Introduction

1. By application filed on 20 February 2017, the Applicant, a staff member of the Office of the United Nations High Commissioner for Refugees ("UNHCR"), challenges the decision [illegible]

charging a suspense account pending process under the Medical Insurance Plan ("MIP").

7. 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.

8. By email of 12 April 2016, a Senior Human Resources Officer at UNHCR Office in Ankara requested the MIP Management Committee to consider the Applicant's case under the MIP hardship and stop-loss provisions.

9. On 20 July 2016, the MIP Management Committee considered the Applicant's case under the MIP hardship provision. The MIP Management Committee was of the view that the Applicant had incurred major medical expenses while vacationing in Switzerland, that the MIP does not provide worldwide coverage and that the reimbursement should be based on reasonable and customary cost at the staff member's duty station. Thus, it recommended to the Director, Division of Human Resources Management ("DHRM"), and the Controller and Director, Division of Financial and Administrative Management ("DFAM"), that "no additional reimbursement be made in relation with the Out-of-Pocket amount corresponding to medical expenses incurred in Switzerland".

10. By a memorandum dated 31 August 2016 to the Director, DHRM, and the Controller and Director, DFAM, the Chairperson of the MIP Management Committee further explained the details of the Applicant's case and his understanding of the applicable rules. In particular, he stated that "MIP is priced and designed for local use only and, as per its rules, does not provide worldwide coverage. Therefore, medical expenses incurred outside the subscriber's country should normally be reimbursed based on the reasonable and customary cost at the duty station." He further explained that the difference between the actual medical expenses and the certified amount (representing the reasonable and customary cost at the duty station) is not taken into consideration in calculating the out-of-pocket amount, such that the Applicant is not eligible for additional payment under the

17. The Tribunal was initially scheduled to hear Ms. Lynda Ryan, former Controller and Director, DFAM, but after having heard the first two witnesses, it was agreed that her testimony was not necessary.

18. By Judgment *Peker* UNDT/2018/110 of 19 November 2018, the Tribunal dismissed the application. This Judgment was appealed before UNAT.

19. By Judgment *Peker* 2019-UNAT-945, UNAT remanded the Applicant's case for a *de novo* determination on two grounds. Firstly, UNAT held that it was prevented from undertaking a proper review of the case because the audio recording of the oral hearing before this Tribunal contained only the final submissions of both Counsel but not the testimony of the Applicant and the two witnesses. Secondly, UNAT found that this Tribunal erred in rejecting the Applicant's motion for production of documents related to the calculation of reasonable and customary expenses and directed the Tribunal to order their disclosure.

20. By Order No. 68 (GVA/2019) dated 20 September 2019, the Tribunal ordered the Respondent to produce the documents sought by the Applicant in his motion for production of documents. The Tribunal also granted leave to the parties to file further submissions concerning those documents. Furthermore, the Tribunal directed the Applicant to file his witness statement and the Respondent to file written statements of his witnesses. The parties were also instructed to inform the Tribunal whether they wished to cross-examine any of the other party's witnesses.

21. Both parties complied with the Tribunal's Order No. 68 (GVA/2019). On 2 October 2019, the Respondent filed the documents sought by the Applicant as well as the witness statements of Mr. Pasquali and Ms. Farkas. On 9 October 2019, the Applicant filed his submission in relation to those documents and his witness statement. On 16 October 2019, the Respondent replied to the Applicant's submissions. The parties also indicated that they did not wish to cross-examine any of the other party's witnesses.

22. By email of 18 October 2019, the Applicant indicated that he would seek the Tribunal's leave to reply to the Respondent's submission of 16 October 2019. However, no formal motion was filed by him in this regard.

23. On 22 October 2019, the Respondent filed a motion for leave to file additional evidence and submissions.

Parties' submissions

24. The Applicant's principal contentions are:

a. The attestation that he received in connection with visa formalities for his travel to Greece constitutes a written promise issued by a competent 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 said amount was disputed by the Applicant, the Director, DHRM, should have used the dispute resolution mechanism envisaged in the MIP;

d. The complexity of the Applicant's case and the various

25. 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. The Applicant has not produced any evidence to substantiate his claim that the omission of information related to the liver abscess drainage and resection procedure, which was carried out during the same operation, had any impact on

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27. The Tribunal considers that the Respondent's motion is granted, and the evidence is admitted into the case record.

Applicant's pending request

28. In his submission of 9 October 2019, the Applicant requested the Tribunal to order the Respondent to provide a new estimate of reasonable and customary expenses taking into consideration the "actual" medical treatment received by him in Geneva.

29. Considering that the Respondent has already provided quotations from two UN-designated hospitals in Ankara, namely Acibadem Hospital and Guven Hospital, in namelThTj 0.Tj 65 T7D (the)Tj ( ).8Tj l

36. Sec. 6.3 of the MIP Rules provides that:duty members

> In the case of expenses incurred during official mission travel for emergency medical care only, approved medical evacuation in the authorized location or medical care received in an approved regional area of care [foot note omitted], the expenses will be settled in accordance with the reasonable and customary cost level of the area or country where care was provided.

37. Sec. 6.4 of the MIP Rules provides in its relevant part that:

> Any expenses incurred outside the country of duty station except those described in paragraph 6.3 above will be adjusted to reflect the reasonable and customary cost level of the duty station where the staff member is assigned.

38. Sec. 4(y) defines “reasonable and customary” as follows:

> The prevailing pattern of charges for professional and other health services at the staff member’s duty station or the approved location (for example, the place of approved medical evacuation or regional area of care) where the service is provided as reasonably determined by the Administering office.

39. It is not disputed that since the Applicant was on private business at the time he fell ill, his case does not fall under any of the exceptions of sec. 6.3 of the MIP Rules.

40. The MIP Rules contain two measures that allow for exception to the rules, which are to be made to mitigate the impact of medical expenses on staff members in certain circumstances: the stop-loss and the hardship provisions, respectively defined in secs 6.25 to 6.27 and sec. 7 of the MIP Rules. Since the Applicant claims that the stop-loss provision had to be applied in his case, this provision will be examined in more detail.

41. Sec. 6.25 onwards

reimbursement of an additional 80 per cent on the residual; that is, that portion of reasonable and customary expenses not reimbursed. For

Did UNHCR commit any procedural o[illegible] Applicant's

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.

54. 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, found it appropriate to rely upon this estimate of comparable costs for the treatments that the Applicant received in Switzerland even though the American Hospital is located in Istanbul, where the cost of living is significantly higher than in Ankara, the Applicant's duty station. It also used the upper bracket of the estimate provided by the "American Hospital", to the benefit of the Applicant.

55. Subsequent to the remand of the case, the Tribunal ordered the Respondent to file *inter alia* additional documents relevant for the calculation of "reasonable and customary expenses" in the Applicant's case. The Respondent filed the quotations of two hospitals in Ankara, namely Guven Hospital and Acibadem Hospital in relation to the Applicant's medical treatment in Geneva.

56. The estimated cost for the Applicant's treatment in the Guven Hospital was TRY65,822.06 (which is equivalent to USD11,625.23) and in the Acibadem Hospital was TRY75,208.72 (or USD13,283.07).

57. The Applicant was reimbursed USD16,610.49 for the medical treatment he received in Switzerland. Therefore, the Tribunal considers that UNHCR's initial estimate of the reasonable and customary charges for the Applicant's treatment, based on the information fn0 Td (the)Tj ( )nto 94Tj 4h43176794

59. The Applicant claims that the administering office was confused in respect of the

Did the attestation of 3 August 2015

69. 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.

70. 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 covered