



IN THE APPEAL BOARD OF THE COUNCIL FOR MEDICAL SCHEMES

IN THE MATTER BETWEEN

Discovery Health Medical Scheme

Appellant

v

Mr X

1st Respondent

Appeals Committee of the CMS

2nd Respondent

The Registrar of Medical Schemes

3rd Respondent

Case No: CMS 84717

Date of hearing: 3/09/2025

MEMBERS OF THE APPEAL BOARD

Judge Thokozile Masipa - Chairperson

Dr Dimakatso Ramagole - Member

Professor Solomon Rataemane - Member

LEGAL REPRESENTATION

For the Appellant

A

B

C

D

E

For the Respondent

Y

X

DECISION

INTRODUCTION

[1] This is an appeal against the ruling of the Appeals Committee dated 24 March 2025. It is brought in terms of section 50(3) of the Medical Schemes Act No 131 of 1998 ("MSA").

THE PARTIES

[2] The Appellant is Discovery Health Medical Scheme, (DHMS), a medical scheme registered as such in terms of section 24 of the MSA.

[3] Mr X is a member of the DHMS having joined the scheme on 1 October 2003. He participates in the DHMS Classic Priority Plan.

FACTUAL BACKGROUND

[4] Mr X is 54 year old and a member of DHMS since 1 October 2003 and is on the Classic Priority Plan option.

[5] Since his childhood, X suffered from Atopic Dermatitis (eczema) which he managed with moisturising creams and controlling triggers.

[6] He stated that in 2021, after he had taken the Pfizer Covid 19 vaccine, the eczema started getting progressively worse. As a result he had to be admitted to hospital twice for intravenous cortisone treatments.

[7] In April 2022, he was referred to Dr XXXXX, a specialist dermatologist at XXXXXX Hospital for treatment. He was diagnosed with Erythroderma, and had to undergo various treatments. These were doses of methatrexate over a six week period). Then he was given Azathioprin (in increasing doses of 100mg, 150mg and 200mg over a 3-month period).

[8] None of these treatments had any effect on the symptoms.

[9] Meanwhile X now experienced extreme inflammation across 80-90% of his body, severe skin dryness and shedding, weight loss and inability to control body temperature due to the inflammation.

[10] Following two separate occasions when he was admitted to hospital, the treating doctor, Dr XXXXX, recommended treatment with Dupixent/Dupilumab. On 4 November 2022, the member started using Dupixent injections 300mg every two weeks.

[11] This treatment has, reportedly, been very effective in getting the symptoms under control. The few side effects noted are dry eyes, joint pains and occasional facial flares.

[12] The member consulted the Scheme regarding support for this medication as it appeared that he might be on it long term.

[13] He stated that since he started using the Dupixent injections in November 2022, he had spent almost R300,000.00 and could not sustain the costs.

[14] Dr XXXXXX motivated the request for funding the treatment thus:

“This is to inform you that Mr X is suffering from extremely severe Atopic dermatitis affecting 100% of his body. Currently he has Erythroderma which can have life threatening complications including loss of temperature control, loss of fluid and electrolytes.”

[15] Notwithstanding the doctor’s motivation, the Scheme refused the request to fund Dupixent, a biological, as a treatment.

[16] On the 28 March 2023, the Scheme’s internal dispute committee responded that the diagnosed condition, ‘Dermatitis, unspecified’ (ICD10 L 30.9) was not a PMB. It also disputed that the Covid 19 vaccine was linked to the member’s aggravated condition.

Section 47 Complaints Procedure

[17] The Respondent then lodged a complaint in terms of section 47 of the MSA.

[18] On the 6 September 2024, the Registrar made his ruling and stated:

‘Based on the CRC clinical opinion, the Complainant’s Erythroderma is as a result of being vaccinated against COVID-19, which is a PMB condition. If it was not of the latter treatment, the Complainant would not have required this treatment. Therefore, the Scheme has an obligation to fund in full the Complainant’s treatment as a PMB level of care. Therefore, the funding should be afforded in accordance with Regulation 8 of the Act not in accordance with its rules ...”

[19] Aggrieved by this decision, the Appellant submitted the Section 48(1) Appeal to the CMS.

Section 48(1) Appeal

[20] Before the Appeals Committee it was argued on behalf of the Appellant that there were five recognisable category causes of Erythroderma namely—
dermatoses, drug reactions, malignancies, infections and idiopathic causes as referenced in the literature.

[21] The Scheme had funded the medication for the member in terms of the Scheme’s Rule 16.1. However, the cost of Dupixent was high and a cheaper alternative, Rinvoq which cost approximately R8000 per month compared to Dupixent, which came to approximately R23000 per month, had in the meantime become available. The Respondent was urged to use Rinvoq which compared favourably to Dupixent in terms of efficacy and safety. There was, therefore, no reason why the member could not commence using this medication.

[22] Lastly, the Appellant argued that there was no direct link to the member’s present condition and the use of the Covid-19 vaccine.

