



World Bank Administrative Tribunal

2024

Decision No. 704

**HN,
Applicant**

v.

**International Bank for Reconstruction and Development,
Respondent**

**World Bank Administrative Tribunal
Office of the Executive Secretary**

**HN,
Applicant**

v.

**International Bank for Reconstruction and Development,
Respondent**

1. This judgment is rendered by the Tribunal in plenary session, with the participation of Judges Janice Bellace (President), Seward Cooper (Vice-President), Lynne Charbonneau (Vice-President), Ann Power-Forde, Thomas Laker, and Raul C. Pangalangan.
2. The Application was received on 30 October 2023. The Applicant was represented by Ryan E. Griffin and Charlotte H. Schwartz of James & Hoffman, P.C. The Bank was represented by David Sullivan, Deputy General Counsel (Institutional Affairs), Legal Vice Presidency. The Applicant's request for anonymity was granted on 12 April 2024.
3. The Applicant claims that the Bank failed to take appropriate action consistent with its duty of care in response to the Applicant's worsening medical condition.

FACTUAL BACKGROUND

The Applicant's employment history

4. The Applicant joined the Bank in 2017 as an Operations Officer, Grade Level GF, with a duty station of Guinea-Bissau. At the time that she was hired by the Bank, the Applicant had been living in Guinea-Bissau, the home country of her domestic partner, since 2011. Before then, she had also lived and worked in Guinea-Bissau from 2006 to 2008.
5. At all times relevant to this case, the Bank classified Guinea-Bissau as a Fragile Conflict-Affected Situations (FCS) country, listing it among the states experiencing "High Institutional and Social Fragility." The Bank defines fragility as a "systemic condition or situation characterized by an extremely low level of institutional and governance capacity which significantly impedes the

state's ability to function effectively, maintain peace and foster economic and social development.”

The Bank's Health and Safety Directorate

6. According to the Bank, the mission of the Bank's Health and Safety Directorate (HSD) is to promote a safe work environment and good health for staff of the World Bank Group and their immediate families. It provides advice to the Bank Group on health- and safety-related matters. HSD's duties include, *inter alia*, helping staff identify qualified local health care providers by using various sources of information, for example, onsite visits and recommendations from authoritative sources such as the Medical Benefits Plan administered by Cigna, the third-party administrator of the Bank's Medical Benefits Plan. The Bank explains that HSD staff do not diagnose or provide treatment directly, but rather act as risk managers and facilitators for health and safety. While they may apply their health care training when reviewing the medical reports of a staff member's own treating physician, their roles are advisory in nature. They do not act as treating physicians or health care providers for staff, nor do they prescribe medical treatment.

7. HSD has regional hubs with Medical Evacuation Teams that work with Headquarters-based (HQ-based) HSD staff to facilitate access to adequate health care for staff experiencing severe, acute, and possibly life-threatening illness or injury. This can be done through (i) local referral if health resources are adequate at the duty station, (ii) an Out of Country Care (OCCC) request processed through the affected staff member's Medical Benefits Plan administered by Cigna, or (iii) emergency/non-emergency medical evacuation to the nearest center of expertise in accordance with Staff Rule 6.07.

The Bank's rules regarding staff health

8. Staff Rule 6.07 states:

04. Medical Evacuation

Eligibility

4.01 To ensure adequate medical treatment in the event of acute/severe/life threatening illness, injury, or an existing Medical Condition when appropriate treatment is not available locally, the World Bank Group may evacuate Staff and registered dependents who are resident overseas or traveling on official World Bank Group business, to the closest location where appropriate medical treatment can be provided based on the authorization of HSDDR [Health and Safety Development Directorate]. [...]

Authorization for Medical Evacuation in Non-Emergency

4.05 In non-emergency situations, when appropriate medical facilities are not available at the duty station, care out of the country may be authorized by HSD for persons described in paragraph 4.01, above, who suffer from chronic conditions with the potential for life-threatening outcomes and complications such as the following:

- Cancers
- Complications of diabetes mellitus
- Chronic cardiovascular diseases
- Chronic pulmonary diseases
- Chronic kidney diseases
- Chronic liver diseases
- HIV/AIDS
- Organ and bone marrow transplants
- Severe psychological disorders

4.06 Other chronic conditions are generally not considered for medical evacuation. However, each request for medical evacuation is reviewed individually and HSD may authorize a medical evacuation for a condition not listed in paragraph 4.05, above, should this condition have the potential for severe complications.

4.07 Care out of the country may be authorized by HSD to the closest regional location where appropriate care can be provided, within the course of official mission travel, special overseas travel, or home country travel. If such travel is not reasonably imminent, HSD may authorize a non-emergency medical evacuation to the closest location where appropriate medical facilities are available.

The Applicant's health

9. In early 2022, the Applicant started to experience significant abdominal pain and other gastroenterological symptoms. On 24 January 2022, she attended a local physician at a United Nations (UN) clinic and underwent tests both there and at a private laboratory. Test results

disclosed the presence of two bacterial infections for which she was prescribed a course of treatment.

10. On 3 February 2022, the Applicant emailed an HSD Regional Medical Advisor stationed in Dakar, Senegal, and a Dakar-based Health Specialist, as she “wanted to share [...] a health preoccupation” and “seek guidance.” She stated that “[o]ne week ago (now it stopped)” she felt a “strong bellyache” which came for a few seconds, went away for an hour, and then came back. She had “[n]o fever, no diarrhea, no intestinal obstruction, [and] no other visible symptoms.” She stated that “no abnormalities were found,” and she attached her medical reports, the laboratory test results showing the two bacterial infections, and an ultrasound scan which was clear. In the email, the Applicant explained that she “thought this very strange” and that from “some research” she understood that she did not have symptoms related to any of those “diseases” and wondered about “entamoeba” arising if healthy conditions exist, as in her case. Although the bellyache had disappeared, she explained she was afraid it may come back, and she sought advice on how to proceed.

11. On 4 February 2022, the Regional Medical Advisor replied, stating that she understood the Applicant’s concern regarding her current infections and reassuring her that, even in a “good health environment, those infections can occur.” She recommended that the Applicant “follow the current prescription” as had been advised by her treating physician and “to renew [the] analysis within 2 weeks.”

12. On 6 February 2022, the Applicant thanked the Regional Medical Advisor and indicated that she would follow up as advised, stating, “I will do it.” There was no indication of any renewed analysis and no further communication from the Applicant to HSD until the first week of April 2022.

13. On 5 April 2022, the Applicant attended the UN clinic for a consultation arising from abdominal pain, tingling, bloating, and belching.

