



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/GVA/2025/038

Order No.: 80 (GVA/2025)

Date: 7 July 2025

Original: English

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**Before:** Judge Sun Xiangzhuang

**Registry:** Geneva

**Registrar:** Isaac Endeley, Officer-in-Charge

APPLICANT

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**ORDER ON AN APPLICATION FOR  
SUSPENSION OF ACTION PENDING  
MANAGEMENT EVALUATION**

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**Counsel for Applicant:**

Jiries Saadeh, Saadeh Rahman LLP

**Counsel for Respondent:**

Wambui Kahama-Bernard, UNEP

## **Introduction**

1. The Applicant is the daughter of a former staff member of the United Nations Environment Programme (“UNEP”). As her mother is medically incapacitated, the Applicant is acting on her behalf pursuant to art. 3.1(c) of the Statute of the Dispute Tribunal.

2. On Friday, 27 June 2025, after working hours, the Applicant filed an application requesting suspension of action, pending management evaluation, of the decision to withdraw, as of Tuesday, 1 July 2025, the full-time 24/7 home care services and other services to the physical and combined therapies being provided to her mother.

3. The application for suspension of action was served on the Respondent on Monday, 30 June 2025, who filed his reply on 2 July 2025. In his service notification, the Respondent was instructed to refrain, for as long as the suspension of action procedure before the Dispute Tribunal is ongoing, from taking any further decision or action relating to the decision that the Applicant seeks to suspend.

## **Facts**

4. The Applicant’s mother is a participant in the United Nations Worldwide Medical Plan (“UNWWP”) administered by Cigna.

5. On 21 May 2021, the Applicant’s mother suffered a serious medical condition which led to a long hospitalisation and rehabilitation phase. Her care is provided by a licensed home intensive care provider, offering around-the-clock medical support and continuous crisis readiness.

6. The UNWWP contains an annual cap on medical care of USD 250,000. In previous years, a waiver of this cap was routinely approved for the Applicant following submission of updated medical reports.

7. By email dated 21 May 2025, Cigna informed the Applicant that “[a]t this moment, we are unable to approve any further guarantee of payment letters for HKP Bonn [“the medical provider”], as we are limited by the annual maximum of

250,000 USD. I am working closely with my colleagues in the discussions with the UN”.

8. Cigna commissioned an official evaluation of the Applicant’s medical condition, which took place on 7 June 2025.

9. On 24 June 2025, Cigna informed the Applicant that:

[...]

I am writing to provide an update on your request for exceptional reimbursement under the UN Worldwide Plan for the following services:

- 24/7 home care – request to waive the annual plan limit of USD 250,000
- Physical therapy – request to exceed the annual limit of 60 sessions
- Combined therapy (including occupational and speech therapy) – request to exceed the annual limit of 60 sessions

Following a thorough review and discussion between Cigna, [the Health and Life Insurance Section, “HLIS”], and [the Division of Healthcare Management and Occupational Safety and Health, “DHMOSH”], we regret to inform you that the 24/7 home care services can no longer be covered under the plan effective 1 July 2025. While we understand that these services have been essential for [the Applicant] over the years, we must clarify that the UN Worldwide Plan does not provide coverage for custodial care. Therefore, past approvals of 24/7 services were outside the scope of plan coverage.

As stated in the UN Worldwide Plan Description of Benefits [...], nursing assistance related to activities of daily living is not a covered benefit under the plan.

To support a transitional period, the Health and Life Insurance Committee (HLIC) has agreed to continue covering 24/7 care through 30 June 2025. As of 1 July 2025, any expenses related to custodial care will no longer be reimbursed.

Going forward, HLIC has determined that 8 hours per week is the maximum allowable home care coverage under the plan. With the current provider, HKP Bonn, this equates to approximately EUR 3,528 per month.

Regarding therapy services, HLIC has approved the following coverage levels, based on the medical reports shared with us and the medical necessity:

- 2 sessions of physical therapy per week
- 2 sessions of speech therapy per week
- 1 session of occupational therapy per week.

If you would like to explore alternative care arrangements, such as inpatient options, or require assistance identifying suitable providers, please do not hesitate to contact us. Cigna is here to support you.