[23] On behalf of the Respondent, it was submitted that the member had been able to manage the eczema by using moisturising creams for years. It was only after he had taken doses of the vaccine twice that his condition worsened. For that reason Erythroderma could only have been caused by the Covid-19 vaccines.

[24] Having heard submissions by both parties the Appeals Committee came to the conclusion that this was a unique case and that the Scheme had not appropriately applied its mind to the case. According to the Appeals Committee, the Registrar was correct in his finding in terms of Regulation 8 of the MSA, as the COVID-19 vaccine was linked to the member's worsened condition.

APPEAL IN TERMS OF SECTION 50(3)

The Issue

[25] The issue to be determined was whether the Scheme was correct in its refusal to fund the drug Dupixent as a treatment.

THE APPEALS' COMMITTEE'S RULING

[26] In its ruling, the Appeals Committee dismissed the Appeal and upheld the Registrar's decision of the 6 September 2024.

[27] The Scheme was ordered to pay the costs of the 52 doses of Dupixent already procured and used by the member, which amounted to just over R600 000 upon receipt of proper and valid invoices. This was to be corroborated by the Scheme.

[28] Further, the Scheme was ordered to continue paying for the Dupixent going forward unless the consideration to change to the cheaper biological agent, has been mutually agreed upon with the express consent of the Member.

ANALYSIS BY THE APPEAL BOARD

[29] It appears that the basis of this decision was that there was a nexus between the COVID-19 vaccine and the aggravation of the member's condition. This accordingly, made the treatment of erythroderma a PMB level of care.

[30] The Appeals Committee seems to have relied on a published article of a case report of a 73 year old male with a history of atopic dermatitis. In the Abstract the following statement was written:

"This case report describes the development of erythroderma in a 73 year old male with a history of atopic dermatitis with widespread erythema and scaling covering 95% of his body surface area, which developed sequentially after the patient had received each dose of the Pfizer-BioNTech (BNT162b2) COVID-19 vaccination. The patient's condition improved significantly with appropriate dermatologic, including systemic and topical corticosteroids and dupilumab. Thus it is important to recognise erythroderma as a potential side effect of the Pfizer-BioNTech COVID-19 vaccine, particularly in patients with pre existing dermatologic conditions. Early diagnosis and treatment are vital for managing this potentially life-threatening reaction and preventing severe complications".

[31] An observation needs to be made regarding the above "supporting article."

[32] There is evidence that the article was emailed to both the CMS and the Appellant shortly after the hearing. This means it was not part of the evidence at the time of the hearing. There is no indication that the parties had an opportunity to test its relevance, credibility and reliability. Without such rigorous testing, through cross examination and/or evidence in rebuttal, the so called "evidence" cannot be relied upon for the purposes of arriving at a fair and just decision.

[33] In any event, drug reactions are just one category amongst the five categories mentioned as potential causes of erythroderma. From the decision of the Appeals Committee, it is not clear whether the other categories were considered at all and if not, why. More importantly, it is unclear what led to the conclusion that the vaccines could have been the only cause of the member's worsening condition.

[34] It is important to bear in mind that before any evidence can be accepted it must, inter alia, be consistent with other credible and trustworthy evidence.

[35] In the present case, the evidence about the five categories of potential causes of the aggravated condition of the member, was not contradicted. Yet it does not appear to have been considered by the Appeals Committee. In the absence of such an exercise, it cannot be said that the Appeals Committee properly applied its mind to the matter.

[36] I say this because a proper analysis of the facts and the evidence, entails the consideration and weighing up of all the relevant information presented. This is important if the decision maker is to reach a just and fair decision.

CONCLUSION

[37] As said earlier, in the present case, a submission was made that there were five possible categories of factors which might cause the worsening of Atopic dermatitis.

[38] However, nowhere in the decision of the Appeals Committee is there an indication that any of the other four categories were considered before a conclusion was reached. There is also no explanation why the reason provided by the Respondent was found to be the only plausible reason for the worsening of the member's condition.

[39] One other factor that, in our view, should have been considered is that there is no evidence that the member notified the health authorities of the worsening of his condition as a result of taking the vaccine. The failure of the member to report this was not explained in any way.

[40] Lastly, it is important to bear in mind that schemes have an obligation to protect the interests of all their members. These interests should not be sacrificed for individual interests. It appears that the Appeals Committee overlooked that fact, when giving its ruling that the Scheme should pay for Dupixent and consider a change to a cheaper biological only after express consent by the member.

[41] In the present case, there was evidence that the cost of the drug, Dupixent was high and a cheaper alternative, Rinvoq which cost approximately R8000 per month compared to Dupixent which came to approximately R23000 per month, had, in the meantime, become available.

The member was encouraged to use Rinvoq for his treatment. On the facts, there seems to be no reason why the members cannot try Rinvoq as advised.

[42] Having regard to all the facts of this matter, the Appeal must succeed.

ORDER

[43] Accordingly,

(a) the Appeal is upheld.

(b) The Ruling of the Appeals Committee dated 24 March 2025 is set aside.

Judge Thokozile Masipa

Chairperson of the Appeal Board of the CMS