



**IN THE APPEAL BEFORE THE APPEALS COMMITTEE OF THE COUNCIL FOR MEDICAL SCHEMES
HELD VIA THE MICROSOFT TEAMS VIDEO AND AUDIO CONFERENCING TECHNOLOGY
(Instituted in terms of the Medical Schemes Act No.131 of 1998)**

Case number: **CMS/84818**

In the matter between:

THE SOUTH AFRICAN POLICE SERVICE SCHEME

APPELLANT

And

THE REGISTRAR FOR MEDICAL SCHEMES

1ST RESPONDENT

MR BJ OBO MR JF

2ND RESPONDENT

ORDER AND REASONS

THE PARTIES

1. The Appellant is the South African Police Services Scheme, (“POLMED or the Appellant”) a Medical Scheme duly registered and regulated under the Medical Schemes Act 131 of 1998 (the “MSA.”)
2. The Appellant was represented by Adv. V., duly authorised to represent the scheme at the Appeal Hearing.
3. The 1st Respondent is the Registrar of the Council for Medical Schemes.
4. The 1st Respondent was not represented at the hearing and agreed to abide by the decision of the Appeals Committee.
5. The 2nd Respondent is BJ acting on behalf of Mr. JF (“the member or the 2nd Respondent”) a member of the scheme in terms of the definition accorded to a “*member*” under the Medical Schemes Act 131 of 1998 (“the Act.”)
6. The 2nd Respondent was represented by Mr A, duly authorised to represent the 2nd Respondent at the hearing.

INTRODUCTION

7. This is an appeal in terms of section 48(1) of the Council for Medical Schemes Act 31 of 1998 (“the Act”) pertaining to a decision of the Registrar dated 12 August 2024.¹
8. This section provides 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.”

¹ Page 37-40 of the Bundle.

9. The Appeals Committee heard the Appeal on 10 April 2025 via an audio and video conferencing link.
10. The Appellant seeks an order that the scheme cannot be compelled by the Registrar to fund the members' prosthesis in full

FACTUAL BACKGROUND

11. In this matter the member presented with bilateral trans-tibial amputations. The amputation to the members' right leg was done on 24 November 2022 and the amputation to the members' left leg was done on 13 November 2024. The second amputation was performed due to complications of the member's condition of Atherosclerosis of arteries of extremities with gangrene. The member is a known type 2 diabetic. Both amputations were performed by Dr. Fernandes.
12. An application was sent to POLMED for a left trans-tibial prosthesis.
13. The total cost of the prosthesis was R121 507.69. POLMED imposed a funding limit of R75 800.00 on the member per the scheme rules. This left the member with a co-payment of R46 327.69.
14. The member filed a complaint in terms of section 47 of the Act with the Registrar against the funding decision of the Appellant.
15. The Registrar ruled in favour of the member directing the Appellant to fund the prosthesis in full, as a PMB level of care in accordance with the provisions of Regulation 8(1) of the Act.
16. The Appellant then filed a section 48 appeal to the Registrar's decision, the subject matter of this Ruling.

POINT IN LIMINE

17. The *point in limine* pursued by the Appellant at the hearing; the 2nd Respondent's response; and the Appeals Committees assessment and findings are set out immediately below.

JURISDICTION OF THE 2ND RESPONDENTS REPRESENTATIVE

The Appellant's submissions

18. The Appellant questioned the authority and legal standing of Mr. A. to represent the 2nd Respondent at the Appeals hearing.
19. The Appellant submitted that the appearance of Mr A goes to the heart of the appeal; that Mr. A does not have the legal standing to represent the 2nd Respondent at the appeal hearing because the complainant, Dr. BJ who filed the complaint was not present at the hearing or the member.

The 2nd Respondent's submissions

20. The 2nd Respondent's representative disputed that he does not have the authority or legal standing to represent the 2nd Respondent on the basis that the Act does not specify who can represent a party at an Appeals Hearing. Furthermore, he submitted a mandate to the Registrar confirming his legal standing to represent the 2nd Respondent at the appeal hearing.

FINDING

21. The Appeals Committee considered the submissions of both parties and finds that the Act permits "*any person who is aggrieved by any decision of the Registrar may...appeal against such decision "in terms of section 49(1) of the Act; and in terms of section 49(3) of the Act "The Registrar or any other person who lodges an appeal in terms of subsection (1) may in person or through a representative appear before the Council and tender evidence..."*
22. There is furthermore no evidence before the Appeals Committee that brings the mandate filed by Mr A into question.
23. The Tribunal accordingly dismisses the Appellant's point *in limine*.

