DRN-4647892

The complaint

Mr S has complained that Legal and General Assurance Society Limited ('L&G') terminated his income protection claim unfairly.

What happened

Mr S had a group income protection insurance policy through his employer, underwritten by L&G. He made a claim after he became absent due to ill health. L&G accepted the claim but in 2023, it carried out a review and terminated the claim on the basis of an independent medical expert's (IME) report which said Mr S was fit to return to work.

Unhappy, Mr S complained and referred his complaint to the Financial Ombudsman Service.

Our investigator looked into the complaint and found that L&G hadn't unfairly terminated the claim as it had instructed an IME to provide an objective opinion.

Mr S disagreed and in summary, is unhappy with the way the IME conducted the assessment as he feels he failed to consider his symptoms, his role and the impact on his health if he attempted to return to work. He provided an alternative opinion from an occupational health (OH) nurse who said Mr S remained unfit for work.

And so the case has been passed to me for a final decision.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Having done so, I don't think this complaint should be upheld. I'll explain why.

- I should start by saying I have carefully considered everything Mr S has said in detail even if I don't explicitly refer to something he has said in my decision. Instead, I will focus on what I consider to be key to my conclusions.

- The relevant rules and industry guidelines say an insurer should handle claims promptly and fairly. And shouldn't unreasonably reject a claim.

- The claim was accepted by L&G and in payment until 2023 when it was terminated based on a report from an IME who concluded Mr S was fit for work.

- When a claim is terminated, the onus is on the insurer to show that the definition of incapacity is no longer being met.

- The definition of incapacity is 'own occupation' which says: "*Means the insured member is incapacitated by illness or injury that prevents him from performing the essential duties of his occupation immediately before the start of the deferred period.*"

- L&G instructed an IME who completed a report which concluded Mr S was fit to return to work on a phased basis and with reasonable adjustments. The IME noted Mr S was employed in a business-to-business role leading a team of over 100 colleagues. He had also seen a report from Mr S' GP, his medical history, and had conducted a face-to-face examination.

- L&G received the report from the IME in May 2023 and it said Mr S was no longer incapacitated so the claim would be terminated a couple of months later. This would allow Mr S a longer phased return for work than suggested by the IME.

- Mr S also had an assessment during a telephone call in June 2023 with an OH nurse who concluded he wasn't fit for work and was unlikely to ever be fit enough to return to his role. This report included the full details of Mr S' role and requirements as well as his symptoms and the likely impact on his health if he did return to work.

- L&G shared the report from the OH nurse with the IME for his comments, but this didn't change his opinion.

- Mr S has suggested that his employer wouldn't allow a phased return or reasonable adjustments, but this isn't something L&G can be held responsible for.

- Having considered all of the above, I think L&G has shown through an independent medical opinion that Mr S no longer meets the definition of incapacity. In the absence of any medical evidence from an expert with the same qualifications as the IME, I can't say L&G's decision to terminate the complaint was unreasonable. Although Mr S is concerned that the IME didn't understand his role or symptoms, I am satisfied that the IME had full access to this information as his report contained details of Mr S' management role and responsibilities and additionally, he was provided with the report from the OH nurse which included all of this information.

- When reviewing medical evidence, I have to decide what I find more persuasive. The OH nurse's view conflicts with the IME's report and conclusions. The nurse doesn't think Mr S will ever return to his role but this is based on self-reported symptoms discussed over the telephone. The IME undertook a face-to-face examination, reviewed Mr S's medical history and notes and is a consultant. So I find the IME's opinion on Mr S's ability to return to work more persuasive and don't think L&G's decision to terminate the claim is unreasonable.

- Mr S has also said that L&G declined the claim very shortly before he was due a lump sum. But the IME completed his examination many months before so I can't say L&G acted unreasonably or unfairly in relation to the timing of the termination.

My final decision

For the reasons set out above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 24 May 2024.

Shamaila Hussain
Ombudsman