14. On 7 April 2022, the Applicant emailed the Dakar-based HSD Health Specialist and attached a medical certificate. On the same day, the Dakar-based HSD Health Specialist replied, stating, “Unfortunately this is just a certificate and not a medical report.” She outlined to the Applicant what a medical report should indicate, namely, the date of onset of symptoms, a description of all symptoms, results of all tests, a description of the treatment given with an indication of any improvement or worsened symptoms, an estimated diagnosis, and recommendations “more specific” on next steps.

15. The next day, the Applicant obtained a medical report from her treating physician at the UN clinic. That report, dated 8 April 2022, reads as follows:

History of present illness: on 04/05/2022 the patient showed up for a consultation due to clinical findings indicating abdominal pain, with a tingling sensation in the umbilical region to coincide with abdominal bloating and frequent belching.

On 01/24/2022 many tests (attached) and treatments (attached) were carried out to reveal similar clinical findings. [...]

Physical examination: slightly distended abdomen, painful on superficial and deep palpation in the epigastric and umbilical regions. *Remaining results of the physical examination are normal.* (Emphasis in original.)

Plausible diagnosis: functional dyspepsia.

Outpatient treatment:

- Strict monitoring of cooking methods and food intake
- [Medication] 1 daily for 10 days, 30 minutes before breakfast
- [Second medication] 2 tablets 3 times daily for 3 days.

Observations: *clinical improvement has been observed from the second day of the treatment.* (Emphasis in original.) In view of repetitive clinical findings, we recommend an inter-consultation by the Gastroenterology Department after the following examinations will have been performed:

- Helicobacter pylori search (breath test)
- Parasitology examination in feces
- Coprocultural test and antimicrobial susceptibility testing
- Gastrointestinal endoscopy, if necessary

16. On 8 April 2022, the Applicant emailed the medical report to the Dakar-based HSD Health Specialist, stating, “Here is the second version 😊? What do you think?”

17. On the same day, 8 April 2022, the Dakar-based HSD Health Specialist replied, opining that it was “unlikely” that a non-emergency medical evacuation (NEME) could be organized, based on the medical report, but that she would submit it for final decision. The Dakar-based HSD Health Specialist recommended that, in the meantime, the Applicant use the Medical Benefits Plan provided by the Bank to seek medical care in another country by applying for OOCC through Cigna.

18. Throughout April 2022, the Applicant did not apply for OOCC as had been recommended by the Dakar-based HSD Health Specialist. As the eligible plan participant, the Applicant was responsible for applying for OOCC.

19. On the evening of 27 April 2022, the Applicant emailed the Regional Medical Advisor, stating:

A week ago, I started to feel pain again. [...] I did new analysis (urine, feces, blood, vagina exudate, echography, abdominal, vesicle, liver function, etc.). They found [a vaginal infection] this time. They concluded it could be due to my IUD [intrauterine device] or to lactobacillus. The latter, apparently, could be provoking this intense pain and digestive dysfunctions. I’m not able to eat during my crises and when I eat, I cannot keep anything down (I vomit every [*sic*] I drink or eat). Between crises, because I’m not sure if my symptoms are digestive or not, I refrain myself from eating as much as I’d like.

Today, I started the treatment for [the vaginal infection].

I wanted to bring to your attention that in four months I have been submitted to different analysis and 3 different diagnoses. I have followed two different treatments so far and the result is that the pain came back more intense and for a longer period.

As you surely understand, having 3 different diagnoses and treatments in 4 months with no impact at all on my well-being, leave me in a very difficult situation. I no longer trust the results and the diagnosis made by medical resources in Bissau. As you know Guinea-Bissau meets many if not all the criteria that characterize health systems in fragile states. The country’s health system faces persistent challenges related to poor infrastructure and equipment, inadequate clinical and managerial training systems, and malfunctioning referral system, to cite a few.

This situation is affecting my mental health and prevents me from leading a normal life (performing my work, taking care of my family, socializing with friends, etc.).

I feel tired and stressed because of this uncertainty about my health condition and the inability to address my symptoms for the past four months. This situation is creating emotional stress as I don't know when the next crises will come, or if the food I'm eating is convenient for me (in case this is digestive problem, as per the second diagnosis). So, I limit myself when it comes to eat. As a result, I'm losing weight.

I would very much appreciate your guidance on this.

20. The Applicant attached to her email the results of the updated laboratory and imaging studies and the results of another ultrasound. The Regional Medical Advisor reviewed the results of the laboratory and imaging studies which were negative except for an indication of the presence of a vaginal infection. The ultrasound scan was also negative.

21. In the afternoon of 29 April 2022, the Regional Medical Advisor reached out to an HSD HQ-based Senior Medical Officer (SMO) and a discussion ensued over options for assisting the Applicant throughout the weekend. As of this point, none of the test results attached to the Applicant's email stated that there was a critical or urgent situation, nor had any of the Applicant's treating physicians indicated that her situation was critical or urgent, nor had they recommended any immediate treatment or evacuation.

22. After a telephone conversation of 29 April 2022 between the Applicant and an HSD HQ-based Health Specialist (Hotline Health Specialist), the Hotline Health Specialist reported the conversation to the HQ-based SMO as follows:

OK, finally got to talk to her. She is requesting an updated medical report from physician. New diagnosis is vaginal infection? Is this from previous treatments for parasites? Very non-specific.

[...] [The Dakar-based Health Specialist] was trying to get [the Regional Medical Advisor] to reach out to [the] UN doc[tor].

Pain continues, definitely impacting daily life/sleep. Has been ongoing since January.

She doesn't think it's an emergency, would like to try OOCC, so we confirmed I will send her information and she is working on updated report.

If through OOCC, can she request Europe as country of care?

23. On Sunday, 1 May 2022, the Applicant completed a request form for approval of OOCC, citing Spain as her preferred country option. On that form, the Applicant's diagnoses are recorded as (i) Entamoeba and Salmonella Typhi, (ii) dyspepsia, and (iii) Gardnerella. While the Applicant signed the form and attached a medical certificate and report, the form did not contain a physician's seal and signature. On the afternoon of the same day, the Applicant exchanged text messages with the HQ-based SMO who was attempting to see if anything could be done to hasten the OOCC process through Cigna and who suggested that she visit a doctor if there were any acute changes such as fever, diarrhea, increased pain, or vomiting. The exchanges included the following:

[The Applicant]: Hello [the HQ-based SMO]! [The Hotline Health Specialist] explained in her email that the physician signature is needed. And the same indicate the application form. So I guess I can't submit [the OOCC request] without it.