CONDONATION

The Appellant's submissions

24. The Appellant submitted that in this matter, the appeal was filed 11 days late.
25. The Appellant asked for condonation for the late filing of its appeal stating that the delay is not excessive and neither the Registrar nor the 2nd Respondent will suffer any prejudice if the condonation for late filing is granted by the Appeals Committee.
26. The Appellant submitted that it received the Ruling of the Registrar on 12 August 2024. On the same day, the Appellant referred the matter to its administrator, Medscheme with instructions to prepare the appeal. On 6 November 2024, Medscheme took the view that the Registrar's Ruling should not be appealed. This came as a surprise to the Appellant because it had received assurances that Medscheme was preparing the affidavit to appeal the Registrar's ruling.
27. On 7 November 2024 the Appellant expressed its displeasure at the prejudice caused by Medscheme who failed to appeal the Registrar's Ruling in good time; on 8 November 2024, the Appellant tried to persuade Medscheme that the Registrar's Ruling should be appealed, but Medscheme was not persuaded.
28. Thus from 8 November 2024, the Appellant proceeded to instruct Counsel to prepare the appeal; with a final affidavit settled by 28 November 2024.
29. Based on the Registrar's errors in law the Appellant submits that it has prospects of success.
30. The Appellant submitted that this matter is of importance to the parties; the delay is not inordinate; and the Appellant's delay in filing the appeal is not prejudicial to the administration of justice and it should be condoned.
31. Based on the afore-mentioned the Appellant asks that its delay in filing its appeal is condoned by the Appeals Committee.

The 2nd Respondent's submissions

32. The 2nd Respondent opposed the granting of condonation to the Appellant, in summary. on the basis that the appeal filed was late and has no prospects of success.

THE MERITS

33. The Appeals Committee considered the submissions of both parties.
34. The Appeals Committee has the discretion to grant an application for condonation if the Appellant can show good cause why the Appellant did not comply with the Act.
35. In *Head of Department, Department of Education, Limpopo Province v Settlers Agriculture High School and Others*² it was held that the standard of considering an application of this nature is the interests of justice.
36. Whether it is in the interests of justice to grant condonation depends on the facts and circumstances of each case. Factors that are relevant include, but are not limited to:
- 36.1 the nature of the relief sought;
 - 36.2 the extent and cause of the delay;
 - 36.3 the effect of the delay on the administration of justice and other litigants;
 - 36.4 the reasonableness of the explanation for the delay;
 - 36.5 the importance of the issue to be raised in the intended appeal; and
 - 36.6 the prospects of success.
37. In *Melane v Santam Insurance Company Limited*³ it was held that:
- “The approach is that the Court has a discretion, to be exercised judicially upon a consideration of all the facts, and in essence, it is a matter of fairness to both sides. Among the facts usually relevant are the degrees of lateness, the explanation, therefore, the prospects of success and the importance of the case. These facts are inter-related: they are not individually decisive. What is needed is an objective conspectus of all the facts. A slight delay and a good explanation may help to compensate for prospects of success which, are not strong. The importance of the issue and strong prospects of success may tend to compensate for a long delay. There is a further principle which is applied, and that is that without prospects of success, no matter how good the explanation for the delay.”*

² 2003 (11) BCLR 1212 (CC) at para[11].

³ 1962 (4) SA 531(A) at 532C-F.

38. Similarly, in *Mbutuma v Xhosa Development Corporation Ltd*,⁴ the court held that:

“The main issue in these proceedings is whether this Court should grant the indulgence sought, notwithstanding the inordinate delay in approaching the court for condonation. The Court has a very wide discretion in these matters. Condonation may be granted under Rule 13 of the Rules of this Court if the applicant has satisfied the Court that sufficient cause has been established for granting him relief from the operation of the Rules; and, in deciding whether sufficient cause has been shown, the Court will consider all the relevant facts and circumstances of the particular case, such as the degree of non-compliance with the Rules, for example, the length of the delay, the explanation therefore, the importance of the case, the prospects of success, the respondent’s interests in the finality of his judgment and the avoidance of unnecessary delay in the administration of justice...”