10. On 27 June 2025, the Applicant requested management evaluation of the contested decision dated 24 June 2025.

11. On the same day, she filed the instant application for suspension of action.

### **Consideration**

#### *Anonymization*

12. Due to the nature of the contested decision and sensitivity and confidentiality of the medical details that ought to be addressed in this case, the Tribunal finds it appropriate to anonymize the Applicant's name in order to protect her privacy and confidential medical information.

#### *Receivability*

13. The Respondent challenges the receivability *ratione materiae* of the application for suspension of action on the grounds that the Applicant is not seeking suspension of the implementation of a contested administrative decision to maintain the *status quo*. Instead, she is seeking an order compelling the Administration to take an affirmative act to grant her an exceptional reimbursement for a service that is not covered under the Applicant's mother current health care plan. In this context, he submits that the Dispute Tribunal does not have jurisdiction to grant an order sought under art. 2.2 of its Statute.

14. Pursuant to the well-established jurisprudence of the Dispute Tribunal,

A suspension of action order is, in substance and effect, akin to an interim order of injunction in national jurisdictions. It is a temporary order made with the purpose of providing an applicant temporary relief by maintaining the *status quo* between the parties to an application pending trial. It follows, therefore, that an order for suspension of action cannot be obtained to restore a situation or reverse an allegedly unlawful act which has already been implemented (*Applicant* Order No. 87 (NBI/2014)).

15. While the Tribunal generally agrees with the principle that an order for suspension of action can only be granted to maintain the *status quo*, it does not agree with the Respondent that the Applicant is alternatively seeking an affirmative act in this case.

16. The contested decision dated 24 June 2025 stated, *inter alia*:

[...]

Following a thorough review and discussion between Cigna, HLIS, and DHMOSH, we regret to inform you that **the 24/7 home care services can no longer be covered** under the plan effective 1 July 2025. **While we understand that these services have been essential for [the Applicant] over the years, we must clarify that the UN Worldwide Plan does not provide coverage for custodial care.** Therefore, past approvals of 24/7 services were outside the scope of plan coverage. (emphasis added)

17. In the Tribunal's view, the contested decision indeed changed the *status quo* by revoking a particular healthcare service that, up until that point, was being covered under the Applicant's health plan. The language of the decision further suggests that there was also a change in the interpretation of the nature of the services provided. That is, now the services are being considered "custodial care", which is not covered.

18. In this sense, regardless of its lawfulness, reasonableness or fairness, the contested decision definitely constituted a change to the *status quo*.

19. Absent any other argument challenging the receivability of the application, the Tribunal finds that the application is receivable *ratione materiae*.

*Legal framework*

20. Art. 2.2 of the Tribunal's Statute provides that the Tribunal shall be competent to suspend the implementation of a contested administrative decision during the pendency of management evaluation where the decision appears *prima facie* to be unlawful, in case of particular urgency, and where its implementation would cause irreparable damage. These three requirements are cumulative. In other words, they must all be met in order for a suspension of action to be granted. Furthermore, the burden of proof rests on the Applicant.

*Prima facie unlawfulness*

21. The Tribunal recalls that the threshold required in assessing this condition is that of "serious and reasonable doubts" about the lawfulness of the impugned decision (*Hepworth* UNDT/2009/003, *Corcoran* UNDT/2009/071, *Miyazaki* UNDT/2009/076, *Corna* Order No. 90 (GVA/2010), *Berger* UNDT/2011/134, *Chattopadhyay* UNDT/2011/198, *Wang* UNDT/2012/080, *Bchir* Order No. 77 (NBI/2013), *Kompass* Order No. 99 (GVA/2015)).

22. In this case, it is clear that the contested decision transmitted a change in the interpretation of the homecare services being provided to the Applicant's mother. Up until that point, the medical determination was that her mother's situation warranted the exceptional reimbursement under the UNWWP for the services of 24/7 home care in excess of the annual limit, physical therapy in excess of the annual limit, and combined therapy (including occupational and speech therapy) in excess of the annual limit.

23. On 24 June 2025, the assessment, based on a review and discussion between Cigna, HLIS, and DHMOSH, changed to conclude that the UNWWP does not provide coverage for custodial care.

24. The Applicant challenges the assessment that the services being provided to her mother should be categorised as "custodial care".

