

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

In the matter between:

ALIMAG PHARMACY

Appellant

and

REGISTRAR FOR MEDICAL SCHEMES

Respondent

RULING

- [1] Mr M is the owner of the Alimag group of pharmacies comprising four pharmacies that operate within the Tshwane Municipal area. The four constituent pharmacies under the Alimag umbrella are Black Rock, Ghost-Med, Kopano and Tshwane Pharmacies. They operate independently of one another. The Alimag Pharmacy group is the Appellant in these proceedings.
- [2] Allcare Administrators (Pty) Ltd (“Allcare”) is a registered administrator of medical schemes. According to M in his written submissions, Hosmed Medical Aid Scheme (“Hosmed”) is one of the medical schemes it administers. This is not disputed either by the Registrar or by Allcare which is represented in these proceedings. While this appeal is lodged against the administrator, it

is clear both from written submissions and oral submissions made at the hearing that Hosmed is the scheme that is withholding payment to the Appellant for services rendered by it to the scheme's members. It is also common cause that no payment has been made by the scheme or the administrator to members either.

- [3] The undisputed relevant facts, in brief, are that during May 2007 Allcare advised the Appellant that direct payments to its constituent pharmacies had been suspended owing to allegations of irregular or fraudulent claims. So, the Appellant started submitting its claims manually. Allcare further, acting as Hosmed's agent, required that the Appellant submit all scripts relating to certain named members for an audit of the claims that had been submitted by the Appellant. The scripts were submitted in August 2007. By end September 2007 no audit report had been prepared as regards the propriety or otherwise of the claims investigated. Instead, Allcare demanded that the Appellant agree to a financial settlement of the fraudulent allegations. The Appellant refused, pointing out that no irregularity or fraud had been proven in respect of the claims it had submitted to Allcare for payment. Since then, Allcare has paid neither the Appellant nor the members for services rendered by the Appellant.
- [4] On 4 October 2007 the Appellant lodged a complaint against Allcare with the Registrar's office, which was later supplemented by a similar complaint dated 26 October 2007 "against medical schemes and schemes administrators". In its complaint, as supplemented, the Appellant sought payment of "an estimated

amount of R470, 000,00” and clarification of the proper workings of section 59(2) of the MSA.

- [5] In its response Allcare raised three technical points and did not deal with the merits of the Appellant’s complaint. The first was akin to a mis-joinder point and it was this. Allcare is an administrator and cannot make payments to the Appellant against the express wishes of its principal. By implication, Allcare was saying the relief sought in the complaint was against the wrong party. It should rather have been sought against the scheme concerned. Its second argument was that the amount claimed by the Appellant was “extremely vague” in that what was claimed was “an estimated amount of R470 000.00”. The third was related to the first and it was that section 59(2) of the Medical Schemes Act, 131 of 1998 (“the MSA”), which gives a discretion for payment to be made either to the member or the service provider, refers clearly to the medical scheme and not the administrator. In other words, it is the scheme that has such discretion and not the administrator.
- [6] The Registrar’s office found that, by reason of the provisions of section 59(2) of the MSA, it would have no jurisdiction to determine differently from what the schemes had themselves determined (namely, to pay members directly) and compel schemes to pay providers directly at all times. It determined that certain “*legal processes and actions*” had first to be addressed before the merits of the complaint were dealt with. We disagree.

[7] First, Mr Kolver, who appeared for the Registrar, expressly disavowed any *in limine* points of the sort raised by Allcare in its response to the complaint. That means the issues pertaining to an uncertain amount and the relief being sought against the wrong party need not detain us. In any event, the Appellant quantified its claim at the hearing as being R684 650.52. Neither Mr Kolver nor Allcare's representative objected to this. What is more, the supplementary complaint of 26 October 2007 was clearly lodged against both Allcare and the medical schemes concerned. By extension, there is nothing in the appeal letter to suggest that the relief sought in the appeal is sought only against Allcare.

[8] Second, there is nothing in section 59(2) to suggest that payment for services already rendered by a service provider, and in respect of which accounts have already been submitted for payment to Allcare as agent of the scheme, is nonetheless to be made directly to the member.

[9] Third, it is unconscionable that the scheme (or its agent acting on the scheme's instructions) should withhold payment indefinitely on allegations of fraud which it has been unable to prove. A year has now passed (since May 2007) and the Appellant has still not received payment for services it has rendered in good faith to Hosmed's members. The provisions of section 59(2) are not even triggered because it has emerged that no payment of the claims in issue has been made directly to members either. Now Allcare tells us the money is sitting in an attorney's trust account pending the outcome of criminal investigations by the police's commercial crimes unit. Yet the Appellant has not even been contacted by the police for questioning in this regard some six

months after the matter was allegedly referred to them in November 2007 for a criminal investigation.

[10] Fourth, in any event, the onus is on the scheme to prove the fraud and the amount by which it alleges to have been defrauded and pay the balance to the service provider while it conducts its investigations. That has not been done. Instead, the Appellant is being prejudiced by unsubstantiated allegations of fraud and irregularity that border dangerously closely on defamation. Such conduct which may well put the Appellant out of business cannot be allowed to continue.

[11] Fifth, the procedure to be followed in circumstances where the scheme questions the validity of a claim is clearly set out in regulation 6 of the MSA. The Appellant has done what was required of it to enable the scheme and Allcare to investigate the claims submitted for payment. No fraud or irregularity has been unearthed in over a year. It now falls on the scheme to pay up.

[12] The Appellant has requested interest at 21% per annum to be levied on the ground that this is the rate the bank is charging the Appellant on overdraft. No evidence of this was advanced for this, however.

[13] In the result, Hosmed, and Allcare as its agent, are jointly and severally (the one paying, the other to be absolved) ordered forthwith to pay to the Appellant directly all amounts owing to it for services rendered – and in any event no

less than R684, 650.22 – together with interest thereon calculated at 15,5% per annum reckoned from 1 June 2007 until date of final payment.

V NGALWANA for the appeal committee

Date of Hearing: 08 May 2008
Date of Ruling: 19 May 2008