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MEDIA STATEMENT

MEC METH WELCOMES GROUNDBREAKING MEDICO-LEGAL CLAIMS COURT VICTORY

BHISHO — Setting a precedent, the Bhisho High Court has ruled that the Eastern Cape Department of Health does not have to make an upfront lump sum payment in a medico-legal claims case.

The Judge Robert Griffiths' landmark judgment was handed down earlier today.

The department was sued for R35.4-million against the Cecilia Makiwane Hospital (CMH) after an unfortunate situation of a baby who had developed cerebral palsy after birth.

The department defended the case pleading adverse fiscal implications for the department.

The judgment has paved the way for the department, in the immediate, to no longer pay upfront lump sum payments for future medical medical care.

This will also save the government millions of rands by paying the awards in instalments. This means, the department will no longer have to start financial years with billions of rands in budget shortfalls as a result of medico-legal payouts.

The department had approached the court using public health or constitutional defence, arguing that paying huge amounts of money to individuals crippled the department, resulting in some services not being offered properly.

Judge Griffiths agreed with the department that ECDoH should provide care through the rehabilitation centres of excellence and provide the necessary medical care instead of paying for future medical costs.

The department's defence included, inter alia, rehabilitation centres of excellence, multi/disciplinary medical teams (paediatric surgeons/ neurologists etc) to provide future medical care to children with cerebral palsy.

The department plans to have rehabilitation centres of excellence in each district to support the 43 cerebral palsy clinics provided by rehab teams across the province.

We have commenced with the first three centres of excellence at CMH supporting Frere Hospital, Nelson Mandela Academic Hospital and Dora Nginza Hospital.

For this purpose, CMH is ready to provide the services

MEC for Health, Nomakhosazana Meth welcomed the judgment.

“We are happy that the court has ruled in favour of the department, because you find that in some cases we pay R20-million or R30-million to litigants but they then come back to be a burden on the very same department that they had sued.

“In some cases, unscrupulous lawyers end up taking the lion’s share of the payment and cheat litigants. This is a victory for the people of the Eastern Cape.

“We are not saying where we are guilty of medical negligence we should not pay, but we argued that paying such huge amounts of money to one person seriously compromised the quality of service and care that we offer to the millions of people who rely on the public sector for their health needs,” she said.

Head of Department, Dr Rolene Wagner agreed.

“We are overwhelmed by this positive outcome. We are humbled by the court’s judgment and will endeavour to provide the necessary care to the patient.

“This case has a significant bearing on our financial situation as a department and our ability to provide care for all who depend on the public sector for their healthcare.”

The department will study the judgment further and fully abide by it before further commenting.

The department has also been given R5-million by Provincial Treasury to establish a fully fledged legal services unit that would be led by a legally qualified chief director, who will be assisted by a legally qualified director.

The department is also establishing four legal hubs at CMH, Nelson Mandela Academic, Frere, Livingstone hospitals. These hubs will be supported by legal practitioners. Four lawyers have already been appointed and recruitment processes for other positions have already ensued.

MEC Meth thanked the legal team for presenting a compelling case; the Office of the Premier and the Provincial Treasury for supporting the department with the medico-legal implementation strategy.

The strategy has four strategic objectives:

- To stop the loss of funding through upfront lump sum payments and thus potentially compromising the care that can be provided to the wider population depended on the public sector;
- Coordinate the legal defence of cases before the court, through the Specialised Litigation Unit of the OTP and strengthening our capability;
- To strengthen our administration of medico-legal matters through our eHealth and digitalisation process; and
- To prevent future claims by strengthening the care provided to mothers and babies and also investigate and hand to the relevant authorities those case suspected of fraud.

ECDoH, OTP and Provincial Treasury formed a tripartite team to oversee the management of medico legal cases in the Eastern Cape with responsibilities broadly allocated as follows:

EC DOH is responsible for clinical and administrative interventions; the OTP is responsible for the take-over of the medico legal defence; while the Provincial Treasury investigates suspected fraudulent medico-legal claims as well as funding for medico legal settlements.

Issued by the Eastern Cape Department of Health.

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