[The HQ-based SMO]: Hi. I would submit it anyway. Without the signature. And all the documents we discussed. And see what happens. I have seen many applications sent and not all with the signature. You can also mention that in the email [t]hat UN doctor is not there [until] Wednesday. Cc me and I will follow up.

[The Applicant]: Ok. Noted. Thanks.

[The HQ-based SMO]: 👍 I think the medical certificate may be sufficient for the purpose of the signature. Do I have your permission to engage with Cigna on this? I may write to the chief medical office as a heads up.

[The Applicant]: Of course. Permission and all my trust. Many thanks.

[The HQ-based SMO]: 👍

Later that evening the HQ-based SMO confirmed to the Applicant that she had followed up on her email with an email to one of the medical directors at Cigna explaining that the Applicant was not a Francophone, which explained the request for Spain as the Applicant's preferred country of care. She advised the Applicant to see if she could get some sleep.

24. That same day, the Applicant submitted a request to Cigna seeking approval for OOCC.

25. The following day, 2 May 2022, the Applicant exchanged further text messages with the HQ-based SMO. She stated that she had had “a horrible night” and was “still in pain” but that it was “more manageable now.” She said that she was unable to eat or drink and could not retain liquids and enclosed a photograph of what appeared to be abdominal distention below the navel, stating, “I have gases or something there.” The HQ-based SMO replied: “Very odd indeed. I think we will probably need to try to get you seen before the OOCC can be approved. I will revert in about an hour.” The Applicant confirmed that she had both a Spanish passport and a United Nations laissez-passer. Within the hour, the HQ-based SMO replied:

[The HQ-based SMO]: We are going to approve the non emergency medical evacuation. [The Hotline Health Specialist] is going to be picking your case back up and supporting you with this process. I will be a resource for her and will follow along but she will help you here.

[The Applicant]: Thank you [the HQ-based SMO]!

26. That same day, HSD engaged ISOS, the Bank’s medical assistance company, to initiate the approval process for a NEME. In the “Client Update” form, dated 2 May 2022, from ISOS to the World Bank Group, an ISOS doctor provided the following assessment of the Applicant’s condition:

Medical Update & Recommendations: [...] As per today, presenting no red flags. No specialist available locally. Patient needs repatriation for specialist review +/- gastroscopy. We recommend commercial flight unescorted evacuation to either or Lisbon or Madrid depending on earliest specialist availability.

On Examination:

Vomiting, no blood
Weight loss, fatigue
No diarrhea
No fever

Investigations:

Normal Blood tests
Normal Ultrasound
Negative urine and stools test

27. On 2 May 2022, the HQ-based SMO authorized a NEME for the Applicant to be evacuated to Spain. On that date, the ISOS doctor’s medical report did not indicate a chronic condition with

a life-threatening complication. The closest location where appropriate medical treatment could be provided was a French-speaking country in West Africa. Spain was the Applicant's country of nationality and where she had family support and could speak the language.

28. Simultaneously, ISOS arranged an appointment for the Applicant with a gastroenterologist in Spain for 9 May 2022. Although the Applicant's appointment was scheduled for 9 May 2022, the HQ-based SMO arranged for the Applicant to be evacuated sooner so that the Applicant could access an emergency room in Spain in the event that her symptoms worsened before the 9 May appointment.

29. Flights were full across the region due to Eid Ul Fitr, and the Applicant was evacuated to Spain on 5 May 2022. On arrival that same day, the Applicant sent a message to the HQ-based SMO confirming that she had checked into a hotel.

30. The following day, 6 May 2022, the Applicant attended an emergency room in a Spanish hospital. As a result of evaluation and imaging studies carried out in the hospital, the Applicant was informed that she had a bowel obstruction and would need surgery. The Applicant remained in the hospital for eleven days.

31. On 6 May 2022, the HQ-based SMO exchanged text messages with the Applicant as follows:

[The HQ-based SMO]: Hi [the Applicant]. [...] I am on mission travel. So glad you got to Spain quickly. How are you? The medical duty officer this weekend is [...] and she is picking up your case and [ISOS] is also involved as you know. Is your sister there?

[...]

[The Applicant]: Not good. I have been operated in urgency. They found colon cancer. [...]

[The HQ-based SMO]: Oh [the Applicant] I am so sorry to hear of this. Am glad you [got] there when you did and is [*sic*] the surgery. I assume there will be a lot of information over the coming days. I know how stressful this can be. We will support you in any way we can. I am traveling but the team will be managing more

closely but if you need anything just send me a text and let me know. And give my number to your sister as well.

[The Applicant]: Thanks.

32. On 3 June 2022, the HQ-based SMO sent the following text to the Applicant: “Can we have a call sometime? For a check in and let me see how I can make things easier for you? I can be free in about an hour if not sooner.”

33. On 9 June 2022, the HQ-based SMO again reached out via text to the Applicant. In reply, the Applicant confirmed that she had opted to start chemotherapy in the week that was to follow and that her doctor had advised that the cancer was at Stage 2, meaning that no other organs were affected. She confirmed that her doctors had removed 56 ganglia and that none of them was affected, which she stated was “great,” and that all examinations from the previous week were okay.

34. A medical report from a Spanish hospital, dated 16 June 2022, identified the Applicant’s main diagnosis as “Adenocarcinoma of right colon of G2 stage [...] High Budding.” The Applicant opted to begin chemotherapy treatment in late June 2022.

The Applicant’s medical leave and disability benefits

35. Between 4 May 2022 and 30 September 2023, the Applicant was placed on Short-Term Disability while undergoing treatments in Madrid. Pursuant to the rules of the Short-Term Disability program, the Applicant was first required to exhaust her remaining sick leave, which she did from 4 May 2022 until 6 August 2022 and during which she received 100 percent of her base salary. Thereafter, she received 70 percent of her base salary pursuant to the rules of the Short-Term Disability program. While on Short-Term Disability leave in Spain, the Applicant continued to receive certain premium pay benefits, such as the Hazard and Fragility premiums she had received while living and working in Guinea-Bissau, constituting almost 12 percent of her base salary.

36. On 17 July 2023, the Applicant went back to work on a part-time basis until 1 October 2023, at which point the Applicant resumed full-time working hours. Since then, the Applicant has worked remotely so that she can travel between Spain, where she receives medical treatment, and Guinea-Bissau, where her domestic partner and children live.

