



**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 83867**

**Mrs M**

**Appellant**

**And**

**Bestmed Medical Scheme**

**Respondent**

**Panel:** Dr K. Chetty; Dr H. Mukhari; Ms M. Ramagaga.

**Date of hearing:** 12<sup>th</sup> February 2025.

**Date of ruling:** 11<sup>th</sup> March 2025.

## **RULING AND REASONS**

### **THE PARTIES**

1. The Appellant is Mrs M (The “Appellant” or “Member”), a Member of Bestmed Medical Scheme.
2. The Respondent is Bestmed Medical Scheme (The “Respondent or the “Scheme”), registered and regulated under the Medical Schemes Act, Act 131 of 1998 (the “MSA” or “Act”).
3. Mr S, from Ngeno & Mteto Inc. appeared for the Respondent.
4. Mr V, complaints specialist for Bestmed was also present.

### **BACKGROUND**

5. The Appellant, Mrs M is a Member of the Bestmed Medical Scheme, on the Rhythm 2 option.
6. The original complaint involved two main issues: Bestmed's failure to fully fund claims related to Mrs. M's alleged Prescribed Minimum Benefit (PMB) condition and misinformation about Dr. S's status as a Designated Service Provider (DSP).
7. The Scheme stated that the MRI scan did not confirm spinal cord compression, thus her condition does not qualify as a PMB, and further her condition of degenerative disc disease is not a PMB as the “disc” is not part of the spinal cord.
8. The issue of Dr S not being as DSP, was part of the original complaint, but did not form part of the appeal, and therefore the Appeal Committee will not deliberate on this.
9. The Clinical Review Committee (CRC) confirmed that Mrs. M's condition does not meet the criteria for PMB.
10. The Registrar concluded that Bestmed's funding decision was correct.

11. Mrs M is appealing the Registrar's decision as she states her condition fully meets the criteria in the PMB descriptor which is confirmed in her radiology report which states that "there is severe disc space narrowing at C4-5, C5-6 and C6-7 from degenerative disc disease. She states that this meets the PMB Descriptor Code 941(A) which states "Spinal cord compression, ischemia or degenerative disease NOS".

### **THE REGISTRAR'S RULING**

12. The Registrar's Ruling was issued on 26 March 2024.
13. The Registrar concluded that Bestmed's decision to decline funding from Risk benefits was correct.
14. There is no evidence to support that Dr. S was a DSP.
15. Bestmed cannot be compelled to contract with Dr. S as a DSP.
16. The Member is now appealing this decision in terms of Section 48 Appeal.

### **APPLICATION TYPE AND RELIEF SOUGHT**

17. This is an appeal under section 48(1) of the Medical Schemes Act (the "MSA or the Act").<sup>1</sup> 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".*
18. The Appeals Committee heard the appeal on 12<sup>th</sup> February via an audio and video conferencing link.

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<sup>1</sup> 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**

19. The relationship between the Scheme and the Member is governed by the terms of the contract (“the Schemes rules”) the Scheme concluded with Member. The contract in turn is governed by the “MSA” and the regulations (as amended) made in terms of the Act.
20. 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.
21. 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**

22. The issue in dispute is whether the Scheme was correct
  - a. To decline funding of claims from risk benefits and not funding the claim in full on the basis that it is not a PMB.

## **APPELLANTS SUBMISSION**

23. The Appellant Mrs M is currently registered on the Rhythm 2 benefit plan.
24. Mrs. M experienced neck pain, headaches, and balance issues, leading her General Practitioner (GP) to refer her to a neurosurgeon, Dr. G. She found no DSP neurosurgeons within a 20km radius of her residence.
25. She then consulted Dr. L a neurosurgeon who had previously treated her lumbar spinal issues. Dr. L diagnosed a PMB condition after an MRI. However, Bestmed initially rejected the PMB application, causing significant delays before eventually approving it.
26. The Appellant argues that neither the scheme nor the Registrar has considered the full definition of the PMB descriptor as defined in the diagnosis and treatment pairs list which does confirm M48.02 being spinal stenosis.
27. The Appellant further states her condition fully meets the criteria in the PMB descriptor which is confirmed in her radiology report which states that “*there is severe disc space narrowing at C4-5, C5-6 and C6-7 from degenerative disc*”

disease. She states that this meets the PMB Descriptor Code 941(A) which states “*Spinal cord compression, ischemia or degenerative disease NOS*”.

28. The Appellant requests that the Registrar's ruling is dismissed.

## **RESPONDENTS SUBMISSION**

29. Bestmed reviewed various radiology reports submitted with the complaint to determine if Mrs. M's condition qualified as a PMB condition.

30. The MRI of the cervical spine, signed by Dr. S. M, showed no spinal cord compression or lesion.

31. Another MRI report, signed by Dr. M, also indicated “*The spinal cord, cranio-cervical junction, and visible posterior fossa structures: normal*”, thus no spinal cord compression or lesion was noted.

32. For a condition to qualify as a PMB, it must fully meet the criteria in the PMB descriptor, which in this case, the PMB Descriptor requires the existence of a spinal cord compression or lesion to qualify the condition as a PMB condition.

33. Since the radiology reports did not confirm spinal cord compression or lesion, Mrs. M's condition did not qualify as a PMB condition.

34. The Scheme in its oral submission also argues that in none of the medical records does it talk about the spine. Rather it talks about degenerative disc disease which is the disc and not the spinal cord.

