COUNCIL FOR MEDICAL SCHEMES APPEALS COMMITTEE
(CENTURION)

In the matter between:

N , P Appellant

and

DISCOVERY HEALTH MEDICAL SCHEME Respondent

RULING

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1. This is an appeal, dated 22 April 2016, in terms of section 48 of the Medical Schemes Act, 131 of 1998 (**"the MSA"**) against a ruling of the office of the Registrar of Medical Schemes (**"the registrar"**) dated 25 January 2016.

2. The facts as set out by the registrar are uncontroversial. It is the outcome that is. Hence this appeal.

3. Having sustained serious injuries, including fractures, in a motor vehicle accident, the member underwent posterior spinal instrumentation and stabilisation under the care of a non-DSP

Orthopaedic Surgeon. On that occasion the scheme paid in full for the treatment because there was an emergency.

4. When the instrumentation required removal a few months later, the member returned to the same non-DSP Surgeon. This time, the scheme declined to fund the treatment in full contending that this was a voluntary use of a non-DSP.

5. The registrar's office took the view that it was **"advisable that the same provider remove the internal instrumentation of the initial surgery [because he] is familiar with the member's case and also did the follow-up consultation"**. It held that the scheme is obliged to fund removal of the instrumentation in full as it was, according to the registrar's office, **"not reasonable to expect the member to consult with a provider who has no knowledge of his injuries, or what occurred when surgery was done"**.

6. All well and good, except it features nowhere among the only exceptions permitted under the MSA regulations for the use of non-DSPs, namely:

6.1 where service from a DSP was either not available or would not be obtained without unreasonable delay; or

6.2 where immediate medical or surgical treatment for a PMB condition was required under circumstances or at locations which reasonably precluded the beneficiary from obtaining treatment from a DSP; or

6.3 where there is no DSP within reasonable proximity.

7. The scheme says it is not necessary to decide whether this is a closed list of instances in which a non-DSP may permissibly be used and the scheme called upon validly to pay in full. It says there is no clinical evidence presented by the member to deviate from this list of instances. It says this follow up procedure could have been done by any competent surgeon. The Health Professions Council of South Africa does contemplate the handing over of a patient to another surgeon on certain conditions. This could have been done here. Finally, it says there were DSPs available at that same hospital where the member was treated. The member denies none of these.

8. The installing and removal of the rods is within the scope of all Orthopaedic Surgeons. So there is no super speciality required here. Any competent Orthopaedic Surgeon could have done it.

9. In the result, the appeal must succeed.

27 OCTOBER 2016

VR NGALWANA SC for Appeal Committee

For the scheme: *N Taitz; S Singh; Dr N Madhlopha*
For the member: *P N* *(who abides the ruling)*
For the registrar: *M Winkler*

Date of hearing: *16 September 2016*
Date of Ruling: *12 October 2016*