39. From these two judgments, it is clear that not only must the Appeals Committee act fairly in deciding whether or not to grant condonation; it must also consider several factors. These include the degree of lateness of the application, the reasons, therefore, the prospects of success of the Applicant, and the importance of the case. These factors should be considered in conjunction and not in isolation.

FINDING

40. Accordingly, the Appeals Committee finds that it is in the interests of justice to condone the late filing of the Appeal because the delay is not excessive; the matter is clearly of importance to both parties; the promotion of just administration in finalising the matter would grant both parties a full opportunity to vent their respective cases.

41. Accordingly, the late filing of the appeal by the Appellant is condoned by the Appeals Committee.

THE MAIN MATTER

42. The Appeals Committee now proceeds to the main matter and the submissions of both parties.

RELEVANT STATUTORY AND REGULATORY PROVISIONS

⁴ 1978 (1) SA 681 (A).

43. The relationship between the member and the scheme is governed by the terms of the contract (“the schemes rules”) that the member concluded with the scheme. The contract in turn is governed by the Act and the regulations (as amended) made in terms of the Act.
44. Section 32 of the Act stipulates as follows: *“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.”*
45. Section 29(1) Matters for which rules shall provide- (1) *The Registrar shall not register a medical scheme under section 24, and no medical scheme shall carry on any business, unless provision is made in its rules for the following matters- Section 29(1)(o) The scope and level of minimum benefits that are to be available to members and dependants as maybe prescribed; and 29(1)(p) No limitation shall apply to the reimbursement of any relevant health service obtained by a member from a public hospital where this service complies with the general scope and level as contemplated in paragraph (o) and may not be different from the entitlement in terms of a service available to a public hospital patient.*
46. Regulation 8 stipulates as follows -
“8. Prescribed Minimum Benefits.—(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.”

WIDE APPEAL

47. This is a wide appeal. The Appeals Committee may therefore consider the matter afresh and is not restricted to the record of proceedings that were before the Registrar.
48. 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

49. The issue to be determined is whether the scheme must fund the prosthesis as prescribed by the member's treating doctor in full, as a PMB level of care for the member.

THE APPELLANT

50. The Appellant acknowledged at the outset that the member's condition is a PMB condition.
51. The Appellant however submits that in terms of the scheme rules the external prosthesis benefit in terms of the member's benefit option is only R75 180.00 per beneficiary and is a stand-alone benefit.
52. Furthermore, the prosthesis that falls to be treated as a PMB level of care is one that is available to a public hospital patient; and the diagnosis, treatment and care costs in relation to the member's prosthesis should be at the level obtainable from a public hospital to meet the PMB criteria.
53. Thus the quotation of R129 364.09 is deemed above PMB level of care.
54. The Appellant argued that the Registrar's ruling is based on errors of law in that-
 - 54.1 it pivots on regulation 8(1) without considering the other provisions of the Act read with the regulations;
 - 54.2 the Registrar failed to consider in particular Regulation 29(1)(o) and 29(1)(p); should the Registrar be dissatisfied with the Rules of POLMED it should take it on review as the Registrar has registered a cost-based cap scheme rule which is binding on the scheme and member in terms of section 32 of the Act;
 - 54.3 the Registrar directed that the scheme funds the prosthesis in full at a private rate in the absence of a DSP. Absent a DSP network for Prosthetists and Orthoptists, the Registrar's ruling opens a scheme up to unlimited liability;
 - 54.4 the Registrar erred in directing that the Appellant should source the prosthesis at a discounted rate when no DSP's are in place is incorrect because the prosthesis has already been procured by the member who is using it and the Registrar's ruling should be set aside for this reason alone;

