BEFORE THE APPEAL COMMITTEE OF THE COUNCIL FOR MEDICAL SCHEMES (SECTION 48 APPEAL)

HELD VIA MICROSOFT TEAMS VIDEO AND AUDIO-CONFERENCING TECHNOLOGY.

(Instituted in terms of the Medical Schemes Act No 131 of 1998)

In the matter between	**Ref number: CMS 72246**
Medihelp Medical Scheme	**Appellant**
And	
Mrs F	**Respondent**

Panel: Dr K. Chetty; Dr T. Mabeba; Dr X. Ngobese; Ms P. Beck; Ms M Ramagaga; Dr S Naidoo.

Date of hearing: 7 October 2024.

Date of ruling: 15 November 2024.

RULINGS AND REASONS

THE PARTIES

1. The Appellant is Medihelp Medical Scheme (The “Appellant or the “Scheme”), registered and regulated under the Medical Schemes Act, Act 131 of 1998 (the “MSA” or “Act”).
2. Ms T, Legal Advisor for Medihelp appeared for the Appellant.
3. The Respondent is Mrs F(The “Respondent” or “Member”), a member of Medihelp Medical Scheme.
4. The Respondent was represented by Mr F, her husband and main member.

BACKGROUND

5. The Respondent, Mrs F is a member of the Medihelp Medical Scheme.
6. Mrs F was admitted to hospital for a malignant neoplasm of the skin near the eye area. The Respondent states that the required pre-authorization had been obtained, but the Scheme did not give a clear indication that the practitioner was a non-DSP. As a result, the Respondent alleges that the Scheme had acted improperly in the short payment for services rendered by the treating doctor, Dr D
7. The Scheme states that during the pre-authorization call it informed the Respondent that the claims related to services by the specialist would be funded at 100% of the Scheme's rate and that the complainant would be liable for the remainder if the specialist charges more than the Scheme rates. The Scheme also states that in addition it sent an authorization letter to the Respondent in which it stated that the specialist is a non-DSP and the account would be paid at the Scheme rates.
8. The Scheme stated that the name of two DSP doctors were given, namely Dr G and Dr S. The Respondent stated that Dr G denied that he is a DSP of the scheme and that he would have charged the same rates as Dr D for the procedure.

9. According to the Respondent he stated that the DSP's of a scheme must be contracted to the scheme in terms of the information on the Council for Medical Schemes website. The Scheme responded that according to the Act, DSPs must be "*selected"* (not contracted), and therefore there was no obligation for the Scheme to contract with the DSP.
10. The Scheme concluded that the Registrar erred in its decisions that the Scheme be compelled to fund the account in full and that the Schemes decision to reimburse the providers account according to the Scheme tariff should be upheld.

THE REGISTRAR'S RULING

11. The Registrar's Ruling was issued on 15th November 2019.
12. The Legal Officer: Complaints Adjudication Unit of the Council for Medical Schemes (CMS) ruled that the Scheme is liable to fund the account for services rendered to the Respondent by Dr D in full due to the Scheme's failure to provide sufficient evidence that Dr G is a DSP of the Scheme.
13. The Legal Officer found that in in the absence of evidence to support the DSP status of Dr G, the use of the services of Dr D constitutes involuntary use of a non-DSP in terms of Regulation 8(3) of the Medical Schemes Act and should therefore be funded in full.
14. The Appellant is now appealing this decision in terms of Section 48 Appeal submitted on 14th February 2020.

APPLICATION TYPE AND RELIEF SOUGHT

15. This is an appeal under section 48(1) of the Medical Schemes Act (the "MSA or the Act").[1] This section provides that:
    a. *"(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".*

[1] Medical Schemes Act 131 of 1998 as amended by Act 55 of 2001; Section 48(1); Proc 13/GG 19725/19990129

16. The Appeals Committee heard the appeal on 7 October, 2024 via an audio and video conferencing link.

RELEVANT STATUTORY AND REGULATORY PROVISIONS

17. The relationship between the Scheme and the Respondent is governed by the terms of the contract ("the schemes rules") the Scheme concluded with the Respondent. The contract in turn is governed by the "MSA" and the regulations (as amended) made in terms of the Act.
18. This is a wide appeal. The Appeals Committee may consider the matter afresh and is not restricted to the record of proceedings that were before the Registrar.
19. The burden of proof rests on the Appellant who must prove on a balance of probabilities that the appeal should succeed.

