
PUBLIC PROTECTOR
SOUTH AFRICA

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REPORT ON AN INVESTIGATION INTO THE ALLEGED FAILURE BY THE DEPARTMENTS OF EDUCATION OF THE LIMPOPO AND FREE STATE PROVINCIAL GOVERNMENTS TO PAY THE MEDICAL AID SUBSIDY OWED TO AN EMPLOYEE
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Executive summary

(i) Ms M Moorcroft (the Complainant) approached the Public Protector in July 2007. She alleged that while she was employed by the Department of Education: Limpopo (DOE: Limpopo), from 1 April 2006 to 30 September 2007, it did not pay the employer contribution or medical aid subsidy towards her medical aid premium. She was of the view that as a public service employee, she was entitled to receive this medical aid subsidy.

(ii) On 30 September 2007, the Complainant was transferred from the DOE: Limpopo and on 1 October 2007, appointed at the Department of Education: Free State (DOE: Free State). In January 2008, she submitted an additional complaint to the Public Protector in which she alleged that during her employment at DOE: Free State, it also failed to pay its portion of the medical aid premium in respect of the medical aid subsidy to which she was entitled as a public service employee. She further submitted that she was improperly prejudiced by the alleged undue delay by both these Provincial Departments of Education to reach a solution in this matter while she paid the full contribution toward her medical aid premium.

(iii) From the investigation, it was found that:

(a) The Provincial Departments of Education failed to pay the employer contribution towards the Complainant’s medical aid premium in terms of its legal obligation in this regard.

(b) The Complainant was improperly prejudiced by the failure of the DOE: Limpopo and the DOE: Free State to:

(aa) Institute her medical aid subsidy and make the employer contributions directly to the medical aid scheme during her employment at the respective Departments; and
(bb) Reimburse her for the employer’s contribution that she made towards the medical aid scheme during her employment at the respective Departments.

(c) The undue delay by the DOE: Limpopo to establish an alternate method of payment and by the DOE: Free State to reimburse the complainant since January 2009 was considered unreasonable and violated the fundamental constitutional right of the Complainant to lawful, reasonable and procedurally fair administrative action.

(d) The DOE: Limpopo failed to co-operate with the Public Protector timeously during its investigation and thus did not comply with its constitutional obligation in this regard.

(iv) The remedial action to be taken by the Members of the Executive Council (MEC’s) responsible for Education in the Limpopo and Free State Provincial Governments, respectively, is to take urgent steps to ensure that:

(a) The Complainant is reimbursed the total amount of the medical aid subsidy in respect of the medical aid contributions she made to Spectramed, during her employment at the DOE: Limpopo, within three months from the date of this report;

(b) The Complainant is reimbursed the total amount of the medical aid subsidy in respect of the medical aid contributions she paid to Spectramed during her employment at the DOE: Free State, within three months from the date of this report;

(c) The problems faced by the DOE: Limpopo in respect of the PERSAL system are addressed in order to prevent the recurrence of this type of prejudice to other employees who transfer inter-provincially; and
(d) The Provincial Departments of Education take cognisance of its constitutional obligation to co-operate with the Public Protector in respect of any investigation that it may conduct into the administrative affairs of the Department, as provided for in the Constitution and the Public Protector Act.
REPORT ON AN INVESTIGATION INTO THE ALLEGED FAILURE BY THE DEPARTMENTS OF EDUCATION OF THE LIMPOPO AND FREE STATE PROVINCIAL GOVERNMENT TO PAY THE MEDICAL AID SUBSIDY OWED TO AN EMPLOYEE

1. INTRODUCTION

1.1 This is a report in terms of section 182(1)(b) of the Constitution of the Republic of South Africa, 1996 (the Constitution) and section 8(1) of the Public Protector Act, 1994 (the Public Protector Act).

1.2 It is submitted to Mrs Moorcroft (the Complainant), the Speaker of the National Assembly, the Members of the Executive Council responsible for Education in the Limpopo and Free State Provincial Governments, and the Heads of the Limpopo and Free State Departments of Education.

1.3 The report relates to an investigation into an alleged failure by the Departments of Education, in both the Limpopo and Free State Provinces, to pay the medical aid subsidy owed to an employee.

2. BACKGROUND

2.1 The Complainant approached the Public Protector in July 2007 and made the following allegations against the Limpopo Department of Education (DOE: Limpopo):

2.1.1 She did not receive her qualification bonus and argued that her additional tertiary qualification, BED Honours, attained in May 2006, was not considered for purposes of her salary progression and her qualification bonus.

2.1.2 She did not receive her ten year service bonus. The Department failed to take into account her service in the Gauteng Provincial Department of Education, in terms of which her service with the Department of Education
(National) began on 1 January 1997. Instead, it relied on the date she was appointed at the DOE: Limpopo, which was 1 April 2006.