25. In support, the Applicant explains that custodial care refers to non-medical assistance provided to individuals who need help with daily living activities, such

as bathing, dressing, eating, and mobility. This type of care is typically delivered by non-medical professionals and is aimed at helping individuals maintain a level of independence and quality of life when they are unable to perform these tasks on their own. The Applicant's mother situation, however, requires medical care by qualified medical personnel.

26. In further support, the Applicant submits that her mother is unable to communicate, respond or move, needs constant professional monitoring to recognise and respond to medical emergencies, and that the slightest delay in care (such as for airway obstruction, oxygen desaturation, or seizures) could be fatal.

27. However, based on an incorrect premise that the Applicant's mother situation falls within the "custodial care" category, the Administration decided that the services that were being provided were not covered by the UNWWP and art. 78 of ST/IC/2025/4, which mandates that "all reimbursed medical services must be medically necessary and fall within the scope of benefits defined under the plan".

28. In the Applicant's understanding, the foregoing legal requirements are met: the treatment is medically necessary and has repeatedly been confirmed to be so by suitable medical personnel. In support, the Applicant provided, *inter alia*:

- a. a medical status report initially issued on 13 July 2022 and updated throughout the years, with the most recent one in May 2025;
- b. a medical certificate from 26 June 2025 stating that the Applicant's mother requires intensive care by specially trained medical personnel (intensive nursing care); and
- c. an email correspondence dated 24 May 2025 between Cigna and the medical provider confirming that the services provided to the Applicant's mother at home are classed as "medical services" (i.e., care of the tracheostomy tube, suctioning of secretions, inhalation therapy, administration of medications via PEG or other delivery routes, PEG site care, and monitoring of vital signs).

29. Lastly, the Applicant submits that the Administration organized a medical visit on 7 June 2025 to obtain a new independent expert report on her mother's health, which has either been misunderstood or disregarded. In any case, the Administration failed to disclose the contents of that report to the Applicant, despite being repeatedly asked to, as shown by the emails of 19 and 24 June 2025 that are part of the case record.

30. In response, the Respondent argued that the contested decision was based on a thorough review of the Applicant's claim for exceptional reimbursement, which assessed both the medical necessity, and the outcomes of the services provided, as well as the professional level at which the care was delivered. The review considered:

- a. the medical reports received;
- b. the Applicant's mother historical medical records from 2021;
- c. the ongoing nature of the treatment;
- d. the patient's relatively stable condition;
- e. the surgical procedure performed; and
- f. the input from the Cigna Health Care Team, including the Nurse Case Manager.

31. Based on the findings of the review, it was determined that certain services provided to the Applicant's mother under the 24/7 home care arrangement were expressly excluded under the terms of her health care plan. Furthermore, the Respondent's Medical Officer concluded that while some components of the care were medically necessary, they could be administered through non-medical means in accordance with established clinical guidelines. In light of the additional medical documentation and the clarified nature of the services rendered, the continuation of exceptional reimbursement for services not covered under the plan could no longer be justified.

32. The Tribunal notices, however, that while the Applicant substantiates her claims regarding the medical necessity of the 24/7 home care services with medical reports and timely correspondence, the Respondent did not provide any evidence in support of his opposition.

33. The Respondent, furthermore, did not address the Applicant's allegation that the 24/7 home care services provided were erroneously categorised as "custodial care". He only submitted that, while some components of the care were medically necessary, they could be administered through non-medical means. However, he did not explain what components were medically necessary and how the alternative "non-medical means" could suffice.

34. The Respondent equally did not substantiate his claim that certain services under the 24/7 home care arrangement were expressly excluded under the terms of the Applicant's mother health care plan, nor did he provide this Tribunal with a copy of the medical report that allegedly supports the contested decision.

35. As it follows, the Tribunal remains blind to whether the previously repeated approved services indeed fell outside the scope of the plan's coverage, as the Respondent argues, or if there was any error in the categorisation of the services being provided, with a subsequent unlawful exclusion of coverage.

36. Absent any evidence demonstrating that the contested decision was founded on a reasonable and well-grounded evaluation of the Applicant's mother medical condition and the 24/7 home care services provided, the Tribunal is forced to conclude that the contested decision is *prima facie* unlawful.

#### *Urgency*

37. The Applicant submits that this is a case of particular urgency. If the implementation of the administrative decision is not suspended, the medical care being provided will be withdrawn and become unaffordable. As the Administration has given the Applicant only one week's notice of the withdrawal of life-saving medical care, the situation could not be more urgent. It justifies the granting of an order staying the implementation of the contested decision.