- 54.5 the Registrar failed to apply the scheme Rule 16.8 and 17.1 Marine Benefit schedule Annexure Prosthesis regarding the cost based cap thus requiring the scheme to contravene its own rules;
- 54.6 the Ministers failure to conduct two yearly reviews of PMB's has resulted in ineffective DSP's as well as the refusal of specialists to be part of the DSP network;
- 54.7 The Registrar's ruling is inconsistent with the Constitution in that the Bill of Rights provides for rights subject to limitations;
- 54.8 the claim by the member is excessive and may be because of anti-competitive pricing; and;
- 54.9 Regulation 8(1) cannot be interpreted to broaden as the Registrar has done, the scope of section 29(1)(p) of the Act.
55. The Appellant highlighted section 29(1)(o) and 29(1)(p) of the Act, which per the Appellant affords the Appellant a discretion as to the benefits it wishes to afford its members. However, regulation 8 is subject to section 29(1)(p) of the Act, which stipulates that no limitation shall apply to the reimbursement of any relevant health service obtained by a member from a public hospital where this service complies with the general scope and level as contemplated in paragraph 29(1)(o) and may not be different from the entitlement in terms of a service available to a public hospital patient.
56. The Registrar for the afore-mentioned reasons cannot therefore compel the Scheme to fund expenses incurred which is not within the benefit entitlements in respect of the membership, as this would be the equivalent of an instruction to the Scheme to contravene its own rules, which have been approved by the Registrar. Further, it does not take into consideration the impact of approving such funding on the Scheme's viability and affordability to members
57. Therefore, the Appellant submits that in terms of section 32 of the Act and Rule 10.7 of the Rules of the scheme, the rules of a medical scheme remain binding on every beneficiary and on the scheme, and there is no legal basis to compel the scheme to fund this treatment in full, which is limited by the member's benefit entitlements.
58. The Appellant submits for the afore-mentioned reasons that the appeal should succeed.

THE 2nd RESPONDENT

59. The 2nd Respondent submitted that the member's condition is a PMB condition and that it is not in dispute that the funding requested for the prosthesis is a PMB level of care.
60. The Appellant submitted that the 2nd Respondent is insisting on an ex-gratia application to fund the shortfall which the 2nd Respondent submits is not part of PMB funding and is in contravention of the Act.
61. The 2nd Respondent argued that ex gratia funding is not part of the PMB funding model and to ask the member to apply for ex gratia funding for the short payment of the prosthesis would run counter to the Regulation 8 provision of the Act which advocates for full funding of PMB conditions.
62. The Appellant thus does not consider that ex gratia funding is discretionary and not a benefit to the member.
63. The 2nd Respondent submitted further that *"Polmed is incorrect to limit the funding of the prosthesis (Trans-tibial / Below knee) based on scheme/ fund benefits. Scheme Rules/ limits do not apply in the case of PMB re-imburement. In terms of Regulation 8(1) of the Act, the diagnosis, treatment and care costs of a PMB condition must be paid in full by the medical scheme. Ex gratia payments are not part of the funding model either, and we should not need to apply for ex gratia funding for the balance of the prosthesis."*⁵
64. The 2nd Respondent referred the Appeals Committee to numerous Rulings of the Appeals Committee (CMS/77424; CMS/72656; CMS/78441; and CMS/81651) wherein the Appeals Committee found that a scheme must fund PMB conditions in full.
65. It was submitted by the 2nd Respondent that the same dispute arose with the funding of the member's right leg prosthesis based on the same arguments, but ultimately, it was funded in full by the same scheme. Hence there is no legal basis for the Appellant to refuse the funding of the prostheses for the member's left leg both of which were governed by the same scheme rules.

⁵ Page 70 of the main bundle.

66. Accordingly, the 2nd Respondent requests that the decision of the Registrar be confirmed by the Appeals Committee.

CONSIDERATION OF THE MERITS

67. In this matter it is common cause that the member's condition is a Prescribed Minimum Benefit (PMB) condition and that the prosthesis is a PMB level of care. The request for the prosthetic was made on the basis of an undisputed PMB condition under ICD10 code 170.21 (arteriosclerosis of arteries of extremities with gangrene) and E11.5 (Diabetes) PMB Code 915E.
68. The dispute is whether the prosthesis must be funded in full without co-payment or any deductibles.
69. Regulation 8 of the Medical Schemes Act provides that the diagnosis, treatment and care of a PMB condition must be paid in full by the medical Scheme -
"8. Prescribed Minimum Benefits —(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."
70. This particular case was referred by the Registrar to the Clinical Review Committee ("CRC") of the CMS. The CRC advised that *"the requested trans-tibial prosthetic limb is included in PMB level of care for the member's leg amputation. PMB level of care for the prosthesis refers to the type of prosthesis that is available in the public sector. It does not refer to the Rand value that the public sector spends to procure the prosthesis. The scheme must fund this prosthesis at the quoted private price, or source the prosthesis themselves at a discounted rate if no DSP's are in place."*
71. Overlooked by the Appellant was the key issue of the intention of Designated Service Providers ("DSP's") in the Act; and the applicability of relevant CMS Scripts to the facts of this case.
72. The definition of a Designated Service Provider in the Act means a healthcare provider or group of providers selected by the medical scheme concerned as the preferred provider or providers to

provide to its members' diagnosis, treatment and care in respect of one or more prescribed minimum benefit conditions.

