

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

In the matter between:

**SELFMED MEDICAL SCHEME**

Appellant

and

**CK**

Respondent

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**APPEAL RULING**

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1. The Respondent is a medical practitioner who acts in this dispute on behalf of his patient, Mr F. Mr F suffers from Crohn's disease, which is a prescribed minimum benefit chronic disease.
  
2. The Respondent has prescribed treatment using a drug known as Revellex, following the failure of other more conventional corticosteroidal treatment regimes.

3. Mr F had been treated with Revellex in 2002 and 2003, during which period the Appellant had approved, and paid for, this treatment.
4. Following a relapse in April 2007 Mr F again applied to the Respondent for the funding of treatment with Revellex which was approved by the Respondent but subject to the R15 000.00 limit for chronic medication applicable to Mr F's benefit option. The annual cost of treatment with Revellex is R118 091.00 per year.
5. The Appellant contends that it is not obliged to fund the full cost of treatment with Revellex either in terms of its own rules or in terms of the provisions of the Medical Schemes Act. It acknowledges that Crohn's disease is a PMB CDL, but it contends that the therapeutic algorithm which prescribes the benefits which a scheme is obliged to provide in respect of this condition does not oblige the scheme to fund the cost of Revellex.

6. The therapeutic algorithm in question provides, in the case of an active occurrence of Crohn's disease, and in circumstances where the disease is, as in Mr F's case, severe, for treatment with corticosteroids, with or without antibiotics. Where this is unsuccessful the theoretical algorithm simply requires a "review".
7. The Respondent contends that the obligation to review the treatment of a patient using corticosteroids where such treatment has failed does not oblige a scheme to take any further steps consequent upon such a review.
8. On behalf of the Registrar, Professor Jan van der Merwe has contended for a different interpretation (and one which is supported by CK) to the effect that the requirement of "review" is meaningless unless it contains an implied requirement that an appropriate alternative treatment be identified and implemented. Professor van der Merwe and Mr Fagan, on behalf of the Registrar and the scheme respectively, have both relied on dictionary definitions which they say support their interpretation.
9. As an alternative to this submission, Mr Fagan argued that even if the term "review" is to be interpreted to provide an obligation

on a scheme to provide further treatment, this could not have the effect of obliging the scheme to provide any possible treatment that may be available anywhere in the world. The further obligations on the scheme in these circumstances must, according to Mr Fagan, be restricted to what is considered to be reasonable.

10. In these circumstances, according to Mr Fagan, the determination of what is reasonable requires an assessment of the medical efficacy, affordability, and cost-effectiveness, of the treatment in question.
11. The Appeal Committee accepts Professor van der Merwe's contention with regard to the meaning of the word review. There could be no possible benefit to, or rationale for, the inclusion of a review requirement in the therapeutic algorithm following the failure of the prescribed treatment method, if no obligation were to flow from such a review process. Conducting such a review would be a futile exercise and a waste of time and money.
12. Whilst the Appeal Committee readily concedes that the therapeutic algorithm is in urgent need of redrafting in a manner

that makes the obligations of the schemes more clear, the committee cannot conclude that there are no obligations on a scheme once a review has been completed.

13. The failure to define the specific treatment regime that should follow the review in question could simply reflect a recognition of the ongoing development of medical science, and of the fact that new treatments are being developed every day.
  
14. The Appeal Committee however, accepts that the obligation on a scheme following the conclusion of a review in terms of the therapeutic algorithm cannot be unlimited. The Committee accepts that a reasonableness test must be applied in order to determine whether a scheme is obliged to provide a particular treatment. In the current dispute, the question of medical efficacy of the proposed treatment is not an issue. Firstly, Mr F had been treated in the past with Revellex, and the treatment has been proved to be effective. Secondly, in these instances the Respondent had approved the treatment without questioning its medical effectiveness. And lastly, no suggestion was made during argument on behalf of the scheme that the treatment would be ineffective in the current circumstances.

15. With regard to cost-effectiveness and affordability, Mr Fagan conceded, correctly, that this question cannot be subjectively answered with reference to the particular financial circumstances of the scheme in question. In other words, one could not reach a conclusion that it was reasonable to require one scheme to fund the cost of Revellex, but not another. In any event, even if one were to look at the circumstances of the particular scheme, it would have been a relatively simple exercise for the Respondent to estimate the potential cost of providing Revellex to its members suffering from Crohn's disease, but no such exercise appears to have been undertaken. The Respondent's submissions about affordability are thus made in a vacuum.
16. Mr Fagan did not contest the submission that Revellex is currently being funded by other medical schemes. To be fair, however, this was not a submission on which the scheme had been asked to prepare. Nevertheless, in the years 2002 and 2003 the Appellant itself had funded the use of Revellex by Mr F without requiring any co-payment from him.

17. During that period the Appellant must have been of the view that the funding of treatment of Revellex was both affordable and cost effective.
18. In the intervening period, the Appellant had changed its benefit structure. This had the effect that a R15000.00 annual limit was placed on chronic medication. The motivation for that change must, it would seem, have been based on the Appellant's particular financial circumstances. Those circumstances, Mr Fagan has told us, should not determine whether treatment with Revellex is generally considered to be cost-effective and affordable. In any event, the Committee notes that this co-payment would appear only to be applicable where treatment is obtained from a non-designated service provider, which is not the case in this dispute.
19. The Respondent did not advance an argument to the effect that Revellex was cost-effective when it was first used by Mr F and funded by the Respondent, but is no longer cost-effective today.

20. Applying Mr Fagan's requirement of reasonableness to the determination of whether a scheme would be obliged to fund the use of Revellex in the treatment of Crohn's disease by application of the therapeutic algorithm, the conclusion reached by the Appeal Committee is that the scheme can reasonably be required to do so.
  
21. In the circumstances the Appeal Committee is satisfied that the wording of the therapeutic algorithm requires a medical scheme to take appropriate action after the treating practitioners have reviewed a failure of the treatment of Crohn's disease with corticosteroids. Thereafter a scheme is obliged to provide further treatment, providing such treatment is reasonable, having regard to medical efficacy, affordability and cost-effectiveness. This does not mean that Revellex is required to be part of the protocol, formulary or restricted list of drugs used by a scheme as its standard treatment, as envisaged in Regulations 15H and 15I, but rather that it should be available as an exception or substitution should treatment in terms of the protocol, formulary or drug list fail.

22. The committee is satisfied that the treatment of Crohn's disease using Revellex is medically efficient, affordable and cost-effective to medical schemes as a whole, and in the circumstances the Appellant should be compelled to provide this treatment.
23. To the extent that the member has been obliged to self-fund treatment with Revellex in the past, the scheme is ordered to reimburse the member for such expenses, and the scheme is further ordered to pay the costs of treatment with Mr F's condition with Revellex prospectively from the date of this ruling .

DATED at JOHANNESBURG on the 13<sup>th</sup> day of MARCH 2008

**P R JAMMY**

For: Appeal Committee