The present Application and remedies sought

37. On 30 October 2023, the Tribunal received the Applicant's Application, in which she claims that the Bank failed to take appropriate action consistent with its duty of care in response to the Applicant's worsening medical condition.

38. On 16 January 2024, the Bank submitted a pleading maintaining that the Applicant failed to exhaust internal remedies before filing her Application with the Tribunal. However, in that same pleading, the Bank noted that it "acknowledges the significant medical challenges that [the] Applicant suffered in May 2022 and her fragile health condition during that time" and "accepts that exceptional circumstances are present in this case" justifying an assumption of the Tribunal's jurisdiction and "has chosen not to file [...] Preliminary Objections."

39. In her Application, the Applicant requests compensation in an amount deemed just and reasonable by the Tribunal to remedy the following:

- a) the physical and mental pain and suffering, anguish, and emotional distress she suffered and continues to suffer after being rushed into emergency abdominal surgery and chemotherapy treatments after HSD's delay and failure to respond appropriately to her requests for assistance;
- b) the serious danger her life was put under since the intestinal obstruction could have caused peritonitis any moment causing her death;
- c) the lengthy delay in diagnosing her colon cancer caused by HSD's failure to ensure that she received appropriate and timely medical care; and
- d) the unfair treatment she suffered when HSD failed to respond appropriately to her requests for assistance.

40. The Applicant further requests legal fees and costs in the amount of \$24,659.00.

SUMMARY OF THE CONTENTIONS OF THE PARTIES

The Applicant's Contentions

The Bank failed to take reasonable steps to protect the Applicant as a staff member working in an FCS country with severely limited medical resources

41. The Applicant contends that the Bank breached its duty of care by failing to facilitate timely access to needed diagnostic services, waiting until she was experiencing extreme symptoms and until she provided unsolicited photographic evidence of her symptoms to do so.

42. According to the Applicant, as of 7 April 2022, HSD knew that the Applicant's symptoms from February had returned despite her having followed the course of treatment prescribed by her treating physician. To the Applicant, this means that HSD "was thus on notice that [the Applicant] likely had not received an accurate diagnosis and/or adequate course of treatment through the locally available medical provider."

43. The Applicant further maintains that, also as of 7 April 2022, HSD knew that the Applicant's treating physician specifically recommended that she obtain gastroenterology diagnostic services and, "given that at no point did HSD ever suggest obtaining such diagnostics locally, it can only be presumed that HSD was fully aware that such services were not readily available to [the Applicant] in Guinea-Bissau."

44. In the Applicant's view, as of 7 April 2022, HSD should have been aware that the Applicant's condition presented the potential for serious complications, because the Applicant's treating physician's certificate stated that she had been experiencing significant abdominal pain since at least 24 January 2022, a period of two and a half months.

45. The Applicant contends that HSD breached its duty of care when it did not act upon receiving this information of 7 April 2022 by connecting the Applicant with a specialist abroad. To the Applicant, HSD took a wait-and-see approach for another three and a half weeks "until she reverted to them in increasing desperation" on 1 May 2022, and she states that, even then, "it

appears that HSD would have continued to take this approach had [the Applicant] not submitted the unsolicited photographic evidence of her severe condition that finally prompted HSD to act.”

46. The Applicant contends that HSD’s approach left her in a dangerous position, because, on the one hand, she could not obtain the advanced diagnostic testing her treating physician recommended without NEME approval, but, on the other hand, she could not obtain NEME approval without already having the results of such testing to demonstrate that she satisfied the “potentially severe complications/life-threatening outcomes criteria” to qualify for a NEME.

47. In the Applicant’s view, HSD was obligated, under the circumstances, and especially considering her FCS duty station, to err on the side of caution and facilitate her timely access to the physician-recommended diagnostic services based on the information shared with HSD as of early April 2022.

48. Instead, the Applicant maintains that, after being informed of the severity of her symptoms – including intense pain, inability to perform daily tasks or care for her children, and inability to eat or even drink – HSD merely advised her to keep taking the medication which was not helping and to “sleep with your head up, like with a few pillows.” To the Applicant, it appears as though HSD would have continued with its wait-and-see approach had she not taken the initiative to send a photograph of her severely distended abdomen – something HSD never asked for. The Applicant points out, in this respect, that HSD never requested photographic evidence or made “any other serious effort between April 7 and May 2 to investigate whether a NEME might be warranted.” The Applicant contends that, by never asking for a photograph, the Bank violated its duty to make the necessary inquiries and to arrive at a reasonable and careful judgment in line with the Tribunal’s precedent in *FM (Merits)*, Decision No. 643 [2020], para. 141.

49. The Applicant further contends that HSD’s suggestion that she apply for OOCC was not sufficiently clear. She points out in this respect that, before suggesting she apply for OOCC, HSD noted that it was unlikely that a NEME could be organized. The Applicant claims that HSD did not explain what a NEME or OOCC was or that these were two distinct processes. To the

Applicant, HSD's email suggests that OOCC was a way of obtaining a NEME, which HSD indicated was unlikely.

50. The Applicant states that, even if HSD had been clearer about the process, OOCC was not the appropriate course of action because approval can be lengthy to obtain, and it was clear as of early April 2022 that a NEME was the appropriate course of action.

51. The Applicant contends that she should not be faulted for relying on HSD to provide appropriate medical guidance and adopting their wait-and-see approach. The Applicant points out that she is not a medical professional, so, to the extent that the Applicant did not act with sufficient urgency prior to late April, the Applicant claims that "HSD is to blame."

52. The Applicant claims that, as a result of HSD's violation of its duty of care, she was caused physical and emotional pain and suffering. Because she went "months without proper treatment," she says, "her cancer developed into a major intestinal obstruction which could have caused peritonitis at any time, potentially killing her." According to the Applicant, her condition was "extremely painful and stopped her from eating, drinking, working, or caring for her children." She also claims that, by the time her cancer was diagnosed, it had spread to a third layer of her colon, requiring months of chemotherapy to treat, and that she faces a "high likelihood of relapse."

53. The Applicant claims that, beyond the physical implications caused by HSD's handling of her case, she also faces financial harms, namely (i) paying out of pocket for an experimental treatment in the hopes of warding off relapse, (ii) losing a significant portion of her salary while on Short-Term Disability benefits, and (iii) living apart from her family, requiring her and her domestic partner to maintain two residences, one in Spain and one in Guinea-Bissau, for over a year.

54. Moreover, the Applicant maintains that "this series of events" has also caused major emotional distress to her and her family, for which she and her children have undergone psychological treatment.

