

Central Administrative Tribunal
Principal Bench
New Delhi

O.A.No.850/2017

Order Reserved on: 16.05.2017
Order pronounced on 17.07.2017

Hon'ble Shri V. Ajay Kumar, Member (J)

Sudha Sharma [Group `B']
W/o Krishna Kant Bhardwaj,
Working as `A' Grade [Staff Nurse] BM ID No.10028436
Health-cum-Maternity Centre
Shahbad Daulatpur,
Delhi – 110 042. ... Applicant

(By Advocate: Mrs. Harvinder Oberoi)

Versus

1. Commissioner North D.M.C.
North Delhi Municipal Corporation
Dr. S.P.M. Civic Centre
New Delhi.

2. Addl. Commissioner North D.M.C.
North Delhi Municipal Corporation
Dr. S.P.M. Civic Centre
New Delhi.

3. The C.M.O (SAG)
LHRP, Sector 07, Rohini Zone
North Delhi Municipal Corporation
New Delhi. ... Respondents

(By Advocate: Sh. Amit Sinha)

ORDER

Aggrieved by the action of the respondents in not reimbursing the medical expenses for bariatric surgery undertaken by her dependent husband, the applicant, a Staff Nurse, in the respondent-North Delhi Municipal Corporation (NDMC), filed the present OA.

2. The brief facts, as narrated in the OA, are that the applicant's husband was suffering from Lymph-edema of Lower Abdominal Wall and both the Lower Limbs, OSA, B/L Knee Arthritis and Mild Urinary Incontinence with Morbid Obesity (BMI=59 kg/m²). In view of this, he was referred by MO I/C, Maternity Home, Shahbad, Daulatpur to panel Hospital for further treatment. In pursuance of the said reference, in Action Balaji Hospital, a panel Hospital, he had undergone Lap Sleeve Gastrectomy on 18.01.2016 as advised by Dr. Pradeep Jain [MS Mch. (GI Surgery)]. In this connection, the applicant submitted the claim for medical reimbursement on 18.04.2016 vide CAMO/RZ.D.No.334, amounting to Rs.2,55,521/-. According to Expert Committee's remarks, dated 19.05.2016, the case is treated as per Government of India, MOHFW Guidelines, for Bariatric Surgery. However, the respondents vide Annexure A1 have rejected the claim of the applicant on the ground that the applicant had not followed the said approved guidelines under CS (MA) Rules, i.e., prior permission has not been obtained from the competent authority before undergoing the Bariatric Surgery.

3. Heard Smt. Harvinder Oberoi, the learned counsel for the applicant and Shri Amit Sinha, the learned counsel for the respondents and perused the pleadings on record.

4. Mrs. Harvinder Oberoi, the learned counsel appearing for the applicant, submits that the applicant's husband was duly examined and referred by the Government Medical Officer (Incharge) to any panel hospital for his further treatment of the above referred medical problem. Accordingly, the husband of the applicant approached and undergone the Lap Sleeve Gastrectomy in the Action Balaji Hospital, which is an approved panel Hospital for treatment of subject decease, and incurred an expenditure of Rs.2,55,521/-. Neither the Government Medical Officer while referring the case of the husband of the applicant to the panel Hospital nor the respondent-Corporation at any point of time informed the applicant that prior permission is to be obtained for undergoing Bariatric Surgery.

5. The learned counsel further submits that once the applicant's husband was duly referred by the Government Medical Officer and when he undergone the Surgery in a panel Hospital, denying the claim on the ground of non-obtaining of prior approval is illegal, arbitrary and against rules.

6. The learned counsel placed reliance on the Judgments in OA No.415/2011 (**Smt. Bhoori Devi v. The Commissioner, MCD, Delhi**), dated 25.01.2011; OA No.208/2012 (**Devendar Kumar Bhardwaj v. Municipal Corporation of Delhi**), dated 20.01.2012,

and O.A.No.4218/2013 (**Sh. Sunil Kumar v. The Commissioner (North), Municipal Corporation of Delhi**), dated 05.09.2016, in support of her submissions.

7. Shri Amit Sinha, the learned counsel appearing for the respondent-NDMC would submit that they are diligently following the guidelines issued by the Ministry of Health and Family Welfare vide OM No.S.11030/33/13/CGHS(P), dated 06.11.2013, and as the applicant failed to follow the said Guidelines, while incurring the medical expenditure for her husband's Bariatric Surgery, they have rightly rejected the claim of the applicant.

8. It is further submitted that unlike other medical procedures, Bariatric Surgery procedures are planned/elective procedures and hence, not regarded as emergency procedures and prior permission has to be obtained from the competent authority on the basis of recommendation given by a Government Specialist before the surgery is undertaken. Since the applicant failed to obtain the prior permission, she is not entitled for reimbursement of the medical expenses, incurred by her, for her husband's Bariatric Surgery.

9. Government of India, Ministry of Health & Family Welfare, issued the above referred Office Memorandum dated 06.11.2013, containing the Guidelines and ceiling rates for permission/reimbursement for Bariatric Surgery procedures under CGHS/CS (MA) Rules, 1944, the relevant paragraphs of the same read as under:

"E. Permission for Bariatric Surgery:- .

Bariatric Surgery procedures are planned/elective procedures and hence, not regarded as emergency procedures. Prior permission has to be obtained from the competent authority on the basis of recommendation given by a Government Specialist before the surgery is undertaken. No ex-post facto approval for reimbursement shall be given. For those Bariatric Surgery procedures that falls within Para 2(C)(iv), requests for prior permission in such case's shall be examined by an Expert Committee on a case to case basis and in consultation with IFD."

10. As per the above Guidelines, it is true that an employee should obtain prior permission before undergoing Bariatric Surgery to him or to his dependent family members. But it is to be seen that the Government framed the policy of reimbursement of medical expenses to its employees for their benefit. The guidelines are meant to ensure that no fraudulent claims for medical reimbursement are paid. In the instant case, the documents filed along with OA reveal that the applicant's husband was examined by the Government Medical Officer and keeping in view the condition of the husband of the applicant and after assessing the urgency, the Doctor in an approved panel hospital performed the Bariatric Surgery procedures. It is also not the case of the respondents that the Experts Committee, which required to assess and examine the condition of the patient neither held that there is no necessity to the husband of the applicant to undergo the Bariatric Surgery procedures nor he was treated in violation of the aforesaid guidelines. It is also not the case of the respondents that the applicant has not incurred the expenditure claimed by her nor the claim is fake. Hence, denying to consider to reimburse the medical claim of the applicant is against to the concept of Scheme itself.

11. In the peculiar circumstances of the case and for the aforesaid reasons, the OA is allowed and the respondents are directed to process the claim of the applicant for medical reimbursement of the expenses incurred, if otherwise entitled as per rules. This exercise shall be completed within 60 days from the date of receipt of a copy of this order. No costs.

(V. Ajay Kumar)
Member (J)

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