

Decision Appeal Committee National Doping Regulations

Members of the Appeal Committee National Doping Regulations (TUE chamber):

Prof. B.M. Pluim M.D. PhD (chair)

Ms. M. Becker M.D. (member)

Ms. F. Broekhof M.D. (member)

Ms. G.L.C. Tewari (clerk)

Case number: 2021/BND/01

1. In the case of:

Name: [...] (hereinafter: the Athlete)

Date of birth: [...]

Address: [...]

Zip code/town: [...]

National Federation: Koninklijke Nederlandse Atletiek Unie (**KNAU**)

2. Appealed decision:

Panel: National Therapeutic Use Exemption Committee (TUEC)

Date: 12 November 2020

Case number: 202009616-9616

3. Appeal by: the Athlete

4. Course of the procedure:

- The Athlete submitted a request for a TUE to the national TUEC for the use of modafinil on November 5, 2020;
- The national TUEC has granted the Athlete a TUE for the use of modafinil starting from November 12, 2020, therefore not with retroactive effect from [...] , 2019 onwards;
- The Athlete filed an appeal with the Appeal Committee National Doping Regulations (BND) on 8 February 2021 against the decision of the national TUEC to not grant her a retroactive TUE;
- The appeal of the Athlete was handled by the TUE Chamber of the BND (hereinafter: the Committee).

5. Taking into consideration:

- The medical information made available to the Committee by the Athlete in the context of the aforementioned appeal; and
- The information available on the TUE section of Doping Authority Netherlands' website (<https://gds.dopingautoriteit.nl/>).

6. Considerations

6.1. When assessing the appeal lodged by the Athlete, the Committee first assessed whether the Athlete is eligible for a retroactive TUE for the use of modafinil. It seems to the Committee that the appeal of the Athlete primarily relates to the rejection by the national TUEC of a retroactive TUE.

6.2. When assessing whether the Athlete is eligible for a retroactive TUE for the use of modafinil, the Committee looked at the questions that can be found on the website mentioned above.

6.3. These questions firstly relate to the question of whether the Athlete is included in a so-called Testing Pool. If the Athlete is not included in such a Testing Pool, she may apply for a retroactive TUE. The Committee has established that the Athlete has not been included in any Testing Pool.

6.4. Second, the questions pertain to the following:

- a. does the Athlete actually need the medicine;
- b. is there an alternative medicine without doping; and
- c. does the use of the medicine provide additional performance improvement?

6.5. The medical information provided by the Athlete shows that she was diagnosed with ADHD in 2020. This fulfills the first criterion.

6.6. From the medical information provided by the Athlete, it appears that two alternative medicines have been tried as a treatment method, but these are both also included as prohibited on the WADA Prohibited List.

6.7. The Committee cannot assess to what extent the use of modafinil provides additional performance improvement. The Committee agrees with the national TUEC's opinion on this point.

6.8. Based on these considerations, the Committee is of the opinion that the Athlete is eligible for a retroactive TUE.

6.9. Now that on the basis of the foregoing the Committee is already of the opinion that the Athlete is eligible for a retroactive TUE for the use of modafinil, and on that basis upholds the appeal of the Athlete, the Committee does not need to assess the other grounds for appeal.

7. Decision

The Committee resolves to grant the Athlete a TUE for the use of modafinil, with retroactive effect from [...] , 2019.

Thus decided on April 8, 2021

Prof. B.M. Pluim M.D. PhD
(chair)

Ms. G.L.C. Tewari
(clerk)

Review WADA

Pursuant to Article 4.4.6 of the World Anti-Doping Code, the World Anti-Doping Agency (WADA) is authorized to review and reverse any TUE decision.