

complaint

Mr B has complained about Unum Ltd's decision to decline his claim for benefit under his income protection policy.

background

Mr B held an individual income protection policy. The policy would pay benefit if Mr B was unable to perform his occupation because of illness or injury. The policy was subject to a 13 week deferred period.

On 31 December 2011, Mr B became absent from work as he was suffering with respiratory problems, namely wheezing. He submitted a claim under the policy. Unum declined the claim as it considered Mr B's symptoms would not have prevented him from carrying out his occupation, which was sedentary in nature, throughout the deferred period.

Mr B appealed. He argued that he had since been diagnosed with chronic fatigue syndrome ("CFS") and that he had suffered with symptoms of this condition (including problems with short-term memory and concentration) throughout the deferred period. Mr B said that the diagnosis of CFS typically takes at least six months to arrive at, as it is diagnosed by the exclusion of other illnesses. Unum was not persuaded to alter its decision and so Mr B brought a complaint to this service.

Our adjudicator did not uphold the complaint. She acknowledged that Mr B's condition had apparently deteriorated over time, however she was of the opinion that the medical evidence did not demonstrate that Mr B was unable to perform his occupation throughout the deferred period.

Mr B did not agree with our adjudicator's findings and as such, the complaint has been referred to me to review afresh.

my findings

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

The policy definition of 'incapacity' is:

"Means you cannot perform the material and substantial duties of your occupation because of your illness or injury".

Before stopping work, Mr B was employed in a sedentary occupation and his role required him to travel. However, I note that the policy definition of 'occupation' explains that it means the commonly performed duties of the profession usually undertaken in such a job, rather than the specific duties of Mr B's personal role, and that occupation is not restricted to one place of work. Although Mr B's specific pre-incapacity role involved travel, I am satisfied that the commonly performed duties of his profession would normally be sedentary.

I therefore consider it reasonable for Unum to assess Mr B's claim against his ability to perform a sedentary occupation.

In October 2011 Mr B attended his GP and reported experiencing wheezing for the previous four weeks. He had noticed his ability to run was restricted as he was feeling wheezy. He was prescribed medication used to treat asthma but the following month he still reported feeling 'tight'.

Mr B then stopped work on 31 December 2011. Between this date and the end of the deferred period (31 March 2012) he attended his GP on five occasions, with four of those being in relation to his respiratory problems. The information in the GP notes is limited but essentially describes that Mr B continued to suffer from wheezing as well as a cough and that his exercise tolerance was restricted. Mr B was signed off work because of his respiratory problems.

Mr B's GP referred him to a consultant physician in general and respiratory medicine ("Doctor G"). Doctor G met with Mr B in March 2012 and noted that he had developed various symptoms since October 2011, including nocturnal wheeze and limitation of exercise compared to his usual exercise tolerance. Doctor G said that whenever Mr B tried to run he experienced chest tightness after just 200 metres. Doctor G also noted that Mr B had an additional symptom of cough and suspected that Mr B suffered from exercise asthma.

In May 2012 Mr B reported suffering other symptoms to his GP, in addition to his wheezing. Mr B described feeling fatigued, having problems concentrating and suffering from joint pains. This led to Mr B later being diagnosed with CFS by his GP. In July 2012, Mr B's GP explained that Mr B suffered from muscle and joint pains, headaches and 'flu-like' symptoms, as well as problems with short-term memory and concentration. He said "[Mr B] has confirmed to me that he has had these symptoms for over six months..."

It appears that when Mr B initially became absent from work, this was solely as a result of the respiratory problems he was experiencing. Although I note Mr B's GP says that Mr B told him in July 2012 that he had suffered with other symptoms (such as problems with short-term memory and concentration) for over six months, there is no mention of these symptoms in the medical evidence throughout the deferred period. Mr B's GP records and his consultation with Doctor G only describe Mr B's symptoms as that of wheezing and a cough. Whilst Mr B may well have experienced other symptoms throughout the deferred period, it seems unlikely that they were of such severity at that time to prevent him from working, as he did not seek medical help or advice about them until May 2012.

I fully accept that since the end of the deferred period, Mr B's condition deteriorated and that he has since been diagnosed with CFS. However, in order for me to conclude that Mr B has a valid claim under the policy, I must be satisfied that he was unable to perform the material and substantial duties of his occupation throughout the 13 week deferred period, as well as beyond.

On the evidence before me, it is clear that during the deferred period Mr B's respiratory problems affected his ability to exercise. However, there is insufficient evidence to support that Mr B's symptoms of wheezing and cough prevented him from carrying out the material and substantial duties of his sedentary occupation. Consequently and although I understand Mr B will be greatly disappointed with my decision, I consider it was reasonable for Unum to conclude that Mr B's claim did not meet the terms of the policy and for it to reject his claim when it did.

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 Unum Ltd.

Chantelle Hurn
ombudsman