

complaint

Mr N has complained about the decision made by Phoenix Life Limited ("Phoenix Life") to decline a claim for incapacity benefit under his income protection policy.

background

Mr N held an income protection policy, and this paid a benefit if Mr N met three or more Activities of Daily Working ("ADW"). The ADW's listed in the policy are walking; climbing; bending; communication; eyesight; dexterity; responsibility and independence; and financial competence. The policy contains a full definition of the criteria attached to each activity that a claimant must meet.

Mr N stopped work in November 2006 because of symptoms of chronic fatigue syndrome ("CFS") and problems he was experiencing with his knee. He submitted a claim to Phoenix Life in 2007, and this was declined. However, after Mr N brought a complaint to this service, Phoenix Life accepted that he met the ADW definitions for "walking", "climbing" and "financial competence". It paid Mr N's claim until he returned to work in May 2008.

Mr N stopped work in August 2008 for nine days. He then again stopped work in November 2008, and returned to work in April 2009. Mr N made a claim under his policy for the two periods, and said he was unable to work because of his CFS symptoms. Mr N wanted Phoenix Life to treat his claim as a continuation of his previous claim which had been accepted.

Phoenix Life did not accept the claim, and this led to Mr N bringing a second complaint to this service. The adjudicator concluded that Phoenix Life had not carried out sufficient enquiries into Mr N's claim, and so recommended that it write to Mr N's treating medical practitioners for further information to allow it to properly assess the claim.

Phoenix Life wrote to Mr N's GP for further information, and subsequently maintained its decision to decline the claim. It was not persuaded there was sufficient medical evidence to confirm that Mr N met three or more ADW's for the periods in question. Moreover, it noted that Mr N had received income from his employer until January 2009, and therefore considered his claim was not financially valid before this date.

Dissatisfied with this response, Mr N brought a new complaint to this service. Our adjudicator did not uphold the complaint, as she was not persuaded that Mr N met the policy definition of incapacity, or that his claim was financially valid.

Mr N did not accept the adjudicator's findings, and so the matter has been referred to me to consider afresh.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

The policy definition of incapacity states:

"Incapacity means that the life insured must be totally incapacitated meaning that due to his illness or injury routinely and not exceptionally the life insured meets three or more of the Activities of Daily Working as set out in the 'Activities of Daily Working' condition of the plan."

Concerning the linking of periods of incapacity, the policy states:

*"If, following a period of **incapacity** for which **benefit** in respect of an Income Protection policy was paid, the life insured resumes the duties of his **occupation** with the approval of his usual private medical attendant but is then incapacitated from the same cause within the following 12 calendar months, the further period of **incapacity** shall be treated as a continuation of the original period. Payment of **benefit** shall then recommence immediately."*

The issue for me to determine is whether Mr N's claim is payable. If there is sufficient evidence to demonstrate that Mr N met the policy definition of incapacity in August 2008 and then again in November 2008, then I would accept that these should be linked to his previous claim and therefore a new deferred period would not need to apply.

In December 2011, Mr N's GP wrote to Phoenix Life and explained that Mr N had been affected by CFS from the end of 2008 until April 2009. He said attendances were noted with *"fatigue, leg pain, shakiness, stiffness, shortness of breath at times also some sleep problems, low mood."* The GP explained the dates that Mr N had been given medical certificates confirming he was unfit to work, and concluded by stating *"In short it is difficult for me to comment at this distance in time with specificity relation (sic) to your particular criteria. Chronic Fatigue Syndrome is variable in its degree of effect of tiredness, weakness, low mood and general debility."*

It is very unfortunate that Phoenix Life did not specifically ask the GP about Mr N's ability to carry out the ADW's until directed to do so by this service. This delay meant that the GP was not able to comment on Mr N's abilities to carry out the ADW's in 2008 and 2009, when responding to Phoenix Life's enquiries some three years later. Having considered Mr N's medical records, I am satisfied that Mr N's GP has accurately summarised them in his letter of December 2011, and I note there is no other evidence which comments on Mr N's ability or inability to carry out the ADW's in the relevant periods.

I accept that when Mr N made a claim in 2007, the evidence from his GP in October 2007 was that Mr N met the relevant criteria for three of the ADW's at that time. However, it is crucial to note that Mr N recovered sufficiently from his symptoms to be able to return to work in May 2008 and, apart from nine days in August 2008, was able to continue to work for six months. I have not seen any evidence that Mr N continued to meet the three ADW's (that had previously led to his claim being accepted) when he returned to work in May 2008.

I also accept that Mr N's medical records suggest that he was suffering with the effects of CFS at the end of 2008 and the beginning of 2009, and that these prevented him from working. However without medical evidence to confirm that he met three of the ADW's in August 2008 and again in November 2008 to April 2009, and given his GP's acknowledgement of the variable nature of Mr N's symptoms, it would be very difficult for me to conclude that his claim should be paid for the periods in question.

Accordingly, and whilst I understand Mr N will be disappointed with my decision, based on the available evidence I am not persuaded that his claim should be accepted.

Although I have noted Phoenix Life's comments concerning the financial aspect of Mr N's claim, as I have not been persuaded that the claim is payable for medical reasons, then I have not considered whether or not Mr N's claim is financially valid.

my final decision

For the reasons set out above, my final decision is that I do not uphold this complaint. I make no award against Phoenix Life Limited.

Chantelle Hurn
ombudsman