



**BEFORE THE APPEAL COMMITTEE OF THE COUNCIL FOR MEDICAL  
SCHEMES  
HELD VIA THE MICROSOFT TEAMS VIDEO AND AUDIO CONFERENCE  
TECHNOLOGY INSTITUTED IN TERMS OF MEDICAL SCHEMES ACT NO 131  
OF (1998) CENTURION - CASE NUMBER CMS 73051**

In the matter between:

**MS K**

**APPELLANT**

**AND**

**DISCOVERY HEALTH MEDICAL SCHEME  
REGISTRAR OF THE CMS**

**FIRST RESPONDENT  
SECOND RESPONDENT**

**DATE OF HEARING:**

**7 MARCH 2024**

**DATE OF RULING:**

**17 APRIL 2024**

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**RULING AND REASONS**

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## **THE APPELLANT**

1. The Appellant is Ms. K, a member of the Discovery Health Medical Scheme.

## **THE FIRST RESPONDENT**

2. The First Respondent is Discovery Health Medical Scheme (“Discovery” or the “Scheme”), a Medical Scheme duly registered and regulated under section 25 of the Medical Schemes Act, Act 131 of 1998 (the “MSA”).

## **THE SECOND RESPONDENT.**

3. The Second Respondent is the Registrar of the Council for Medical Schemes (“CMS”). The Council for Medical Schemes is an autonomous body established in terms of the Council for Medical Schemes Act.
4. It is a statutory body established to regulate the Medical Schemes industry, with its principal place of business located at the Eco-Park Estate, Centurion.

## **APPLICATION TYPE AND RELIEF SOUGHT**

5. The appellant makes this application in terms of section 48(1) of the Act. This section provides –

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

6. The Appeals Committee heard the Appeal on 07 March 2024 *via* audio and video conferencing link.

7. The hearing concerns the merits of appeal filed by Ms. K , a member of the Discovery Health Medical Scheme on the Classic Priority Plan, including International Travel Benefits (ITB).
8. The Appellant seeks an order for the following relief:
  - 8.1 That the Appeals Committee overturns the decision of the Registrar of the The Council for Medical Schemes (CMS) in agreeing with the decision of the scheme to decline to fund the full amount of out-of-pocket medical expenses incurred by the member during her overseas vacation.
  - 8.2. The appeals committee to order the scheme to reimburse her return flight cost to South Africa and other medical expenses incurred by the member whilst in overseas vacation.

#### **RELEVANT STATUTORY AND REGULATORY PROVISIONS.**

9. The relationship between the member and the scheme is governed by the terms of the contract ( ‘ *the scheme rules*”) that the appellant concluded with the Discovery Health Medical Scheme.
10. The Contract in turn is governed by the Medical Schemes Act 131 of 1998 and the regulations (as amended) contained in the Act.

#### **WIDE APPEAL**

11. This is the wide appeal. The Appeals Committee may consider the matter afresh and is not restricted to the record of the proceedings before the registrar.

## **THE ISSUE IN DISPUTE**

12. The issue to be decided by the Appeals Committee is whether the decision by the scheme to decline funding the total amount of out-of-pocket medical expenses incurred by the member during her overseas vacation is consistent with the Medical Schemes Act of 1998 and the scheme rules. Precisely, to determine whether the scheme has an obligation to reimburse the complainant for her return flight cost to South Africa.

## **SUBMISSION BY THE APPELLANT.**

13. On 31 December 2018, Ms K travelled to Bulgaria. On 22 March 2019, whilst in Bulgaria, she was admitted to Progrov Hospital for multiple fractures of the lower leg, which she sustained in a skiing accident.
14. The member further alleges that Discovery Health Medical Scheme neglected her when she was admitted on 22 March 2019 and that the scheme did not respond to her calls when she contacted it for several times including the 23 March 2019. The member contacted Discovery Health Medical scheme several times through the Madrid Euro Centre, trying to report that she was sick.
15. The member is further aggrieved that an explanation why discovery health Medical Scheme did not repatriate her to the RSA immediately; that the scheme ignored her telephone calls; and neglected her to finance all her medical expenses and travelling expenses back to RSA.
16. The member stated that besides the poor service from the scheme's service providers, she also did not receive proper assistance from the Scheme regarding the processing of her claims from the International Travel Benefit (ITB) fund.
17. In addition, the member alleges that the scheme did not refund her other out-of-pocket expenses, including the upgrade for the flight back to RSA.

