IN THE APPEAL BOARD OF THE COUNCIL FOR MEDICAL SCHEMES

IN THE MATTER BETWEEN

POLMED	Appellant
and	
Council for Medical Schemes	1st Respondent
The Registrar of Medical Schemes	2nd Respondent
Mr X obo Y	3rd Respondent

Represented by

Mr. Z

Case No:

Date of hearing: 13/11/2025

MEMBERS OF THE APPEAL BOARD

Judge Thokozile Masipa - Chairperson

Dr Dimakatso Ramagole - Member

Professor Solomon Rataemane - Member

LEGAL REPRESENTATION

For the Appellant

Mr. S

For the Respondent

Mr. Z

DECISION

INTRODUCTION

[1] This is an appeal against the Ruling of the Appeals Committee dated 15 May 2025. It is brought in terms of section 53(1) of the Medical Schemes Act No 131 of 1998 ("MSA").

[2] In its decision, the Appeals Committee ordered the Appellant to

"Pay for the prosthesis in full ".

[3] The appeal lies against the findings and order of the Appeals Committee.

THE PARTIES

[4] The Appellant is (POLMED), a medical scheme registered as such in terms of section 24 of the Medical Schemes Act No.131 of 1998 ("MSA").

[5] The First Respondent is the Council for Medical Schemes established in terms of the MSA.

[6] The Second Respondent is the Registrar of the Medical Schemes ("The Registrar").

[7] The Third Respondent is X, appearing on behalf of Y. Only the third Respondent is opposing the appeal.

THE BACKGROUND

[8] Mr. Y, a member of the Appellant, presented with bilateral trans-tibial amputations. The amputation of his right leg was done on 24 November 2022. Two years later, on 13 November 2024, the amputation of his left leg was done.

[9] From the facts, it appears that the second amputation was performed due to complications of the member's condition of Atherosclerosis of the arteries of the extremities with gangrene. It is reported that Mr. Y is a known type 2 diabetic. Both amputations were performed by Dr M.

[10] Mr. X of XXXXX Orthotics and Prosthetics practice submitted an application for a left trans-tibial prosthesis to the Scheme. The cost of the prosthesis was R121 507.69.

[11] POLMED applied a funding limit of R75 800.00 on each member per the registered scheme rules. As a result, Mr. Y was left with a co-payment of R46 327.69.

SECTION 47 COMPLAINT

[12] Consequently, Mr. Y filed a complaint in terms of section 47 of MSA with the Registrar against POLMED's funding decision.

[13] The Registrar ruled in favour of Mr. Y, directing POLMED to fund the prosthesis in full. The basis of this decision was that the prosthesis was a PMB level of care in accordance with the provisions of Regulation 8(1) of the MSA.

[14] Aggrieved by this decision, POLMED filed an appeal with the Appeals Committee. **The basis for the appeal was that the invoice for the prosthesis was in excess of PMB costs**.

[15] On 11 June 2025, the Appeals Committee transmitted its ruling to POLMED. In that ruling, the Appeals Committee upheld the Registrar's decision and further dismissed POLMED's ***point in limine*** on the legal standing of Mr. Z who acted on behalf of Mr. Y.

[16] The Appeals Committee also dismissed POLMED's appeal on the merits, ordering POLMED to pay in full for the prosthesis.

[17] Hence the present appeal.

THE APPEAL IN TERMS OF SECTION 50(3) OF THE MSA

[18] The issue on appeal was two-fold, namely:—

18.1 That the Appeals Committee had wrongly decided on the preliminary issue of the legal standing of Mr. Z, who appeared on behalf of Mr. Y.

18.2 That the Appeals Committee had failed to consider and answer the question that was before it. Instead, it had decided on a completely different question. It was submitted that, for that reason, the Appeal Board was entitled to set the decision of the Appeals Committee aside and remit the matter to the Appeals Committee, differently constituted, to decide the correct issue afresh. Alternatively, the Appeal Board could itself determine the issue, properly formulated.

Preliminary Issue

[19] The Appellant had raised an objection against the legal standing Mr. Z, and the Appeals Committee had dismissed it on the grounds that there was no legal basis for the submission.

[20] The same issue was raised before the Appeal Board. Counsel for the Appellant submitted that the objection against Mr. Z was not that he was representing Mr. Y. Rather it was that Mr. Z could not step into the shoes of Mr. Y by deposing to an affidavit on his behalf, for example, without authority.

[21] He based his argument on alleged written authority that the Respondent had relied upon as evidence of authorisation for Mr. Z to appear on behalf of Mr. Y. Counsel pointed out various discrepancies in the dates and argued that these discrepancies were an indication that the alleged authorisation was an afterthought and could not be relied upon.

[22] The ***point in limine*** was considered by the Appeal Board and found to be lacking in merit for a number of reasons.

