Can I claim my medical aid expenses from the Road Accident Fund?

The Road Accident Fund (RAF) is liable, in terms of the Road Accident Fund Act, 56 of 1996, to compensate any person (a third party) for any loss or damage suffered by the third party as a result of any bodily injury to himself or herself or the death of or any bodily injury to any other person, caused by or arising from the driving of a motor vehicle by any person at any place in South Africa, if the injury or death is due to the negligence or other wrongful act of the driver or of the owner of the motor vehicle.

A third party (claimant) is entitled to claim damages from the RAF, in respect of past and future medical expenses, past and future loss of income and general damages for pain and suffering and loss of amenities.

The RAF recently adopted a new policy to reject the medical expenses claimed by a claimant **if the medical scheme has already paid the medical expenses.**

The reasoning behind the decision is the fallacy that a claimant does not suffer any loss if his/her medical scheme has already paid the said expenses. The RAF however ignores and refutes the contractual relationship between medical schemes and their members, as entrenched in the scheme's rules.

The decision is not only wrong but also bad in law as it ignores the well-entrenched legal principle that a wrongdoer (like the RAF) is not entitled in law to deduct benefits which are *res inter alios acta.* It simply means that the RAF is not entitled to benefit from a contract between a medical scheme and a member and that it is required to disregard these benefits in computing a claimant's damages. The RAF's decision is procedurally unfair, unreasonable, and unlawful.

The Health Funders Association has since launched an urgent application to set aside the decision.

We are of the view that the court will set aside the RAF's decision and that the RAF will remain liable to reimburse a claimant the medical costs paid by his/her

medical scheme, provided that the requirements for liability as set out in the RAF Act, are fully met and subject to any apportionment against the claimant. The claimant will then have to reimburse his/her medical scheme (in terms of the rules of the scheme), the medical costs paid by the RAF.

Where does it leave a member (or dependent) of a medical scheme who is claiming from the RAF?

In terms of the medical schemes' rules, a member remains obliged to claim the medical expenses resulting from a motor vehicle accident from the RAF and to reimburse the medical scheme upon payment from the RAF. **Claimants should accordingly not forfeit the medical expenses paid by their medical schemes, if rejected by the RAF and are contractually obliged in terms of the rules of their medical schemes, to still pursue such claims against the RAF, pending a court ruling on the matter.**

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