

complaint

Mrs D has complained about Legal & General Assurance Society Limited's decision to reduce the benefit payable to her under her former employer's income protection policy on the grounds that she is capable of part time work.

background

In September 1996, Mrs D became absent from work as a result of symptoms relating to chronic fatigue syndrome. She submitted a claim and received income protection benefit under her employer's group scheme.

In 2003, she was made redundant by her employer which resulted in Legal & General paying her income protection benefit directly to her.

Mrs D relocated after her redundancy and purchased a property with her partner. The property has an annexe that has been let to holidaymakers during the summer months. The property also has a large garden that Mrs D and her partner have opened to the public for 28 days a year.

Throughout the period of her claim, Legal & General has arranged for Mrs D's condition to be reviewed by medical and other experts. In 2011, Legal & General instructed N, a consultancy specializing in occupational health & insurance medicine, to carry out a review of Mrs D's condition. At the same time, Legal & General arranged for surveillance of Mrs D over a period of four consecutive days.

N considers that Mrs D no longer met the criteria for the full award of her income protection benefit. Legal & General then arranged for Mrs D to receive advice from F, a career management consultancy. In April 2012, Legal & General decreased the amount of benefit paid to Mrs D on the basis that she was able to work 20 hours a week. Mrs D complained about this decision. Legal & General did not amend its position and the complaint was referred to this service.

our initial conclusions

Our adjudicator did not recommend that the complaint should be upheld. She considered that the evidence demonstrated that Mrs D was capable of carrying out some work and that Legal & General's decision to reduce her benefits was fair and reasonable.

Mrs D did not agree with our adjudicator's conclusions. In summary, she says that:

- the reports prepared by N were dismissive of her symptoms and included judgments that were not based on evidence;
- the consultant from F that she has dealt with has repeatedly got things wrong and has not listened to her;
- reliance on the surveillance is unfair because it does not take account of the fluctuating course of her remission or show her mental well-being;
- her condition has deteriorated since the surveillance was carried out and the surveillance has been a cause of great anxiety that has exacerbated her condition; and

- she considers that her benefit should only be reduced by the amount of her actual earnings.

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 that I have to decide is whether Legal & General acted fairly and reasonably when it reduced the amount of benefit paid to Mrs D.

The policy contains the following condition:

“If you cease to be an employee of your Employer while you are receiving benefit, payment will continueprovided you are unable because of your sickness or injury to do any work for which you are reasonably suited by training, education or experience.”

The effect of the above condition is that, after Mrs D was made redundant, Legal & General became entitled to stop or reduce her benefit if she was capable of carrying out any suited occupation and it was not sufficient for Mrs D to simply show that she was incapable of returning to her old job.

I have carefully considered the reports that have been provided to Legal & General by N and I have watched extracts of the video evidence resulting from the surveillance of Mrs D. The doctors working for N who were involved with Mrs D's case all have experience and qualifications in the field of occupational medicine. I am satisfied that the reports are well-reasoned and objective and that the conclusions made by N were reasonable, based on the evidence that it had seen.

Apart from the reports prepared by N, the only medical evidence that I have seen is copies of letters from Mrs D's GP. The first letter is dated September 2012 and is addressed to Mrs D's solicitors. The letter details the illnesses suffered by Mrs D and the medication that she is taking for those illnesses. In the letter, Mrs D's GP does not express an opinion on her ability to work. He acknowledges that he is not an expert in the field of chronic fatigue syndrome and suggests that she should have a further medical review. As far as I am aware, the only medical reviews have been those undertaken by N.

The second letter from Mrs D's GP is dated September 2013 and was written in support of her appeal for employment and support allowance. The letter refers to Mrs D suffering flares due to her chronic fatigue syndrome during which she would find it more difficult to do simple tasks around the house. The letter does not give any detail regarding the frequency of the flares or their effect on Mrs D's overall ability to work. Mrs D has also produced a copy of a medical certificate issued by her GP saying that she was not fit for work during the period from the end of October 2013 until mid-January 2014.

