

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)
पञ्जाब राज्य के अल्पसंख्यक/Department of Empowerment of Persons with Disabilities (Divyangjan)
Union Ministry of Social Justice and Empowerment
STTTrT ^eRT/Government of India

Case No. 12446/1092/2020

Complainant:

Shri Danish Mahajan Village & Post - Shahpur Kandi,
Tehsil - Dhar Kalian,
District - Pathankot, Punjab-145029 Email:
Danish.malnuanKSm'innail.com

Respondents:

- (1) Aditya Birla Health Insurance Co. Limited,
[Through: CEO & Whole Time Director]
9th Floor, Tower-1, One Indiabulls Centre,
Jupiter Mills Compound, 841, Senapati Bapat Marg,
Elphinstone Road, Mumbai-400013
Email, care.healihinsnrancck/tadityabirlacapital.com
- (2) Insurance Regulatory and Development Authority of India,
[Through: The Chairman]
115/1, Financial District, Nanakramguda,
Hyderabad-500032 Email: irdafmirdai.uov.in

1. Gist of Complaint

1.1 The complainant filed this Complaint regarding denial of Health Insurance Policy by Aditya Birla Health Insurance Co. Ltd. to him and his wife Smt. Shilpa, both persons with 100% Visual Impairment.

1.2 The complainant submitted that on 02.10.2020 he had applied for a Health Insurance Plan - Aditya Birla Active Assure for himself and his wife with an annual coverage of INR Rs.5.00 Lakh and deposited a premium amount of

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Sarojini House, 6, Bhagwan Dass Road, New Delhi-110001 ; Tel.: 23386054, 23386154 ; Telefax :
23386006 E-mail: ccpd@nic.in Website: www.ccdisabilities.nic.in _N(^.w nf4<i ^ ^ fen?
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(Please quote the above file/case number in future correspondence)

Rs.8567/- for the same. The respondent rejected the proposal due to Medical Risk Assessment Report. The complainant has highlighted that no medical examination was conducted at the time of application and the only document submitted in this regard by the complainant was the Disability Certificates of him and his wife.

2. The matter was taken up with Aditya Birla Health Insurance Co. Ltd., the Insurer; and Insurance Regulatory and Development Authority of India (IRDAI) for submission of their comments.

3. Submissions made by the Insurer - Respondent No.1

3.1 Respondent No.1 in their reply dated 31.12.2020 submitted that the Insurance is for covering the unforeseen risks and on basis of the facts of the present case, it cannot be ascertained presently that what other medical conditions may arise due to present condition of the Proposer and his wife. Hence such risk cannot be Insured in line with the Board approved Underwriting Policy of the Company; and the product specific underwriting manual filed with IRDAI.

4. Submissions made by IRDAI - Respondent No.2

4.1 Respondent No.2 in their reply in affidavit dated 29.12.2020 and inter- alia submitted that Insurers evaluate the proposals received from individuals and entities/organisations and issue appropriate health insurance policies. This process of evaluation is called underwriting in insurance parlance. Insurers design insurance products offering health insurance coverage. Once insurance policy is issued the insurers are duty bound to honour the claims as per the terms and conditions of the policy contracts.

4.2 Respondent No.2 specified that as per Regulation 8 of HIR, 2016 any proposal for health insurance may be accepted as proposed or on modified terms or denied wholly based on the underwriting policy of the concerned insurer as



approved by the Board of the Insurance Company. The underwriting policy shall cover the approach and aspects relating to offering health insurance coverage not only to standard lives but also to sub-standard lives. It shall have in place various objective underwriting parameters to differentiate the various classes of risks being accepted in accordance with the respective risk categorisation. Thus, insurance companies shall have the norms covering Persons with Disabilities (Divyangjan) in their respective underwriting policies.

4.3 IRDAI vide its circular No.IRDAI/HLT/MISC/CIR/129/06/2020 dated 02.06.2020 has instructed all the insurance companies to disclose their underwriting philosophy and approach with regard to providing health insurance coverage, inter-alia, to persons with disabilities. Denial of a proposal by the insurer shall be communicated to the prospect in writing; by recording the reasons for denial and that the denial of the coverage shall be the last resort that an insurer may consider. The objective criteria based on underwriting is applicable even while dealing with providing insurance coverage to persons with disabilities.

4.4 Underwriting the risks proposed for insurance is the business prerogative of the insurers as they undertake the liability by accepting the insurance coverage to the lives to be insured.

4.5 Insurance is a contract of utmost good faith and both the parties are duty bound to make disclosures that are material to the contract. It is necessary that the proposer who knows everything about himself/herself furnishes all the material information in the proposal form. Based on the answers of the proposer to the questions in the proposal form, the insurance company examines the acceptability of the proposal for insurance and the terms on which the acceptance can be made inter-alia on the decision of calling for medical examination or any further tests that may be required to assess the risk correctly and take an informed decision.



