

THE COUNCIL FOR MEDICAL SCHEMES

APPEAL COMMITTEE

In the matter between:

DISCOVERY HEALTH

Appellant

and

JG

Respondent

APPEAL RULING

1. In terms of the structure of the Appellant's operations the Appellant will only pay for certain benefits on behalf of its members once a general threshold of expenditure has been reached within a particular year.
2. Prior to reaching that threshold members are required to pay for the relevant benefits from funds available in their medical savings account.
3. If these funds are exhausted before the requisite threshold has been met, and further payment for benefits are required, members are expected to self-fund the payment for such benefits.
4. The Appellant keeps a cumulative total of the amount spent by the members each year, regardless of whether that amount is expended from the medical savings account or is self funded by the member. It uses this total to ascertain

when the threshold is reached, and when that occurs the Appellant funds further expenditure on benefits from its risk pool.

5. The Respondent's dissatisfaction arises from the fact that where a limit is set by the Appellant for a particular type of benefit, and that limit is reached by the member through expenses paid from his or her savings account or through expenses which are self-funded, the scheme will not pay any contribution towards such benefit even after the threshold has been reached, on the basis that the annual limit for that benefit has been exhausted.
6. The Respondent's complaint is that the scheme is, in effect, not making the promised benefit available, and that the amounts expended at the expense of the member from the savings account or self funded, whilst calculated for the purpose of determining when the threshold is met, should not be deducted from the available annual limit for a specific benefit.
7. There is much cogency in the Respondent's submissions. For the Appellant to offer a benefit in respect of a particular category of expenses, but then to decline to pay for those expenses on the basis that the limit applicable has been exceeded during the period that the member has self funded expenses, is tantamount to offering no such benefit at all.
8. It is also clear that the Appellant's literature makes it extremely difficult for a member to understand precisely how the Respondent's system works.

9. This notwithstanding, the arrangement and obligations described above fall within the Respondent's rules, and these rules have been registered under the Act. The rules contain the terms of the contract applicable between the Appellant and its members, including the Respondent. There is nothing about this arrangement that offends the provisions of the Act, and the rules cannot therefore be said to be *ultra vires* the Act.

10. The fact that the rules may operate harshly against the Appellant's members is not a basis for this Committee to hold that they cannot be implemented. The result of the foregoing is that the appeal is upheld and the ruling of the Registrar favouring the Respondent is reversed.

DATED at JOHANNESBURG this 30th day of MAY 2007

P R JAMMY
Member
For: Appeal Committee