

# **Claiming from the Road Accident Fund the medical expenses incurred by Medical Scheme: Double dipping and the right for medical scheme to terminate your membership**

## **Introduction**

Road accidents and related fatalities are very high in South Africa. According to the world health ranking report of 2011, South Africa is ranked number 72 in the world, with a death rate of 20.1 per 100 000 people dying from road accidents.

Government established the Road Accident Fund (RAF) in terms of Act 56 of 1996 with an object to pay compensation for loss or damage caused by road related accidents. It compensates for injuries sustained on public roads and the medical expenses associated with these injuries, and is funded by a special fuel levy on petrol and diesel.<sup>i</sup>

It is however the responsibility of the member involved in a road accident to speak to their respective medical aid schemes and to sign an undertaking to repay the medical scheme upon finalisation of a claim from RAF.

According to RAF, "if you have a successful claim against the RAF and there is a payout, you will be expected to pay this money back to your medical aid. This is because in terms of the rules of most medical aid schemes, medical aid schemes are not liable for any accident-related costs in cases where the member can institute an action against another party. The RAF in this case is the other party from which these costs are reimbursed."<sup>ii</sup>

## **The big question**

Do medical aid schemes have the right to terminate your membership if you have failed to repay them the medical expenses you have recovered from the RAF? This is a big question that troubles the minds of many of our members and ordinary citizens alike. In this article, the PSA tries to answer this question by highlighting what the law says, the practice by medical aid schemes and what is expected of medical aid scheme holders or members.

## **What the law says**

According to the guiding rules of medical aid schemes as stipulated in Chapter 5 of the Medical Schemes Act of 1998, "A medical aid scheme shall not cancel or suspend a member's membership or that of any of his or her dependants, except on the grounds of -

- (a) failure to pay, within the time allowed in the medical scheme's rules, the membership fees required in such rules;
- (b) failure to repay any debt due to the medical scheme;
- (c) submission of fraudulent claims;
- (d) committing any fraudulent act; or
- (e) the nondisclosure of material information."<sup>iii</sup>

The above provisions of the medical schemes act clarify the circumstances under which medical schemes can terminate individual's membership. The issue of payment from the RAF can be interpreted in terms of subsection (b) above.

Thus according to the Council for Medical Schemes, the termination of membership to medical scheme is allowed if a member fails to repay expenses recovered from the RAF. The register of medical schemes asserts that "the common law principle of subrogation enables your scheme to ask you to recover costs on its behalf, and should you recover the costs but fail to pay them over to your medical scheme, you will have unjustly enriched yourself by receiving double compensation for the same event."<sup>iv</sup>

In an article that appeared in the independent online newspapers in April 2012, Laura du Preezhighlighted the obligation to repay claims from RAF to medical schemes. She says: "If you belong to a medical scheme, you need to be aware that your scheme may ask you to sign an undertaking to claim from the RAF and to reimburse the scheme whatever medical expenses you recover. This undertaking may include a clause that binds you to repay the scheme without deducting legal fees from the amount that the RAF paid you for medical expenses. If you do claim successfully from the RAF, you are obliged to repay your scheme the medical expenses that you recoup."<sup>v</sup>

### **Some claim, some don't: different approaches of medical schemes**

Medical schemes are different in their approaches to claims for medical expenses recovered from Road Accident Fund. Some oblige their members to claim on their behalf while others use their own lawyers to claim the expenses and others do not claim at all.

The rules of Discovery Health Medical Scheme, Profmed, and Pro Sano exclude benefits for medical expenses arising from motor vehicle accidents that can be claimed from the RAF. These schemes pay claims arising from such accidents only if a member makes an undertaking that once compensation is received from the relevant third party, e.g. RAF, such funds will be reimbursed to the schemes. Some of these schemes insist that their members who claim from RAF should use the services of a lawyer and the scheme will accept RAF payment less the legal costs incurred.

