

**THE COUNCIL FOR MEDICAL SCHEMES**

**APPEAL COMMITTEE**

In the matter between:

**BK L**

Appellant

and

**DISCOVERY HEALTH MEDICAL SCHEME**

Respondent

---

**APPEAL RULING**

---

1. Prior to July 2004 the appellant was morbidly obese. She underwent gastric bypass surgery, with the result that her weight dropped from 170 kgs in July 2004 to her present weight of approximately 85 kgs.
2. The appellant's radical weight loss has left her with an excessive amount of loose skin. The excess skin causes complications such as fungal infections and the appellant has been advised that the only solution would be the removal of the excess skin through surgery.
3. The appellant has applied to the respondent to finance the cost of this surgery, and the respondent has declined. The respondent's dispute

committee upheld the respondent's decision and it is against this finding that the appellant now appeals.

4. Before the appeal committee the appellant was represented by an Advocate. The essence of his submission on behalf of the appellant was that with the removal of the excess skin was not a procedure of a cosmetic nature, but was a medical necessity.
5. He relied to this extent primarily on the letter of a Plastic and Reconstructive Surgeon, Mr R.
6. This medical opinion, so the appellant contended, had not been contested at the dispute committee meeting, and thus should therefore be accepted. In light of this, the appellant argued, the disputes committee erred in concluding that the surgery was of a cosmetic nature and therefore not covered by the respondent's rules.
7. Annexure "C" to the respondent's rules, as registered by the Registrar of Medical Schemes, provides as follows:

**"1 Exclusions**

*With due regard to the prescribed minimum benefits and unless otherwise provided for or decided by the board,*

*expenses incurred in connection with any of the following will not be paid by the scheme:*

.....

1.3 *all costs for operations, medicines, treatment and procedures for cosmetic purposes which shall, without limitation, be deemed to include health care services related to obesity, otoplasty for bat ears, hair removal and nasal tip surgery. The scheme shall have the sole discretion to determine whether a particular operation, treatment or procedure is cosmetic in nature.*

.....

1.23 *health care services related to any complication that may arise from any exclusion listed in this annexure.”*

8. There may be many instances in which, in order to determine the scope of application of the exclusion contained in paragraph 1.3 above, it becomes necessary to decide whether an operation, medicine, treatment or procedure has a cosmetic purpose.
9. In the case of health care services related to obesity, however, such

an enquiry is not necessary. This is because, in terms of the wording of paragraph 1.3, such health care services are deemed to be for cosmetic purposes.

10. A deeming provision such as that contained in paragraph 1.3 is definitive. It differs from a presumption that may be rebutted upon appropriate evidence. It is, in relation to the matter to which it applies, conclusive.
11. There can be no question that the gastric bypass surgery performed on the appellant is a health care service related to obesity. The committee assumes that the appellant accepted this and that is the reason why she did not attempt to claim the costs of such surgery from the respondent.
12. The sole question that remains is whether the surgery now required by the appellant is related to her obesity. Whether or not such surgery is a medical necessity is irrelevant.
13. For the appellant, the Advocate sought to argue that the connection between the surgery now sought and the appellant's original obesity was too remote for the provisions of clause 1.3 above to apply. The committee does not agree.

14. The need for the surgery now required by the appellant has arisen as a direct consequence of the steps taken by her to address her obesity. As such, the committee can find no basis to conclude that the surgery is not a health care service related to the appellant's obesity.
  
15. There is no question that the appellant is to be commended for the steps that she has taken to address a difficult problem. However, the appellant's contractual relationship with the respondent is governed by the rules of the respondent, and the respondent is bound to apply its rules to all of its members.
  
16. The appellant is seeking funding for a procedure that is excluded by the respondent's rules, and the respondent's refusal to fund this procedure is therefore justified.
  
17. In the circumstances the appellant's appeal must fail.

DATED AT SANDTON THIS        DAY OF MARCH 2006

P R JAMMY  
FOR: APPEAL COMMITTEE