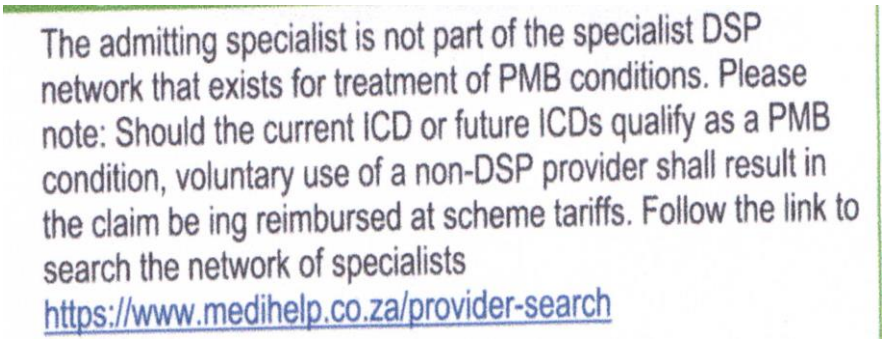
THE ISSUE IN DISPUTE

20. The issue in dispute is whether the scheme was correct to not fund the account for services rendered by Dr D in full on the basis that it constitutes voluntary use of a non-DSP

APPELLANTS SUBMISSION

21. The Appellant states that Mrs. F joined Medihelp on 1st April 2016 and is currently registered on the Prime 3 benefit option.
22. On 7th February 2019, Medihelp received a request to authorize benefits for the Respondents planned surgical procedure scheduled for 13 February 2019, under the care of the admitting specialist, Dr D at Mediclinic Nelspruit. Further information was requested from the Respondent
23. The Appellant states that the Respondent was informed telephonically as well as in the electronic authorization document dated 8 February 2019 that the admitting specialist was not part of Medihelp's specialist Designated Service Provider (DSP) network for the treatment of the PMB conditions and that

making use of the non-DSP would result in the claim being reimbursed at the scheme tariff.[2]


The admitting specialist is not part of the specialist DSP network that exists for treatment of PMB conditions. Please note: Should the current ICD or future ICDs qualify as a PMB condition, voluntary use of a non-DSP provider shall result in the claim be ing reimbursed at scheme tariffs. Follow the link to search the network of specialists
https://www.medihelp.co.za/provider-search

24. The Appellant states that they received Dr D claim on 28th February 2019 and settled the account 100% of the Scheme tariff, and the Respondent remained responsible for the shortfall.
25. The Appellant states that it is not in dispute that the Respondent's condition constituted a Prescribed Minimum Benefit (PMB) condition and that the treatment provided qualified for PMB. However, the Appellant states that the Respondent voluntarily elected to utilize the services of a non-DSP during her planned admission, thereby attracting a co-payment.
26. The Appellant states that in terms of Regulation 8 of the regulations under the Act, medical schemes are entitled to stipulate in their rules that members must utilise DSP's for PMB conditions. The Appellant states it is important to understand that in terms of Regulation 8(1) Schemes must fund PMB conditions in full but, but Regulation 8(1) must be read with Regulations 8 (2) and 8(3) and cannot be read in isolation. In terms of regulation 8(2) a Scheme may apply a co-payment or deductible if a member made use of a non-DSP, unless it can be considered as “involuntary” use of a non-DSP as stipulated in Regulation 8(3)(a)(c).
27. The Appellant states that the definition of DSP in the Act reads as follows:

> *“Designated service provider means a healthcare provider or group of providers selected (emphasis added) by the medical scheme concerned as the preferred provider or providers to provide to its members*

[2] Page 6 of bundle

diagnosis, treatment and care in respect of one or more prescribed minimum benefit condition (PMB).