2.1.3 She was employed by the Mpumalanga Provincial Department of Education from 1 March 2006 to 31 March 2006, before she was transferred to the DOE: Limpopo, and argued that the salary for this month was not paid.

2.1.4 The medical aid subsidy towards her medical aid contributions was not paid since she joined Spectramed, a private medical aid scheme, on 1 April 2006.

2.2 After careful consideration of the abovementioned allegations and subsequent consultation with the DOE: Limpopo, it was established and accepted that the Complainant's allegations were justified.

2.3 The Public Protector requested the Head of the DOE: Limpopo to urgently intervene in this matter, adequately address these issues and promptly ensure resolution to prevent further prejudice to the Complainant.

2.4 In November 2007, the Head of Department of the DOE: Limpopo reported that the Complainant's issues were addressed and resolved as follows:

2.4.1 After consideration of the Complainant's service record, as confirmed by the Gauteng Provincial Department of Education, her date of appointment for purposes of her service bonus was adjusted from 1 April 2006 to 1 January 1997. She therefore qualified for a ten year service bonus (1 January 1997 to 1 January 2007) which was subsequently paid pro-rata, on 15 October 2007.

2.4.2 The Complainant's qualification was captured accordingly, her salary notch appropriately adjusted and she received her qualification bonus on 8 October 2007.
2.4.3 DOE: Limpopo, after consultation with the Mpumalanga Provincial Department of Education, agreed to pay the March 2006 salary owed to the Complainant. The payment was effected on 15 October 2007.

2.4.4 The Complainant's medical aid membership was captured on 19 June 2006 and not on her date of appointment at DOE: Limpopo, which was 1 April 2006. The medical aid subsidy was subsequently authorised in September 2007 but later revoked on the basis that the Complainant was a member of Spectramed, a private medical aid, and not the Government Employees Medical Scheme (GEMS).

2.5 From the report submitted by the Head of the DOE: Limpopo, it was concluded that the issues relating to the qualification bonus, salary notch, service bonus and March 2006 salary, were adequately addressed. However, the complaint relating to the medical aid subsidy was not adequately addressed and thus remained unresolved.

3. **THE COMPLAINT**

3.1 The Complainant approached the Public Protector in July 2007. She alleged that while she was employed by the DOE: Limpopo, from 1 April 2006 to 30 September 2007, it did not pay the employer contribution or medical aid subsidy toward her medical aid premium. She was of the view that as a public service employee, she was entitled to receive the medical aid subsidy since her membership with Spectramed, which began on 1 April 2006.

3.2 On 30 September 2007, the Complainant was transferred from the DOE: Limpopo and appointed at the DOE: Free State, on 1 October 2007.

3.3 In January 2008, she submitted an additional complaint to the Public Protector in which she alleged that the DOE: Free State, also failed to pay its portion of the medical aid subsidy to which she was entitled, during her membership of Spectramed.
3.4 She submitted further that she was improperly prejudiced by the alleged undue delay of the DOE: Limpopo and the DOE: Free State to reach a solution in this matter while she paid the full contribution toward her medical aid premium.

4. **POWERS AND JURISDICTION OF THE PUBLIC PROTECTOR TO INVESTIGATE THE COMPLAINT**

4.1 In terms of section 182(1)(a) of the Constitution, the Public Protector is empowered to investigate complaints of improper conduct in state affairs or in the public administration in any sphere of government, to report on such conduct and to take appropriate remedial action.

4.2 In terms of section 6(4)(a) of the Public Protector Act, the Public Protector is competent to investigate, on own initiative or on receipt of a complaint, any alleged:

4.2.1 maladministration in connection with the affairs of government at any level;

4.2.2 abuse or unjustifiable exercise of power or unfair, capricious, discourteous or other improper conduct or undue delay by a person performing a public function; and

4.2.3 act or omission by a person in the employ of government at any level or a person performing a public function which results in unlawful or improper prejudice to any other person.

4.3 The alleged improper conduct of the said Government Departments falls within the powers and jurisdiction of the Public Protector to investigate.

5. **THE INVESTIGATION**

The investigation was conducted in terms of sections 6 and 7 of the Public Protector Act and comprised the following:
5.1. Consideration of the complaint and supporting documentation submitted by 
the Complainant;

5.2. Correspondence with and consideration of the responses provided in relation 
to the complaint by the relevant officials of the DOE: Limpopo and the DOE: 
Free State; and

5.3. Consideration of the relevant provisions of:
5.3.1 The Public Service Act, 1994 (the Public Service Act);
5.3.2 The Public Service Laws Amendment Act, 1998 (the Public Service Laws 
Amendment Act); and
5.3.2 The relevant Public Service Co-ordinating Bargaining Council (PSCBC) 
Resolutions issued in terms of these Acts.

