DRN-4340385

The complaint

Mrs H complains that Assicurazioni Generali SpA (Generali) has turned down an incapacity claim she made on her employer's group income protection insurance policy.

What happened

The background to this complaint is well-known to both parties. So I haven't set it out in detail here. Instead, I've set out a summary of what I think are the key events.

Mrs H is insured under her employer's group income protection policy. The policy provides cover in the event that Mrs H is unable to work in her own occupation, as a result of illness or injury. The deferred period is 52 weeks.

In February 2022, Mrs H was signed-off from work by her GP, suffering from post-traumatic stress disorder (PTSD) and fibromyalgia. She was referred to occupational health (OH) by her employer and she underwent psychological therapy with a psychologist, but she remained unfit for work. So Mrs H's employer made an incapacity claim on her behalf.

Generali requested medical evidence to assess Mrs H's claim. It noted that she'd been diagnosed with fibromyalgia in 2018 and subsequently, that she'd been diagnosed with PTSD and prolonged duress stress disorder (PDSD) in 2020. It also noted that Mrs H's conditions had remained stable for a few years, but that a relapse had been triggered by her employer directing her to return to the office one day each week. Generali noted too that in December 2022; a consultant OH physician had concluded that Mrs H would be fit to work from home. So it didn't think there was enough evidence to show she met the policy definition of incapacity throughout the entire deferred period and it turned down her claim.

Mrs H was unhappy with Generali's decision and she appealed. She provided evidence to show that she'd been referred to neurology in January 2023 and also that she'd been awarded personal independence payments (PIP) by the Department of Work and Pensions.

Generali appointed an independent medical examiner (IME) to assess Mrs H. The IME is a consultant psychiatrist. They concluded that Mrs H wasn't incapacitated on psychiatric grounds. They concluded too that Mrs H's symptoms were non-specific and were, in many ways, a reaction to her circumstances, including her unresolved dispute with her employer. Based on the IME's report and the other available evidence, Generali maintained its decision to turn down Mrs H's claim.

Remaining unhappy with Generali's position, Mrs H asked us to look into her complaint.

Our investigator didn't think Mrs H's complaint should be upheld. He considered the available medical evidence and how Generali had assessed Mrs H's claim. He thought it had been reasonable for Generali to rely on the IME's findings. And based on the medical evidence as a whole, he didn't think it had been unfair for Generali to conclude that Mrs H hadn't shown she met the policy definition of incapacity.

Mrs H disagreed and I've summarised her responses to our investigator. She didn't feel that consideration had been given to her symptoms of fibromyalgia and an assumption had been made that her symptoms now remained the same as they had been a year ago. She considered that she had provided evidence which showed she met the definition of incapacity, in the form of GP fit notes; her psychotherapist's evidence and the OH reports. She explained how the symptoms of PTSD, PDSD and fibromyalgia could overlap and interact with one another. She stated that she was receiving the appropriate therapies for her conditions, but that her recovery had been hampered by both her employer and by Generali.

And Mrs H told us that her condition has deteriorated since an OH report of December 2022. She said her absence in February 2022 was due to pressure being put on her to return to the office – which she knew she couldn't do because of her health and not being able to manage her symptoms from an office location. She questioned why Generali hadn't referred her for other available capability assessments and why it had used an IME who wasn't UK-registered. She also questioned the accuracy of some of the IME's findings. She said that her GP and psychotherapist would provide more evidence in support of her claim.

The complaint's been passed to me to decide.

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, whilst I'm very sorry to disappoint Mrs H, and I know how upsetting my findings will be to her, I don't think it was unfair for Generali to turn down her claim. I'll explain why.

First, I'd like to reassure Mrs H that while I've summarised the background to her complaint and her detailed submissions to us, I've carefully considered all that's been said and sent. I'm very sorry to hear about the circumstances that led to Mrs H needing to make a claim and I don't doubt what a worrying and upsetting time this has been for her. I was also sorry to read about the impact of Mrs H's poor health on her.

It's important that I make it clear that this decision will consider whether Generali handled Mrs H's claim fairly, based on the evidence available to it when it initially assessed her claim and when it issued its final response to her complaint. I understand Mrs H has told us that her treating doctors intend to provide new evidence in support of her claim. However, Mrs H will need to first send any new evidence to Generali for its review and assessment before we're able to comment on it. If Mrs H is unhappy with any further consideration of her claim following the provision of new medical evidence, she may potentially be able to make a new complaint about that issue alone.

The relevant regulator's rules say that insurers must handle claims promptly and fairly. And that they mustn't turn down claims unreasonably. So, I've considered, amongst other things, the terms of this policy and the available medical evidence, to decide whether Generali handled Mrs H's claim fairly.

I've first considered the terms and conditions of the policy, as these form the basis of Mrs H's employer's contract with Generali. Mrs H's employer made a claim on her behalf for incapacity benefit, given she wasn't fit for work. So I think it was reasonable and appropriate for Generali to consider whether Mrs H's claim met the policy definition of incapacity. This is:

'*As a result of illness or injury, the Member is incapable of performing the Material and Substantial duties of their occupation, and they are not carrying out any other Work or*

occupation.'

Material and Substantial duties '*means duties that are normally required for the performance of a Member's occupation and cannot reasonably be omitted or modified by their employer.'*

This means that in order for Generali to pay Mrs H incapacity benefit, it must be satisfied that she had an illness or injury which prevented her from carrying out the material and substantial duties of her occupation.

The policy says that Generali will begin to pay incapacity benefit after the end of the deferred period. This means that in order for benefit to be paid, Mrs H needed to have been incapacitated in line with the policy terms for the entire deferred period and afterwards.