Other medical schemes have outsourced the responsibility to process the claims submitted to RAF. For example, Libcare has contracted the Medical Aid Recovery Unit of Alexander Forbes to process claims submitted to the Road Accident Fund (RAF) for reimbursement of funds paid by Libcare Medical Scheme. While Libcare does not accept liability for the payment of claims that can be recovered from a third party, it can pay members' medical expenses in terms of the benefit structure, pending recovery of funds from the appropriate funders by Alexander Forbes. However, they are emphatic about the responsibilities of a member. "You have a duty of care to disclose all and any information that might have a bearing on decisions by the Scheme relating to your claims. If this is not done, exclusions will apply."<sup>vi</sup>

The Government Employees Medical Scheme (GEMS) has a different approach. According to its principal administrator, Dr Eugene Watson, “GEMS does not think it is fair and equitable to recover monies from members who have third-party insurance – to varying degrees and with varying values – and who received treatment that GEMS is in any case obliged to cover in terms of its benefits and the prescribed minimum benefits.”<sup>vii</sup>

It is for this reason that GEMS has since taken a decision that “it will not pursue or lay claim to any medical expenses that its members who are involved in a motor vehicle accident recover from the Road Accident Fund (RAF). The issue of whether a member has a claim against a third party, such as the RAF or in terms of the Compensation for Occupational Injuries and Diseases Act (Coida), will not detract from the scheme’s duty to pay.”<sup>viii</sup> By doing this, “GEMS has removed the rules that oblige its members to recover their medical costs from the RAF or, in terms of Coida, from any other third party that is potentially liable for medical expenses”<sup>ix</sup>

GEMS decision flies in the face of other medical schemes that oblige their members to reimburse the medical aid scheme of medical expense they would have covered and have been paid for by the RAF.

### **Opening the flood gates for termination of membership**

The cost for lawyers processing the claim from RAF on behalf of a client is often at dispute between members and their medical aid schemes. Sometimes the process for claim takes too long before it is finalised. The longer the claim takes the higher the cost for lawyers.

This is what led to the case currently in court between Mark Bellon, represented by Ronald Bobroff & Partners and Discovery Health Medical Scheme. In this case, the Council for Medical Schemes had ruled that Discovery Health Medical Scheme was within its rights to terminate the membership of Mark Bellon after he failed to repay the scheme the medical expenses he recovered from the Road Accident Fund (RAF). It is alleged that Discovery Health Medical Scheme had expected Bellon to pay R861 334 in medical expenses in full without legal fees deducted from this amount.

While Bellon might so far be the only person whose membership to a medical scheme has been terminated for failing to repay money recovered from the RAF, we are concerned as the PSA that this may open flood gates for our members to find themselves without medical aid scheme.

It is therefore important for PSA members to be alert of the developments in this case and be aware of their rights and responsibilities. We will therefore be watching this case closely and keep our members informed of the developments. The PSA therefore urges all its members to be more vigilant when applying for membership to medical aid schemes. Such vigilance should include reading carefully and understanding the contents of the contract before signing.

While the PSA will not condone double dipping, it is equally important for medical aid schemes to clarify their expectations and rules to members about these matters in advance. We urge all medical aid schemes to provide detailed information to their members on their approach to claims from RAF. This information must be explicit and must not be hidden in footnotes.

## Conclusion

The PSA encourages all its members to ensure that they have a medical aid scheme. This is an important condition of service that the PSA will fight tirelessly to protect. It is costly to be sick and it can even be more costly to be involved in a road accident. Without medical aid scheme, the hope to recover from a fatal accident can be a pipe dream. We call on our members not to drink and drive, obey the rules of the road and join national efforts to reduce road accidents and related fatalities.

We call upon the office of the registrar of medical schemes to convene a summit to address the inconsistencies among medical aid schemes in dealing with claims from RAF. Participants should include representatives of organized labour, government, business and civil society. The summit should be aimed at finding a common approach that can harmonise the interest of medical aid schemes and their members.

## Endnotes and references

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- <sup>i</sup>South African Roads Accident Fund Act 56 of 1996.
  - <sup>ii</sup>RAF Brochure
  - <sup>iii</sup>Parliament, 1998, Medical Schemes Act
  - <sup>iv</sup>The register
  - <sup>v</sup>Laura du Preez, 2012, Legal potholes when claiming from RAF, IOL
  - <sup>vi</sup>Libacare medical aid brochure
  - <sup>vii</sup>Dr Eugene Watson, 2012, IOL
  - <sup>viii</sup>Ibid
  - <sup>ix</sup>Ibid