18. The member alleges that the scheme did not refund the upgrade for her flight after having received such a commitment from the Discovery medical scheme.
19. The member argued that she was not aware of the expiry of her Discovery Overseas Cover of 90 days until 27 March 2019, when Euro Centre informed her of such expiry.
20. On 29 March 2019, the member was discharged from the hospital and, suffered mental and emotional torture and decided not to fulfil the doctors Fit and Fly business class accompanied by the nurse.
21. The member further submitted that she was not aware that during her extended stay in the hospital, there was not going to be additional treatment nor medication to be given for the duration of her stay at the hospital. Furthermore, during this period, her Priority Plan Cover was still valid.
22. On 30 March 2019, the member confirmed that she was ready to fly. The scheme did not send a doctor to evaluate her condition; instead, she was told to pay for the return flight to South Africa and claim from Discovery Health upon arrival.
23. On 8 April 2019, the member received an email from Madrid Euro Centre and it committed to assist her with another flight to Instabul where she was told to go on 9 April 2019 to see another doctor.
24. The member further received the email from Madrid Euro Centre that her policy has expired and she no longer qualify to be funded for the return ticket to RSA.

## **SUBMISSIONS BY RESPONDENT**

25. The scheme submitted that Ms K belonged to Discovery Health Medical Scheme Classic Priority Plan with the contract commencement date of 1 August 2004.
26. According to Discovery Medical Scheme, the member had a plan cover for the approved in-hospital claim up to the agreed rates in hospital. The related accounts will be funded up to 200% of the scheme rate.
27. The scheme further confirmed that members who belong to the Classic Priority Plan have access to Medical Savings Account (MSA) for day -to-day expenses. Once the MSA is depleted, a Self-Payment Gap (SPG) is applicable where members are personally responsible for the funding of day -to-day claims.
28. Furthermore, these claims must be submitted to the scheme to assist the member to close the SPG to access funding from limited above threshold benefit. The scheme fund day to day expenses at the scheme rate, subject to the annual benefit limits in accordance with the plan rules, until the of the benefit year.
29. The scheme confirmed that members on the Classic Priority Plan have access to funding from the International Travel Benefit (ITB). The cover provides cover for emergency medical treatment outside the borders of the Republic of South Africa for 90 days from the date of departure from RSA.
30. The scheme indicated that the cover is limited to R 5 Million per person, per journey on the Classic Priority Plan. According to the scheme, the benefit does not cover elective treatment, any treatment related to a pre-existing medical or surgical condition and any treatment received outside 90- day period, a co-payment applies for out-of-hospital emergency medical expenses.
31. The scheme further submitted that it is contracted to ER24 and Euro -Centre who manage the International Travel Benefit (ITB) on schemes behalf. The contracted service provider assists where a member needs emergency hospitalisation while travelling overseas, they would notify ER24 as soon as possible once the emergency is being reported. The ER24 would validate the

membership and confirm any waiting period before they issue a payment guarantee.

32. The scheme funds the cost of an authorized emergency hospital claim from the ITB. The scheme will cover the members in-hospital or day to day medical costs provided that these costs must be as a result of an emergency and must be approved by ER24.
33. The scheme emphasized that the above costs are only covered if the member is unable to be repatriated to South Africa. However, If the member elects to stay in the international country even though they are medically fit to be medically repatriated, all expenses incurred after the decision not to be repatriated shall be the members own account. The members cover will then end when the member return home or after 90 days whichever comes first.
34. According to Discovery health version, Ms K travelled to Bulgaria on 31 December 2018. On 22 March 2019, she was admitted to Progrov Hospital for multiple fractures of lower leg which she sustained in a skiing accident. The scheme approved funding for the member on the basis that this incident happened whilst she was still within her 90 days cover period which would have ended on 30 March 2019 and the scheme also approved funding for her medical costs from the ITB.
35. The representative from Euro-Centre contacted Ms K to inform her that a guarantee of payment had been issued to the hospital and that this meant she does not need to pay for any medical related costs incurred whilst in hospital.
36. On 29 March 2019, the scheme received an update from ER24 confirming that Ms K repatriation to the Republic of South Africa for her continuation of treatment. In doing so, ER24 requested a fit-to-fly form for hospital or treating doctor, which was received on the same day. The fit -to-fly form deemed that Ms K was fit to travel on 29 March 2019.

