

**THE COUNCIL FOR MEDICAL SCHEMES
APPEAL COMMITTEE**

In the matter between:

DISCOVERY HEALTH MEDICAL SCHEME

Appellant

and

A M

Respondent

APPEAL RULING

1. The Respondent is the proprietor of four pharmacies.
2. The Appellant has taken a decision not to make payments directly to these pharmacies, but instead to reimburse its members (for those expenses for which they are covered by the Appellant's scheme) incurred at these pharmacies, by way of payments directly to the members in question.
3. The Appellant's decision has its origin in reports that came to the Appellant's attention to the effect that fraudulent activity was taking place at least at one of the Respondent's pharmacies. In response to these reports a 'test' transaction was conducted at the X pharmacy. During this

test Mr Y, a pharmacist employed by the Respondent, dispensed items not covered by the Respondent, but submitted claims that bore no relation to the items dispensed, but were for items that would have been covered.

4. The Appellant lodged a complaint with the Pharmacy Council, who found Mr Y, who at that stage was no longer employed by the Respondent, to be guilty of the charge. No guilty finding was made against the Respondent himself.
5. On the strength of this incident the Appellant took a decision not to make direct payments to the Respondent's pharmacies until such time that it was satisfied that the billing practices at all of these pharmacies were entirely regular and legitimate.
6. The Appellant's evidence before the appeal committee was that it is not yet satisfied with the standard of billing from these pharmacies, and that furthermore it appears from further information received from another medical scheme that fraudulent practices of the type referred to above are still continuing at least at one of the four pharmacies in question.
7. On the basis of this new information the Appellant contends that the exercise of its discretion to pay its members directly rather than to pay the service providers on their account is reasonable.

8. Section 59(2) of the Medical Schemes Act states as follows:

“A medical scheme shall, in the case where an account has been rendered, subject to the provision of this act and the rules of the medical scheme concerned, pay to a member of a supplier of service, any benefit owing to that member of supplier of service within thirty days after the day on which the claim in respect of such benefit was received by the medical scheme.”

9. On behalf of the scheme Mr Krawitz submitted to the appeal committee that the scheme’s discretion in this regard is absolute. That the scheme has this discretion, and is entitled to make the choice as to who to pay, has been confirmed by the Supreme Court of Appeal in the matter of **Medscheme Holdings (Pty) Ltd and Another v Bhamjee 2005 (5) SA 339 (SCA)**.
10. On behalf of the Respondent Mr Vermaak submitted that the discretion must be exercised reasonably, and cannot be exercised in a discriminatory manner.
11. Whilst it may be true that to exercise the discretion contained in section 59 in a discriminatory manner would offend the provisions of the Act, there is no internal limitation contained in section 59 that determines how the discretion is to be exercised, and the importation into the section of a requirement of reasonableness is therefore not justified.
12. In any event, on the evidence before the appeal committee it cannot be said that the Appellant has exercised its discretion in a manner that is

either unreasonable or discriminatory. The Appellant has grounds for its belief that there are irregularities in the billing practices of at least one of the Respondent's pharmacies. That belief, and the evidence upon which it is based, are sufficient to justify the Appellant's decision to elect to pay for amounts expended at the Respondent's pharmacies directly to its members.

13. Such a decision, however, could only properly apply to payments in respect of transactions concluded on a date after the decision was taken. To the extent that there may have been outstanding transactions that predated that decision, the Appellant would be required to reimburse the pharmacies in question directly for those claims.

14. In the circumstances, there was no basis for the original complaint lodged by the Respondent and the appeal must, consequently, succeed, save that the Appellant must make good any payments as described in paragraph 13 above.

DATED AT JOHANNESBURG THIS DAY OF MARCH 2007

P R JAMMY
FOR: APPEAL COMMITTEE