The evidence from Mrs D's GP would not have been available to Legal & General when it decided to reduce Mrs D's benefit in April 2012. N took advice from Professor V, an expert in chronic fatigue syndrome, whereas Mrs D's GP acknowledges that he is not an expert in that field. I am not, therefore, persuaded that the evidence from Mrs D's GP should have been given more weight than the reports from N and caused Legal & General to revise its decision, even if it had been available at that time.

Mrs D completed a claim form for Legal and General in March 2011. Mrs D answered questions on the claim form, as follows:

“Q. What symptoms of your incapacity prevent you from working?”

A. Physical and mental fatigue, anxiety. Pain (mostly back and hips) need a lot of sleep to feel reasonable. Increased pressure leads to exacerbation of CFS symptoms, unpredictability would make reliability impossible.

Q. How often are you restricted by these symptoms and how long does it last and what do you do to alleviate them?

A. On a daily basis. I always need to pace my days. I take painkillers every day. Some days I feel better than others but I have to be really careful not to do too much. If I feel really unwell I do very little, rest.

Q. How far (in metres) are you able to walk on a level surface without stopping? Please describe the factors that prevent you from walking further than the distance stated above?

A. I do not know in metres. I walk with dog some days for about 15 mins. I go food shopping in supermarket about 3 times a month. If I do this I would not take dog out and vice versa. If I increase activity I have more pain and fatigue.

Q. Please describe your hobbies, pastimes and general interests. Which of these are you still able to do?

A. Plants and gardens/gardening (this is restricted to sitting on ground to do weeding where possible, no digging).

Q. What household or D.I.Y. tasks are you able to do?

A. Hoovering, mop floor, dusting, washing up, cooking, painting small areas i.e. not ceilings or walls. Note: It is the repetition and quantity of exhausting tasks that I cannot do on a regular basis. Therefore I could not hoover and mop floor, go shopping, take dog for walk and gardening all in one day.

The surveillance of Mrs D was carried out over a single period lasting four days in June 2011. Consequently it only shows the activities carried out by Mrs D during that period. However, the video evidence shows Mrs D working in her garden on three afternoons during periods of five to seven hours. Mrs D is shown performing tasks in a standing position and walking normally. She is pictured pushing a wheel barrow containing what appears to be a heavy garden ornament. She is also pictured picking up and carrying a large container. On one day, Mrs D left her home by car early in the afternoon and returned seven hours later. Whilst she was out she made various visits during which she was walking normally and did not appear to be fatigued.

Given the above, I consider that it was reasonable for N to conclude that Mrs D appeared capable of carrying out work over the period of surveillance. Legal & General has not said that Mrs D is capable of returning to work full time. I am satisfied that it was reasonable for

Legal & General to conclude that Mrs D was capable of working part time despite any fluctuations in her condition and to reduce her benefit, accordingly.

With regard to Mrs D's suggestion that her benefit should only be reduced by the amount of her actual earnings, the policy says:

"If you have been unable to work because of sickness or injury but have become well enough to workeither on a part-time basis or in a less well-paid job then you will continue to qualify as a Disabled Member and.....if you are already receiving benefit this will continue but at a reduced rate."

The above condition refers to becoming well enough to return to work not actually returning to work. I am not persuaded that the above wording only entitles Legal & General to reduce Mrs D's benefit by the amount of her actual earnings. It seems to me that it is reasonable for Legal & General to assess the number of hours that Mrs D could reasonably work during an average week and reduce her benefit accordingly. I note that Legal & General has provided assistance to Mrs D through F to assist her in obtaining an income. I have not seen anything that would enable me to reasonably conclude that F has made errors or not listened to Mrs D.

my final decision

For the reasons given above my final decision is that I do not uphold this complaint. I make no award against Legal & General Assurance Society Limited.

Charles Bacon
ombudsman