28. The Appellant states that in Schedule B.3 to the rules of Medihelp it is stated in paragraph 15 that “In the case of the PMB service rendered by medical specialist, in and out of hospital, the service must be obtained from a specialist selected by Medihelp as the DSP. Should the service be obtained from a non-DSP, benefits will be paid according to the scheme tariff.
29. The Appellant states that before the Registrar's Office approves a medical schemes rules, it requires the scheme to demonstrate that it has conducted an assessment of its DSP's and has assurance of the availability of services. Where schemes failed to demonstrate such capabilities the CMS rejects their rules. Medihelp updates its list of DSPs bi-annually, based on the outcome of an actuarial valuation.
30. The Appellant states the CMS is of the opinion that it would be more prudent for schemes to formally contract its DSP and therefore advises schemes to do so. The Appellant states that Medihelp supports the view of the CMS and is in the process of contracting its DSPs, but the absence of a signed contract does not detract from the legitimacy of Medihelp’s currently selected DSPs.
31. The Appellant also states that there is no evidence to indicate that the respondent enquired about a DSP prior to her planned admission and that she only did this after she has held liable for the shortfall.
32. The Appellant requests that the ruling made by the registrar is dismissed in terms of the registered rules of Medihelp and the provisions of Regulation 8 of the Regulations under the Act, that the Respondent made voluntary use of a non-DSP for a planned procedure.

RESPONDENTS SUBMISSION

33. The Respondent Mrs F is a member of Medihelp on the Prime 3 benefit option. She was represented by Mr. T her husband who is the main member.
34. The Respondent stated that she had applied for authorisation for removal of a malignant neoplasm of the skin near the eye. She stated that approval was granted under certain conditions namely, that payment would be made under

PMB tariffs, but there was never a clear indication that the practitioner was a non-DSP.

35. The Respondent states that Medihelp said that Dr G is a registered DSP practitioner and that the member should have used his services. However, the Respondent states that Dr G denies being a registered DSP with Medihelp and has no contract with them and is unaware that he is a registered DSP. The respondents also stated that Dr G also said that he charges above scheme rates and produced evidence that this was placed in his surgery
36. The Respondent also states that Medihelp also indicated that Dr S was also part of Medihelp's DSP scheme. The Respondents said that they know Dr S personally and he no longer works at Mediclinic and he also no longer performs the said procedures, and only performs cosmetic surgery.
37. The Respondents contention is on what basis is a DSP selected and what gives Medihelp the right to unilaterally assign doctors and specialists as DSP's without such practitioners being in agreement and accepting such appointment.
38. The respondent questions what is the criteria used to qualify Dr G and yet denied Dr D from being a DSP and believes that this is an unfair practice.
39. The Respondent states that as a result Medihelp only paid R4000 of the account of R9000 (44%) resulting in a co-payment of R5000.
40. The Respondents dispute is that Medihelp did not properly inform the members of the registered DSP's, and that they are making false claims about the registered DSP's as the DSP's are unilaterally decided upon by Medihelp.
41. The Respondent request that the registrars ruling is upheld and account is paid in full.

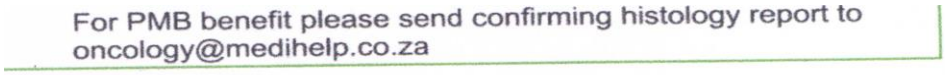
DISCUSSION AND ANALYSES

The Appeals Committee considered papers filed in this appeal; the further submissions the party's made; the relevant provisions of the Medical Schemes Act; and the Rules of the Scheme.

42. It is common cause that

a. The Respondent has been a member of the Medihelp Medical Scheme and covered on the Prime 3 benefit option.
b. The member was admitted for the removal of a malignant neoplasm near the eye.
c. The Scheme levied a co-payment for the specialist treating doctor on the basis that it was the voluntary use of a non-DSP according to the rules of Medihelp.

43. From the evidence provided there is no dispute that the member's condition is a PMB and treatment provided qualified for a PMB.


For PMB benefit please send confirming histology report to oncology@medihelp.co.za

44. The Respondent indicated that the Scheme failed to clearly indicate that her treating doctor was not a Designated Service Provider. The Appellant however indicated that during the pre-authorization the member was informed telephonically of the funding at 100% of the Medihelp Scheme Rates, as well as electronically in the authorization letter that was sent.
45. In the evidence given before the panel the Respondent stated that they contacted Dr G who informed them but he was not a DSP of Medihelp and that he did not charge Scheme rates. The Respondent also indicated that they knew the other doctor personally and was aware that he no longer was at Mediclinic and did not do this type of surgery.
46. The key issues to be looked at is what was the intention of Designated Service Providers in the Act.
    a. *Designated Service Provider means a healthcare provider or group of providers selected by the medical scheme concerned as the preferred provider or providers to provide to its members diagnosis, treatment and care in respect of one or more prescribed minimum benefit conditions.*[3]
47. CMScript October 2008 states *"Provision for DSP's in the Medical Schemes Act was intended to encourage DSP arrangements between medical schemes and health care providers to ensure the proper delivery of prescribed minimum benefits to all beneficiaries of all schemes…. The Registrars office strongly*

