



BEFORE THE APPEALS COMMITTEE OF THE COUNCIL FOR MEDICAL SCHEMES

HELD *VIA* MICROSOFT TEAMS VIDEO AND AUDIO CONFERENCING TECHNOLOGY

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

REF.CMS NO: 82284

In the matter between:

C obo J

Appellant

and

Medihelp Medical Schemes

First Respondent

The Registrar

Second Respondent

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## **RULING AND REASONS**

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## **INTRODUCTION**

1. The Appellant is Miss C on behalf of Mr J (“Member”), a member of the Scheme.
2. The First Respondent is Medihelp Medical Scheme (“Medihelp” or the “Scheme”), a Medical Scheme duly registered and regulated under the Medical Schemes Act, Act 131 of 1998 (the “MSA”).
3. The Second Respondent is the Registrar of the Council for Medical Schemes.
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. Miss C appeared on behalf of Mr J, the Appellant.
6. Miss T accompanied by Mr K appeared for the First Respondent.
7. The Second Respondent did not appear but indicated that the Registrar would abide by the Appeals Committee’s decision.
8. The Appeals Committee heard the Appeal on 05 March 2024 *via* audio and video conferencing link.

## **BACKGROUND**

9. Mr J is a 77-year-old member of the Medihelp Medical Scheme on the Med-Elite Benefit option. He joined Medihelp on 2 April 1967.
10. In January 2023, Mr J was diagnosed with a Para Renal Abdominal Aortic Aneurysm at Kiaat Hospital in Nelspruit following a fall while in his home.

11. The member was then transferred to a vascular surgeon in Johannesburg, Dr M for further management.
12. The vascular surgeon recommended a custom made Fenestrated Endoscopic Stent Graft (F-EVER prosthesis) to be used in managing the member's aneurysm.
13. The F-EVER prosthesis had to be ordered from Australia and the turnaround time for the manufacturing of the F-EVER device was about 6 weeks.
14. On 07 February 2023, the Scheme received a request for authorization for the F-EVER to be performed on the member on 16 February 2023.
15. The Scheme declined to authorise the F-EVER prosthesis citing *inter alia*, the available alternative surgical management for the member's aneurysm.
16. On 15 February 2023, the member was re-admitted to Life Fourways Hospital under Dr M, the vascular surgeon to undergo the F-EVER prosthesis procedure the following day.

## **MERITS OF THE APPEAL**

### **17. Wide appeal**

17.1 Appeals before the Appeals Committee are wide appeals. The Appeals Committee may consider the matter afresh and is not restricted to the records of proceedings that were before the Registrar.

17.2 The burden of proof rests on the Appellant who must prove on the balance of probabilities that the appeal should succeed.

## **ISSUES IN DISPUTE**

18. The crisp issue for determination is whether or not the Scheme's decision to decline to fund F-EVER in full for the member's PMB condition is correct taking into account the provisions of the Medical Schemes Act and the Scheme's rules.

## **SUBMISSIONS BY APPELLANT**

19. The Appellant argued that F-EVER is a minimally invasive procedure that will allow the member to recover quicker than the conventional standard procedure.
20. He contended that he had been a member of Medihelp for 56 years and had never missed any contribution towards his medical cover. As a result, the Scheme should take into consideration his long-standing membership to cover the cost of his F-EVER procedure.
21. Medihelp should pay in full for F-EVER given that other schemes like Discovery and Medscheme do pay for F-EVER in full.
22. According to the member, his condition was an emergency and there was no alternative to the F-EVER procedure.
23. As a result of the foregoing submission, the Appellant requests the Appeals Committee to set aside the Registrar's decision, and to rule that F-EVER is a PMB level of care for the treatment of the Appellant's PMB condition and that the Scheme should fund the treatment in full.

## **SUBMISSIONS BY RESPONDENT**

24. Medihelp submitted that the member had an available Endovascular prosthesis (EVARS) limit of R148 200.00 which would be funded at the MediKredit Nappi Tariffs.

25. Since Marcus Medical quoted an amount of R872 367, 98 for the F-EVER prosthesis, the member would have a co-payment on the F-EVER prosthesis to the amount of R724 167, 98.
26. Medihelp argued that it communicated the foregoing funding to the member prior to the F-EVER procedure.
27. It is the argument of the Scheme that the member voluntarily proceeded with the F-EVER procedure despite the Scheme's email sent to the member dated 10 February 2023.

