



## PRESS RELEASE

Reference: ConCourt confirms schemes to fund PMBs in private hospitals  
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Date: 26 February 2016

### **Press release 3 of 2016: ConCourt dismisses Genesis application to appeal confirming liability of schemes to fund PMBs in private sector**

The Constitutional Court on 17 February dismissed, without a hearing, the application for leave to appeal by Genesis Medical Scheme against a judgment of the Supreme Court of Appeal, obliging the scheme to pay PMB benefits in full in the private sector. The application was dismissed for lack of prospects of success with costs awarded against Genesis.

According to Mr Daniel Lehutjo, Acting Chief Executive and Registrar of the Council for Medical Schemes (CMS), this now marks the end of the debate on the extent to which medical schemes may in their rules seek to limit payment for treatment of prescribed minimum benefits (PMBs) as envisaged by the regulations under the Medical Schemes Act 131 of 1998 (the Act), for expenses incurred at a public or state institution.

“Medical schemes are obliged to appoint a designated service provider (DSP) to limit their exposure to the cost of funding PMB treatment and cannot in their rules seek to limit their obligation to pay for these benefits outside of this dispensation. The Constitutional Court accordingly endorses the CMS’ stance that a medical scheme may not, in the absence of a duly appointed DSP in its rules, seek to avoid the obligation to pay the costs of treatment for PMBs in full, regardless of whether these services were obtained in a public or private institution,” states Lehutjo.

“This is undoubtedly a momentous judgment in that it settles once and for all the ongoing speculation by medical schemes on limiting PMBs outside of what the Act and Regulations prescribe,” Lehutjo emphasised.

#### **Background of the case**

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 CMS 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 DSPs 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.

*Neutral citation: Council for Medical Schemes v Genesis Medical Scheme (CCT/241/15) (17 February 2016)*

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