The Bank's Response

HSD's actions went above and beyond the standard of reasonable care; the Bank acted reasonably, based on information available at the time, in facilitating the Applicant's access to care

55. The Bank accepts that it has a duty of care to provide a safe and healthy working environment for staff and to exercise this duty with a standard of reasonable care. According to the Bank, HSD's actions went above and beyond the standard of reasonable care because (i) HSD assisted the Applicant in applying for OOCC, (ii) HSD authorized the Applicant's NEME under Staff Rule 6.07 on an exceptional basis, (iii) the Bank accommodated the Applicant's requests to live and telecommute from Spain, and (iv) HSD's duty of care is not a guarantee against all illnesses or medical conditions.

56. The Bank contends that the Applicant was free to apply at any time for OOCC under her Medical Benefits Plan with Cigna and did not require HSD's authorization to do so. The Bank explains that HSD has neither the duty nor the authority to apply for OOCC on the Applicant's behalf.

57. The Bank maintains that HSD encouraged the Applicant, several times, to request OOCC. The Bank points out, for example, that, when the Applicant shared with HSD, on 8 April 2022, the latest report from the Applicant's treating physician that included a recommendation for her to undergo diagnostic tests that may not be available in Guinea-Bissau, the Dakar-based HSD Health Specialist promptly advised the Applicant that she should apply for OOCC. The Bank maintains that, despite HSD's advice given on 8 April 2022, the Applicant did not immediately apply for OOCC, but rather waited until 1 May 2022 – more than three weeks later – to apply for OOCC. According to the Bank, when the Applicant finally did apply for OOCC benefits, HSD provided her with assistance in submitting her OOCC request form.

58. In the Bank's view, HSD went above and beyond the provisions of the Staff Rules to assist the Applicant as much as possible. The Bank submits that, by authorizing the Applicant's NEME, HSD exercised extraordinary consideration. Notwithstanding the absence of any diagnosis that

came within the listed reasons for a NEME, it used its discretion to justify the NEME under the catch-all clause in paragraph 4.06 of Staff Rule 6.07. Moreover, the Bank maintains, HSD also went above and beyond the provisions of the Staff Rules in assisting the Applicant by approving her exceptional request to be evacuated to Spain rather than to the closest regional center in West Africa. To the Bank, HSD complied with its duty of care and acted in good faith when, out of an abundance of caution, it authorized the NEME to Spain instead of waiting for OCCC approval which the Applicant had delayed in requesting.

59. The Bank submits that it takes its duty of care to its staff members very seriously, but that such duty of care cannot be interpreted as a guarantee against all forms of illness and/or accidents. In the Bank's view, it has put in place extensive measures to mitigate risks to staff who live and work in FCS countries, which include OCCC, through Cigna's Medical Benefits Plan, and procedures for facilitating emergency and non-emergency medical evacuations.

60. The Bank contends that, while the Applicant's situation is undoubtedly sympathetic, the Bank is not responsible for her diagnosis, nor could it be. The Tribunal, it submits, has recognized – in *ER (No. 3) (Merits)*, Decision No. 656 [2021], para. 69 – that HSD's duty of care does not extend to medical diagnosis, prescription, or treatment of staff. The Bank states that the Staff Rules are unambiguous in this respect: HSD staff shall rely on the reports of treating physicians when deciding whether to authorize a medical evacuation. In the Bank's view, HSD exercised a reasonable standard of care when it relied on the Applicant's treating physician's reports in deciding whether to approve her request for a medical evacuation.

61. According to the Bank, the Applicant failed to produce any evidence to substantiate her claim that she would not have had to undergo emergency surgery and chemotherapy treatment had the Bank authorized her evacuation earlier. The Bank submits that the relief requested by the Applicant significantly relates to alleged negligence in her medical diagnosis and treatment by persons who are not Bank staff and that, as such, it falls outside the review of the Tribunal.

62. In sum, while the Bank has compassion for the Applicant's medical condition and understands that she is aggrieved by her cancer diagnosis, the Bank points out that it did not cause

the Applicant's condition. In the Bank's view, it went above and beyond its duty of care in authorizing the Applicant's evacuation outside of the region notwithstanding that (i) the reports of her treating physician did not indicate a condition requiring urgent out of country medical care, (ii) professionals in ISOS's air ambulance service did not find an urgent need to secure a medical appointment before 9 May, and (iii) the Applicant herself showed no sense of urgency in applying for OOC and instead indicated to HSD as late as 29 April 2022 that she did not think that her situation was an emergency. The Bank submits that it acted reasonably and in good faith based on the information available at the time. The Bank maintains that it was proactive and evacuated the Applicant to Spain at her request as soon as there was "even some medical information to justify this action." For these reasons, the Bank requests the Tribunal to dismiss the Application.

THE TRIBUNAL'S ANALYSIS AND CONCLUSIONS

THE SCOPE OF THE TRIBUNAL'S REVIEW IN DUTY OF CARE CLAIMS

63. The Tribunal observes that this case raises a question as to the scope of the Bank's duty of care in the context of making reasonable efforts to provide a safe and healthy working environment. That the Bank does have a such duty was affirmed by the Tribunal in *EI*, Decision No. 569 [2017], para. 90. In that case, the Tribunal noted that this duty is consistent with Principle 2.1 of the Principles of Staff Employment, which provides: "The Organizations shall at all times act with fairness and impartiality and shall follow a proper process in their relations with staff members. [...The Organizations shall] make *all reasonable efforts to ensure appropriate protection and safety for staff members in the performance of their duties.*" (Emphasis added.)

64. The specifics of what constitutes a duty of reasonable care can vary from case to case, and the duty is assessed in the light of all the prevailing circumstances. In assessing an alleged breach of a duty of care, the question is "whether the Bank has exercised its obligation of reasonable care to ensure the safety of its staff in the course of their employment." *FM (Merits)* [2020], para. 141.

65. The existence of such duty of care has been affirmed and upheld by other international administrative tribunals. *See, e.g.*, UN Dispute Tribunal *Raikow*, Order No. 72 (GVA/2021);

former UN Administrative Tribunal (UNAT) *Durand*, Judgment No. 2005-UNAT-1204; Asian Development Bank Administrative Tribunal *Bares*, Decision No. 5 (1995); International Labour Organization Administrative Tribunal *In re Grasshoff (Nos. 1 and 2)*, Judgment No. 402 (1980).

