



THE SUPREME COURT OF APPEAL  
OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal  
Date: 16 November 2015  
Status: Immediate

*Please note that the media summary is intended for the benefit of the media and does not form part of the judgment of the Supreme Court of Appeal*

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**Neutral citation:** *The Council for Medical Schemes v Genesis Medical Scheme* (20518/14) [2015] ZASCA 161(16 November 2015)

The liability of a medical scheme to pay its members for treatment administered in respect of so-called prescribed minimum benefits as envisaged under the Medical Schemes Act 131 of 1998 was the central issue debated in this appeal. Genesis Medical Scheme disputed its liability to pay for certain medical treatment that had been administered to the dependant daughter of one of its members. In the course of her treatment, the member's daughter had been fitted on three occasions with an external prosthesis in order to provide stability to assist in the healing process of a severe comminuted compound fracture of her leg. It was accepted that this was a prescribed minimum benefit condition under the Medical Schemes Act and the regulations promulgated thereunder, but Genesis alleged that in terms of its rules by which all its members were bound it was not obliged to compensate its members for any external fixators if they were fitted at a private institution, and as in the present matter that had been the case, it refused to accept liability.

The member complained to the Registrar of Medical Schemes. After receiving representations from both sides, the Registrar issued a written ruling that can be accepted amounted to a finding that Genesis was liable for the cost of all three prosthesis that had been used.

Under s 49 of the Act, Genesis proceeded to appeal to the Appeal Committee which, in due course, ruled that Genesis was obliged to pay for the cost of one of the three prosthesis at the rate it would have been provided at a public or state hospital. Aggrieved at this, Genesis proceeded to appeal further to the Appeal Board under s 50 of the Act. This appeal was also dismissed, with the

Appeal Board ruling that it was liable for all three external fixators ‘to the level of a public hospital’ (a ruling that was not supported by either side in the appeal in this court).

Still dissatisfied, Genesis proceeded to apply to the Western Cape Division of the High Court to review the Appeal Board’s decision. It ruled that the decision of the Appeal Board relating to Genesis’ liability for the external prosthesis that had been used could not stand. The counsel for Medical Schemes and its Registrar then proceeded to appeal to the Supreme Court of Appeal against this latter finding.

The appeal was today upheld. Although the court accepted that the rules of a medical scheme amount to a contract between it and its members, it rejected the contention by Genesis that if a medical scheme’s rules conflict with the Act and the regulations they remain binding until such time as the Registrar proceeds to take steps to oblige the medical scheme to change its rules. It held that the rules of a medical scheme cannot be viewed in isolation and that, as the provisions of the Act have as their goal their obligation of a medical scheme to provide a prescribed level of treatment for all its members suffering from certain conditions, whether obtained from the private or public sector, Genesis could not be permitted to contract out of those provisions. Consequently as the member’s dependant suffered from a prescribed medical benefit condition, Genesis was obliged to pay for the treatment administered in respect thereof, including all three prostheses. Genesis had had the opportunity under the Act of ameliorating this by appointing designated service providers with whom it could have agreed beneficial rates but it had failed to do so. Accordingly it was liable to pay for all three prostheses even though they had been fitted at a private medical institution.

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