73. CMS Script October 2008 states "*Provision for DSP's in the Medical Schemes Act was intended to encourage DSP arrangements between medical schemes and health care providers to ensure the proper delivery of prescribed minimum benefits to all beneficiaries of all schemes.... The Registrars' office strongly advises schemes to ensure that services will be readily available for their members before identifying DSPs as their preferred service provider in their rules*"
74. CMS Script October 2008 goes further to state "*When approving scheme rules the Registrar's office requires schemes to demonstrate that they have conducted an assessment of the DSPs and that they have the assurance of the availability of services. The Council for Medical Schemes has made it clear that DSP arrangements should be more than just a listing of a name, the very reason why DSPs were introduced is mainly for schemes to ensure that their members get proper care at a proper place and at an appropriate cost. This could not be easily determined without some mutual partnership and interaction between the scheme and the health care provider.*"
75. In the Supreme Court of Appeal ("SCA") case, Council for Medical Schemes and another v Genesis Medical Scheme and others⁶ the judge stated that "*the relationship between a medical scheme on the one hand and its members on the other, is not governed solely by that scheme's rules but also by the obligations imposed by statute upon medical schemes.*" The Judge went further to quote DL Pearmain - The Law of Medical Schemes in South Africa⁷ correctly observes that "*although the Act states that the scheme is bound by its rules, if one or more of these rules is contrary to the law the law will take precedence*". In the aforementioned SCA judgement, the judge ruled that "*Genesis had the opportunity to appoint DSP's. It could even have concluded agreements with the public sector as its DSP, which would not have been offensive if the Registrar was satisfied that there was a clear agreement between it and the relevant public health authorities.*"
76. The SCA judgement also stated that "*the provisions referring to DSP's clearly indicating that private sector treatment was envisaged - such provisions allowing a medical scheme to select*

⁶ Supreme Court of Appeal: Council for Medical Schemes and another v Genesis Medical Scheme and others (20518) [2015] ZASCA 161 (16 November 2015). Para 43

⁷ DL Pearmain The Law of Medical Schemes in South Africa para 7.1.1

DSPs with whom it may reach agreement on charges beneficial to it and thereby limit its exposure to liability under regulation 8(2.)”

77. From the SCA judgement and various CMS Scripts the key issue in selecting a DSP is a mutual partnership, agreement and interaction between the scheme and the health care provider which is to ensure cost effective, affordable and available treatment to members of a scheme; and that private sector treatment was envisaged.
78. No evidence was provided by the Appellant that it entered into any DSP arrangements save to submit that the 2nd Respondent used a DSP that exceeds the cost of a public facility. This view is contrary to that of the SCA and cannot be sustained. Other than the Appellant’s “say so”, no evidence was led by the Appellant that the cost of the prosthesis is excessive or that the pricing of the prosthesis is anti-competitive as alleged.
79. *It is pertinently undisputed that the Appellant funded the prosthesis for the member’s right leg in full based on the same scheme rules yet refuses to fund the member’s request for a prosthesis for the member’s left leg.*

FINDING

80. Accordingly, the Appeals Committee after considering the evidence is satisfied and finds that-

- 80.1 the Member’s condition is a Prescribed Minimum Benefit (PMB) condition and a PMB level of care is required.

- 80.2 The Scheme therefore must fund the Member’s prosthetic leg in full, as provided for in Regulation 8(1) of the Act.

ORDER

81. The Appeals Committee makes the following order:

- 81.1 The Appeal is dismissed.

- 81.2. The Registrar’s decision is confirmed.

- 81.3 There is no order as to costs.

THUS DONE AND SIGNED AT JOHANNESBURG ON THIS THE 15th DAY OF MAY 2025

SIGNED
PA BECK
PRESIDING MEMBER

Dr. T. Mabeba; Dr. H. Mukhari; Dr. Ngobese and Dr. S Naidoo concur.