## **LEGAL FRAMEWORK AND EVALUATION**

28. Section 29(q) of the MSA; *The Registrar shall not register a medical scheme under section 24, and no medical scheme shall carry on any business unless provision is made in its rules for the following matters:*  
*The payment of any benefit according to -*
  - (i) *a scale, tariff or recommended guide; or*
  - (ii) *specific directives prescribed in the rules of the medical schemes.*
29. Regulation 7 of the MSA defines PMB as "benefits contemplated in Section 29 (1) (0) of the Act, and consist of the provision of diagnosis, treatment and care costs of –
  - a. *The diagnosis and treatment pairs listed in Annexure A, subject to any limitations specified in Annexure A; and*
  - b. *Any emergency medical condition"*
30. Regulation 8(1) of the MSA stipulates that: *Prescribed Minimum Benefits:*  
*(1)Subject to the provisions of this regulation, any benefit option that is offered by a medical scheme must pay in full without co-payment or the use of deductibles, the diagnosis, treatment and care costs of the PMB condition;*

31. Section 32 of the MSA: *The rules of the medical scheme and any amendments thereof shall be binding on the medical scheme concerned, its members, officers and any person who claims any benefit under the rules or whose claim is derived from a person so claiming.*

## **DISCUSSION AND ANALYSIS**

32. It is common course between the parties that Mr J suffered from the following condition:  
I71.4- Abdominal aortic aneurysm, without mention of rupture
33. The aforementioned condition is a Prescribed Minimum Benefit (PMB) diagnosis, under the Diagnosis and Treatment-Pair (DTP) 908E, - Aneurysm of major artery of chest, abdomen, neck, - Unruptured or ruptured NOS. The treatment component is surgical management.
34. The parties differ in that the Appellant believes that F-EVER is an appropriate treatment for his PMB condition, therefore the Scheme must pay the account in full. Whereas the Scheme believes that F-EVER is not a PMB level of care, and cannot be funded in full, and therefore the member's PMB condition was funded at the Scheme Rate in accordance with the Scheme Rules.
35. This is the matter that is before the Appeals Committee for determination.
36. According to the treating doctor, Dr M, the member's CT scan report confirmed a para-renal aneurysm, measuring 7cm in diameter. This kind of aneurysm was not anatomically suitable for a standard endovascular repair hence the need to insert a custom-made device. The treating Dr indicated that open surgery had a higher morbidity and mortality and also given the member's advanced age, F-EVER was a preferred procedure. It was the treating doctor's view that managing the member's condition endovascularly using F-EVER would be best. The F-EVER endovascular operation would have a 2.4% peri-operative mortality with immediate recovery.

37. Regulation 8(1) of the MSA compels the Scheme to pay in full without co-payment or the use of deductibles, the diagnosis, treatment and care costs of Mr J's PMB condition.
38. Medihelp submitted that although the member suffers from a PMB condition, F-EVER is not a PMB level of care. The F-EVER service provider in South Africa (Marcus Medical) further confirmed this assertion, which indicated that F-EVER was only offered on a donation basis in Western Cape and Free-State.
39. The Appeal Committee heard the evidence advanced by both parties and further considered the provision of Explanatory Note 2 to the PMB conditions which states that:

*“Where the treatment component of a category in Annexure A is stated in general terms (i.e. “medical management” or “surgical management”), it should be interpreted as referring to prevailing hospital-based medical or surgical diagnostic and treatment practice for the specified condition. Where significant differences exist between Public and Private sector practices, the interpretation of the Prescribed Minimum Benefits should follow the predominant Public Hospital practice, as outlined in the relevant provincial or national public hospital clinical protocols, where these exist. Where clinical protocols do not exist, disputes should be settled by consultation with provincial health authorities to ascertain prevailing practice...”*

40. *In casu*, there is no evidence submitted by the Appellant to support the prevailing use of F-EVER in Public Hospitals when managing abdominal aorta aneurysms.
41. The Scheme however submitted that the prevailing surgical management for the member's PMB condition in Public hospitals is EVARS and there are no Public hospitals that offer F-EVER.
42. Accordingly, it is submitted that F-EVER is not a PMB entitlement.

43. Notwithstanding that the Scheme communicated its funding to the member in terms of its Rules, before the member underwent the F-EVER procedure, the member nevertheless proceeded with the F-EVER procedure having had sufficient knowledge of the short payment that the Scheme had communicated to him.
44. The member and the Scheme are bound to the rules of the Scheme and cannot stray outside the bounds of the rules of the Scheme under section 32 of the MSA.

### **FINDING**

45. The Appeals Committee finds that the Appellant has not discharged its onus that F-EVER is a PMB level of care and that at the time of his treatment, F-EVER was the only surgical management available for his PMB condition.
46. F-EVER is not available in Public hospitals and therefore not a PMB level of care.
47. The Scheme correctly funded the member's PMB condition in terms of its Rules.

### **ORDER**

48. Having considered the matter, the Appeals Committee rules that:
  - 48.1. The Appeal is dismissed.

**DATED AT THIS CENTURION ON 05 MARCH 2024.**

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**DR THANDI MABEBA (For and on behalf of the Appeals Committee )**

CONCURRING WITH-

Dr X Ngobese

Miss M Ramagaga

Dr S Naidoo

Miss P Beck

Dr Chetty