



**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 819 84

Medshield Medical Scheme

Appellant

And

S o b o B

First Respondent

Office of the Registrar

Second Respondent

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

Date of hearing: 8 July 2024.

Date of ruling: 20 August 2024.

RULING AND REASONS

THE PARTIES

1. The Appellant is Medshield 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 R, Legal Advisor for Medshield appeared for the Appellant. In attendance is Ms T, Acting Clinical Risk Executive at Medshield Medical Scheme.
3. The First Respondent is Ms. S acting on behalf of Mr. B (The “First Respondent” or “Member”), a Member of Medshield Medical Scheme.
4. The First Respondent was represented by Mr T, a reimbursement consultant.

BACKGROUND

5. The First Respondent, Mr B is a Member of the Medshield Medical Scheme.
6. Mr B is on the Mediplus Prime benefit option which covers approved Prescribed Minimum Benefits (PMBs), and hospital care through a designated service provider network.
7. Mr B had a bilateral below the knee amputation because of an underlying PMB condition.
8. Due to volume loss on the residual limbs the Member now requires refitting of new prosthetics and submitted a quotation of R145 442.44.
9. According to the Respondent the Scheme indicated that the claim for the prostheses must be paid from his prosthesis benefit instead of PMB funding.
10. The Respondent stated that the medical aid stated that “the Members condition is not registered as a PMB condition”.
11. The Scheme argues that the Member’s transtibial prosthetic legs do not constitute PMB level of care as the quotation received from the first Respondent does not correspond to the costs of the available prosthesis in State facilities.

12. The Scheme states that it does not dispute that prosthesis limbs are PMB level of care, but argues that the cost of such prosthetic limb is what is considered in determining whether or not that specific prosthetic limb would constitute a PMB level of care after having consulted with the Public Health sector to reach such a determination.
13. The Scheme's internal CMS committee reviewed the case and the decision was taken to fund the bilateral transtibial prosthetic legs from the prosthesis benefit of R38,500 and the balance to be reviewed by the special cases process as the diagnosis is a PMB.
14. The Scheme concluded the Member's desired prosthesis does not constitute a PMB level of care and that the Registrar's decision be reviewed and set aside.

THE REGISTRAR'S RULING

15. The Registrar's Ruling was issued on 30th August 2023.
16. The Registrar ruled that the Scheme must fund the Member's prosthetic leg in full, as provided for in Regulation 8(1) of the Act.
17. The Registrar found that the Schemes argument for limiting funding to the amount paid in the state hospital cannot be sustained as there is no reference to a monetary threshold been placed as a determining factor to settle disputes on the PMB level of care.
18. The Appellant is now appealing this decision of the Registrar in terms of Section 48 Appeal submitted.

APPLICATION TYPE AND RELIEF SOUGHT

19. 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

20. The Appeals Committee heard the appeal on 8th July 2024 via an audio and video conferencing link.

21. This hearing concerns the merits of the appeal filed.

RELEVANT STATUTORY AND REGULATORY PROVISIONS

22. The relationship between the Scheme and the First Respondent is governed by the terms of the contract (“the Schemes rules”) the Scheme concluded with the First Respondent. The contract in turn is governed by the “MSA” and the regulations (as amended) made in terms of the Act.

23. 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.

24. 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

25. The issue in dispute is whether the Scheme was correct to not fund the transtibial prosthetic legs in full for a PMB condition.

APPELLANTS SUBMISSION

26. The Appellant states that the First Respondent (on behalf of Mr. B, the Member of the Scheme), a healthcare provider, who is the orthotist and prosthetist being aggrieved with the Scheme’s refusal to fund at cost as Prescribed Minimum Benefit the Member’s prosthetic leg. The Member is on MediPlus prime benefit option.

27. The Appellant states that the Member sustained bilateral amputations necessitated by an underlying PMB condition.

28. The Scheme received a quotation from the first Respondents for the Member’s prosthesis in the amount of R145 442.44. The Scheme reviewed the request and approved funding up to a limit for an amount of R38 500.00. The Member was advised of discretionary funding available to the Member

for the balance of the payment from the Special Cases Process and requested a number of documents in order for the Scheme to consider the funding.

