



## PRESS RELEASE

Reference: SCA confirms schemes to fund PMB's in private hospitals  
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### **Press release 16 of 2015: SCA confirms liability of scheme to fund PMBs in private sector**

The Supreme Court of Appeal (SCA) in Bloemfontein yesterday upheld an appeal by the Council for Medical Schemes (CMS) concerning prescribed minimum benefits (PMBs). The Court per Mr. Justice Leach overturned a judgment of the Western Cape High Court and awarded legal costs to the CMS. The matter concerned the liability of a medical scheme to pay for PMBs obtained from a private hospital as prescribed by the Medical Schemes Act 131 of 1998 (the Act). The contention of the scheme was that in terms of its rules, only services obtained from the state had to be funded under the PMB legislation.

Genesis Medical Scheme disputed its liability to pay for the dependant daughter of one of its members after she was involved in an accident. The daughter had been fitted with three external prostheses to provide stability to assist in the healing process of a severe comminuted compound fracture of her leg, without which her leg would likely have been amputated. The scheme initially paid the medical bills only to reverse them at a later stage.

The dispute was adjudicated by the Registrar of the CMS who ruled in favour of the member. This was followed by the scheme's appeal to the Appeals Committee of the Council and finally to the Appeal Board. Still not satisfied with the outcome the scheme lodged a review application in the Western Cape High Court against the decision of the Appeal Board. At this stage the scheme paid all three prostheses and asked the court to make a finding on its liability to have funded same in terms of the Act and the scheme rules. The High Court agreed with the scheme's view that the registered rules of a medical scheme are binding and form the basis of the contract between the scheme and its member. The Court further held that as the Registrar registers the rules of a scheme he could not force the scheme to pay PMBs in full in terms of the Act, in the absence of him having first issued a directive to the scheme to amend its rules and found in favour of Genesis.

The CMS and the Registrar then appealed to the Supreme Court of Appeal against the finding by the Western Cape High Court. The CMS based its case on the fact that the Act always supersedes the rules of a medical scheme. In addition the scheme refused to appoint designated service providers (DSP) to service its members at an acceptable rate. The Court agreed with the CMS and stated that the scheme's failure to appoint a DSP meant that it could not rely on Regulation 8(2) which allows for co-payments

when a member voluntarily elects not to use a DSP. The Court also found that the previous rules of the scheme misled its members into believing that it indeed had a DSP.

The appeal of the CMS was upheld and the court confirmed that PMBs are required to be funded in both the private and the public sector as provided for in Annexure A to the Regulations.

Mr. Craig Burton-Durham, General Manager of Legal Services of the CMS, stated, “this is a very important victory for the CMS as it confirms our interpretation of PMBs and protects beneficiaries against catastrophic health events in addition to preventing the overburdening of the public health sector”.

*Neutral citation: Council for Medical Schemes v Genesis Medical Scheme (20518/14) [2015] ZASCA 161(16 November 2015)*

Genesis has also lodged a further application in the Western Cape High Court to strike down Regulation 8. The CMS has joined as one of many intervening parties to ensure that this important piece of legislation is upheld.

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