

BEFORE THE APPEALS COMMITTEE OF THE COUNCIL FOR MEDICAL
SCHEMES
HELD IN CENTURION, PRETORIA
(Instituted in terms of the Medical Schemes Act No.131 of 1998)

REF. CMS NO: 75556

In the matter between:

A APPELLANT

and

DISCOVERY HEALTH MEDICAL SCHEME FIRST RESPONDENT

THE REGISTRAR FOR MEDICAL SCHEMES SECOND RESPONDENT

RULING AND REASONS

INTRODUCTION

1. The Appellant is Ms. A (“Member” or “A”), a member of the Scheme.
 2. The First Respondent is Discovery Health Medical Scheme (“Discovery”), a Medical Scheme duly registered and regulated under the Medical Schemes Act, Act 131 of 1998 (“MSA”).
 3. The Second Respondent is the Registrar of Medical Schemes (the “Registrar”).
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4. This is an appeal under section 48(1) of the MSA, providing that –

“(1) Any person who is aggrieved by any decision relating to the settlement of a complaint or dispute may appeal against such decision to the Council.”

5. The Appeals Committee heard the Appeal on 10 June 2021 *via* audio and video conferencing link.

6. Ms. Naidoo appeared for the Appellant.

7. Mr. Dhorat appeared for the First Respondent

8. The Second Respondent did not appear but indicated that the Registrar will abide by the Appeals Committee’s decision.

BACKGROUND

9. The Appeal relates to a Registrar’s finding that the Scheme had no obligation to fund Humira for the Appellant, as the Appellant has not been diagnosed with a Prescribed Minimum Benefit (“PMB”) condition.

10. On 24 June 2006 the Appellant was diagnosed with Ankylosing Spondylitis.

11. On 10 December 2011, the Appellant was treated with Humira therapy, which she self- funded.

12. The Appellant’s treatment with Humira Therapy showed great results, however, she was unable to continue funding her treatment with Humira therapy, as she was retrenched.

13. On 8 October 2019, the Scheme received a motivation from the Practice Physician, Dr. N. Patel, requesting funding of Humira to treat Appellant’s condition, however, the Scheme declined to fund a non -PMB condition from the Chronic Illness Benefit for persons who were on the Coastal Saver Plan, such as the Appellant.

14. The Registrar found that funding for the non-PMB condition the member suffers of, is circumscribed by the benefit entitlement applicable to a member’s benefit plan and the Scheme rules.

SUBMISSIONS BY APPELLANT

15. The Appellant conceded that her condition is not a Prescribed Minimum Benefit (“PMB”), however, Registrar ignored the provisions of Regulations 15H- (c) and 15I(c) contained in Chapter 5 of the General Regulations to the Medical Schemes Act (the “Regulations”).
16. Firstly, the Appellant submitted that the Appeals Committee make an exception for an appropriate alternative treatment, if the medicines on the formulary have been ineffective, have caused or would cause adverse reaction to a beneficiary.
17. Secondly, the Scheme is required by the MSA under Regulation 15 to develop any treatment protocols and any formularies based medical evidence, and to create exemption where necessary.

SUBMISSIONS BY RESPONDENT

18. The Respondent submitted that the Appellant’s condition not a PMB.
19. The Respondent further submitted that Regulations 15H (c) and 15I (c) are not applicable.
20. In terms of Section 32 of the MSA, provides that the Scheme’s rules are binding on the Scheme and its members.

LEGAL FRAMEWORK AND EVALUATION

21. Regulations 15H(c) and 15I(c) state as follows-
22. 15H (c) - *“If managed health care entails the use of a protocol- provision must be made for appropriate exceptions where a protocol has been ineffective or cause or would cause harm to a beneficiary, without penalty to that beneficiary”.*_
23. 15I(c) – *“If managed health care entails the use of a formulary or restricted list of drugs – provision must be made for appropriate substitution of drugs where a formulary drug has been ineffective or causes or would cause adverse reaction to a beneficiary, without penalty to that beneficiary”.*_

24. ***Medshield, Medical Services Organisation SA (Pty) Ltd v. CMS and Others***¹ explains regulation 15H (c):

The Act requires in Regulation 15H(c) that “Where a Protocol has been ineffective or causes or would cause harm to the beneficiary, appropriate exceptions have to be provided without penalty to that beneficiary”.

25. ***Traub v. Discovery Health Medical Scheme***², explains regulations 15H and 15I and rheumatoid arthritis as a pmb:

“It is correct that Regulations 15H and 15I place an obligation on a Scheme that uses either a protocol, a formulary or a restricted list of drugs, to develop such protocol or formulary on the basis of evidence based medicine, taking into account considerations of cost-effectiveness and affordability”.

“What this requires, therefore, is that there be a rational, justifiable basis for the protocol or the formulary as a whole. This requirement does not and cannot excuse the Scheme from its obligations in terms of Regulations 15H(c) and 15I(c), both of which specifically provide that provision must be made for departures from the protocol or formulary where necessary without penalty to the beneficiary”.

26. In final analysis the Appeals Committee found the following:

27. The Appellant’s condition is not a PMB.

28. The Appellant was self-funding her treatment of Humira therapy prior to her retrenchment.

29. Regulations 15H(c) and 15I(c) are not applicable –

29.1 The Appellant’s condition is not a PMB; and

¹ *Medshield, Medical Services Organisation SA (Pty) Ltd v. CMS and Others* dated 1 February 2012 page 13 paragraph 31.

² *Traub v. Discovery Health Medical Scheme* dated 31 January 2008 page 15 paragraph 33 and 34.

29.2 The Appellant's Coastal Saver Plan excludes funding for Humira therapy treatment.

29.3 The Appellant has not shown that the current treatment with Methotrexate is ineffective or causes or would cause adverse reaction.

FINDING

30 For the reasons above, the Appeals Committee finds that the Scheme was not obliged to fund Humira treatment therapy for the Appellant.

ORDER

31 Having considered the matter and heard the parties, the Appeals Committee rules that:

31.1 The Appeal is dismissed.

DATED AT THIS CENTURION ON 19 JULY 2021.

DR L MKANSI

For: THE APPEAL COMMITTEE (CENTURION)

WITH –

MR N RAHEMAN

DR T MABEBA

DR H MUKHARI

DR S NAIDOO

MS D TERBLANCHE

CONCURRING, IT SO BE RULED.