4.6 Calling/not calling for medical examination cannot be regarded as the fundamental for issuance of health insurance policies, it is as per the Board approved Underwriting policy of an insurance company. Insurance companies shall evolve Underwriting policy based on sound, prudent and objective criteria taking into account the market segment while formulating underwriting policy.

5. The replies filed by the respondents were forwarded to the complainant for submission of his rejoinder which is still awaited.

6. **Hearing:** The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on 12.02.2021. The following were present:

1. Shri Danish Mahajan, complainant.
2. Shri Mahesh Radhakrishnan, HOD (Legal), Aditya Birla Health Insurance Company Ltd., Mumbai.
3. Shri D.V.S Ramesh, GM (Health), Shri N. Sheshagiri Rao, Manager (OSD) and Ms. Sageena A, AGM (Legal) on behalf of IRDAI.

7. **Observations/Recommendations:**

7.1 Both the parties were heard.

7.2 Complainant alleges that he forwarded proposal to buy health insurance product from Respondent No 1, i.e. Aditya Birla Group. His proposal was denied and that the Respondent No. 1 denied to sell health insurance scheme product to the Complainant because of his disability. His contention was that many similarly placed persons have been given health insurance.

7.3 IRDIA, Respondent No. 2, in its written Reply submitted that it is regulatory authority and regulates the functioning of public as well as private sector insurance companies. Further it submitted that as per insurance business scheme, buyer intending to buy insurance product has to forward his proposal to the Insurance Company which evaluates the proposal. This process of evaluation is called 'underwriting'. After underwriting, it is prerogative of the Insurance Company either to accept or reject the proposal. IRDIA does not have any role in underwriting process. Further, IRDIA submits that by circular dated 02.06.2020, it instructed all the insurance companies to disclose their underwriting philosophy with respect to Divyangjan on their websites.

7.4 During online hearing, IRDIA specifically submitted that it cannot direct the insurance companies to frame specific policies for any group of people.

7.5 During online hearing, Respondent No. 1, i.e. Aditya Birla Group explained its reasons for denying insurance proposal to 100% Visual Impaired. As per the Respondent No. 1, reason for denying insurance products to persons with severe percentage of disabilities is basic philosophy of insurance. Insurance is a concept based on 'pooling'. People of similar background & risk profile, i.e. those who are under acceptable levels of tolerant limits, are placed in one single group. Each member of this group contributes to cover an unwanted situation, like an accident or disease, which may arise in future. Such contribution is called 'premium'. Hence, such policies must be fair and reasonable for all the members of the group. Any person whose level of risk is higher in comparison to the other members of the group, cannot be made member of the group since it will result into discrimination with other members of the group who are at lower levels of risk. Therefore, people with higher percentage of disabilities are denied insurance products.

7.6 Respondent No.1 also suggested that a separate group of people with higher level of risks can be created, in which people belonging to higher risk levels may be included.

7.7 Section 24 Rights of Persons with Disabilities Act, 2016 mandates that the appropriate government shall formulate schemes related to social security and health of Divyangjan. Section 24 is reproduced below -

24. Social security - (1) The appropriate Government shall within the limit of its economic capacity and development formulate necessary schemes and programmes to safeguard and promote the right of persons with disabilities for adequate standard of living to enable them to live independently or in the Community ...

(3) The schemes under sub-section (1) shall provide for -

(j) Comprehensive insurance scheme for persons with disability, not covered under the Employees State Insurance Schemes, or any other statutory or Government-sponsored insurance schemes.

7.8 Section 14 of IRDAI Act, 1999 lays down duties, powers and functions of IRDAI. As per the provision it is the duty of IRDAI to promote and regulate professional organisations connected with the insurance and re-insurance



business.

7.9 Considering Section 24 of RPwD Act, 2016 read with Section 14 of IRDAI Act, 1999, it is certain that IRDAI is under statutory mandate to ensure that comprehensive insurance policy is made for Divyangjan.

7.10 Its responsibility does not end with mere issuing of circulars. It should, through a consultative and advisory role, proactively ensure that Insurance Companies, private as well as public, form separate pools for higher risk people and design insurance products dedicated for Divyangjan.

7.11 I was also informed by IRDAI that it framed policies with respect to Divyangjan, e.g., disclosure of underwriting policies for Divyangjan by insurance companies. This court further recommends that IRDAI shall ensure that its guidelines are effectively followed and insurance companies are disclosing the underwriting policies which are available on the websites of the companies for easy access to Divyangjan.

7.12 The Respondent No.2 is Aditya Birla Health Insurance Group shall also revisit this particular case and re-examine if a proposal could be made to the Complainant for health insurance.

7.13 Accordingly the case is disposed off.

Dated:
01.03.2021



(Upma Srivastava)
Commissioner

for Persons with
Disabilities