66. An assessment of the reasonableness of the response of an organization lies at the heart of any consideration of an alleged breach of a duty of care, and an organization cannot be required, unreasonably, to insulate employees against unforeseeable harm that is not attributable to the organization. Thus, in *Bares* (1995), para. 24, the Administrative Tribunal of the Asian Development Bank, while having no reason to question the existence of a general obligation on the part of the respondent to ensure the safety of its staff in the course of their employment, nevertheless found that the obligation to protect staff

is not the same thing as saying that that obligation is absolute, so as to make the organization the insurer of the staff member even if no failure of reasonable care can be attributed to the organization itself.

67. This Tribunal has previously examined the reasonableness of the Bank's efforts to provide a safe and healthy work environment to its staff. In *EI* [2017], leaks and flooding had caused mold spores to develop in the applicant's office. In that case, the Tribunal found that the Bank's remediation efforts, including the steps that it had taken to proactively monitor the conditions of the applicant's work environment, were reasonable in all the circumstances and that the Bank had, accordingly, discharged its duty of care. *Id.*, para. 98.

68. In considering the reasonableness or otherwise of the Bank's actions in the present case, the Tribunal is mindful not to review those actions in the light of information that subsequently became available but, rather, to consider the Bank's actions and responses in the light of what was known or ought, reasonably, to have been known in all the prevailing circumstances. In its analysis, the Tribunal will consider the objective state of affairs that prevailed and the Bank's fulfillment or otherwise of its duties, responsibilities, and obligations as set out in the relevant rules, practices, and policies.

69. Staff Rule 6.07 sets out provisions governing the Health Program and Services of the Bank. Emergency situations are provided for in paragraph 4.01 thereof. This provision sets out the eligibility of staff for medical evacuation in specific and identifiable circumstances. It states:

To ensure adequate medical treatment in the event of acute/severe/life threatening illness, injury, or an existing Medical Condition when appropriate treatment is not available locally, the World Bank Group may evacuate Staff and registered dependents who are resident overseas or traveling on official World Bank Group business, to the closest location where appropriate medical treatment can be provided based on the authorization of HSDDR.

70. Permission is required for the evacuation of a staff member in an emergency situation. “Authorization for emergency evacuation will ordinarily be provided only for the patient, based on the recommendation of a local physician and, if possible, in consultation with HSD.” Staff Rule 6.07, paragraph 4.04.

71. Non-emergency situations are provided for in paragraph 4.05 of Staff Rule 6.07. This paragraph provides for the possibility of evacuation for out of country medical care being authorized by HSD for eligible staff in non-emergency situations. Specifically, paragraph 4.05 states:

In non-emergency situations, when appropriate medical facilities are not available at the duty station, care out of the country may be authorized by HSD for persons described in paragraph 4.01, above, who suffer from chronic conditions with the potential for life-threatening outcomes and complications such as the following:

- Cancers
- Complications of diabetes mellitus
- Chronic cardiovascular diseases
- Chronic pulmonary diseases
- Chronic kidney diseases
- Chronic liver diseases
- HIV/AIDS
- Organ and bone marrow transplants
- Severe psychological disorders

72. Staff Rule paragraph 4.06 states that other chronic conditions are generally not considered for medical evacuation. However, each request for medical evacuation is reviewed individually

and HSD may authorize a medical evacuation for a condition that is not listed in paragraph 4.05 should the condition have the potential for severe complications.

73. The Staff Rules stipulate that evacuation for care out of the country may be authorized by HSD “to the closest regional location where appropriate care can be provided.” Staff Rule 6.07, paragraph 4.07.

74. The Tribunal recalls that the mission of HSD includes advising the Bank on health-related matters but that its professionals do not, themselves, serve as personal health care providers. They do not act as clinical practitioners for staff in that they neither diagnose health conditions nor prescribe medical treatment. There is no doctor-patient relationship established between an HSD professional and a staff member.

75. This case will be reviewed in the light of these standards and the relevant provisions of Staff Rule 6.07 as cited above.

WHETHER THE BANK FAILED TO EXERCISE ITS DUTY OF REASONABLE CARE TO THE APPLICANT

76. The Tribunal observes that the Applicant first contacted HSD on 3 February 2022, as she wanted to share “a health preoccupation” and to “seek guidance.” To her email, she attached the results of tests which had been carried out by the treating clinicians whom she attended. Those results confirmed the presence of two bacterial infections and an ultrasound that was normal. She stated that the intermittent bellyache she experienced had passed and, in her email, she confirmed that she had no fever, no diarrhea, no intestinal obstruction, and no other visible symptoms. In her (non-medical) view, she thought it “very strange” that her symptoms did not align with what the test results disclosed.

77. The record shows that HSD responded to the Applicant the following day and advised her to follow the treatment she had been prescribed. Moreover, HSD’s prompt response addressed the Applicant’s views about the diagnoses she had received by informing her that, even in a “good

health environment, those infections can occur.” In addition, HSD advised the Applicant to renew the clinical analyses in two weeks’ time.

78. The Tribunal considers that the response of HSD to the Applicant’s email of 3 February 2022 was a reasonable one in the light of both what the Applicant described and the objective and empirical evidence that was indicative of infection. It observes nothing in the record to suggest that the Applicant renewed the analysis of her symptoms after two weeks, as recommended by HSD. In any event, while the Applicant may consider that her condition was “misdiagnosed” by her treating physician, there is nothing in the record to suggest, let alone establish, that she did not, in fact, have the infections as identified in the test results. On the contrary, after she took the medication prescribed by her treating physician, those infections resolved, and there was no evidence of the infections identified when the Applicant was subsequently tested. The Tribunal considers that the information received by HSD on 3 February 2022 from the Applicant and her treating clinicians fell, demonstrably, short of what constitutes an emergency or non-emergency situation as set out in the Staff Rules. There was, therefore, no question of a medical evacuation arising at that point nor, indeed, did the Applicant request one. The Tribunal considers that HSD’s response was entirely reasonable and that, accordingly, it cannot be impugned.

79. The Applicant’s next exchange with HSD took place over two months later, on 7 April 2022. Once again, there is nothing in the record to show that the Applicant requested or even considered the question of an evacuation at that time. In response to her contact with HSD on 7 April 2022, she was given detailed assistance that same day. HSD advised the Applicant, specifically, as to what an appropriate medical report should contain, namely, the date of onset of symptoms, a description of all symptoms, results of all tests, a description of the treatment given with an indication of any improvement or worsened symptoms, an estimated diagnosis, and, importantly, specific recommendations on next steps. The following day, the Applicant obtained a medical report prepared by her treating physician. She sent that report to HSD by way of email with an emoji smile and a question: “What do you think?”