[23] There is a difference between a court of law and a tribunal that sits as an administrative body. In particular, in a court of law, the right of appearance is limited to legally qualified practitioners such as attorneys and advocates. Because of their legal background, the practitioners know the bounds within which to conduct their case. Where they stray beyond these bounds, the opposition usually objects, and the court shall make a ruling accordingly.

[24] Tribunals, on the other hand, avoid the formality of the ordinary courts and strive for a speedier and cheaper procedure than that afforded by the ordinary courts. For that reason, where the legislation is silent on the issue, tribunals are masters of their own procedures.

[25] In this Appeal Board, for instance, historically, procedural rules have been more flexible as non-lawyers are often allowed to appear on behalf of a party. Understandably, as lay people, they may not even be familiar with the ***modus operandi*** or with the limits applicable to representation. For that reason, the Appeal Board's practice is to give them guidance, rather than deprive a party they are appearing for of assistance.

[26] If it is in the public interest to proceed with the non-lawyer representation and there is no prejudice to the other party caused by the individual's conduct, the Appeal Board will allow it.

[27] As alluded to earlier, there are good reasons for such an approach.

[28] Unlike a court of law, an administrative tribunal is designed to be less formal, less expensive and faster than a court of law.

[29] With the foregoing in mind, the Appeal Board examined the facts in this matter.

[30] Mr. Y is over 70 years old, diabetic, and currently undergoing dialysis treatment. He briefly appeared to answer a few questions relating to whether he had given authority to Mr. Z to appear on his behalf.

[31] It was obvious that he had difficulty expressing himself and would have real difficulty proceeding in a hearing without assistance.

[32] Having seen and heard Mr.Y, this Appeal Board is satisfied that Mr. Z is appearing on behalf of Mr. Y with his knowledge and on his instruction.

[33] Where Mr. Z's conduct oversteps his authority, in any manner, the Appeal Board shall not hesitate to correct him. But to deprive Mr. Y of assistance during the proceedings

would be to do him a grave injustice. It would also undermine the goal of expeditious case disposal.

[34] It is so that counsel for the Appellant pointed out discrepancies in dates in various letters that were allegedly a mandate for Mr. Z to act on behalf of Mr. Y.

[35] However, like any other information that is presented to this Appeal Board, such discrepancies cannot be viewed in isolation. As stated earlier, Mr. Y stated that he gave the mandate both telephonically and by way of a letter. When the facts are viewed in totality, there is nothing to suggest that Mr. Z lacks the necessary mandate to represent Mr. Y.

[36] More importantly, it was not alleged that allowing Mr. Z to proceed with representing Mr. Y would cause prejudice to POLMED.

[37] As the Appeal Board, we are bound by the principles of natural justice, which supersede legal technicalities.

[38] In our view, the focus of the Appeal Board should be more on resolving disputes between the parties, and less on legal technicalities.

[39] Accordingly, the **point *in limine*** is dismissed.

THE MERITS

[40] The issue on the merits was succinctly summed up by counsel for the Appellant:
The Appeals Committee failed to address the question posed by the scheme, which was

"Whether, in the absence of an agreement with a DSP, a specialist service provider is entitled to charge in excess of the PMB costs limits as stated in the Rules of the Scheme."

[41] Instead of dealing with this issue, the Appeals Committee replaced it with its own question, which was phrased thus:

"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."

[42] It was argued, on behalf of the Appellant, that because of the approach that the Appeals Committee had adopted in dealing with the issue, its decision ought to be set aside, and replaced with the decision of this Appeal Board. Alternatively, after setting aside the decision of the Appeals Committee, the Appeal Board was entitled to remit the matter to be heard afresh, by a differently constituted Appeals Committee.

[43] The Respondent did not dispute any of the Appellant's arguments.

[44] It is, therefore, common cause that, instead of answering the question that the Appellant had posed as the issue to be decided, the Appeals Committee formulated its own question, which was different from the one it had been requested to decide.

[45] The approach taken by the Appeals Committee was irregular.

[46] The appeal process is generally intended to review specific challenged decisions from a lower body, not to introduce new matter.

[47] In other words, an appeal body is meant to correct errors, not redo the entire case by finding new issues.

[48] For that reason, the decision of the Appeals Committee is set aside.

APPEAL ON THE MERITS

[49] Having set aside the decision of the Appeals Committee, the next step is to decide whether to remit the appeal to the Appeals Committee, differently constituted, or to entertain the appeal.

[50] For convenience and to save time, the Appeal Board shall, itself, adjudicate on the appeal before it. This is so because it has all the necessary information before it to make a decision.

THE ISSUE

[51] The question asked by the Scheme was

"Whether, in the absence of an agreement with a DSP, a specialist service provider is entitled to charge in excess of the PMB costs limits as stated in the Rules of the Scheme."

