



**BEFORE THE APPEAL COMMITTEE OF THE COUNCIL FOR MEDICAL  
SCHEMES  
( SECTION 48 APPEAL )**

**REFERENCE No: CMS 83118**

**In the matter between**

**Bonitas medical scheme**

**Appellant**

**And**

**GP**

**Respondent**

**Date of Appeal Hearing:  
10 April 2025**

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**RULING AND REASONS**

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## **THE PARTIES**

1. The Appellant is Bonitas Medical Scheme (the “Appellant” or the “Scheme”), registered and regulated under the Medical Schemes Act, Act 131 of 1998 (the “MSA”).
2. The Respondent is Mr GP (the “Respondent” or “Member” ), a member of the Bonitas Medical Scheme.
3. 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.”*

## **INTRODUCTION**

1. The Appeals Committee heard the Appeal on 10<sup>th</sup> April 2025, *via* audio and video conferencing.
2. Ms Z , senior legal advisor for the Scheme, appeared for the Appellant.
3. Mr GP , appeared for the Respondent, as the Scheme member.
4. The Appellant lodged an appeal against the Registrar’s ruling of the 30<sup>th</sup> of July 2024, which emanated from the initial complaint from the Member, for the Scheme to fund the shortfall of the claim for the cardiac prosthesis provided to him during a procedure on the 30<sup>th</sup> May 2022.

## **BACKGROUND**

5. Mr GP has been a member of the Bonitas Medical Scheme since January 2017 and is on the Primary Option.
6. He is 70 years old and was under the treatment of cardiologist, Dr S for cardiomyopathy and atrial fibrillation.
7. He also had a brain tumour which needed resection.
8. He was admitted to the Netcare Kuilsriver Hospital on the 30<sup>th</sup> May 2022 as an emergency complaining of the ‘cardiac arrhythmia’ and shortness of breath.
9. He was admitted to the high care unit and the surgeons decided that the best option for the patient was the insertion of the left atrial appendage occlusive device as this

was his third procedure on his heart, he was increasingly at risk for strokes and with the need for brain surgery, would need to be cease using his anticoagulant medication.

10. The authorization was submitted post the event to the Scheme on the 31st May 2022 for the procedure to be carried out.
11. The Scheme also received a letter of motivation from the treating practice of Dr S, Dr M on the 3<sup>rd</sup> June 2022<sup>1</sup>
12. The Scheme and the treating provider and hospital continued with the updating the authorization request post the event from the 1<sup>st</sup> June 2022 to 28 December 2022<sup>2</sup>.
13. The Scheme's hospital event management and clinical review forum approved the insertion of the cardiac prosthesis only for the medical advisors to subsequently decline the prostheses as a PMB level of care.
14. The member subsequently received an account from the hospital and treating doctor of R403,594.97 of which the scheme partially paid, leaving a shortfall of R72,070.04<sup>3</sup>.
15. On the 07<sup>th</sup> June 2023, a section 47 complaint was registered by the Respondent, after repeated engagement with the Scheme did not resolve the matter.
16. The Scheme responded on the 14<sup>th</sup> July 2023<sup>4</sup> stating that the Scheme was contracted to 'Hospital Events Management(HEM)' to manage costs and care in terms of hospital events/ admissions in order to ensure affordable and quality care. In terms of the timeline for the authorization:
  - a. Letters of Motivation were obtained from the cardiologist and hospital post the event from the 31<sup>st</sup> May 2024
  - b. The case manager from a sequence of events demonstrating the various correspondence including enquiries on the correct coding.
  - c. The case manager approving the authorization on the 7<sup>th</sup> August 2022 as an exceptional case and noting that the patient had a large intra-cranial mass that requires surgery and could not be on anti-coagulants for the atrial fibrillation.
  - d. On the 26<sup>th</sup> August 2022, the case was referred to the medical advisor to review the prosthesis as a PMB level of care. In applying the algorithm and Has Bled score, the medical advisor found on the 1<sup>st</sup> December 2022, that the percutaneous left atrial appendage closure not to be

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<sup>1</sup> Paginated pages 19 – 20 of the Appeal bundle

<sup>2</sup> Paginated pages 34 – 39 of the Appeal bundle

<sup>3</sup> Statement on Paginated page 15 of Appeal bundle

<sup>4</sup> Paginated pages 28 – 32 of Appeal bundle

deemed as a PMB level of care.