80. While the medical report which the Applicant submitted described her physical condition as a “slightly distended abdomen, painful on superficial and deep palpation in the epigastric and

umbilical regions,” it also confirmed that the “[r]emaining results of the physical examination [were] normal.” (Emphasis in original.) Additionally, it stated that “clinical improvement ha[d] been observed from the second day of the treatment.” (Emphasis in original.) In view of repetitive clinical findings, the Applicant’s physician recommended “an inter-consultation by the Gastroenterology Department” after certain examinations had been performed. Three of the four examinations were microbiological in nature, and there is nothing in the record to indicate that they were not capable of being conducted by laboratories at the local level. The fourth examination was a “[g]astrointestinal endoscopy,” and that was recommended “if necessary.”

81. The Tribunal considers that, once again, there was nothing in the communications of 7 and 8 April to suggest or even intimate to HSD that either an emergency or a non-emergency medical situation existed. Neither the Applicant’s communication to HSD – “Here is the second version 😊? What do you think?” – nor the medical report of her treating physician would sustain a proposition to the contrary. The Applicant submits that, as she was located in an FCS country with severely limited medical resources, it was incumbent on HSD to have asked more questions, such as requesting the production of photographs of her abdomen.

82. The Tribunal does not agree. The Tribunal recalls that HSD’s mission includes providing advice to the Bank on health-related matters and does not involve diagnosing or providing treatment to staff. Moreover, the Tribunal considers that it would have been highly inappropriate for an HSD staff member to have asked the Applicant for a photograph of her abdomen. In acting as risk assessors and facilitators of health and safety, HSD professionals read and consider the medical reports and accompanying clinical analyses of treating physicians. They have no role to play in soliciting photographs of staff members’ body parts.

83. The Applicant claims that HSD is composed of medically trained professionals who failed to make the necessary inquiries to arrive at a reasonable and careful judgment. The Tribunal considers that this claim is misconceived in that it misunderstands and mischaracterizes the advisory nature of the role of HSD. While HSD staff may apply clinical knowledge and experience when reviewing medical reports submitted by staff, it is not their role to act as treating physicians by conducting their own independent medical evaluation. In this regard, it is instructive to note

that, where a medical evacuation is warranted, this may be authorized only on the basis of a “*recommendation of a local physician.*” (Emphasis added by the Tribunal.) There was nothing in the medical report of 8 April 2022 which came close to making such a recommendation.

84. The Tribunal has previously considered the scope of the Bank’s role in the health of its staff and the reasonableness of the Bank’s reliance upon the opinions of third parties when making health-related assessments. In *EI* [2017], the Bank hired a firm of independent experts to verify the safety of the air quality in the applicant’s work environment. The Tribunal found it reasonable for the Bank to rely on the tests conducted and the conclusions reached by that firm. *Id.*, para. 95.

85. Here, in a similar vein, the Tribunal finds that it was entirely reasonable for HSD to rely on the medical report of the Applicant’s treating physician and the various test results appended thereto, including those resulting from blood tests and an ultrasound scan, when advising the Applicant on the course of action that she could take to address her symptoms. The Tribunal makes no criticism of HSD for not conducting its own remote medical evaluation in circumstances where, had it done so, it would have been acting *ultra vires* and beyond the scope of its clearly specified role. It would also have been professionally improper for HSD staff to even attempt to make a diagnosis on a remote basis and outside of the context of a patient/clinical relationship.

86. Moreover, the Tribunal observes that there was nothing in the medical report of 8 April 2022 to indicate or even raise a suspicion of any of the chronic conditions listed in Staff Rule 6.07, paragraph 4.05. Rather, the medical report stated that the Applicant was experiencing abdominal pain with a tingling sensation, abdominal bloating, and frequent belching. A slightly distended abdomen was noted as was the Applicant’s clinical improvement from the second day of the treatment. Otherwise, the results of the Applicant’s physical examination were recorded as normal. What was recommended was an inter-consultation by the Gastroenterology Department after certain examinations were performed. There was no sense of urgency in respect of those examinations and certainly no recommendation that a medical evacuation was required.

87. While the Applicant never requested an evacuation in her communications with HSD, she queried what the acronym NEME meant and was informed, on the same day, that it stood for non-

emergency medical evacuation. Notably, she did not query the acronym for out of country care, “OCC,” notwithstanding that it, too, was used in the same email from HSD. Considering the information contained in the medical report of 8 April 2022, the Tribunal is satisfied that it was entirely reasonable for HSD to conclude that the prevailing clinical picture as set out in that report was “unlikely” to meet the qualifying criteria for a NEME as provided for in Staff Rule 6.07 and to inform the Applicant accordingly.

88. The Tribunal observes that on that date HSD went further and proactively recommended to the Applicant that, in the meantime, she use the staff members’ Medical Benefits Plan, provided by the Bank through Cigna, to apply for OCC. The option of applying to Cigna’s OCC program to receive medical care outside a staff member’s duty station is available to staff members, irrespective of whether they meet the criteria for emergency or non-emergency medical evacuation under Staff Rule 6.07. OCC covers travel, hotel, and per diem expenses. The Applicant was advised to complete the Cigna OCC request form and attach her medical report of 8 April 2022 thereto. She was told where to find the Cigna email address (“on your CIGNA card”), and she was reminded to insert her Cigna number in the subject line. She was further invited to copy HSD when emailing Cigna. The fact that the Applicant chose not to use her Medical Benefits Plan to seek OCC at that time is not a matter in respect of which blame can be attributed to the Bank.

89. The Tribunal observes that a period of over two months had passed between the Applicant’s first email exchange with HSD on 3 February 2022 and her second email exchange on 7 April 2022. As already noted, there is no evidence in the record to show that she followed up on the advice she received on foot of her first contact nor does the record demonstrate any sense of urgency on the part of the Applicant in respect of her second contact. In the Tribunal’s view, the Applicant has not established that the Bank acted unreasonably in responding to the Applicant in the way that it did on foot of her contact with HSD on 7 and 8 April 2022 and her submission of the medical report she had received from her treating physician.

90. The Applicant’s next communication with HSD occurred on 27 April 2022 when she contacted the Regional Medical Advisor seeking guidance. She stated that she had had abdominal pain one week earlier, and she expressed concern about the impact of the intermittent episodes of

pain on her life. The Tribunal observes that this email of 27 April 2022 was the first communication in which, in addition to seeking guidance from HSD, the Applicant raised a concern about the medical resources available in her duty station. She indicated that she no longer trusted the results and the diagnoses made “by medical resources in Bissau.”

