

complaint

Mr B's complaint is about the decision made by Phoenix Life Assurance Limited ("Phoenix Life") to decline his claim for benefit under his income protection policy.

background

In 2000 Mr B applied for an income protection policy (then with Pearl Assurance). The aim of the policy is to pay benefit after a deferred period if the insured is unable to meet three out of 11 physical tests (such as walking, standing and sitting in a chair), or if the insured suffers serious symptoms of a medical illness or has a serious inability to function socially or at work.

In Mr B's application form, he explained that he had been previously diagnosed with myalgic encephalomyelitis ("ME")/chronic fatigue syndrome ("CFS"). Pearl Assurance accepted him for cover but applied the following special condition:

"No benefit shall be payable for incapacity arising from any mental, nervous or functional disorder, including chronic fatigue syndrome or Myalgic Encephalomyelitis."

In June 2012 Mr B made a claim under the policy to Phoenix Life (as it had taken over the policy from Pearl Assurance). He said that he was suffering with ME and fibromyalgia and that his conditions affected his ability to carry out eight of the 11 physical tests.

Phoenix Life declined the claim as it said his policy specifically excluded ME and other functional disorders. It also said that the medical evidence did not support that he satisfied three out of the 11 physical tests, as required by the policy. Mr B did not accept Phoenix Life's decision and brought a complaint to this service.

Our adjudicator did not uphold the complaint. He noted that Mr B had clarified the meaning of the special condition applied by Pearl Assurance in 2000 and had accepted Pearl Assurance's explanation that a functional disorder is one where a physical cause cannot be found for symptoms a patient is experiencing. The adjudicator was satisfied that Mr B's claim therefore fell under the special condition applied to his policy.

Mr B did not accept the adjudicator's conclusions and requested that his complaint be referred to an ombudsman. He said that ME is a recognised physical neurological disease and is not a functional disorder. He further said that in 2000 he had accepted that Pearl Assurance could exclude mental illness and diseases of no physical origin, but he did not accept an exclusion of ME.

The matter has now 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 Phoenix Life was correct to decline Mr B's claim.

After Pearl Assurance received Mr B's application and notified him of its intention to apply the special condition to his policy, Mr B wrote to Pearl Assurance and stated *"The specific 'chronic fatigue syndrome or myalgic encephalomyelitis' exclusion, I understand and accept."* He then queried the meaning behind 'any mental, nervous or functional disorder'.

Pearl Assurance responded and stated ““A **functional** disorder is defined as one where, despite thorough objective investigation, no physical cause can be found for the symptoms of which a patient may be complaining...”

Mr B wrote back to Pearl Assurance and stated “Having read your letter, the summary appears to be that if I am incapacitated by the effects of a genuine illness of the body, brain or nervous system I am covered. If I am incapacitated by symptoms for which no physical origin can be found then I am not. On that basis, I am pleased to proceed.”

Although Mr B argues that ME is not a functional disorder, I am satisfied that CFS and ME were specifically excluded under his policy from the outset and that Mr B accepted this.

In a letter dated April 2012, Mr B’s GP explained that since January 2012 he had undertaken a number of investigations on Mr B, all of which were completely normal apart from mildly raised blood pressure and cholesterol. The GP said “On balance, I think the diagnosis is likely to be a worsening of his long-standing ME...”

Mr B’s medical records do not make reference to a diagnosis of fibromyalgia, but I understand that when his GP signed him off work he gave the reasoning as CFS and fibromyalgia.

Overall, whilst I understand that Mr B’s symptoms worsened from January 2012, no physical cause could be found to explain this and so he was diagnosed with a worsening of his existing condition of ME. As ME was specifically excluded under the special condition applied to Mr B’s policy at the outset, I am satisfied that his claim falls under this and so I have to conclude that Phoenix Life acted appropriately in declining the claim.

my final decision

For the reasons set out above, and whilst I understand my decision will greatly disappoint Mr B, my final decision is that I do not uphold this complaint. I make no award against Phoenix Life Assurance Limited.

Chantelle Hurn
ombudsman