

APPEAL COMMITTEE OF THE COUNCIL FOR MEDICAL SCHEMES

In the matter between:

V

[REDACTED]

Appellant

and

REGISTRAR OF MEDICAL SCHEMES

First Respondent

FEDHEALTH

Second Respondent

RULING

- 1 This is an appeal against the ruling of the Registrar that the treatment sought by the appellant is excluded in terms of the rules of the fund.

- 2 But this appeal concerns non-disclosure of a pre-existing condition, and not whether or not the procedure in question is excluded by the rules. The exclusion issue was introduced by the Registrar and was never argued by the scheme.

3 On the non-disclosure issue, then, Mr R argues that the application form does not offer enough space for the applicant to give sufficient information of his medical history. For this he relied on the judgment of Van Zyl J in **McCann v Goodall Group Operations (Pty) Ltd 1995 (2) SA 718 (C)**. The argument is unpersuasive because the member could just as easily have provided an addendum if he had more medical information to provide than the application form provides space for.

4 Section 5 of the scheme's application form enquires whether the applicant

“or any of your dependants [has] sought any advice, been diagnosed with or been treated for any conditions in the last 12 months”

5 To this the appellant does not seem to have answered as neither the “yes” nor the “no” boxes are ticked off. But he does give details below that question and this seems to suggest that the answer may have been “yes”. None of the details he gives seem to relate to obesity (he seeks the scheme to fund a bariatric surgical procedure for the treatment of obesity).

6 The scheme contends that it is unlikely that the appellant in his condition (he is apparently morbidly obese, hence the claim for bariatric surgery) would not have received treatment for, been diagnosed with, or received advice on obesity in the 12 months preceding the application for membership. Mr R for the appellant says the appellant has never received any advice for, been diagnosed with, or treated for obesity. The scheme advances no evidence for

the contention that the appellant must in past 12 months have received treatment for, been diagnosed with or been treated for obesity. The appellant cannot be expected to prove the negative. He cannot be expected to prove that he never received treatment or advice for obesity, or that he was never diagnosed with obesity.

7 In the end the scheme and the appellant's representative have agreed that the way to resolve the issue is for the scheme to at least go through its own records of the appellant's membership of the same scheme between 2001 and 2006 to satisfy itself that he has not been treated for obesity or been diagnosed with or received any advice on obesity. Any evidence found would then have to be followed up to then include the relevant period i.e. that which runs from 5 March 2007 until 5 March 2008.

8 If the scheme should discover any treatment or advice or diagnosis for obesity, then it would be within its rights to refuse funding the procedure. But if it should find no evidence of any of these, then it must pay to the extent covered by its rules as applicable in 2008.


9 Mr L [REDACTED] has informed the committee that the relevant rule (rule 3.4.18.11) has now been deleted so that the scheme does not cover surgical procedures for obesity anymore since they discovered "a run on the scheme" because it seems to be the only scheme that provided funding for this procedure. However, he did indicate that if no evidence is found of the

appellant's diagnosis, treatment or advice for obesity, funding would have to be made *ex gratia*.

Finding

10 In the result the scheme is directed, within 5 days of the date of this ruling, to search its records with a view to ascertaining whether or not the appellant was diagnose, or treated or received advice for obesity in the 12 months immediately preceding 5 March 2008.

11 If no such evidence is found, then the scheme is ordered to fund the bariatric surgery on an *ex gratia* basis to the extent covered by the 2008 rules.


VUYANI NGALWANA for Appeal Committee

For the Appellant: Mr R [redacted]

For the 2nd respondent: Mr D L [redacted]; P [redacted]

Date of hearing: 26 November 2009

Date of Ruling: 04 December 2009