BEFORE THE APPEAL COMMITTEE OF THE COUNCIL FOR MEDICAL SCHEMES HELD VIA THE MICROSOFT TEAMS VIDEO AND AUDIO CONFERENCE TECHNOLOGY INSTITUTED IN TERMS OF MEDICAL SCHEMES ACT NO 131 OF (1998) - CASE NUMBER (CMS810901)

In the matter between:

R	**APPELLANT**
AND	
BONITAS SCHEME	**1ST RESPONDENT**
REGISTRAR	**2AND RESPONDENT**
HEARD ON:	**12 SEPTEMBER 2025**
DATE OF RULING:	**29THSEPTEMBER 2025**

RULING AND REASONS

THE PARTIES.

1. The appellant in this matter is a member of Bonitas Medical Fund, Ms R, who lodged a complaint against the refusal by the scheme to reimburse her for the self-funded oncology treatment Blincyto. The respondent is Bonitas Medical Fund, a registered medical scheme in terms of section 24 of Medical Schemes Act, represented through its administrator and attorney on record.

APPLICATION TYPE AND RELIEF SOUGHT

2. This matter comes before the Appeals Committee as an appeal in terms of section 48(1) of the Medical Schemes Act 131 of 1998 against the ruling of the Registrar. The appellant seeks an order compelling the scheme to reimburse her for the two self-funded cycles of Blincyto, a drug prescribed for her condition Acute Lymphoblastic Leukaemia. In the alternative, she requests that the Appeals Committee enforce payment through the scheme's ex-gratia process, notwithstanding prior advice by the Registrar that ex-gratia benefits fall outside the enforceable jurisdiction of the Council for Medical Schemes.

BACKGROUND AND REGISTRAR'S RULING

3. The complainant was diagnosed with Acute Lymphoblastic Leukaemia in May 2021 and applied in August 2022 for authorisation of Blincyto, a high-cost oncology drug. The scheme declined the application on the basis that the complainant's chosen benefit option did not include a Specialised Drug Benefit, that Blincyto is not part of the South African Oncology Consortium guidelines, and that it is not available in the public sector for this condition and thus does not qualify as Prescribed Minimum Benefit level of care. The member's oncology benefit for 2022 was limited to R48 000, well below the cost of Blincyto, which averages R740 000 per cycle.
4. The complainant in the interim raised approximately R2 million to fund two cycles of Blincyto herself and thereafter sought reimbursement from the scheme. The scheme considered, but declined, ex-gratia funding for the retrospective cycles, although it indicated a willingness to support a third cycle ex-gratia, which was ultimately not administered due to the member's medical complications.
5. The Registrar referred the matter to the Clinical Review Committee, which confirmed that while Acute Lymphoblastic Leukaemia is a Prescribed Minimum Benefit condition under DTP 901S, Blincyto does not constitute PMB level of care since it is neither available in the public sector nor included in the SAOC guidelines.

6. The CRC concluded that in terms of the Medical Schemes act, Regulation 15I (c) or 15H(c) did not apply as there were still in-protocol treatment options available under the SAOC guidelines. The Registrar further recorded that ex-gratia is a discretionary benefit that the Council for Medical Schemes has no statutory power to compel. On this basis, the Registrar dismissed the complaint.

APPELLANT'S SUBMISSION

7. On appeal, the member argued that Blincyto is clinically appropriate and internationally recognised as the treatment of choice for her condition. She emphasised the financial burden of raising R2 million and maintained that fairness requires the scheme to reimburse her. She contended that the Registrar erred in finding Regulation 15H(c) inapplicable, since in her view Blincyto represented the most effective therapy. She asked the Appeals Committee to direct the scheme to apply its ex-gratia process retrospectively and reimburse her costs.

RESPONDENT'S SUBMISSION

8. The scheme opposed the appeal. It argued that the complainant's benefit option does not provide for a specialised drug benefit and that Blincyto is not listed on the SAOC guidelines nor included in the Essential Medicines List. For this reason, it cannot be considered PMB level of care.
9. The scheme emphasised that ex-gratia is a discretionary process which had been followed in good faith, with an offer to support a prospective cycle, but retrospective reimbursement was excluded by policy. It submitted that the Registrar's findings were correct and that the Appeals Committee has no jurisdiction to compel ex-gratia payments.

