

Payment of Prescribed Minimum Benefits

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In the case of *Keyhealth Medical Scheme v the Honourable Mr Justice SM Ngoepe N.O, the Registrar of Medical Schemes and William Reed*, Case Number: A203/2021, a full bench of the Pretoria High Court held that prescribed minimum benefits (“PMBs”) must not be paid from a member’s personal medical savings but must be paid from the medical scheme’s PMB risk pool.

Factual Background

During 2016, Dr William Reed (“Reed”), a member of Keyhealth Medical Scheme (“Keyhealth”), lodged a complaint with the [Council for Medical Schemes](#) (“CMS”) in terms of which Reed challenged and objected to Keyhealth paying for a cardiologist’s fees from Reed’s personal medical savings. Reed argued that Keyhealth was not permitted to pay cardiology fees from his personal medical savings in so far as his medical condition was categorised as a PMB condition, and accordingly, ought to have been paid from the Keyhealth’s risk pool. In addition, Reed argued that Keyhealth’s conduct to first deduct from his medical savings and only use the risk pool once medical savings are depleted was contrary to the Medical Schemes Act No. 131 of 1998, as amended (“the MSA”) and the Regulations promulgated in terms of the Medical Schemes Act No. 131 of 1998, published in *GNR1262*, dated 20 October 1999 (“the MSA Regulations”).

Keyhealth, in turn, argued that, in terms of its rules, Keyhealth was allowed to deduct first from the member’s personal medical savings for the payment of PMBs prior to utilising its PMB risk pool. Additionally, Keyhealth argued that it was not prohibited by either the provisions of the MSA or the MSA Regulations from utilising personal medical savings to pay for PMBs.

The CMS found in favour of Keyhealth and Reed appealed to the Appeals Committee of the CMS (“the Appeals Committee”), which also found in favour of Keyhealth.

The Appeals Committee held, *inter alia*, that –

- the MSA Regulations did not prohibit Keyhealth from paying a PMB condition from Reeds medical savings and believed that the only prohibition concerning PMBs is found in regulation 10(6) of the MSA Regulations, which provides that the member’s medical savings should not be used to pay for the costs of a PMB; and
- this express prohibition was not included in the MSA itself – if the intention of the drafters of the MSA was to prohibit the funding of a PMB from a member’s savings account, then the MSA would have contained such provisions.

Reed then appealed to the Appeal Board of the CMS (“the Appeal Board”), which found in his favour and rejected Keyhealth’s arguments. The Appeal Board rejected Keyhealth’s arguments on the basis that regulation 8 of the MSA Regulations requires all medical schemes to fund PMBs from the risk pool. The Appeal Board concluded that Keyhealth’s conduct “amounted to an attempt to contrive and escape from its liability to the full payment of PMBs out of its pool”.

Keyhealth subsequently lodged an application before the Pretoria High Court to review and set aside the decision of the Appeal Board on the basis that rules 17.7 and 17.8 of Keyhealth Rules authorised Keyhealth to fund PMBs from a member’s personal medical savings account. The High Court, per Constantinides AJ, confirmed the ruling of the Appeal Board.

Keyhealth then applied for leave to appeal against the ruling of Constantinides AJ, and the Supreme Court of Appeal granted leave to appeal to a Full Bench of the Gauteng Division, Pretoria.

The MSA Regulations

In terms of regulation 7 of the MSA Regulations, PMBs mean “the benefits contemplated in section 29(1)(o) of the [MSA], and consists of the provision which talks to the diagnosis, treatment and care costs of –

- (a) the Diagnosis and Treatment Pairs listed in Annexure A, subject to any limitations specified in Annexure A; and
- (b) any emergency medical condition”.

In turn, “prescribed minimum benefit condition”, is defined as “a condition contemplated in the Diagnosis and Treatment Pairs listed in Annexure A or any emergency medical condition”.

