

Case No.: UNDT/GVA/2017/007  
Judgment No.: UNDT/2018/110  
Date: 19 November 2018

Case No.

6. The UNHCR Office in Ankara contacted the “American Hospital”, a private health institution in Ankara, and determined that the estimated cost of similar treatments in Turkey was TRY52,860.30 and that the reimbursable amount under the MIP was TRY48,288.38, which represented USD16,608.49.

7. By email of 12 April 2016, a

10. The Director, DHRM, and the Controller and Director, DFAM, approved the MIP Management Committee's recommendation by signing the memorandum of 31 August 2016.

11. By email of 21 November 2016, the Applicant was notified of the decision to recover USD14,707.15 following the recommendation by the MIP Management Committee that no exception be made to consider the total medical costs that the Applicant had incurred.

12. On 3 January 2017, the Applicant requested management evaluation of the decision to recover USD14,707.15 for the medical treatments he received in Switzerland. The Applicant did not receive any response to his management evaluation request within the set deadline, so he filed his application with the Tribunal on 20 February 2017.

13. The application was served on the Respondent on 22 February 2017, and he submitted his reply on 24 March 2017.

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official that all his medical expenses will be covered by the MIP. This promise was clear, unambiguous and specific and it bound the Organization to cover all medical expenses that the Applicant incurred when travelling to Switzerland as he used the same Schengen visa for this trip;

b. UNHCR erred in its interpretation of the stop-loss clause by limiting it to the reasonable and customary expenses at the Applicant's duty station, whilst the rule does not provide for such limitation. In addition, UNHCR adopted an inconsistent interpretation of the "out-of-pocket expenses" in his various documents related to the present case;

c. Alternatively, the amount of reasonable and customary expenses at the duty station was not properly determined and the recommendation made by the MIP Management Committee contained misrepresentations about the number of hospitals consulted. Since it was disputed by the Applicant, the Director, DHRM, should have used the dispute resolution mechanism envisaged in the MIP; and

d. Consequently, the Applicant requests to be reimbursed for all deductions on his salary made pursuant to the contested decision.

17. The Respondent's principal contentions are:

a. The contested decision was taken in compliance with sec. 6.4 of UNHCR/AI/2016/3 (Administrative Instruction on the Medical Insurance Plan (MIP)—Statutes and Internal Rules) ("MIP Rules") and, accordingly, the Applicant was only entitled to reimbursement of the expenses adjusted to the reasonable and customary costs level in Ankara;

b. The decision-making process followed the applicable procedures;

c. The Applicant cannot validly claim an ignorance of the applicable rules, nor rely upon the attestation provided for his travel to Greece;

d. The decision-maker had no discretion as the Applicant's case was strictly regulated by the MIP rules;

e. Consequently, the Respondent requests that the application be dismissed in its entirety.

### **Consideration**

18. The present case concerns the reimbursement of medical expenses incurred by a locally recruited staff member outside his duty station while travelling on private business. As the conditions for reimbursement and the extent of the coverage are detailed in the MIP Rules, the Tribunal's role essentially consists in examining whether UNHCR committed any error, in law or in fact, in the interpretation or the application of these rules.

19. The Applicant submits that irrespective of the MIP Rules, the obligation for UNHCR to reimburse him for his medical expenses in Switzerland arises from the promise it made in the attestation of 3 August 2015. It is incumbent upon the Applicant to establish that such promise was made and that it had the effect of binding the Organization to reimburse in full his medical expenses in Switzerland.

20. In view of the foregoing and having examined the parties' submissions and the evidence produced before it at the hearing, the Tribunal has identified the following issues:

- a. Was the Applicant entitled to the benefit of the stop-loss provision of the MIP Rules?
- b. Did UNHCR commit any procedural or factual error in the assessment of the reasonable and customary expenses at the Applicant's duty station?
- c. Did the attestation of 3 August 2015 issued in support of the Applicant's visa request for his travel to Greece constitute a promise by UNHCR that his medical expenses in Switzerland would be covered and reimbursed in full?

### *Relevant rules*

21. The legal framework applicable to the present case is contained in the MIP Rules.

22. Pursuant

that the stop-loss provision had to be applied in his case, this provision will be examined in more detail.