6. RESPONSE RECEIVED FROM THE PROVINCIAL DEPARTMENTS OF 
EDUCATION

6.1 Response received from the DOE: Limpopo

6.1.1 In August 2008, the Head of Department of the DOE: Limpopo reported that 
after an internal investigation into the complaint the following was 
established:

6.1.1.1 In September 2007, the payment of an amount equivalent to three months of 
the employer’s medical aid contribution was authorised.

6.1.1.2 However, in October 2007, the DOE: Limpopo was unable to access the 
Complainant’s records to make this payment as she had resigned and she 
was not registered on its PERSAL system. In addition, it was unable to 
recapture her as an employee on its PERSAL system as she was appointed 
6.1.1.3 It was impossible to access the Complainant’s records, to pay the outstanding amounts accordingly and to verify both the amount and the Complainant’s details in this respect.

6.1.1.4 "The Free State is better positioned to investigate and pay accordingly and later claim from the Limpopo Department of Education hence [we] advised Mrs Moorcroft to raise the matter with the Free State". (Paragraph 3.2 of letter dated 03 September 2008).

6.1.2 In the light of the above, the matter was referred to the Head of Department of the DOE: Free State, requesting him to investigate the matter further, make the payment due to the Complainant and thereafter to claim the amount owing from DOE: Limpopo.

6.2 Response received from the DOE: Free State

6.2.1 In January 2009, the Acting Deputy Director: Human Resources, Mr T D Lekgetho, informed the Public Protector that the DOE: Free State had taken a decision in this matter based on the reconciliation statement it received from Spectramed.

6.2.2 He advised that from the reconciliation statement it appeared that the Complainant contributed for three months, namely, December 2007, January 2008 and March 2008.

6.2.3 He advised further that since the Complainant was only transferred onto the PERSAL system in December 2007, despite being appointed on 1 October 2007, it will reimburse the Complainant for the payments made in respect of these three months. However, due to financial constraints the DOE: Free State was incapable of reimbursing the Complainant for the months during which she was employed by the DOE: Limpopo.

6.2.4 In the light of the above, the matter was then referred back to the DOE: Limpopo, and it was advised to pay the employer contributions owed to the
Complainant during her employment there, including October 2007 and November 2007, as it paid the Complainant’s salary for these months.

7. APPLICABLE LEGISLATION REGARDING MEDICAL ASSISTANCE FOR GOVERNMENT EMPLOYEES

7.1 PSCBC Resolution 3 of 1999, issued in terms of the Public Service Act, provides:

7.1.1 An employee of the state is entitled to receive an amount equivalent to two thirds of an employee’s normal contribution to a registered medical scheme. The employer contribution is subject to a maximum monthly payment that can be paid by the employer.

7.1.2 This maximum monthly contribution must be revised by the Minister annually by an amount equivalent to the increase in the medical Consumer Price Index.

7.1.3 The employer is responsible to pay the contribution directly to a registered medical scheme.

7.2 In 2006, a new medical scheme for government employees was implemented by the Department of Public Service and Administration in accordance with PSCBC Resolution 1 of 2006. This Resolution, which was issued in terms of the Public Service Laws Amendment Act, provides:

7.2.1 A new medical scheme called the Government Employees Medical Scheme (GEMS) came into effect on 1 July 2006.

7.2.2 All employees newly appointed from 1 July 2006 must belong to GEMS in order to receive an employer subsidy in respect of their medical cover.
7.2.3 An employee appointed before 1 July 2006 and who received an employer subsidy as at 30 June 2006, shall continue to receive the employer’s subsidy of two-thirds of the medical aid contribution subject to a maximum of R1 014.00 per month, provided the employee remains a member of a registered medical aid scheme.

8. OBSERVATIONS

8.1 The Complainant was employed by the DOE: Limpopo from 1 April 2006 to 30 September 2007.

8.2 She was transferred to the DOE: Free State and appointed on 1 October 2007 to 31 December 2008.

8.3 The Complainant was a member of Spectramed, a registered medical scheme, for purposes of medical cover, from 1 April 2006 to 30 March 2008.

8.4 As an employee of the state and in terms of the Public Service Act and the PSCBC Resolutions 3 of 1999 and 1 of 2006 issued respectively, she was entitled to receive a medical aid subsidy in terms of which the employer would pay an amount equivalent to two-thirds of the her total contribution to the medical aid scheme.

8.5 It was established that during her employment at both Provincial Departments of Education and while she was a member of Spectramed, the employer failed to pay the medical aid subsidy towards her medical aid premium.