Annexure A of the MSA Regulations sets out certain codes and categories of Diagnosis and Treatment Pairs that constitute PMBs. As such, where a diagnosis or treatment does not fall within the PMBs in terms of Annexure A, that condition would not be considered as a PMB. In this case, it was common cause that the condition suffered by Reed was a PMB.

Regulation 8(1) of the MSA Regulations states that “any benefit option that is offered by a medical scheme must pay in full, without co-payment or the use of deductibles, the diagnosis, treatment and care costs of the prescribed minimum benefit conditions”.

Regulation 10(6), entitled “personal medical savings accounts”, states that “the funds in a member’s medical savings account shall not be used to pay for the costs of a prescribed minimum benefit”.

Findings of a Full Bench

The main issue for determination was whether or not Keyhealth was authorised to pay a PMB condition from a member’s personal medical savings. The Full Bench, relied heavily on Constantinides AJ’s judgment, and found that Keyhealth’s main argument that it was entitled to do as it did because there was nothing in the MSA and the MSA Regulations prohibiting Keyhealth to deduct from a member’s personal medical savings was flawed in two respects:

- first, the question was not whether there was any prohibition not to utilise the day-to-day account, but whether there was any authorisation to do so in the MSA, the MSA Regulations or Keyhealth’s Rules; and
- second, Keyhealth’s conduct amounted to an attempt to contrive and escape from its liability for the full payment of PMBs out of the risk pool and was thus in contravention of Regulation 8 of the MSA Regulation.

The court further held that Keyhealth failed to provide the court with authority for its proposition. In this regard, the court noted that Keyhealth could not do as it pleased to the detriment of a member. The court emphasised that medical schemes cannot avoid liability to pay, in full, a PMB condition out of the risk pool. What Keyhealth attempted to do was to “employ a stratagem, indirectly or directly...and through this stratagem, it avoided dipping into the risk pool from which PMB conditions are paid for by deflecting such debits to day-to-day account” (paragraph 29).

Keyhealth maintained its main argument that, in terms of its own rules, it was entitled to pay a PMB condition from Reed’s day-to-day medical savings account. However, the court found that rules 17.7 and 17.8 relied upon by Keyhealth, were not applicable to PMBs and not relevant to the main issue. Instead, the court found that only rule 17.5 of Keyhealth’s Rules was applicable to PMBs, which rule provided that “no limitations or exclusions will be applied to Prescribed Minimum Benefits”. The arguments relating to Keyhealth’s rules were, thus, found to be unsustainable.

In so far as rule 17.5 of Keyhealth’s rules is concerned, the court found that Keyhealth has an obligation to comply with section 32 of the MSA, which provides that “the rules of a medical scheme and any amendment thereof shall be binding on the medical scheme concerned, its members, officers and on any person who claims any benefit under the rules or whose claim is derived from a person so claiming”. The court thus found that in terms of both the MSA and rule 17.5, a PMB condition must be paid from the PMB risk pool.

The court, in delivering its judgment, further highlighted that:

- an argument advanced by Keyhealth, that Reed tacitly accepted to fund a PMB condition from his personal medical savings by signing an agreement with Keyhealth, was unfounded in so far as Keyhealth, at no time, made its intentions clear to Reed with regards to the payment PMBs from his personal medical savings;
- in any event, the court will not permit the parties to contract out of the provisions of the MSA, where the MSA was manifestly passed for the protection of a class of persons (members of medical schemes) who do not negotiate from a position of equal strength;
- one of the main purposes for the enactment of the MSA is to “protect the interests of members of medical schemes” and Keyhealth’s attempts to evade paying a PMB condition from the PMB risk pool in no way promotes the interests a member; and
- if Keyhealth’s own Rules permitted the payment of a PMB condition from a member’s personal medical savings, such rule would, in any event, be trumped by clear legislation in regulation 8 of the MSA Regulations.

The Full Bench dismissed Keyhealth’s appeal and found the decision of the Appeal Board and the court *a quo* reasonable and upheld those decisions.

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