

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

In the matter between:

**D [REDACTED]**

Appellant

and

**REGISTRAR OF MEDICAL SCHEMES**

First Respondent

**GEN-HEALTH MEDICAL SCHEME**

Second Respondent

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**RULING**

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- 1 This is an appeal<sup>1</sup> against a decision of the office of the registrar in which it found that the scheme had correctly applied a condition-specific (hypertension and related conditions) waiting period in relation to a Mr A [REDACTED]. The appellant acts for Mr [REDACTED]. He is a paramedic and the member's son-in-law.
  
- 2 The appellant seeks compensation for part of the hospital cost as he contends that the condition which Mr [REDACTED] developed while in hospital (pneumonia) did not form part of the condition-specific 12 month exclusion.

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<sup>1</sup> The appeal hearing was chaired by Adv Gumede. For purposes of preparing the ruling I read the documents and listened to the audio recording of the appeal hearing.

The scheme rejected this claim on the basis that it considered the hospital to have manipulated the ICD codes with a view to affecting the claim. But when pressed on the issue at the hearing Dr Kruger could not substantiate this accusation, contending himself with the refrain, "It's a possibility".

3 Dr Kruger accepted that where pneumonia was part of the condition that developed during Mr ██████████ stay at hospital, then the scheme would pay because pneumonia is a PMB condition. However, he says the scheme is at a disadvantage because it has been unable thus far to confirm the existence of pneumonia. Apparently certain hospital records in that regard have been inadvertently destroyed. It is not clear how that came about.

4 If pneumonia is confirmed, then the scheme expressed its willingness to pay for treatment of pneumonia as an out-patient which would not be more than R2500. The appellant rejected the offer and proposed a settlement offer of R50 000 out of the total costs of over R116 000.

5 The onus is on the appellant to show that Mr ██████████ developed pneumonia during his stay at hospital. The scheme has indicated that it would be willing to pay for the treatment of pneumonia. This was not a condition to which the condition-specific exclusion of 12 months applies.

6 It is our view that since the pneumonia, if proven, would have developed while in hospital, treatment thereof as an out-patient would be an inappropriate standard. Thus, the scheme's point of departure as regards the extent to which

it would be prepared to pay for the treatment of pneumonia is in our view a non-starter.

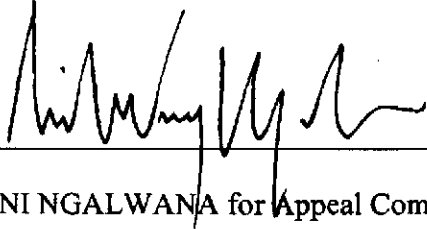
7 But the appellant has to show the development of pneumonia. Mr L [REDACTED] submitted at the hearing that it is implausible that all the medical costs would have related to the treatment of hypertension. He pointed, for example, to the cost of the isolation of Mr [REDACTED] saying hypertension is not a contagious condition and so his isolation would not have been related to the treatment of hypertension.

8 On the evidence before us, including the hospitals ICD codes, it is clear that Mr [REDACTED] was not admitted only for hypertension. There is also evidence of other conditions such as acute respiratory failure which is usually manifestation of pneumonia, presence of fungus in the lungs which also tends to manifest the presence of pneumonia, and the admission of the patient to an isolation ward which is consistent with the presence of pneumonia rather than hypertension.

9 The treating physician suspected pneumonia and requested an X-ray. The radiologist advised the treating doctor of the possibility of pneumonia and asked for clinical correlation. The physician specialist was of the opinion that factors such as oxygen dependence and positive sputum cultures provided that correlation and he prescribed potent antibiotics and antifungal agents, and isolated the patient. It is not for the scheme to challenge the medical assessment and management of a member unless it has

specific evidence. No such evidence was provided and there are no grounds for rejection on the basis of issues such as the member's history of asthma. There was in any event scant evidence of asthma. In fact even if there was an element of asthma it is not uncommon for hospitalised asthmatics to develop pneumonia which, as a PMB, must be covered even if the asthma has a waiting period.

- 10 In the circumstances, we are satisfied that on the evidence before us Mr [REDACTED] was treated for more than just hypertension which is the condition to which the 12 month condition-specific exclusion applies. The difficulty is quantifying that part of the cost of the treatment which would relate to conditions other than hypertension (and related conditions). But there is authority for the proposition that difficulty posed by a set of circumstances should not drive a court to inaction.
- 11 It seems to us fair and reasonable that the scheme pays a substantial portion of the treatment costs because on the evidence before us, it is quite clear that a substantial portion of the treatment costs relate to conditions other than that to which the exclusion applies. But since the appellant has sought payment of R50 000 of the total account, we can think of no compelling reason to direct payment of more than that for which he asked.
- 12 In the result, the scheme is directed to pay R50 000 of the total account.



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VUYANI NGALWANA for Appeal Committee

*For the Appellant:*

**[REDACTED]**

*For the 2<sup>nd</sup> respondent:*

*Dr Kruger; Dr Marong, Dr V Memela*

*Date of hearing:*

*11 February 2010*

*Date of Ruling:*

*17 June 2010*