

**IN THE APPEAL COMMITTEE OF THE COUNCIL FOR MEDICAL
SCHEMES**

Case Number: CMS 19256

In the matter between:

██████ A

Appellant

and

REGISTRAR FOR MEDICAL SCHEMES

Respondent

RULING

- 1 This matter previously came before the appeals committee on 15 December 2008. As Mr ██████ did not appear and was not represented at that hearing, the committee heard and considered oral representations made on behalf of Medihelp. It also considered written representations made on behalf of Mr ██████

- 2 The appeals committee considered that the question that called for determination was whether or not the appellant's dependant's cancer was "treatable" within the meaning of the rules of Medihelp read together with the

relevant statutory provisions in relation to the PMB definition under code 950D, in turn read together with paragraph (3) of the explanatory note thereto.

3 When the appeal came up for hearing on 15 December 2008, the dependant had already passed away from cancer-related complications. It was this committee's finding that this unfortunate development provided a definitive answer to the enquiry.

4 The scheme had declined an application to fund chemotherapy treatment for the appellant's dependant on the basis that the cancer had already spread from the site of origin of where it had originated. The scheme thus considered that the cancer was not treatable.

5 The registrar took the same view in dismissing the appellant's complaint.

6 The dependant's condition fell under code 950D of the prescribed minimum benefit diagnosis and treatment pairs for which the Medical Schemes Act, 131 of 1998 makes provision. For lung cancer the prescribed treatment is, among other things, chemotherapy. But the code says the cancer must be "treatable" before the patient can become eligible for a funded chemotherapy treatment under the PMB regimen. Treatable cancer is defined in the explanatory notes to the list of PMB conditions thus:

"In general, solid organ malignant tumours (excluding lymphomas) will be regarded as treatable where:

- (i) they involve only the organ of origin, and have not spread to adjacent organs**

- (ii) there is no evidence of distant metastatic spread**
- (iii) they have not, by means of compression, infarction, or other means, brought about irreversible and irreparable damage to the organ within which they originated (for example brain stem compression caused by a cerebral tumour) or another vital organ**
- (iv) or, if points (i) to (iii) do not apply, there is a well demonstrated five year survival rate of greater than 10% for the given therapy for the condition concerned."**

7 On the facts of this case, the dependant's cancer had already spread to the contralateral lung and was therefore not amenable to surgical resection that would normally precede chemotherapy. Furthermore, sub-paragraph (iv) of the definition of treatable cancer applies in that the demonstrated five year survival for the malignancy in question is below 10% for the given therapy. The cancer therefore did not meet the PMB definition of treatable cancer.

8 In the result, the appeal was dismissed.

9 Mr [REDACTED] then contacted the Registrar's office complaining that he expected to be contacted on the day of the hearing but was not. In the circumstances, the matter was again set down for a fresh hearing on 9 March 2009. At that hearing, Mr [REDACTED] was present and assisted by Dr [REDACTED] a Paediatrician. Medihelp was represented by Advocate [REDACTED] who appeared together with Dr [REDACTED]

10 Doctor [REDACTED] submitted that since Medihelp had contracted the South African Oncology Consortium ("the SAOC") as its designated service provider to treat all its cancer patients, it was bound by the SAOC's treatment practices. The SAOC offers a three-tier treatment plan the most

comprehensive of which is offered on the Medihelp Plus benefit option which offers members unlimited benefits for cancer treatments that do not qualify for PMB. Mrs [REDACTED] did not belong to this benefit option. She belonged to the Dimension Prime 2 benefit option which offers only tier 1 treatment which is the most basic treatment and does not cover treatments that do not qualify for PMB. As such, before cancer treatment on the Dimension Prime 2 benefit option can be offered, the cancer must first qualify as a PMB. That means it must be a "treatable cancer" within the meaning of the definition in the explanatory note. In this case, it does not because it had already spread to an adjacent lung. In any event, even Mrs [REDACTED]'s doctor, [REDACTED] said the cancer had "metastasized to the contralateral lung". That places it firmly within the definition of a non-treatable cancer. Doctor [REDACTED] also relied on treatment practices in the United States and had apparently also communicated with academic Oncologists at the University of Cape Town. In making a case for treatment Dr [REDACTED] cited Explanatory Note 2 of the Regulations, viz:

"the interpretation of the Prescribed Minimum Benefits should follow the predominant Public Hospital practice, as outlined in the relevant provincial or national public hospital clinical protocols, where these exist."

- 11 However Dr [REDACTED] failed to take into account the remainder of the Explanatory Note that states:

"The following interventions shall however be excluded from the generic medical/surgical management categories unless otherwise specified: (i) Tumour chemotherapy."

- 12 He also failed to provide Medihelp, the Registrar or the committee with written confirmation of the Cape Town protocol/s in support of his contention that prevailing public sector treatment would include chemotherapy

notwithstanding the advanced stage of Mrs [REDACTED]'s cancer. As such his evidence should be regarded as hearsay.

13 But this must be done with caution because there are specific legislative provisions in South Africa which may not be consonant with routine treatment plans for cancer in the United States. Doctor [REDACTED] did not go into detail as regards the American treatment plans and so it is difficult for the committee to make any meaningful comparisons. But whatever the outcome of such comparison, Mrs [REDACTED]'s benefit option, the rules of the scheme in relation to members belonging to that benefit option, and the legislation must all hold sway unless there is some valid constitutional challenge. That is not the case here.

14 In the circumstances, the appeal cannot succeed.


VUYANI NGALWANA for Appeal Committee

For the Appellant:

For the Respondent:

For Medihelp:

Date of hearing:

Date of Ruling:

[REDACTED]
Mr L Pautz

[REDACTED]
09 March 2009

[REDACTED]
21 April 2009