

TAC and patients with chronic conditions file urgent court application to reinstate dismissed health workers

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Created 2007/06/18 - 12:00am

18 June, 2007 - 00:00 ? moderator

On Friday, the Treatment Action Campaign and five patients, and parents of patients, who receive chronic medication at Khayelitsha's health facilities lodged an urgent application in the Cape High Court. The respondents are the MEC of Health for the Western Cape (Mr Pierre Uys), the Director-General for Health for the Western Cape (Professor Craig Househam), the Minister of Health (Dr Manto Tshabalala-Msimang) and the Minister of Public Service and Administration (Ms Geraldine Fraser-Moloketi).

The case will be heard on Tuesday 19 June at 11h30, Court 16. TAC will hold a press briefing outside the High Court at 10h30 before proceedings start.

We have asked the court to declare the summary dismissals without hearing of no less than 41 health workers in Khayelitsha's health facilities unlawful because it will adversely impact on the provision of essential health services. TAC is acting on behalf of the class of people with chronic medical conditions who depend on Khayelitsha's public health facilities.

Mandla Majola, TAC's Khayelitsha Co-ordinator and the founding affidavit deponent, explains that we are seeking legal relief to ensure the reasonable, rational and effective functioning of health services including emergency, chronic, child and reproductive health services at the Khayelitsha clinics.?

He further explains:

- 30 staff members were dismissed at Site B Day Hospital
- One staff member was dismissed at Nolungile (Site C) Community Health Centre
- Ten staff members were dismissed at Michael Mapongwana Centre.
- Across the Western Cape 75 health workers were dismissed

(This situation appears to be changing on a daily basis, with reinstatements and new dismissals following a pattern of arbitrary and irrational state actions. - ED)

Majola writes that the dismissals will result in an irreparable human resources crisis in Khayelitsha, that the replacement of the dismissed staff will be extremely difficult given pre-existing staff shortages and that even in the best (and very unlikely) scenario it will take at least four to eight weeks to replace them. Dismissed workers include nurses, pharmacists, administrative and support staff.

The second applicant, SM, explains that her daughter is HIV-positive and needs to collect her monthly supply of antiretrovirals. Furthermore her son has drug-resistant TB and still has to complete seven months of treatment. Before the dismissals, doctors were calling to make sure her son takes his medication, but now no-one calls. She notes that the strike will be prolonged because of the dismissals. She is concerned that her son will not live if he does not get the medication he needs and that if his TB worsens, her family will be at risk of contracting it. She explains that they cannot afford private health care and are dependent on the Michael Mapongwana Day Hospital.

The third to sixth applicants live with HIV and other chronic illnesses. They explain how the strike has affected the service they have received. They are concerned that the dismissals will further hamper services and put them at risk of not receiving their medicines or monitoring tests.

In a supporting affidavit, Dr Eric Goemaere who directs Medecins Sans Frontieres' services in Khayelitsha, writes that the dismissals will cause "irreparable harm to thousands of individual patients in Khayelitsha, both adults and children with HIV/AIDS, who may become ill and die as a consequence of inevitable treatment interruptions [that] will limit their constitutional rights to life, dignity and health."

He further explains that "public health harm will be caused by the development of drug-resistant HIV as a consequence of treatment interruptions."

In another supporting affidavit, Dr Srinivisan Govender, who works mainly at the Site B day hospital, writes, "In the last 12 months, we have battled to maintain an adequate level of service delivery. We have been struggling to implement a proper system within our reception areas, within trauma services (emergency) and in chronic units. ... Our efforts have been largely hampered by the lack of sufficient staff. In other words, before the strike we were barely functioning because of staff constraints. ... [During the strike] [w]e have a triage system where patients that are not considered emergency cases are turned away. Since the strike patients with chronic conditions have been able to get their medication but have not been examined. ... [T]he strike and the dismissal of staff have worsened the situation. In my view all areas of service have been critically affected. ... Of grave concern to me is the impact of the strike and dismissals on relationships within the health sector, which is not only about health delivery. The situation is creating a rift between striking and non-striking workers and the unprocedural dismissal of striking workers is adding to an already tense situation."

A key cause of the current crisis and the ugly turn that the strike has taken is that government has failed to address union demands for a minimum service level agreement. Nursing unions have been urging government to enter such an agreement for years. Government has preferred to rely on the status quo which deems all health staff as essential service workers without the right to strike. There is no union buy-in to the current situation. A minimum service level agreement, however, would have union consent. It would therefore decrease the risk of future industrial actions becoming as heated, chaotic and risky to patient lives as this one.

"It is our view that the Khayelitsha dismissals violate several provisions of the Bill of Rights, in particular the right to have access to health care services (section 27) - which includes a right to emergency medical treatment - and the right to just administrative action (section 33)."

The media has covered the intimidation and violent disruption of health services by some strikers. Rightly, such actions have been condemned. But there has been almost no coverage of the far more systematic and dangerous disruption of health services by government's rash actions in response to the strike. The summary dismissals in Khayelitsha endanger lives. We believe they are also in breach of administrative justice, labour and health rights enshrined in the Constitution.

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