[3] Regulation 7, Medical Schemes Act 131 of 1998

advises schemes to ensure that services will be readily available for their members before identifying DSPs as their preferred service provider in their rules"

48. CMScript October 2008 goes further to state "*When approving scheme rules the Registrars office requires schemes to demonstrate that they have conducted an assessment of the DSPs and that they have the assurance of the availability of services. The Council for Medical Scheme has made it clear that DSP arrangements should be more than just a listing of a name, The very reason why DSPs were introduced is mainly for schemes to ensure that their members get proper care at a proper place and at an appropriate cost. This could not be easily determined without some mutual partnership and interaction between the scheme and the health care provider."*
49. In a Supreme Court of Appeal (SCA) judgement, the judge ruled that "*Genesis had the opportunity to appoint DSP's. It could even have concluded agreements with the public sector as its DSP, which would not have been offensive if the Registrar was satisfied that there was a clear agreement between it and the relevant public health authorities.*[4]
50. The judgement also stated that "*the provisions referring to DSP's clearly indicating that private sector treatment was envisaged - such provisions allowing a medical scheme to select DSPs with whom it may reach agreement on charges beneficial to it and thereby limit its exposure to liability under regulation 8(2);*[5]
51. In the same judgement the judge stated "*the relationship between the medical scheme on the one hand and its members on the other, is not governed solely by the scheme's rules but also by the obligations imposed by statute upon medical schemes.'… Consequently DL Pearmain in 'The Law of Medical Schemes in South Africa, correctly observes that although the Act states that a scheme is bound by its rules, if one or more of those rules is contrary to law, the will take precedence."*

[4] The Council for Medical Schemes v Genesis Medical Schemes (20518/14) [2015] ZASCA 161 (16 November 2015) (43).
[5] The Council for Medical Schemes v Genesis Medical Schemes (20518/14) [2015] ZASCA 161 (16 November 2015) (38).

52. The Appellant in its affidavit from the Principal Officer of Medihelp stated that "*Before the Registrars office approves medical school students rules it requires a scheme to demonstrate that it has conducted an assessment of its DSPs and has assurance of the availability of services. Where schemes fail to demonstrate such capabilities the CMS rejects their rules. Medihelp updates its lists of DSPs bi-annually, based on the outcome of an actuarial evaluation.*
53. The crisp question is does an actuarial evaluation equate to an assessment of DSPs with regard to the availability of services. The Appellant in its testimony stated that they do not contact the service provider. The actuary checks what fees were charged in the previous years and selects the provider according to those fees.
54. Based on this the Appellant has not provided assurances with regards to the availability of services, and no agreement has been concluded with the service provider, as the service provider has clearly stated that he is unaware that he is a DSP and that he has not been contacted by the Scheme. The Scheme confirmed that they never contacted the doctor, therefore they would not be aware if the services are available or not, at a rate that will be beneficial to both the Scheme and the member.
55. From the SCA judgement and various CMScripts and circulars the key issue in selecting a DSP is some mutual partnership, agreement and interaction between the scheme and the health care provider."
56. By selecting a provider without any negotiations or agreement on an agreed tariff subverts the intention of DSPs which is to ensure cost effective, affordable and available treatment to members of a scheme.

FINDING

57. The members condition, is a Prescribed Minimum Benefit (PMB).
58. Dr G is not deemed to be a DSP as there has been no contact or agreement with him.
59. Regulation 8(3)c is therefore applicable "a beneficiary will be deemed to have involuntary obtained the service from a provider other than a designated service provider if there was no designated service provider within reasonable proximity to the beneficiaries ordinary place of business or personal residence."

60. The Scheme is liable to fund the account for services rendered to the Respondent by Dr D in full.

ORDER

Having considered the matter the Appeals Committee orders that:

b. The appeal is dismissed.
c. The decision of the registrar is upheld.
d. There is no order to costs.

Dated at Johannesburg on 15th April 2024

Dr KS Chetty (For and on behalf of the Appeals Committee)

Concurring:

Dr T. Mabeba.

Dr X. Ngobese

Ms P. Beck

Ms M Ramagaga.

Dr S Naidoo.