8.6 Both the DOE: Limpopo and the DOE: Free State did not dispute liability for the failure to fulfill its legal obligation in this regard.

8.7 After numerous requests and enquiries by the Complainant and the Public Protector, in January 2009, the DOE: Free State, undertook to pay the
Complainant for the contributions made for the months of December 2007, January 2008 and March 2008.

8.8 Although the Complainant was employed in February 2008, the Spectramed reconciliation statement did not reflect an amount for this month. This can be attributed to the fact that the Complainant was in arrears with regard to the medical aid contribution at this stage.

8.9 The DOE: Free State did not fulfill its undertaking and no payment was made to the Complainant in this respect. In addition, it did not furnish the Public Protector or the Complainant with reasons for its failure in this regard, despite several requests to do so.

8.10 The DOE: Limpopo explained that:

8.10.1 The reason for the non-payment of the medical aid subsidy was that the Complainant’s appointment was captured on its PERSAL system, in June 2006, two months after the Complainant’s appointment at this Department; and

8.10.2 The reason it could not reimburse the Complainant for the contributions made, was that, when the reimbursement was authorised in September 2007, she resigned from the DOE: Limpopo and her PERSAL records were transferred to the Free State.

8.11 The following was noted in particular:

8.11.1 The Complainant’s employment was captured in June 2006, however, by September 2007, eighteen months after her appointment, her medical aid subsidy was still not instated; and

8.11.2 The DOE: Limpopo advised that it experienced problems with the PERSAL system, however, it was able to pay the Complainant’s salary for October 2007 and November 2007, after she transferred to the DOE: Free State; and
8.11.3 The DOE: Limpopo was able to resolve the issues surrounding the Complainant’s qualification bonus, salary notch, service bonus and March 2006 salary, with payments made to the Complainant in October 2007. However, it was unable to establish the total medical aid subsidy owed to the Complainant and reimburse her accordingly, in October 2007.

8.12 The DOE: Limpopo did not address the problem it experienced with the PERSAL system, adequately. Moreover, it did not establish an alternate method to process this reimbursement, notwithstanding the fact that it was informed by the DOE: Free State that it could not comply with its request to reimburse the Complainant.

8.13 In addition, it ignored several requests by the Public Protector to approach the National Department of Education in order to establish an alternate method to process the refund to the Complainant.

9. FINDINGS

From the investigation the following findings were made:

9.1 The Complainant was improperly prejudiced by the failure of the DOE: Limpopo and the DOE: Free State to:

9.1.1 Institute her medical aid subsidy and make the employer contributions directly to the medical aid scheme during her employment at the respective Provincial Departments; and

9.1.2 Reimburse her for the employer’s contribution she made toward the medical aid scheme during her employment at the respective Provincial Departments.

9.2 The undue delay by the DOE: Limpopo to establish an alternate method of payment and the undue delay by the DOE: Free State to reimburse the
Complainant since January 2009 is considered unreasonable and violated the fundamental constitutional right of the Complainant to lawful, reasonable and procedurally fair administrative action.

9.3 The DOE: Limpopo failed to co-operate with the Public Protector timeously during its investigation and thus did not comply with its constitutional obligation in this regard.

10. REMEDIAL ACTION TO BE TAKEN

In terms of section 182(1)(c) of the Constitution and section 6(4)(c)(ii) of the Public Protector Act, the remedial action to be taken by the MEC’s responsible for Education in the Limpopo and Free State Provincial Governments, respectively, is to take urgent steps to ensure that:

10.1 The Complainant is reimbursed the total amount of the medical aid subsidy in respect of the medical aid contributions she made to Spectramed, during her employment at the DOE: Limpopo, within three months from the date of this report;

10.2 The Complainant is reimbursed the total amount of the medical aid subsidy in respect of the medical aid contributions she made to Spectramed during her employment at the DOE: Free State, within three months from the date of this report;

10.3 The problems faced by the DOE: Limpopo in respect of the PERSAL system is addressed in order to ensure that the employment details of employees who transfer inter-provincially are captured timeously. This would prevent the recurrence of this type of prejudice to other employees who transfer inter-provincially; and

10.4 The Provincial Departments of Education take cognisance of its constitutional obligation to co-operate with the Public Protector in respect of any investigation that it may conduct into the administrative affairs of the
Departments, as provided for in the Constitution and the Public Protector Act.

11. CONCLUSION

The Public Protector will monitor the progress in the implementation of the recommendations made in this report on a quarterly basis.

ADV TN MADONSELA
PUBLIC PROTECTOR OF THE
REPUBLIC OF SOUTH AFRICA

DATE:

Assisted by: Ms CN Pillay (Senior Investigator)