



**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 82672

Medshield Medical Scheme

Appellant

And

K &S Inc obo V

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 Mr K, a healthcare provider (orthotist and prosthetist) acting on behalf of Mr V (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 V is a Member of the Medshield Medical Scheme.
6. Mr V 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 V had a transtibial amputation of the left leg due to diabetic complications.
8. According to the Respondent the Member has a PMB condition, but the Scheme has approved limited funding and the Scheme indicated that the claim for the prosthesis must be paid from his prosthesis benefit instead of PMB funding. Further to that, the Member was advised of a discretionary funding available to the Member come up with the balance of payment from the special cases process and requested a number of documents in order for the Scheme to consider the funding.
9. 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.

10. 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

11. The Registrar's Ruling was issued on 10th October 2023 and made the following findings:

- a. That the Respondent erred in limiting its funding of the Members prosthetic leg up to R38,500 and therefore,
- b. The Scheme is ordered to fund the Member's prosthetic leg in full, as provided for in Regulation 8(1) of the Act.

12. The Appellant is now appealing this decision of the Registrar in terms of Section 48 Appeal submitted.

APPLICATION TYPE AND RELIEF SOUGHT

13. 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".*

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

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

16. The Relief sought from the Scheme is that the registrar's decision be reviewed and set aside and that the Scheme not be required to pay in full for the treatment in question.

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

RELEVANT STATUTORY AND REGULATORY PROVISIONS

17. 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.
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 which falls for determination is whether the Schemes decision to limit PMB funding of the Members transtibial prosthetic leg up to R38,500 is justified.

APPELLANTS SUBMISSION

21. The Appellant states that the First Respondent (on behalf of Mr. V, the Member of the Scheme), a healthcare provider, who is the orthotist and prosthetist is aggrieved with the Scheme’s refusal to fund at cost as Prescribed Minimum Benefit the Member’s prosthetic leg. The Member is on the MediPlus prime benefit option.
22. The Appellant states that the Member underwent a left transtibial amputation of the left leg caused by complications of diabetes, an underlying PMB condition.
23. The Scheme received a quotation from the first Respondents for the Member’s prosthesis for an amount of R70 065,57. 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.

24. The Scheme confirmed that it does not have designated service providers for prosthetics and orthotics.
25. 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
26. 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
27. 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 (fifteen thousand Rands) and R35,000 (thirty-five thousand Rands) 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.
28. The Scheme disputes the registrar's ruling that *“the Regulations direct that interpretation of prescribed minimum benefits must follow the prevailing hospital based medical or surgical diagnostic and treatment practice for the specified condition.” There is no reference to a monetary threshold or “Rand-for-Rand” match being a determining factor in settling disputes on the PMB level of care and for that reason, the Respondents 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*

² Appellants Heads of Argument. Page 3. Point 4.1:

³ Appellants Heads of Argument. Page 3. Point 5.1

treatment is available in the state, that one cannot ignore the monetary factor associated with such treatment.”⁴

29. The Scheme avers that managed healthcare entails clinical and financial risk assessment and management of health care within the constraints of what is affordable.
30. The Scheme further states *“Managed healthcare, as per the Act, entails clinical and financial risk assessment and management of healthcare with the view of facilitating appropriateness and cost effectiveness of relevant health services within the constraint of what is affordable, through the use of rules based and clinical management based programs.”*
31. 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.
32. The Scheme concludes that the Member’s desired prosthesis does not constitute a PMB level of care therefore the request remains declined.
33. 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

34. The First Respondent K (on behalf of Mr. V, the Member of the Scheme), the treating orthotist and prosthetist was represented by Mr T.
35. The First Respondent stated that the Member underwent a left transtibial amputation of the left leg due to diabetic mellitus complications, a prescribed minimum benefit (PMB) condition.
36. The Respondent submitted a quotation of R70 065,57. to the Scheme, and the Scheme indicated that the Member’s prosthesis claim may be funded from his prosthesis benefit instead of PMB funding up to a limit for an amount of R38,500.00.

⁴ Appellants Heads of Argument. Page 4. Point 5.5

37. The First Respondent stated that *the patient's condition is a PMB condition as the Scheme has registered the patient under the condition and he is receiving other treatment related to diabetes mellitus.*⁵
38. The First Respondent states that the CMScript advises that prosthetic limbs form part of the PMB treatment for patients who suffered limb loss due to a PMB condition.⁶
39. The Member is a new prosthetic user and thus the practice conducted the AMPnoPRO test. The patient scored 13 out of 39. This categorizes the patient as the K1 level lower limb amputee. The Respondent states that the practice used the components indicated for K1 activity level for prosthetic uses
40. 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.
41. The First Respondent stated that the public sector costs to patients seeking prosthetic care cannot be duplicated/transferred in in the private sector, as the public sector is a subsidised environment.
42. The Respondents provided information on tariffs from other medical Schemes and administrators to benchmark market related fees.
43. The Respondents request that that the prosthesis must be authorized from PMB funds in full.

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.

44. 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.

⁵ Page 15 of the document pack.

⁶ CMScript, issue 2 of 2023

- b. The Member underwent a left transtibial amputation of the left leg due to diabetes mellitus complications, a prescribed minimum benefit (PMB) condition.
 - c. The Respondent and provider provided a quotation for R70 065,57.
 - 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
45. During testimony both the Scheme and the Respondent agreed that 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 a transtibial prosthesis constitutes PMB level of care for the Member's condition 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.
46. 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.
47. 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*

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.

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.”

48. 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.
49. 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.
50. The Respondent has provided evidence that it assessed the Members K1 activity level using the AMPnoPRO test and utilized this and industry guidelines to provide the quotation.
51. The Scheme was given the opportunity to provide evidence of the predominant hospital practice with regard to prosthesis that are used in the public sector, but indicated that it was unable to do so.
52. 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.
53. The Appeal committee concurred with the registrar’s findings.

FINDING

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

ORDER

57. 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.