35. The Respondent stated that the member's condition as noted under the various ICD-10 codes provided is not a PMB condition. In essence the Respondent states that the PMB and MSA Regulations state “*Spinal cord compression, ischaemia, or degenerative disease not otherwise specified*”. It says nothing of the disc. Consequently the Respondent states that, funding was limited to the benefits available under her chosen benefit option.

36. According to the scheme rules, benefits are subject to treatment protocols, funding guidelines, preferred providers, and DSP networks.

37. Since the MRI did not confirm a PMB condition, funding was provided according to the available benefits under Mrs. M's benefit option.
38. Bestmed concluded that their decision to decline funding from Risk benefits was correct.
39. The Scheme requests that the ruling of the Council dated 4<sup>th</sup> June 2024 be upheld and that the appeal of the Appellant be dismissed.

## **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.

40. The key issue to be determined is whether the member's condition is a PMB or not, and whether Dr S was/is a DSP or not.
41. The CMS Clinical Review Committee (CRC) was asked to confirm whether the member's condition was PMB. The CRC advised as follows:
  - a. *G95.2 - Cord compression unspecified is included in the PMB Regulations under the DTP category 941A – Spinal cord compression, ischaemia or degenerative disease NOS.*
  - b. *M50.1 - Cervical Disc disorder with radiculopathy is not included in the PMB Regulations*
  - c. *M51.2 – Other specified intervertebral disc displacement is not included in the PMB Regulations.*
  - d. *M48.02 – Spinal stenosis, cervical region is included in the PMB Regulations under the DTP category 941A – Spinal Cord compression, ischaemia or degenerative disease NOS.*
42. The CRC stated that *“It should be noted that for a condition to qualify as a PMB the condition must fully meet the criteria in the PMB descriptor. In this case the MRI scan does not confirm any spinal cord compression and the condition can therefore not be included in the PMB regulations. The CRC further advised that the condition does not qualify as a PMB, the treatment is not included in PMB level of care.”*

43. The Registrar's Ruling was based on the advice from the CRC
44. The crisp issue to be decided is whether condition must meet all the criteria in the PMB descriptor, and whether the Scheme is correct in its interpretation that degenerative disease not otherwise specified, does not include the disc.
45. In *Guardrisk Insurance Company Ltd v Registrar of Medical Schemes*<sup>2</sup> the judge stated:

"The legal principle that has evolved regarding the interpretation of the words 'and' and 'or' in statutes is clear. In *Ngcobo v Salimba CC; Ngcobo v Van Rensburg* 1999 (2) SA 1057 (SCA) at 1067J – 1068B Olivier JA stated<sup>3</sup>:

It is unfortunately true that the words "and" and "or" are sometimes used by the Legislature and there are many cases in which one of them has been held to be the equivalent of the other.....Although much depends on the context and the subject-matter.....it seems to me that there must be compelling reasons why the words used by the Legislature should be replaced;.....The words should be given their ordinary meaning"....unless the context shows or furnishes very strong grounds for presuming that the Legislature really intended" that the word not used is the correct one...

46. The PMB Descriptor 941A – *Spinal Cord compression, ischaemia or degenerative disease NOS* therefore it cannot be seen as conjunctive where the condition must meet all the criteria. Rather, it must be seen as disjunctive where only one of the criteria needs to be met.
47. The Diagnostic and Treatment Pairs (DTPs) List has lots of examples where "and" is used on its own, "and/or" is used and "or" is used on its own. Therefore, the intention under PMB 941(A) was for *degenerative disease NOS* to be a condition on its own, otherwise the legislators would have written "and".

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<sup>2</sup> Cited in *Guardrisk Insurance Company Ltd v Registrar of Medical Schemes* (168/07) [2008] ZASCA 39 (28 MARCH 2008)

<sup>3</sup> The authorities relied upon in the court below are *R v La Joyce (Pty) Ltd* 1957 (2) SA 133 (T) at 116A; *Federated Timbers Ltd v Bosman* 1990 (3) SA 149 (w) at 151F-G and *Binda v Binda* 1993 (2) SA 123 (w) at 125B-126G.

48. The Respondents arguments place reliance that the “disc” is not part of the spinal cord, and therefore the members condition of “degenerative disc disease” is not part of the PMB Descriptor.
49. The PMB Descriptor however states “*Degenerative disease not otherwise specified*”. It does not state “Degenerative disease of the spinal cord”. The PMB Descriptor therefore does not exclude “Degenerative Disease of the Disc”, as it is “*Degenerative disease **not otherwise specified***” (my emphasis).
50. In addition, the radiology reports did confirm spinal stenosis.

## **FINDINGS**

51. That the PMB Descriptor 941A – “*Spinal Cord compression, ischaemia or degenerative disease NOS*” must be read disjunctively as it states “or”.
52. The PMB Descriptor 941A states – “*Degenerative disease not otherwise specified*” does not exclude “degenerative disc disease”.
53. The Members condition, therefore is a Prescribed Minimum Benefit (PMB).

## **ORDER**

Having considered the matter the Appeals Committee orders that:

- b. The appeal is upheld.
- c. The decision of the Registrar is dismissed.
- d. The Scheme is ordered to fully fund claims related to The Appellant as Prescribed Minimum Benefit (PMB) condition.
- e. There is no order to costs.

Dated at Johannesburg on 11<sup>th</sup> March 2025

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

Concurring:

Dr. H. Mukhari

Ms. M. Ramagaga