17. The Clinical Review Committee (CRC) of the CMS, after receiving the referral from the Registrar, found the cardiac prosthesis provided does qualify for a PMB level of care:

- a) *" The member was admitted for electrophysiologic (EP) studies, cardioversion, ablation procedures on 30 May 2022. According to the treatment provider, the member underwent a pulmonary artery ablation, left atrial isthmus ablation, and atrioventricular (AV) node ablation all at the same time. It was also decided then to insert a left atrial appendage occlusion (LAAO) device.*
- b) *"LAAO devices are medical devices used to close off the left atrial appendage (LAA) of the heart (Reddy et al., 2017). The LAA is a small, ear-shaped sac in the muscle wall of the left atrium. This procedure is typically performed to reduce the risk of stroke in patients with atrial fibrillation (AF) who are unable to take long-term anticoagulant medications (Makkar et al., 2019)."*
- c) *"Atrial fibrillation is also a PMB condition under DTP 903E, which refers to life threatening cardiac arrhythmias (Regulations to the Medical Schemes Act, 1998). The hospital noted that the member's admission was an emergency admission where the member presented with cardiac arrhythmia and shortness of breath. The member's condition therefore also qualified as a DTP PMB condition. PMB level of care treatment for this condition is stated in Annexure A of the Medical Schemes Act of 1998 as Medical and surgical management, pacemakers, cardioversion. The member underwent multiple ablation procedures such as pulmonary vein isolation (PVI) ablation, left atrial isthmus ablation, and atrioventricular (AV) node ablation. According to the treatment provider, it was then decided to perform a left atrial appendage (LAA) closure. The decision on whether to use a prosthetic device or not depends on several factors, including the clinical context, the patient's condition, and the availability of specific techniques (Reddy et al., 2017; Makkar et al., 2019)."* *"Given the minimally invasive nature of the ablation procedures and the goal to minimize additional risk and complexity, using a prosthetic device for LAA closure is generally the most appropriate approach. The Scheme approved the procedure as an exception and should therefore also have approved the prosthesis as part of the exception. Based on all the above, the Scheme is incorrect to state that left atrial appendage occlusion devices are not considered PMB level of care for member's condition."*

18. The Registrar's ruled on the 30<sup>th</sup> July 2024 that the Scheme should fund the shortfall, as the treatment provided was a PMB level of care.