37. On 30 March 2019, a representative from Euro -Centre reiterated to Ms K that her cover ends on that day. In addition, it was confirmed that attempts are being made to book flight tickets on her behalf for her repatriation to the RSA as soon as possible.
38. The scheme further submits that the ER24 representative deemed that a business class upgrade and non-medical escort to accompany Ms K on her return to the RSA was justified in order to assist her on the flight.
39. The scheme advised the member that her request to fund her return flight ticket, she was offered three different options and the member voluntarily declined all three options. The member would not qualify for different flight option. In respect of claims that were paid out-of-pocket whilst in Bulgaria, the scheme has informed the member on numerous occasions that any medical claims that she paid for within 90 days cover period may be submitted to the scheme for payment.
40. The scheme addressed all the concerns in relation to its contracted service providers and offered to pay for the return ticket back to RSA. The scheme further approved a request for Business Class upgrade with non-medical escort based on recommendation it received from ER24. Further, the scheme was notified of flight options for 2 April 2019, which was approved even though this was outside the 90 days period of the members Classic Priority Plan.
41. The scheme submitted that it acted within the ambit of the schemes agreed and or approved rules and regulations. The schemes therefore find no basis for the continued medical and return flight ticket claims made by the member. The scheme cannot cover for non-medical and medical expenses incurred outside the 90 days period of the members Classic Priority Plan.



## **LEGAL FRAMEWORK AND EVALUATION**

42. Section 32 of the Medical Schemes Act of 1998, states that “ *The rules of Medical Scheme and any amendment 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*”.
43. According to the Discovery Health Medical Scheme rules, as per section 2D of Annexure B of the rules adopted in 2019, item 11, International Travel Benefit states: “ 11:7. Limitations of Scheme Liability

11:7.1.If a member and or dependant fails or refuses to be returned in circumstances contemplated in clause 11.6.8 associated with the treatment of the relevant accident and or emergency, the scheme shall not be liable for such members and or dependants cost of the transport, evacuation and or return including for his or her dependent, medical staff or any other person accompanying the member or dependent.

### 11.8. Payment of Claims

11.8.1. Any claims submitted in terms of this clause must be submitted in english.

## **DISCUSSION AND ANALYSIS**

44. It is common cause between the parties that Ms K travelled to Bulgaria on 31 December 2018, whilst in Bulgaria, she was admitted to Progrov Hospital for multiple fractures of the lower leg, which she sustained in a skiing accident.
45. The above situation triggered the member to request assistance from Discovery Health Medical Scheme service providers including ER24 Madrid Centre in vain.
46. The member alleged that an explanation why discovery health Medical Scheme did not repatriate her to the Republic of South Africa immediately and that the

scheme never provided reasons on why it ignored her calls thus neglecting her to finance all her medical expenses and travelling expenses back to RSA.

47. The parties differ in that the Appellant believes that the scheme should have responded promptly to her calls and paid for the flight ticket back to RSA including medical expenses incurred whilst the member was on overseas trip. Whereas the Scheme believes that it must only pay for medical and travelling claims which falls within the 90 period Classic Priority Plan under the International Travel Benefit fund as per scheme rules.
48. The scheme believes that it cannot fund any medical or travelling expenses incurred outside its own rules as contemplated on section 32 of the Medical Schemes Act of 1998.
49. The matter that falls for determination by the appeal panel is whether the scheme is lawfully obliged to fund the medical and travel expenses incurred by the member whilst she was on vacation. According to the member, she seek to recover full reimbursement of all her medical and travel expenses she incurred whilst she was on overseas vacation.
50. Regulation 6 (2) of the Medical Schemes Act state that if a medical scheme is of the opinion that an account, statement or claim is erroneous or unacceptable for payment, it must inform both the member and the relevant health care provider within 30 days after receipt of such account, statement or claim that is erroneous or unacceptable for payment and state reasons for such an opinion.
51. The schemes claim procedure is consistent with Regulation 6 (2) of the MSA Act and it has acted within the framework of the Act, further its registered rules. The scheme informed the member that the approved funding of the valid claims from ITB will be paid. All the claim which complied with the scheme ITB were paid to the member as per scheme registered rules.

