

## complaint

This complaint concerns Aviva Life & Pensions UK Limited's decision to remove Mrs R from membership of a group income protection policy and to cease paying her benefit.

## background

The policy provides benefit where the claimant meets the following test of incapacity:

*"The Insured Person's inability to perform the Material and Substantial Duties of his or her Normal Occupation, resulting from that person's illness or injury."*

Mrs R made a claim under the policy in 2008 as she was suffering from Chronic Fatigue Syndrome ('CFS'). The claim was admitted by Aviva during 2009.

During 2012 Aviva carried out several periods of covert surveillance, as part of its ongoing assessment of Mrs R's claim. Aviva also arranged for Mrs R to be reviewed by a consultant occupational physician (Doctor A). On the basis of the surveillance evidence, and the comments Doctor A made on the surveillance evidence, Aviva ceased Mrs R's benefit payments and withdrew her from the group scheme. This was because Aviva felt the evidence demonstrated that Mrs R had grossly misrepresented her condition. Mrs R was dissatisfied with Aviva's responses and therefore referred the matter to our service.

Our adjudicator assessed the complaint but did not consider that Aviva had acted unreasonably in concluding that Mrs R had misrepresented her condition. Mrs R provided further medical evidence to support her complaint. However, as agreement could not be reached the matter has been referred to me to consider afresh.

## my findings

I have only included a brief summary but I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

I should say at the outset that there is no dispute that Mrs R has suffered with CFS and certainly from 2009 she met the policy definition of incapacity. However this complaint primarily concerns Aviva's decision to remove Mrs R from her employer's group scheme. If it was entitled to do this it follows that it could cease paying benefit. If it was not so entitled I would need to consider whether Aviva has shown that Mrs R no longer met the policy definition of incapacity.

Mrs R's employer's policy gives Aviva the right to terminate cover in respect of an insured person in certain circumstances. The policy provides:

*'16 Cancellation*

*...*

*c. Whilst **we** shall not cancel this **Policy** because of eligible claims made in respect of any **Insured Person**, **we** may at any time (with retrospective effect where appropriate) terminate the **policy** or cover in respect of an **Insured Person** or subject such cover to different terms in line with reasonable underwriting and insurance practice if he/she or the **Policyholder** has at any time:*

*i. misled **us** by mis-statement, concealment or omission'*

*Was Aviva was entitled invoke the clause in the circumstances of this case?*

Aviva arranged for Mrs R to attend an independent medical examination with Doctor A, whom she had first seen in 2009, in June 2012. She said she was too ill to attend but surveillance footage from the day of the appointment shows she was out of the house for several hours shopping and with her children. Another appointment was arranged for August 2012.

At the August 2012 appointment Mrs R reported, in summary, that she remained incapacitated by her condition. She described herself as being '40%' and not well enough to participate in either CBT or graduated exercise therapy. She said that she could walk unassisted inside her house but outside used a wheelchair to conserve her energy. She was wheeled in and out of the examination by her husband. Doctor A concluded that given the severity of her illness and the level of her recovery to date it was unlikely that she would recover sufficiently to allow her to resume full time employment.

However, Aviva subsequently asked Doctor A to comment on surveillance that had been taken over a period of seven days in April, June and August 2012. The evidence showed Mrs R shopping, walking outside, and attending the gym. Doctor A said that the level of functional ability displayed within the surveillance period was not consistent with her presentation at the assessment. He felt that on the balance of probabilities she was fit to resume her insured occupation, at least on a part-time basis.

Mrs R vehemently denies that she has misrepresented her disability. She makes the point that she has done everything in her power to get well. Mrs R has submitted a report from Doctor B, a consultant physician, who had previously assessed her in 2009. Having seen Doctor A's report, Doctor B feels that Doctor A has misinterpreted the surveillance footage and in particular failed to recognise that Mrs R was housebound the day after attending the gym. He concludes that Mrs R is incapacitated to a considerable degree and that it is extremely unlikely that Mrs R was trying to misrepresent herself in any way.

Taking into account all the evidence before me, including Mrs R's detailed response to the surveillance footage, I am drawn to the conclusion that Mrs R did mis-lead Doctor A, to the extent that he was satisfied she continued to meet the definition of incapacity. Although I accept that Mrs R does suffer with CFS, has been very incapacitated and inevitably has good and bad days, I am persuaded that she did not paint an accurate picture of her abilities to Doctor A. Doctor A had supported Mrs R's claim in 2009 and in August 2012, had seen Mrs R's medical records and was clearly fully aware of the nature of CFS. Having seen the surveillance footage he changed his view about the extent of Mrs R's incapacity. This being the case I am satisfied that Aviva was entitled to invoke the clause cited above and to terminate Mrs R's membership under the group policy. It follows that it was not obliged to make any further payment to her under the policy.

### **my final decision**

For the reasons given above, my final decision is that I do not uphold this complaint. I make no award against Aviva Life & Pensions UK Limited.

Lindsey Woloski  
**ombudsman**