28. Sec. 6.25 on the stop-loss provision provides:

Once a subscriber, along with his or her enrolled family members, incurs collectively out-of-pocket expenses (that is, the 20 per cent of the reasonable and customary charges that is not covered by the Plan) up to the level of one half of his or her monthly net base salary



*Was the Applicant entitled to the benefit of the stop-loss provision?*

31. The Applicant's case was presented by the administering office in Ankara to the MIP Management Committee for ~~MR~~ consideration

34. Adopting the Applicant's argument would amount to removing the limitation of the coverage for expenses that exceed those reasonable and customary at the duty station and, to some extent, expanding the medical coverage worldwide. This would not only be entirely contrary to the explicit terms of the MIP Rules, but would also change the very nature of the plan, for which the

38. The Applicant challenged for the first time at the hearing the way the amount of reasonable and customary expenses was established. He claimed that the administering office failed to consult several medical facilities, that the MIP Management Committee misrepresented the facts in writing that “the Office contacted a number of hospitals in Turkey” and that the assessment was not based on an adequate consideration of the treatments that the Applicant actually received in Switzerland.

39. The MIP Rules provide for the amount of reasonable and customary expenses at the duty station to be determined by the administering office, based on “the prevailing pattern of charges for professional and other health services at the duty station” (see secs. 4(y) and 6.2 and 6.4 of the MIP Rules). Whilst the reference to the “prevailing pattern of charges” suggests that a comparison among various medical providers may be made, there is no requirement that the administering office obtain several estimates for each medical claim it is requested to reimburse. According to the Chairman of the MIP Management Committee, the administrative office is familiar with the cost of treatments at the duty station and with the various medical institutions. In the instant case, the administering office contacted the “American Hospital” on the basis that it is a renowned medical facility for which the costs are thus at the high end of the spectrum. The administering office, based on its experience, challenged the assessment of the costs of the treatments in Turkey on the basis that it is a renowned medical facility for which the costs are thus at the high end of the spectrum. The administering office, based on its experience, challenged the assessment of the costs of the treatments in Turkey on the basis that it is a renowned medical facility for which the costs are thus at the high end of the spectrum.

41. As to the Applicant's claim that the administering office was confused in respect of the medical care that he received in Switzerland, the Tribunal notes that the Applicant generally referred to the language used by the Ankara Office in the email exchanges, but did not point out to any specific error that would show that the basis of the comparison was incorrect. There is, thus, no evidence that would allow to question the basis of the calculation used to establish reasonable and customary expenses at the duty station in the Applicant's case.

42. The Applicant is right to point out that the memorandum of the Chairman of the MIP Management

*Did the attestation of 3 August 2015 constitute a promise by UNHCR that the Applicant's medical expenses in Switzerland would be covered and reimbursed in full?*

45. Independently from the MIP Rules, the Applicant argues that UNHCR's obligation to reimburse him for the totality of his medical expenses incurred in Switzerland stems from the attestation he was provided on 3 August 2015 to obtain a visa for his personal travel to Greece.

46. This attestation was issued by a Human Resources Officer at UNHCR's Ankara Office to the Greek Embassy and stated, *inter alia*, that:

We also would like to certify that [the Applicant] is fully covered by United Nations Medical Insurance Plan (MIP) against all possible medical expenses that may occur during travel to and in any country.

47. From the Applicant's point of view, this statement constitutes a clear and unambiguous written promise by a competent authority that all medical expenses he may incur while traveling abroad, if any, would be covered under the MIP.

48. This argument cannot succeed. The source of law in this case is the MIP Rules, which are adopted through an administrative instruction and are binding upon the parties. An attestation issued by a Human

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50. Furthermore, the attestation was delivered to the Greek authorities for specific dates, not for the Applicant's travel to Switzerland. There is no commitment from UNHCR towards the Swiss authorities or otherwise in respect of the Applicant's trip to Switzerland. It is also commonly known that medical care in Switzerland is very expensive, such that it cannot be assumed that UNHCR would have issued the same attestation to the Swiss authorities or that the Office would not have warned the Applicant about the limitations of his insurance coverage for this specific trip.

51. The Tribunal acknowledges that the wording of the attestation was perhaps not ideal and may have confused the Applicant. That being said, it was not such as to create any legitimate expectation that "all possible medical expenses that may occur during travel to and in any country" would be coveredbTj 16.959.25 13.7989( )Tjur079 0 Td (

methodology to properly assess them. The contested decision is a mere application of these rules.

### **Conclusion**

58. In view of the foregoing, the Tribunal DECIDES that the application is dismissed.

*(Signed)*

Judge Teresa Bravo

Dated this 19<sup>th</sup> day of November 2018

Entered in the Register on this 19<sup>th</sup> day of November 2018

*(Signed)*

René M. Vargas M., Registrar, Geneva