52. On the evidence before the appeals panel, there is thus no obligation upon the scheme to reimburse the appellant of her return flight costs as these costs were incurred after the lapse of the 90-day period as per the member Classic Priority Plan. According to the Scheme rules, the International Travel Benefit (ITB) was valid from 31 December 2018 for a period of 90 days .
53. According to regulation 6 (2) of the Act, the scheme advised the member that her request to fund her return flight ticket, she was offered three different options and the member voluntarily declined all three options. The member would not qualify for different flight option. In respect of claims that were paid out-of-pocket whilst in Bulgaria, the scheme has informed the member on numerous occasions that any medical claims that she paid for within 90 days cover period may be submitted to the scheme for payment and that claims which falls outside of the scheme rules will not be considered.
54. The Appeal Committee heard the evidence advanced by the Appellant and Respondents and considered the following.

*11:7.1.If a member and or dependant fails or refuses to be returned in circumstances contemplated in clause 11.6.8 associated with the treatment of the relevant accident and or emergency, the scheme shall not be liable for such members and or dependants cost of the transport, evacuation and or return including for his or her dependent, medical staff or any other person accompanying the member or dependent.*

55. At the time of the hearing, under cross examination, the member conceded that Euro -Centre finally offered her return flight for 9 April 2019 to South Africa which she declined. This option had a layover via Doha, Qatar, which would have increased the total duration by an additional 3 hours. The Euro – Centre informed the member that a different option would not be funded and the member elected to return by herself on 7 May 2019.

56. The scheme agreed to fund the return ticket for Ms K back to South Africa, an offer she initially rejected and later agreed to it.
57. Accordingly, it is submitted that the member was never entitled for refund or reimbursement since the claim was inconsistent with the scheme registered rules and was outside the International Travel Benefit (ITB).

## **FINDINGS**

58. The appeals panel is satisfied and finds that the reasons provided by Discovery Medical Scheme when declining the refund of Ms K were justifiable on grounds that she voluntarily declined Euro – Centre offer for her return flight for 9 April 2019 to South Africa and elected to fly by herself on 7 May 2019.
59. The appeals panel further finds that according to regulation 6 (2) of the Act, the scheme advised the member that on her request to fund her return flight ticket, she was offered three different options and the member voluntarily declined all three options. During the cross examination, the member confirmed the scheme submission that she elected to decline three proposed options.
60. The member was advised that she does qualify for three different flight options, but do not qualify for anything outside the given options. In respect of claims that were paid out-of-pocket whilst in Bulgaria, the scheme has informed the member on numerous occasions that any medical claims that she paid for within 90 days cover period may be submitted to the scheme for payment and that claims which falls outside of the scheme rules will not be considered.
61. The appeals panel is satisfied and finds that the scheme acted correctly and in accordance to its rules, that the International Travel Benefit (ITB) was valid from 31 December 2018 for a period of 90 days . There is no obligation to reimburse the complainant of her return flight costs as these costs were incurred after the lapse of the 90-day period as per the member Classic Priority Plan.

62. Finally, the rules of Medical Scheme are binding on both the scheme and its members. It follows that there is no obligation upon the scheme to reimburse the member for medical and travelling expenses she incurred on the overseas vacation.

### **ORDER**

63. Accordingly, the Appeal Committee makes the following order:

63.1. The Appeal is dismissed.

63.2. The decision of the Registrar is upheld.

63.3. There is no order as to costs.

**DATED AT CENTURION ON THIS 17<sup>TH</sup> APRIL 2024.**

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**Dr. Xolani Ngobese** (For and on behalf of the Appeals Committee)

CONCURRING -

Dr T Mabeba

Miss M Ramagaga

Dr S Naidoo

Miss P Beck

Dr Chetty