

**THE MEDICAL SCHEMES APPEAL BOARD ESTABLISHED IN TERMS OF
SECTION 50 OF THE MEDICAL SCHEMES ACT 131 OF 1998**

In the matter between:

SAMWUMED MEDICAL SCHEME

Appellant

and

DR PUTERMAN

Respondent

DECISION OF THE APPEAL BOARD

1. On 15 May 2008, a majority of a committee of the Council for Medical Schemes dismissed an appeal against a ruling made by the Registrar of Medical Schemes that the Appellant was obliged to pay the full amount of the Respondent's fees in respect of certain medical services rendered by him to the baby of a member of the Appellant's Medical Scheme. The Appellant now appeals against such decision.
2. Mrs J, a member of the Appellant, gave birth to a baby at Kingsbury Hospital which hospital was a designated service provider ("DSP") of the Appellant. The baby was suffering from respiratory distress and was admitted to a neonatal high care unit for treatment where the Respondent was the attending paediatrician who accordingly treated the baby. He was not a DSP of the Appellant and there was no DSP paediatrician of the Appellant's at the hospital.
3. It was not disputed that Mrs J obtained pre-approval from the Appellant for admission at Kingsbury Hospital. It was, also, not disputed that Mrs J involuntarily obtained the services of a service provider other than a DSP on the basis of the grounds set out

in Regulation 8(3) of the Regulation made in terms of the Medical Schemes Act 131 of 1998 (“the Regulations”).

- 4 The issue in this matter is whether the Appellant is obliged to pay the Respondent’s fees in full or whether it is only obliged to pay him in accordance with its prescribed tariff in terms of its Rules which was equivalent to the National Health Preference Price List for 2006 plus 5%.
- 5 The fees charged by the Respondent were his usual fees and it was not suggested that these fees were unreasonable or unprofessional or that there was any legitimate reason why Mrs J was not obliged to pay such fees.
- 6 It was common cause that the baby’s condition was an emergency medical condition that formed part of the categories (diagnosis and treatment pairs) constituting the Prescribed Minimum Benefits under Section 29(9) (o) of the Medical Schemes Act.
- 7 Regulation 8(1) reads:

“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”.
- 8 Regulation 8(2) allows a scheme to impose a co-payment or deductible if the member makes use of a service provider other than a DSP. The reason for this is that Medical Schemes usually have contracts with DSP’s who agree to charge certain specified fees in respect of services provided by them. The Regulation, however, has the following proviso:

“No co-payment or deductible is payable by a member if the service was involuntarily obtained from a provider other than a designated service provider”.

- 9 No contractual or statutory relationship existed between the Appellant and the Respondent and accordingly no basis existed entitling the Appellant to prescribe what fees the Respondent was entitled to charge his patients.
- 10 Between the Respondent and his patients, the normal common law position would apply, namely in the absence of an agreement to the contrary the Respondent would be entitled to charge his usual and normal fees provided such fees were not unreasonable or unprofessional. If a party considers a health provider's fees to be unprofessional such party can lay a complaint with the Health Professions Council of South Africa a statutory body created to, *inter alia*, deal with such matters.
- 11 Regulation 8(1) clearly and unambiguously states that a Medical Scheme must pay in full the costs of the treatment of the prescribed minimum benefit conditions. The word "cost" is given the following meaning in the shorter Oxford English Dictionary (third edition) – "that which must be given in order to acquire, produce or effect something; the price paid for a thing."
- The cost of treatment therefore means the amount which the member has to lawfully or legitimately pay to acquire the necessary medical treatment.
- 12 If the Medical Scheme was only obliged to pay the service provider, its prescribed tariff in terms of its Rules, the patient would be liable to pay the excess to the service provider and would, contrary to the proviso to Regulation 8(2)(b), be making a co-payment.
- 13 It was submitted that to give Regulation 8(1) its clear meaning would result in an absurdity and would be contrary to the intention of the Legislature in that it would give Medical Practitioners a "blank cheque" when they treated patients for a prescribed minimum benefit condition. This contention is without substance in that, as has been pointed out above, there are clear limitations on the fees which a health service provider can lawfully charge his patients. However if the regulation would only entitle the Medical Practitioners' to charge the tariff imposed by a Medical Scheme, it would

create serious anomalies and difficulties. Without being exhaustive, a few examples are given below:

- 13.1 different fee structures would apply depending upon which scheme or plan the patient belonged to;
 - 13.2 the doctor would have to charge a fee based on a of tariff which he might have no knowledge;
 - 13.3 a service provider might not be prepared to render services at the prescribed tariff and the patient would not be able to be treated for a prescribed minimum benefit condition even though it was the intention of the Legislature that every scheme pay in full for the treatment of such a condition;
 - 13.4 Medical Schemes could impose tariffs on persons with whom they have no contract and who are not DSP's.
- 14 For the foregoing reasons we are satisfied that the decision of the majority of the committee of the Council for Medical Schemes was correct.
- 15 We accordingly make the following order.

The appeal is dismissed .

SIGNED this 11th day of ...November.....2008

L I GOLDBLATT
CHAIRMAN

for **DR S M PILLAY**
MEMBER OF THE BOARD

**for D TERBLANCHE
MEMBER OF THE BOARD**