LEGISLATIVE REVIEW AND EVALUATION

10. The Appeals Committee carefully examined the statutory and regulatory framework underpinning this matter. The Medical Schemes Act 131 of 1998 provides the foundation for both the scope of benefits and the rights of members. Section 29 of the Act requires every registered medical scheme to set out the scope and extent of benefits in its registered rules, which, once approved, acquire statutory force and bind the scheme, its members, and the Council. The rules therefore form a contract that neither the scheme nor its members may unilaterally vary. In this case, Bonitas Medical Fund's rules governing the Standard benefit option did not provide for a Specialised Drug Benefit, and this absence is binding both on the member and the scheme.

11. Section 47 of the Act empowers the Registrar to receive and adjudicate complaints relating to the administration of schemes, the interpretation of rules, and the application of the Act. Section 48(1) further provides a right of appeal to the Council against the decision of the Registrar. Importantly, this appellate jurisdiction is confined to matters arising under the Act, its Regulations, and registered scheme rules, and does not extend to compelling discretionary or ex-contractual relief.

12. The question of Prescribed Minimum Benefits is dealt with in Regulation 15 and Annexure A of the Regulations to the Act. Acute Lymphoblastic Leukaemia is listed under the Diagnosis and Treatment Pair codes as a PMB condition, but the obligation imposed on schemes is to provide treatment in accordance with the prevailing medical protocols and formularies adopted in the public sector and reflected in clinical guidelines such as those of the South African Oncology Consortium. The Clinical Review Committee confirmed that Blincyto, although clinically beneficial in international practice, is not part of the prevailing South African standard of care, is not listed in the Essential Medicines List, and is not endorsed by the SAOC protocols. The regulatory obligation therefore does not extend to compelling its funding.

13. The appellant invoked Regulation 15H(c), which requires schemes to provide funding where PMB treatment is not available in the State. However, this provision is qualified by the requirement that clinically appropriate alternatives be exhausted. The Clinical Review Committee confirmed that other in-protocol regimens remained available for the appellant's condition, and accordingly Regulation 15H(c) could not be triggered. The Registrar's conclusion that this regulation was inapplicable was therefore correct in both law and fact.

14. Turning to ex-gratia, the legislative position is settled. Neither the Act nor its Regulations create a right to ex-gratia benefits. These are discretionary payments made by a scheme's board of trustees to address exceptional circumstances, but they remain voluntary in nature. The Council for Medical Schemes, including the Registrar and Appeals Committee, lacks statutory power to compel the granting of ex-gratia benefits. This principle has been consistently applied in prior rulings of the Registrar and endorsed in appeals. Accordingly, the appellant's request that the Committee direct the scheme to reimburse her under ex-gratia falls outside this Committee's jurisdiction.

15. On this basis, the legislative evaluation confirms that the Registrar's ruling was sound in law and fully consistent with the Medical Schemes Act, its Regulations, and established clinical governance standards.

JURISDICTION OF THE APPEALS COMMITTEE

16. The Appeals Committee derives its powers exclusively from section 48 of the Medical Schemes Act 131 of 1998. This section provides that any person aggrieved by a decision of the Registrar may appeal to the Council within three months of the decision. The appeal must be considered by the Appeals Committee, which is empowered to confirm, vary, or set aside the Registrar's decision. It is therefore clear that the Committee's jurisdiction is appellate in nature and confined to the determination of disputes within the four corners of the Act, its Regulations, and the registered rules of schemes.
17. The Committee is not a court of equity and does not possess inherent jurisdiction. Its mandate is statutory and limited. While the Committee may evaluate whether the Registrar correctly applied the Act and Regulations, it cannot create new entitlements not provided for in the statute or the scheme's rules. In particular, the Committee cannot compel a scheme to grant discretionary benefits such as ex-gratia payments, because these are not enforceable rights but voluntary concessions governed by the scheme's internal policy and the fiduciary discretion of its board of trustees.
18. This principle has been consistently upheld in prior Council determinations, where it has been emphasised that ex-gratia relief, although compassionate, cannot be judicially or administratively enforced. The Committee is therefore bound to respect the legislative limits of its jurisdiction and cannot substitute its discretion for that of the scheme in relation to ex-gratia matters. Its role is restricted to ensuring that the Registrar's ruling on statutory and rule-based entitlements is correct and lawful.

APPEALS COMMITTEE PERSPECTIVE

19. The Appeals Committee approaches this matter with due recognition of the appellant's grave medical condition, the extraordinary financial sacrifices undertaken to secure life-saving treatment, and the humanitarian considerations at stake. The Committee acknowledges the clinical reality that Blincyto is internationally recognised as an effective treatment for relapsed Acute Lymphoblastic Leukaemia. However, the Committee is duty-bound to apply the law as enacted and interpreted within the South African healthcare framework.
20. The Registrar's ruling was grounded in a correct interpretation of the law and the evidence placed before the Clinical Review Committee. The condition in question qualifies as a Prescribed Minimum Benefit diagnosis, but the specific drug Blincyto does not constitute PMB level of care in South Africa as it is not available in the State sector and not supported by the South African Oncology Consortium protocols. Regulation 15H(c) is therefore

inapplicable, as there remained available in-protocol alternatives which the appellant had not exhausted.