19. The Appellant, the Scheme, submitted their Section 48 Appeal on the 28<sup>th</sup> October 2024.

## **DISCUSSION AND LEGAL FRAMEWORK**

### **APPELLANTS SUBMISSION**

18. Ms Z , for the Appellant, commenced her submission by informing that the Scheme stood by its decision to decline the payment for the left atrial appendage device in terms of its rules and managed care guidelines.
19. From the Scheme's hospital benefit management processes and that according to their clinical team, the Left Atrial Appendage occluder (LAAO) device is not at a PMB level of care.
20. The Appellant accepted that the member's condition of Atrial Fibrillation is a PMB condition, and that treatment required is in terms of the guiding code of conduct for a PMB level of care.
21. In terms of the Scheme protocols and managed care principles there was an assessment in terms of the health economic evaluation, the cost effectiveness of the intervention and whether alternative methods of treatment were available at the time of the admission.
  - a. The code of conduct for PMB level of care and such a standard of care is determined at what is available at a state hospital and in this instance, Groote Schuur hospital is seen as a centre of excellence.
  - b. The Appellant informed that the provision of the LAAO device is not the prevailing state practice
  - c. The Appellant informed that at the time of the Member's procedure, the LAAO device was not available in the state facilities and only in 2024 did it become available at Groote Schuur hospital, Tygerberg Hospital and Charlotte Maxeke hospital.
22. From the Scheme information, the authorization was granted well after the procedure and provided has diagnosis and treatment (DTP) codes and NAPPI codes for the prosthesis, with the application reaching the Scheme on the 31<sup>st</sup> May 2022.
23. The authorization was granted by the clinical forum after a lengthy process as an exception and it was upon review of the funding and medical advisors post the procedure, was it found that the prosthesis supplied did not meet the PMB level of care.
24. The letter of motivation from the treating service provider, Dr S, was only adjudicated by the Scheme 5 days after the procedure
25. The Appellant conceded that the admission was deemed as an emergency by the hospital noting that both the patient and the service provider had known about the need surgery to remove a growth in the brain.

26. Ms Z further informed that there is no clinical evidence in the interaction with the hospital of the patient and member seeking the alternative care according to the Rules of the Scheme and the managed care algorithm.
27. In ending their submission, the Scheme stated that it was obliged in terms of the MSA to fund appropriately and that the regulation was in place to prevent open ended financial liabilities including for PMB conditions.
- a. The member has a contract in terms of section 32 of the MSA with the Scheme and is obliged to follow the rules.
  - b. The Scheme has correctly funded the claims according to their rules and hospital benefit management processes and remained with the position that the member did not have any remaining prosthesis benefits and that the provision of the prosthesis was not at a PMB level of care and hence the member is liable for the shortfall.
  - c. The Scheme would like the Registrar's ruling overturned.

## **RESPONDENTS SUBMISSION**

28. Mr GP, for the Respondent, commenced his submission by stating that he had been a patient with Dr S for a while and had already had 2 procedures on his heart in respect of surgical management for his Atrial Fibrillation condition.
- a. He therefore trusted and believed in the treating doctor's recommendation
  - b. The procedure carried out on the 31<sup>st</sup> May 2022 was the 3<sup>rd</sup> surgical intervention and he believed the doctors made the best decision they could have in terms of his risk from clots and then the fact that he would need major surgery on his brain to remove a tumour. This operation necessitated the stopping of the blood thinners.
  - c. He believed the doctors whilst he was in theatre made the best choice under the circumstances and is very grateful for the intervention and his recovery.
  - d. There were no other options available at the time of the operation.
29. He confirmed that he went to the hospital on the 30<sup>th</sup> May 2022 as an emergency as he was short of breath and suffering severe symptoms from his cardiac arrhythmia.
30. The Respondent also mentioned that the effect of inserting the LAAO device, allowed him to the brain operation, which had also gone well.

31. Mr GP in reflecting on his engagements with the Scheme confirmed that the initial bill of member liability was R72 070.41 but this was reduced to R60 097.70 with the Scheme offering a discount.
- a. He was however not in a financial position to settle this amount
32. The Respondent, concluded that the Appellant should be settling this amount in terms of the Appeal and felt the Registrar's decision in this matter is correct.
33. For the reasons set out above, it is submitted that this Appeal Committee find in favour of the Respondent and uphold the decision of the Registrar.

## **RELEVANT STATUTORY AND REGULATORY PROVISIONS**

34. The relationship between the member and the scheme is governed by the terms of the contract (*'the scheme rules'*) that the member concluded with the Bonitas Medical Scheme.
35. The Contract in turn is governed by the Medical Schemes Act 131 of 1998 and the regulations (as amended) contained in the Act; and wherein there are managed care and service provider contractual obligations and arrangements.

