

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

**Case Number: CMS 15815**

In the matter between:

**HOSMED MEDICAL AID SCHEME**

Appellant

and

**RJ**

Respondent

---

**RULING**

---

- [1] The determination of this appeal turns on a proper interpretation of the provisions of the Appellant's ("the scheme") 2007 Benefits and Rates Brochure. The scheme says section 4.01 thereof under "Optical Benefits" is "confusing" to members. The section provides that the scheme covers "100% of cost" for spectacle

lenses obtained by a member from a service provider who is part of the scheme's preferred provider network. It also provides that there is "[n]o limit for clear or (up to 35%) tinted single vision, aquity flat top bifocal or multifocal spectacle lenses".

- [2] The scheme's representative, Mr Mthombeni, agreed that the determination of this appeal turns on a proper construction of section 4.01 of the scheme's brochure. He submitted that the proper meaning of the section was explained to the service provider telephonically before the Respondent ("the member") obtained prescription lenses from him. A half-page recordal of the alleged telephone conversation was handed in at the hearing. The member was not present at the hearing and was not represented. In my discretion, I admitted the recordal into evidence. From it, it appears that the enquiry was the extent of cover for spectacles. One Reline replied as follows:

"Consultation R325.00, Frame R630.00, Single Lens R100.00, Bio focal R200.00 and Multi focal R360.00"

- [3] But section 4.01 makes no provision for these quotes. Instead, some of these (Single Lens R100.00; Bio focal R200.00 and Multi focal R360 per lens) appear under section 4.02 in relation to

spectacle lenses obtained from a service provider who is not part of the scheme's preferred provider network. The quote for consultation at R325.00 also applies in respect of service providers falling outside the scheme's preferred provider network. This is provided for under section 4.06. Consultation with service providers within the preferred provider network is covered in full under section 4.05. Frames are covered at "100% of cost" at R630 per member whether a preferred provider network service provider is used or not.

- [4] The basis for the scheme's response to the member's complaint was that the member had procured his spectacles from a non-preferred provider network service provider and that was why he had to bear the extra cost of his spectacles. After the ruling of the Registrar in which it was identified that the service provider in question is in fact part of the scheme's preferred provider network, the scheme sought to change its tune and claim that the member obtained "transitions" which carry more than the 35% tint limit covered by section 4.01 and are therefore excluded.
- [5] This does not advance the scheme's cause because regulation 15E to the Act in any event provides that where the scheme has entered

into an arrangement with a service provider and the latter fails to render a service to the member in terms of that arrangement, then the scheme will not be absolved from its responsibility towards the member. Thus, even assuming that the quotes given to the member's service provider were correct (which, as I have shown is not the case), and the provider nevertheless proceeded to provide a service to the member that falls outside what the scheme covers and at a cost that exceeds the scheme's limit, the scheme is still liable to cover the cost and, presumably, take the issue up afterwards with the service provider for not explaining to the member the implications of these exclusions, and/or the preferred provider network for its failure to explain to its constituent service providers the requirements of its contract with the scheme.

[6] In the result, the appeal cannot succeed.

---

VUYANI NGALWANA for Appeal Committee

*For the Appellant:*            *Mr Mthombeni*

*For the Respondent:*        *No appearance*

*Date of hearing:*            *06 December 2007*

*Date of Ruling:*             *14 December 2007*