38. In response, the Respondent argues that the alleged urgency is self-created. The Respondent has already determined and communicated the extent of home care and therapy services considered medically necessary. Accordingly, the Applicant's mother continues to receive services that have been medically assessed as required, including eight hours of home care and six hours of combined therapy per week. She remains covered under her health care plan, and all eligible claims will continue to be reimbursed in accordance with the plan's terms.

39. Moreover, the Respondent contends that the application is premature. Under staff rule 6.7, if an Applicant disputes a medical determination, the matter must be referred, at the Applicant's request, to an independent medical practitioner acceptable to both the United Nations Medical Director and the Applicant, or to a medical board. Administrative Instruction ST/AI/2019/1 (Resolution of disputes relating to medical determination) implements this rule by outlining the relevant procedures and conditions. Section 2.1 of ST/AI/2019/1 provides the following framework for such reviews:

“[r]equests for review of medical determinations shall be submitted by staff members within 60 calendar days of the date on which they received notification, electronically or in hard copy, of the administrative decisions based on the contested medical determination.”

40. The Applicant has not pursued the internal recourse mechanism set out in ST/AI/2019/1. If she wishes to challenge the underlying medical determination, she must do so through the prescribed procedure. Consequently, and in line with established jurisprudence, the Dispute Tribunal lacks jurisdiction to consider matters arising from medical determinations that have not first been reviewed through the appropriate internal channels.

41. Lastly, the Respondent submits that the issue of urgency has been rendered moot. Following the Applicant's request for a suspension of action, the Respondent has initiated an additional review of the specific circumstances of the case. To ensure continuity of care during this process, the Respondent has decided, on an exceptional and non-precedent-setting basis, to approve the continued provision of 24/7 home care services until 30 September 2025. This temporary extension

provides the Applicant with sufficient time to explore alternative care arrangements and/or coverage options.

42. The Tribunal will address each of the Respondent's arguments in turn.

43. First, the Tribunal disagrees with the position that the alleged urgency is self-created. The Applicant was notified of the contested decision on 24 June 2025, requested management evaluation on 27 June 2025, and filed the instant application on the same day. It is clear, therefore, that she has acted promptly.

44. The fact that the Respondent has already determined and communicated to the Applicant the scope of home care and associated therapy deemed medically necessary is irrelevant to the question of urgency since the Applicant is challenging precisely this new determination. It is only to be considered in the assessment of the lawfulness of the contested decision, which, as determined above, is not clear.

45. With respect to the question of whether the application is premature, the Tribunal also disagrees with the Respondent. That could be the case in an application on the merits, which indeed has to be preceded by a final medical review determination made in accordance with staff rule 6.7 and ST/AI/2019/1.

46. In this case, however, there was no time for the Applicant to pursue the medical review determination avenue before losing coverage of the 24/7 home care services provided. Loss of coverage would necessarily result in the loss of the allegedly medically necessary services due to its extremely high costs. In this circumstance, the Tribunal finds that the application for suspension of action pending management evaluation was the appropriate path to address the urgency of the matter.

47. Lastly, considering that the Administration has decided to exceptionally approve the continued provision of 24/7 home care services to the Applicant's mother until 30 September 2025, the Tribunal agrees with the Respondent that the application for suspension of action has become moot.

48. As the contested decision that was due to be implemented on 1 July 2025 has since been altered, with the Applicant being given time to challenge the medical determination regarding her coverage, the Tribunal finds that there is nothing left to suspend.

### **Conclusion**

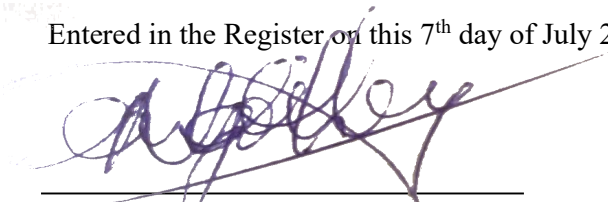
49. In view of the foregoing, the application for suspension of action pending management evaluation is dismissed.



Judge Sun Xiangzhuang

Dated this 7<sup>th</sup> day of July 2025

Entered in the Register on this 7<sup>th</sup> day of July 2025



Isaac Endeley, for Liliana López Bello, Registrar, Geneva