## **ANALYSIS AND FINDINGS**

36. The Appeals Committee considered the papers filed in this Appeal; the further submissions the parties made; the relevant provisions of the MSA; and the rules of the Scheme.
37. It is common cause that-
- a) Mr GP is a member of the Bonitas medical scheme and has been on the Primary option, since January 2017.
  - b) He is 70 years old and suffers from Atrial Fibrillation and cardiomyopathy.
  - c) The risks from the Atrial Fibrillation include blood clots, transient ischaemic attacks for which the use of anticoagulants is recommended but then such usage can also result in bleeding.
  - d) The service provider, Dr S, and his associate, Dr M, are registered cardiologist under the HPCSA and in private practice.

38. The Scheme received the preauthorization for the cardiac procedure on the 31<sup>st</sup> May 2022 and was only able to process completely with all information after a period in time. the letter dated 7<sup>th</sup> August 2022 as contained in the bundle<sup>5</sup> is included for reference.

39. From the evidence provided, there is no dispute that the treated condition of Atrial Fibrillation is a PMB condition.

- a. The Member has consulted with the cardiologist on the risks of the condition as well as the other serious condition needing brain surgery
- b. In consultation with the cardiologist, a decision was going to be made to stop the blood thinner medication to undergo the brain procedure and for the left atrial appendage occlusion device prior.
- c. The treating provider had provided a motivation to the scheme on the 3<sup>rd</sup> June 2022<sup>6</sup> which is contained below with the Member's consent and which corroborates the history

40. From the Scheme perspective, there is a hospital events management process in terms of their managed care protocols and the option is bound by the Scheme rules

- a. Atrial fibrillation is defined in the CDL treatment algorithm.
- b. According to this the treatment includes pharmacological therapy, AV node ablation and permanent pacemaker insertion.
- c. The procedure for the Left atrial appendage occlusion device is not defined and was viewed by their medical advisory after review of the claim as not being at a PMB level of care.

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<sup>5</sup> Per paginated pages (pp) p 34 - 35 of the appeal bundle

<sup>6</sup> Per paginated pages (pp) p 20 - 21 of the appeal bundle

41. Pertinent in this case, is that the Appellant did not deny that the Respondent was admitted as a medical emergency and on those grounds and in terms of the regulations, the admission and the treatment should have been viewed as a PMB level of care.
42. Further, from both the bundle of documents and the submissions during the hearing, an authorization was granted after the procedure and that the treating provider successfully inserted left atrial appendage occlusion on the 31<sup>st</sup> May 2022:
- a. The patient was able to stop the anticoagulants and proceed with the brain operation.
  - b. Both the member and the treating provider complied with the various Scheme requests for information and motivation.
  - c. It is noted that the treating provider is an expert in the cardiology field.
43. The committee noted that the managed care intervention despite the lengthy interaction post the event from the Scheme did not include a direct and collegial engagement at a medical advisor level with the treating provider and relied on the algorithm in the main to come to its decision
- a. It is perplexing that the application after being accepted by the Scheme as an exception was then modified by the medical advisory team.
  - b. The complications from the use of the blood thinners, the fact that the patient was suffering from other comorbidities like Hypertension, which would further aggravate the overall medical risk was not appreciated by the Scheme.
44. The committee agrees with clinical review committee (CRC) of the CMS that the treatment for Atrial fibrillation is specified as Medical and surgical management, and that the Left atrial appendage occlusion closure is an appropriate surgical intervention
- a. Atrial fibrillation is a PMB condition under DTP 903E, which refers to life threatening cardiac arrhythmias.
  - b. The hospital noted that the member's admission was an emergency admission.
  - c. The decision on whether to use a prosthetic device was correct in the clinical context, and by the minimally invasive nature of the procedure, using a prosthetic device for LAAO device is the most appropriate approach.

- d. The Scheme approved the procedure as an exception and should therefore also have approved the prosthesis as part of the exception.
- e. The procedure qualifies therefore as PMB level of care and should be funded as such.

45. The Appeal Committee is of the view that the Respondent had abided by the rules of the Scheme in terms of Regulation 8 of the MSA, which sets out rules for the scheme to pay for the diagnosis and treatment of a PMB benefit condition.