29. The Scheme confirmed that it does not have designated service providers for prosthetics and orthotics.
30. The Scheme states that from a clinical position that *“the Member’s transtibial prosthetic legs do not constitute PMB level of care, as the quotation received from the First Respondent does not correspond to the costs of the available prosthesis in state facilities.”*²
31. However, the Scheme further states that with regard to the legal position *the Scheme does not dispute that prosthesis limbs are PMB level of care. However, the cost of such prosthetic limb is what is considered in determining whether or not that specific prosthetic limb would constitute a PMB level of care after having consulted with the public health sector to reach such a determination.”*³
32. The Scheme states that they consulted with Charlotte Maxeke Hospital, Chris Hani Baragwanath Hospital and Polokwane Hospital (public hospitals) to ascertain the PMB level of care for the Member's condition. The Scheme stated that in the telephonic conversation with the state facilities they confirmed that the costing for transtibial and lisfrac prosthesis is within an average of an amount between R15,000 and R35,000 respectively. The Scheme submits that this limit is adequate for the provision of an external prosthesis of good quality in line with what is available in the state.
33. The Scheme disputes the registrar's ruling that *“There is no reference to a monetary threshold or “Rand-for-Rand” match and therefore the Scheme’s use of a monetary cap lacks basis. The Scheme submits that it is an incorrect interpretation of the Act by the Registrar on making a determination on whether a specific type of treatment is available in the state, that one cannot ignore the monetary factor associated with such treatment.”*⁴

² Appellants Heads of Argument. Page 3. Point 4.1

³ Appellants Heads of Argument. Page 3. Point 5.1

⁴ Appellants Heads of Argument. Page 4. Point 5.5

34. The Scheme avers that managed healthcare entails clinical and financial risk assessment and management of health care within the constraints of what is affordable.
35. The Scheme also states that the Scheme rules are the biggest authority that the Scheme has coupled with the relevant legislation and that these rules were approved by CMS. The Member is bound by the Schemes rules and the benefits under the benefit option chosen by the Member.
36. The Scheme concludes that the Member's desired prosthesis does not constitute a PMB level of care therefore the request remains declined.
37. The Scheme requests the registrar's decision be reviewed and set aside and that Scheme not be required to pay in full for the treatment in question

RESPONDENTS SUBMISSION

38. The First Respondent Ms S (on behalf of Mr. B, the Member of the Scheme), the treating orthotist and prosthetist was represented by Mr T.
39. The First Respondents stated that the Member lost both limbs below the knee due to complications from tick bite fever in October 2021. The underlying condition is a PMB. The original prosthetic legs were partially funded by the Scheme and the Member had to raise donations to fund the rest. The prosthetic legs no longer fit as there has been volume loss and he now needs refitting of new prosthetics to be mobile.
40. The Respondent submitted a quotation of R145 442.44 to the Scheme, and the Scheme indicated that the Member's prosthesis claim may be funded from his prosthesis benefit instead of PMB funding. The Respondent indicated that the ICD 10 codes A41.9 (Sepsis, unspecified) and I71.21 (Atherosclerosis of arteries of extremities with gangrene)⁵ listed on the clinical records indicates that the Member's PMB condition led to him having below knee amputations on both legs.
41. The First Respondent stated that Medshield has no existing protocol for the treatment of persons with lower limb amputations nor a PMB level of care basket to do relevant cost management of these conditions.

⁵ Page 13 of the pack

42. The First Respondent stated that the information gathered by Medshield on the cost of prosthetics in the public sector is not tangible as it is only verbal. She stated that the public sector is a subsidised environment and uses other purchase methods than the private sector.
43. The Respondents provided information on tariffs from other medical Schemes and administrators to benchmark market related fees.
44. The Respondents request that more funding must be approved as the patient has lost both limbs and the benefit available won't cover one prosthesis.