21. On the matter of ex-gratia, the Committee emphasises that it has no legal competence to direct a scheme to make such payments. Ex-gratia remains a discretionary relief measure, lying within the autonomy of scheme governance structures. While the scheme did demonstrate willingness to consider limited prospective ex-gratia support, it was equally entitled under its policy to decline retrospective reimbursement. The Committee cannot elevate a discretionary concession into an enforceable right, nor can it convert international treatment standards into binding obligations under South African law absent statutory authority.
22. In discharging its appellate role, the Committee must therefore balance empathy with fidelity to statute. The appeal is compelling in human terms, but weak in law. The legal framework obliges the Committee to uphold the Registrar's decision. The Committee's perspective is that while the appellant's circumstances are deserving of compassion, they do not provide a legal basis for compelling the scheme to depart from its rules or for expanding the scope of PMB obligations beyond what is prescribed in law.

FINDINGS

23. Having considered the full record of proceedings, the Registrar's ruling, the submissions of both parties, the clinical evidence, and the applicable law, the Appeals Committee makes the following findings:
24. The Committee finds that the Registrar correctly ruled that Regulation 15H(c) does not apply. This regulation can only be invoked where the State sector does not provide PMB treatment and where clinically appropriate alternatives have been exhausted. The Clinical Review Committee confirmed that, in this case, guideline-based in-protocol treatments were still available in terms of the South African Oncology Consortium. The precondition for invoking Regulation 15H(c) was not satisfied, and the Registrar's interpretation was legally and clinically sound.
25. The Committee further finds that Blincyto is not Prescribed Minimum Benefit level of care for the appellant's condition under South African law. While Acute Lymphoblastic Leukaemia is undeniably a PMB condition under the DTP code 901S, the law requires that treatment be provided in line with prevailing State-sector protocols and clinical guidelines. Blincyto does not appear in the Essential Medicines List, nor is it endorsed by SAOC protocols. It therefore falls outside the statutory definition of PMB level of care. The appellant's reliance on international standards, although persuasive on a humanitarian level, cannot alter the binding domestic framework that governs schemes in South Africa.

26. The Committee also finds that the Appeals Committee has no jurisdiction to compel ex-gratia payments. Ex-gratia is a discretionary benefit, exercised at the sole discretion of the scheme's board of trustees to address exceptional circumstances. It does not arise from the Act, its Regulations, or scheme rules, and therefore does not create an enforceable entitlement. The Council for Medical Schemes, including its Appeals Committee, cannot substitute its judgment for that of the scheme's trustees in this regard. The appellant's request that this Committee direct retrospective ex-gratia relief must accordingly fail as it lies outside our statutory mandate.
27. The Committee finds that the Registrar's ruling was correct both in fact and in law. The Registrar carefully considered the clinical and regulatory evidence, properly referred the matter to the Clinical Review Committee, and correctly applied the statutory and regulatory framework. The Registrar's conclusions were consistent with the Act, the Regulations, and precedent rulings of the Council.
28. Finally, the Committee finds that while the appellant's circumstances elicit deep sympathy and compassion, the Appeals Committee cannot elevate considerations of fairness or clinical innovation into binding obligations that the law does not recognise. The Committee is a statutory body constrained by its legislative mandate. The appropriate recourse for relief beyond the statutory minimum remains within the scheme's ex-gratia structures, not within the adjudicative powers of this Committee.
29. The Committee expresses its sympathy with the appellant's circumstances, but confirms that the scope of the Medical Schemes Act and the jurisdiction of the Appeals Committee do not extend to compelling retrospective ex-gratia payments or enforcing reimbursement outside scheme rules.

ORDER

30. The appeal is dismissed.
31. There is no order as to costs.

THUS, DONE AND SIGNED AT SANDTON ON THIS THE 29th DAY OF SEPTEMBER 2025.

SIGNED
DR X NGOBESE
Presiding Member

Dr S Naidoo and Miss M Ramagaga Appeals Panel members Concurring.

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[1] Clinical Review Committee opinion 106 -112, Registrars ruling, 113 -116 and Page 117 appellant's affidavit.