complaint

Mr L has complained about the decision made by Wesleyan Assurance Society ("Wesleyan") to decline incapacity claims made under his two income protection policies.

background

Mr L held two income protection policies which would pay benefit in the event that he was unable to work because of illness or accident.

He stopped work as a general practitioner ("GP") in 2011 as he suffered with chronic fatigue syndrome ("CFS"). Mr L submitted claims to Wesleyan under both policies, however they were declined as Wesleyan considered the evidence demonstrated that Mr L could work in his occupation on a part-time basis.

Mr L disagreed with Wesleyan's decision and referred his complaint to this service. Our adjudicator upheld Mr L's complaint, as he was satisfied that the medical evidence confirmed that Mr L was unable to perform his occupation on either a full-time or part-time basis. He recommended Wesleyan pay the claims.

Wesleyan did not agree with the adjudicator's recommendations, however to resolve the matter, it suggested that Mr L attend an independent medical examination ("IME"). The adjudicator did not consider a further examination to be necessary, as he was satisfied the evidence from Mr L's treating specialist was sufficient to conclude that Mr L's claim was payable.

In light of the disagreement between the adjudicator and Wesleyan, the matter has been passed 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 issue for me to determine is whether the medical evidence demonstrates that Mr L met the following definition of 'incapacity':

"Incapacity means that, because of sickness or accident, the Insured is unable to carry out any of the duties of the Ordinary Occupation stated in the Schedule. If at the onset of sickness or on an accident happening the Insured is following no occupation, incapacity will mean that the Insured is confined to the home, a hospital or nursing home by reason of sickness or accident."

During Wesleyan's assessment of Mr L's claim, it obtained a medical report from Mr L's consultant immunologist ("Mr E") who had treated Mr L since 2008. In the report dated November 2011, Mr E explained that in his opinion, Mr L's symptoms meant that it was not safe for him to continue in his occupation. He noted that Mr L had attempted to work part-time, but that he was not able to cope because of his increasing fatigue.

Mr L then attended an IME with a consultant in occupational medicine ("Mr W"). In the IME report dated June 2012, Mr W accepted that Mr L suffered with CFS. He noted that Mr L continued to be physically active, but observed that this was at a much reduced level than

before the diagnosis of CFS. In Mr W's opinion, Mr L could work as a GP on a part-time basis, in the region of two and a half days a week.

Mr E provided further information to this service concerning Mr L in May 2013. He explained that Mr L had stopped work after attempting to reduce his hours; however there had been no significant improvement in his symptoms. He said "[Mr L] *has significant neurocognitive problems particularly when put under pressure and his memory in regard to diagnoses, testing for diseases and most importantly drug therapy is now extremely poor and he is at high risk of making mistakes in this setting. Accordingly…we viewed that he was not safe to continue in his role as a GP. He has however been able to undertake some very limited work in a very restricted field acting as an orthopaedic physician 2 sessions per week. He is able to cope with this as appointment times in these sessions are much longer than in general practice and he does not feel under any pressure."*

I note that the adjudicator provided Wesleyan with Mr E's evidence from May 2013, and Wesleyan raised a number of concerns it still had with Mr L's claim. In particular, it said Mr E had not commented on the physical activities mentioned to Mr W during the IME. It also said that Mr L was working part-time within an alternative medical practitioner's role which would appear to bear similarities to his role as a GP. Finally, it suggested that not enough consideration had been given to an alternative diagnosis of a psychiatric condition.

In response to Wesleyan's concerns, Mr E provided additional clarification in August 2013. He explained that Mr L had been encouraged by both Mr E and the CFS Therapy Team to be physically active within the limits that he could cope with, and that Mr L's physical activity was considerably less than he was able to undertake before he became ill.

Concerning Mr L's return to work, Mr E stated "*Working 2 sessions per week screening orthopaedic patients is most certainly NOT the same as working even as a part-time GP…these are long stress free appointments, with a minimum of differential diagnosis and therefore completely unlike the work of a GP, even working part-time.*"

Regarding an alternative diagnosis of a psychiatric condition, Mr E explained that he was happy that Mr L met the criteria for CFS. Although he noted that psychiatrists can be keen to blame CFS on depressive or psychological illness, Mr E said there was evidence that depression and CFS are different. However, he pointed out that even if there was an alternative diagnosis, in light of Mr L's symptoms, the effect on Mr L's ability to work remained the same.

Having had consideration for the above evidence, I find Mr E's evidence to be the most persuasive. Although I have taken Mr W's opinion into account, I cannot ignore that Mr W met with Mr L on only one occasion, however Mr E has been Mr L's treating specialist for a number of years and reviewed him at regular intervals during this time. I therefore consider greater weight should be placed on the opinion of Mr E, who has made it clear that he does not consider Mr L can work in his insured occupation as a GP, on either a full-time or part-time basis.

It follows that I consider Mr L meets the policy definition of incapacity, and therefore his claim should be accepted.

Whilst I have noted Wesleyan's request that Mr L attend a further IME, I am not persuaded that a further medical opinion is necessary for this claim. I say this because the available evidence from Mr E strongly supports that Mr L meets the policy definition of incapacity.

Moreover, I consider Mr E has adequately addressed the additional concerns that Wesleyan raised about the claim whilst the matter was with this service for consideration, therefore I see no reason for Mr L to attend a second IME.

my final decision

For the reasons set out above, my final decision is that I uphold this complaint.

I require Wesleyan Assurance Society to accept the claims from the relevant date, and pay the benefit due to Mr L under both policies to date. Interest should also be paid to Mr L at the annual rate of 8% simple, from the date each benefit payment was due until the date of settlement.

I make no other award against Wesleyan Assurance Society.

Chantelle Hurn
ombudsman