DISCUSSION AND ANALYSES

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

45. It is common cause that
- a. The First Respondent has been a Member of the Medshield medical Scheme and covered on the MediPlus Prime benefit option.
 - b. The Member had a bilateral below the knee amputation because of an underlying PMB conditions. The original prosthetic legs are not fitting due to volume loss, and the Member needs refitting of new prosthetics.
 - c. The Respondent and provider provided a quotation for R145 442.44.
 - d. The Scheme reviewed the request and approved funding up to a limit in the amount of R38 500 and advised the treating provider of discretionary funding available to the Member for Special Cases
46. Whilst the appellant has made contradictory statements on whether the Member transtibial prosthetic legs constitutes PMB level of care⁶, from the evidence provided and confirmation from the Scheme during testimony there is no dispute that the condition is a PMB and treatment for that should be at the PMB level of care.
- a. The appeal committee agrees with the registrar's ruling that an above knee prosthesis constitutes PMB level of care for the Member's condition

⁶ In the Appellants Head of Argument Point 41 states that the Member's transtibial prosthetic legs do not constitute PMB level of care and Point 5.1 states that the Scheme does not dispute that that prosthesis limbs are PMB level of care.

and that Regulation 8(1)⁷ of the MSA provides that the diagnosis, treatment and care of PMB condition must be paid in full.

- b. Regulation 8(2)⁸ and Regulation 8(3) which allows the Scheme to impose a co-payment when PMB condition has been treated by a non-DSP, and where a Member has involuntarily obtained the service of a non-DSP, is not applicable as the Scheme has stated that it does not have a DSP for prosthetics and orthotics.

47. The appellant has argued that from a legal position the Scheme does not dispute that prosthesis limbs are PMB level of care. However, the cost of such prosthetic limb is what is considered in determining whether or not that specific prosthetic limb would constitute a PMB level of care after having consulted with the public health sector to reach such a determination.

48. The explanatory notes and definitions to Annexure A to the Regulation of the Act provides that, *“the treatment component of a category in Annexure A is stated in general terms (i.e. “medical management” or “surgical management”, 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.”*

49. The Scheme is not disputing that prosthesis limbs are PMB levels of care as it has established that this is the predominant public hospital practice.

50. What the Scheme is disputing is the cost of the prosthetic limb and has stated that through telephonic interactions that prosthetic limbs offered at state hospitals range from an average amount of between R15 000 to R35 000.

⁷ Regulation 8(1) Subject to the provisions of this regulation, any benefit option that is offered by the medical Scheme must pay in full, without copayment or the use of deductibles, the diagnosis, treatment and care costs of the prescribed minimum benefit conditions.

51. The electronic transcriptions submitted by the Scheme contradicts their own evidence, as the transcript from the telephonic consultation with Steve Biko hospitals states that it ranges from R10,000 to R60,000 and that the average cost is R60,000.
52. The Scheme was given the opportunity to provide in writing the predominant hospital practice with regard to prosthesis that are used in the public sector, but indicated that it was unable to do so and provided an affidavit from the administrator stating this.
53. The Appeal Committee agrees with the Respondent that the Scheme should not be allowed to only fund up to the amount that the prosthesis would cost in the public sector as the public sector obtains devices at much lower cost when compared to the private sector, and the costing model is different.
54. The Scheme also needs to take into account the clinical condition of the Member and the need for specific functionality from the prosthesis.
55. The appeal committee concurred with the registrar's findings.

FINDING

56. The Member's condition is a Prescribed Minimum Benefit (PMB) and PMB level of care is required.
57. The Scheme therefore must fund the Member's prosthetic legs in full, as provided for in Regulation 8(1) of the Act.
58. In terms of the Act, the Special Case Process does not count as PMB entitlement payments.

ORDER

59. Having considered the matter the Appeals Committee orders that:
- a. The appeal is dismissed.
 - b. The decision of the Registrar is upheld.
 - c. There is no order to costs.

Dated at Johannesburg on 16th August 2024

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

Concurring:

Dr T. Mabeba.

Dr X. Ngobese

Ms P. Beck

Dr S Naidoo.