

## APPEAL COMMITTEE OF THE COUNCIL FOR MEDICAL SCHEMES

In the matter between:

**FEDHEALTH MEDICAL SCHEME**

Appellant

and

**REGISTRAR FOR MEDICAL SCHEMES**

First Respondent

**V**

Second Respondent

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### RULING

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- 1 This is an appeal against a decision of the office of the registrar in which it found that the scheme had erred in refusing to fund Clexane for the treatment of a PMB condition and that it should refund the second respondent for expenses incurred in procuring the Clexane.
- 2 It is common cause that the scheme and second respondent agreed to jointly cover the costs of Clexane. However, the first respondent (Registrar) in his ruling instructed the scheme to fully fund the drug as the condition was a PMB. In its initial response the scheme challenged the latter finding of the Registrar and appealed the ruling on that basis, but at the hearing withdrew the challenge

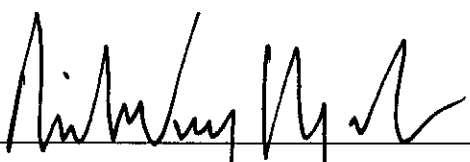
and was prepared to accept the condition as a PMB. While the scheme initially said that the treatment was for prevention of a pulmonary embolus (which in their opinion was not a PMB), it now accepts that the treatment was in fact for a pulmonary embolus or, at the very least, a requirement for anticoagulation throughout pregnancy.

- 3 This change in argument also has the effect of changing the nature of the agreement between the scheme and the member. While the ex gratia award that was originally offered by the scheme was premised on its position that the treatment was not a covered benefit, this changed to the scheme having to examine what the fully-fundable prescribed minimum benefit would be for anticoagulation during pregnancy. As such, the Essential Drug List that is applied in the public sector was used to guide and fund the treatment.
  
- 4 In terms of the List the prescribed treatment consists of heparin during the first trimester and last month of pregnancy, and warfarin for the intervening period. Clexane is a low-molecular-weight heparin, and while there is a lower-cost product available (Fragmin), the scheme nevertheless agreed to pay for the Clexane up to the previously-negotiated amount of R10 100. The scheme pointed out that this in fact covered 55% of the cost of the drug which is more than the 44% of the cost (4 of 9 months) that would be required under the PMB regulations, leaving the member to fund the balance of the drug (which was in the event prescribed and administered throughout the pregnancy).

- 5 While the member did not appear to object to this arrangement there was nevertheless unhappiness at the manner in which the scheme appears to have explained its calculations, leaving the member with a sense that the scheme had not fulfilled its side of the agreement. While the scheme referred to a revised document that in its opinion provided all the necessary detail, this document was not presented to the Committee or the member. However, it would appear that some of the confusion arises out of the terminology used. For example, the scheme refers to “refunding” the member whereas it in certain instances did not actually refund cash but restored benefits to the same value.
- 6 Another point that was raised on behalf of the member during the hearing was that it was necessary for the member to remain on Clexane throughout the pregnancy because of adverse reactions to warfarin in the past. The scheme volunteered at the hearing that had it known about such reactions its approach might have been different, implying that additional funding for Clexane might have been considered. Under these circumstances Regulation 15H(c) would have to be considered.
- 7 The regulation provides as follows:
- “If managed health care entails the use of a protocol—**
- (a) ...**
  - (b) ...**
  - (c) provision must be made for appropriate exceptions where a protocol has been ineffective or causes or would cause harm to a beneficiary, without penalty to that beneficiary”**
- 8 Warfarin had been tried by the second respondent for 8 months. It caused severe fatigue, severe nausea and severe low blood pressure (she fainted a lot).

She was then taken off that drug and put on dispirin. Clexane was then prescribed. The scheme did not dispute this submission and in these circumstances, regulation 15H(c) clearly prescribes exceptional consideration of the funding of Clexane without penalty to the second respondent.

9 In the result, the appeal cannot succeed.



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VUYANI NGALWANA for Appeal Committee

*For the Appellant: Messrs Caldis, Doms and Lategan*

*For the 2nd respondent: Mr S*

*Date of hearing: 29 June 2010*

*Date of Ruling: 26 July 2010*