[52] This is not a question that can be addressed in isolation. Considerations such as what led to the complaint, the legal framework, the facts in this matter, as well as what led the Appellant to formulate the question in the manner that it did, are all important to arrive at a fair and just decision.

[53] I shall now proceed to deal with each in turn.

The Basis of the Complaint

[54] The section 47 complaint, to the Registrar, that culminated in this appeal was filed against POLMED because the Scheme placed a cap of R75 800 on funding the treatment

for Mr. Y's condition. According to the Scheme, such a funding decision was in accordance with its prescribed rules.

[55] It is trite that the rules of the Scheme are subject to the Act.

[56] So, although the Scheme rules are binding on the Scheme and its members, it is important to keep in mind that the applicable legislation always supersedes the rules.

[57] Before dealing with the applicable legislation, it is necessary to consider what is a common cause.

Common Cause Facts

[58] The facts in this matter are largely common cause. It is common cause that the member's condition is a PMB condition. In addition, it is a common cause that the prosthesis prescribed by the treating doctor for the member is a PMB level of care.

Legal Framework

[59] Regulation 8 states the following about PMBs:

"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".

DISCUSSION AND ANALYSIS

[60] Medical schemes are legally required to cover the diagnosis, treatment, and care of the specific medical conditions included in the PMB list. This applies to any benefit option

that is offered by a medical scheme. The upshot is that patients are able to receive necessary healthcare services without having to worry about whether their medical scheme will cover the cost.

[61] In the present case, the necessity of the treatment and care was not in dispute. Instead, the issue was whether, in the absence of a DSP agreement, the service provider (specialist) was at liberty to charge in excess of the PMB limit as prescribed by the Scheme rules.

[62] In terms of the law, medical schemes are only required to cover the cost of treatment provided by a specialist in cases where it is necessary for the diagnosis, treatment, and care of the specific medical condition.

The Role of Designated Service Providers for PMBs

[63] Designated Service Providers (DSPs) are service providers like doctors, pharmacists and hospitals chosen by a medical scheme as the preferred providers for treating Prescribed Minimum Benefits conditions.

[64] In the present appeal, the Appellant has not selected any DSPs. Consequently, the Third Respondent was at liberty to choose which service provider to use.

[65] Regulation 8(1) states clearly that "any benefit option" offered by a medical scheme *"must pay in full, without co-payment and the use of deductibles",* the diagnosis, treatment and care costs of the prescribed minimum benefit conditions.

[66] In the present case, it is common cause that Mr. Y suffers from a PMB condition; that the treatment and care by the specialist is a PMB level of care, and that the Scheme has not selected any DSPs.

[67] To the question whether a specialist can charge in excess of the PMB limit as prescribed by the Rules of the Scheme, the response is yes. The specialist can charge in excess of the PMB limit prescribed by the Scheme as long as he/she have not overcharged for the service. This is so because the Act always supersedes the rules of the Scheme.

[68] Should it be found that the specialist is guilty of overcharging for the service, the Scheme is not without remedy. The specialist can be reported to the relevant authorities, such as a professional body, for investigation.

[69] In addition, where there is evidence that the specialist overcharges for his services, it is not for the Scheme to burden the member with a co-payment by refusing to pay the full amount, as that would be against Section 8(1) of the MSA. The conduct of the Scheme, in the present matter, has the unfortunate effect of punishing a member when the member had nothing to do with the nonexistence of a DSP agreement.

[70] Where a service provider is found to have charged more than what he is entitled to, the Scheme's remedy is to be found in section 59(3) of the MSA, which is a claw-back provision meant to protect Schemes against unscrupulous service providers.

[71] In the present case, there is no evidence that the service provider was guilty of having overcharged for his services. All that the Appellant alleged was
that the invoice for the prosthesis was in excess of PMB costs.

CONCLUSION

[72] The Appeal Board has considered the question posed by the Scheme against the background, the facts and circumstances of this case.

[73] It is so, that the relationship between a member and the scheme is contractual and that both parties are bound by the rules of the scheme. However, the rules of the schemes are subject to the Medical Schemes Act and the Regulations.

[74] A scheme is supposed to act in the interest of its members. The failure by the Scheme to select any DSP, in this case, cannot be used as an excuse to prejudice a member.

[75] The health sector is a regulated industry. There are, for example, rules and regulations that govern tariffs for health services and products. Where a service provider is suspected of having exceeded the limits, they can be reported to the relevant professional body to decide on the alleged transgression.

[76] It follows, therefore, that the Appeal in this matter cannot succeed.

ORDER

[77] Accordingly,

77.1 The ***point in limine*** concerning Mr. Z's appearance, on behalf of the third Respondent, is dismissed.

77.2 The appeal on the merits is dismissed.

77.3 The Appellant is ordered to pay for the prosthesis, prescribed by the specialist, in full.

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Judge Thokozile Masipa

Chairperson of the Appeal Board of the CMS