- a. Regulation 8(1)<sup>7</sup> must be paid in full.
- b. Regulation 8(2)<sup>8</sup>(a) read with 8(2)(b) allows for schemes to charge a co-payment, if the member uses a non-DSP under voluntary circumstances; and which is not applicable in this case
- c. The Appeal Committee is further of the view that the Appellant's case does not meet the criteria for Regulation 8(3)<sup>9</sup>, which is the basis for payment in full and preventing the Scheme from imposing a co-payment when a PMB Condition is being treated by a non-DSP, and where a member has involuntarily obtained the service of a non-DSP and is not applicable in this case.

46. For ease of reference, the bill<sup>10</sup> is contained below:

- a. In reviewing the above-mentioned bill and the bundle, the committee noted the billing and supporting NAPPI codes, which were not in dispute.
- b. The committee noted the Scheme upon receiving the CMS complaint, undertook to discount the member liable amount to R60 097.70<sup>11</sup>

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<sup>7</sup> 8(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 prescribed minimum benefit conditions

<sup>8</sup> Regulation 8(2) provides:

Subject to section 29(1)(p) of the Act, the rules of a medical scheme, in respect of any benefit option, provide that-

- (a) the diagnosis, treatment and care costs of a prescribed minimum benefit condition will only be paid in full by the medical Scheme if those services are obtained from a designated service provider in respect of that condition; and
- (b) a co-payment or deductible, the quantum of which is specified in the rule of the medical Scheme, may be imposed on a member if that member or his or her dependent obtains such services from a provider other than a designated service provider, provided that no co-payment or deductible is payable by a member of the service was involuntarily obtained from a provider other than a designated service provider."

<sup>9</sup> ) Regulation 8(3) reads as follows

For the purposes of subregulation (2) (b), a beneficiary will be deemed to have involuntarily obtained a service from a provider other than a designated service provider, if—

- (a) the service was not available from the designated service provider or would not be provided without unreasonable delay;
- (b) immediate medical or surgical treatment for a prescribed minimum benefit condition was required under circumstances or at locations which reasonably precluded the beneficiary from obtaining such treatment from a designated service provider;
- (c) there was no designated service provider within reasonable proximity to the beneficiary's ordinary place of business or personal residence."

<sup>10</sup> Per paginated pages (pp) p 17 of the appeal bundle

## **FINDING**

47. The Scheme did not exercise a specific enough due diligence regarding its managed care processes and the specific circumstances, clinical context of the emergency and complications experienced by the Member.

48. The Scheme had ample opportunity to properly liaise with the treating provider and review the surgical intervention proposed and authorized by itself and failed to do so.

- a. The case management in this instance should have been augmented by a direct, collegial and professional consultation between medical advisor and treating provider.

49. The Committee agrees with the Registrars ruling

50. The Appeal Committee agrees that the relationship between a Scheme and its member is contractual. The terms of the contract between the member and the Scheme consist of the Scheme Rules, the Medical Schemes Act and its Regulations.

51. Section 32<sup>12</sup> of the MSA stipulates that the Appellant is bound by the Rules of a medical scheme.

## **ORDER**

52. The Appeals Committee dismisses the Appeal and upholds the Registrar's decision of 30<sup>th</sup> July 2024.

53. The Scheme is instructed to review the bill, and to settle the shortfall amount due by the Member of R60 097.70 within 30 business days of the issuing of this Ruling.

DATED AT CAPE TOWN ON THIS 23<sup>rd</sup> May 2025

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Dr S Naidoo

For: The Appeal Committee (Chairperson)

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<sup>12</sup> Section 32. The binding force of rules.—The rules of a medical scheme and any amendment thereof shall be binding on the medical Scheme concerned, its members, officers and on any person who claims any benefit under the rules or whose claim is derived from a person so claiming.

WITH –

Ms P Beck

Dr T Mabeba

Dr H Mukhari

Dr X Ngobese

CONCURRING, IT SO BE RULED