91. In response to this email, the Regional Medical Advisor reviewed the results of the laboratory tests, which were negative except for an indication of the presence of a vaginal infection. An ultrasound scan was also negative. Nevertheless, the Regional Medical Advisor contacted the HQ-based SMO about the Applicant, and they discussed options for assisting the Applicant throughout the weekend.

92. On 29 April 2022, the Applicant was contacted by the Hotline Health Specialist who discussed the Applicant’s condition and the available options. As of that date, the record shows that the Applicant herself did not think that the situation was one of emergency but indicated, for the first time, that she would like to try OOCC, a step which HSD had recommended she take some three weeks earlier.

93. The HQ-based SMO then made contact, directly, with the Applicant on 1 May 2022 and maintained regular contact with her in the days that followed. The record shows that, in response to the Applicant’s concern, the HQ-based SMO told her what to submit to Cigna to initiate an OOCC, sought her permission to engage with Cigna on her behalf after the OOCC request form had been lodged, and confirmed that she would escalate the Applicant’s situation to the Cigna chief medical office and get back to the Applicant within twenty-four hours. The record further shows that, on 1 May 2022, when the Applicant finally submitted the OOCC request form to Cigna, HSD staff took action to assist in expediting the OOCC process.

94. The Tribunal recalls that, as of this time, there was nothing in the record to indicate that the Applicant’s condition was such as would qualify her to meet the criteria for emergency or non-emergency medical evacuation. Indeed, the record shows that, as of 29 April, the Applicant herself informed the Hotline Health Specialist that she did not regard the situation as being one of an emergency. Nevertheless, on 2 May 2022, when the Applicant complained of worsening

symptoms, HSD exercised its discretion and arranged for a NEME, not to “the closest location where appropriate medical treatment can be provided,” as stipulated under paragraph 4.01 of Staff Rule 6.07, but rather to the Applicant’s preferred country of care where she had family support and could speak the language fluently.

95. The Tribunal considers that, in this regard, HSD met and, indeed, went beyond its duty of care in all the prevailing circumstances. The prompt actions taken by HSD professionals between 29 April 2022, the date on which the Applicant first expressed a concern about the medical resources in her duty station, and 2 May 2022, the date on which HSD approved the NEME, are not in any way supportive of the Applicant’s assertion that HSD, in its overall actions, adopted a “wait-and-see” approach to the Applicant and her symptoms.

96. Contrary to the Applicant’s contention in this regard, the record demonstrates that HSD took several concrete steps and gave specific advice in response to communications it received from the Applicant. It further shows that the Applicant either did not act on the advice received or did not follow it in a timely manner. On 4 February 2022, for example, HSD advised the Applicant, expressly, to renew, after two weeks, the tests that had been carried out by her physician in response to her symptoms, but the Applicant did not do so. On 8 April 2022, HSD recommended to the Applicant that she use her Medical Benefits Plan to apply, through Cigna, for OOCC. The Applicant permitted three additional weeks to pass before doing so on 1 May 2022.

97. The Tribunal recognizes that susceptibility, generally, to personal illness is part of the human condition. The Bank’s duty cannot and does not extend to insulating staff members from all risk of developing a personal illness. In this regard, the Tribunal concurs with the finding of the Administrative Tribunal of the Asian Development Bank in *Bares* (1995) to the effect that the duty of care of the organization is not to be regarded as an absolute duty such as would, effectively, make the organization the insurer of staff members’ well-being irrespective of whether there was a failure of reasonable care that could be attributed to the organization.

98. The Applicant also contends that, because she is not a medical professional in HSD, she should not have been expected to understand that OOCC and NEME were distinct processes, and

she contends that HSD had a duty to better explain these processes. The Tribunal is not at all persuaded. The fact that the Applicant is not a medical professional does not detract from her capacity to understand the use of acronyms that have nothing to do with medicine as a science or from asking a question about the meaning of a particular acronym. Indeed, the record shows that, on 8 April 2022, the Applicant did precisely that when she queried what the acronym NEME stood for and was informed of its meaning, without delay. The record further shows that the Applicant did not at any time query the acronym for out of country care. There are several instances of HSD recommending OCCC and supporting the Applicant in completing a request form for the same. The Applicant's claim in this regard must fail.

99. Finally, the Tribunal will examine the Applicant's contention that the Staff Rules placed her in a dangerous position because she could not demonstrate that she qualified for a NEME without receiving the very diagnostic testing that she sought to access through a NEME. The record does not support this contention.

100. As already noted, there is nothing to suggest that the Applicant ever requested a medical evacuation, emergency or otherwise, to obtain a gastrointestinal endoscopy. Such an endoscopy was not identified as an urgent examination required in advance of her physician's recommendation which was, in fact, that an inter-consultation be convened in the Gastroenterology Department. It was an examination to be undertaken in advance of such a consultation, "if necessary," and, in any event, there is nothing in the record to suggest that a gastrointestinal endoscopy would have indicated the presence of colon cancer.

101. Moreover, the Tribunal considers that the Applicant's contention ignores the fact that she had available to her, through her Medical Benefits Plan, a process by which she could have requested a gastrointestinal endoscopy in a country outside her duty station had she submitted the necessary request form to Cigna. The Bank has put medical benefits in place to enable staff members to access medical care. The Tribunal considers that a staff member is not entitled to ignore the processes available to gain access to those benefits.

102. The Tribunal observes that there is a provision in the Staff Rules which confers upon HSD a discretion to approve a NEME should a staff member's condition "have the potential for severe complications." Staff Rule 6.07, paragraph 4.06. The record demonstrates that the documentation and information provided by the Applicant at the relevant time contained nothing to indicate that her condition was one with the potential for severe complications. Nevertheless, when the Applicant later complained of worsening symptoms on 2 May 2022, HSD professionals, out of an abundance of caution, exercised their discretion and authorized a NEME. In these circumstances, the Applicant's contention that she could not obtain a medical evacuation without first producing the diagnostic tests is wholly undermined.

103. For the reasons outlined above, the Tribunal finds that the Bank acted entirely reasonably in responding to the information supplied by the Applicant in terms of both the advice it provided to the Applicant and the actions it took to ensure that adequate medical care was provided.

104. The Tribunal therefore finds that there was no breach of the Bank's duty of care in this case.

DECISION

The Application is dismissed.

/S/ Janice Bellace

Janice Bellace

President

/S/ Zakir Hafez

Zakir Hafez

Executive Secretary

At Washington, D.C., 3 May 2024