It's a general principle of insurance that it's for a policyholder to show they have a valid claim on their policy. This means it was Mrs H's responsibility to provide Generali with enough medical evidence to demonstrate that an illness or injury had led to her being unable to carry out the duties of her occupation for the full 52-week deferred period between February 2022 and the end of January 2023 – not only for her current employer, but *any* employer.

Generali assessed the evidence Mrs H provided in support of her claim. While it sympathised with Mrs H's position, it concluded that there hadn't been any notable deterioration in her symptoms during the deferred period which had led to her being unable to carry out her role. Instead, it felt that Mrs H was suffering with a reaction to being asked to return to her employer's office. So I've next looked at the available medical and other evidence to assess whether I think this was a fair conclusion for Generali to draw.

It's clear from the GP records and other evidence, that Mrs H had been diagnosed with fibromyalgia in 2018 and with PTSD and PDSD in 2020. I understand Mrs H was signed-off from work during 2020, although at that time, no claim was made on the policy. However, it seems Mrs H had returned to work more than 12 months before this particular period of absence – and indeed, that she'd been working full-time hours at home prior to February 2022.

Mrs H's GP records show that on 4 February 2022, she spoke with a GP who recorded that Mrs H was having a flare-up of her symptoms of fibromyalgia and PTSD. The GP noted:

'Essentially triggered as boss asking her to go into work one day per week – can work from home remainder…Pt (patient) states can do job from home and doesn't need to be in the office. Chat re compromise and liaising with work for some agreement…Time out okay for flare-up but not long-term solution and could be detrimental in the long run….Advised needs to speak to HR and OH whilst off for future planning.'

Following this entry, Mrs H's GP continued to issue fit notes which stated that she wasn't fit for work due to fibromyalgia and PTSD. The notes show that during the deferred period, Mrs H continued to take pain-relief and anti-depressant medication and undergo psychotherapy which had begun prior to her absence in February 2022. I do note that some medications were changed during this time.

Mrs H's psychotherapist provided evidence in support of Mrs H's claim and I've set out what I think are their key comments below:

On 22 February 2022, the psychologist said:

'(Mrs H) presents symptoms of PDSD which is a manifestation of a psychiatric injury that is directly due and as a result of a prolonged exposure to duress…

As to the current pressure for her to return to work in the physical sense, when client has been working from home quite capably, and when client is beginning to manage her conditions, the duress this has caused has massively impacted on the therapeutic alliance and progress…

Client will not recover fully from the diagnoses as above until she has the opportunity to fully engage in her treatment without feeling under duress…

As for time scales, if client feels less pressure to physically return to her workplace…I am confident client will sufficiently recover enough to begin making some plans to phase back into her role in the near future, with, of course, reasonable adjustment of allowing (Mrs H) to continue working from home being put back into place.'

The psychologist wrote a further letter to Generali, which is undated. They said:

'Client's symptoms have recently been magnified due to the pressure to return to her post and to be expected to be in an office environment…PDSD is defined as a psychiatric injury due to traumatic and/or prolonged exposure to duress. It is to be noted that any exposure to stressors (in this case the workplace environment, and I humbly ask it is to be noted this is not in any way about (Mrs H's) capability of the work she is asked to do, but purely from the workplace stressors) she may relapse…

I had humbly and repeatedly asked (Mrs H's) employers… for reasonable adjustment to be implemented…The reasonable adjustment being allowing (Mrs H) to work from home. Her employers felt this was not something they could offer and therefore, because of this further duress, there has been a flare-up of her fibromyalgia which has had an unfortunate domino effect on her mental health…Taking all these factors into account, I cannot envisage (Mrs H's) return to work in the near future.'

I've carefully considered too the OH reports which were provided by two OH physicians in May and December 2022. In May 2022, the OH physician considered that Mrs H wouldn't be fit for work for up to three months (mid-August 2022).

In December 2022, the OH physician made the following findings, which I think are key. They said:

'From history, Mrs H tells me that her main problems are fatigue and pain from the Fibromyalgia and this is preventing her from attending work. She does need to do exercises during the day, and she does not wish to do these at work where she may be observed. She does not find an office environment comfortable…All of these problems are barriers preventing her in returning to the office.

Unfortunately, fibromyalgia and PTSD are chronic conditions, and from the history she has supplied to me, there has been little change in the physical condition over the last three years. Similarly, the psychological problems remain ongoing…

(Mrs H) tells me that she is able to perform her role from home, but I am not in a position to comment on whether that is appropriate for the business…I would suggest that if the business is unable to support the adjustment of working from home on a long-term basis, then you may wish to consider redeployment to a role that would enable her to work from home.'

Based on the medical evidence provided to Generali when it assessed the claim, I don't think it was unfair for it to conclude that Mrs H hadn't shown she met the policy definition of incapacity. The evidence indicated that Mrs H had suffered from fibromyalgia for around

three/four years before she made the claim – and that there'd been little change in her condition over the previous three years. Mrs H had previously been able to work during that period, on a full-time basis. And it seems that Mrs H had been undergoing psychotherapy and taking medication for both conditions for some months prior to becoming absent in February 2022. So I don't think it was unreasonable for Generali to conclude that the reason for Mrs H's absence was a reaction to being directed to return to the office one day per week. Indeed, the medical evidence clearly suggests that Mrs H and the treating professionals felt that she would be able to work if she could work from home full-time. I don't think Generali acted unfairly by concluding then that it wasn't Mrs H's illnesses which prevented her from carrying out the material and substantial duties of her role. Instead, I think it was reasonably entitled to conclude that Mrs H's absence was caused by a reaction to the proposed change in her working location by her employer.

Mrs H appealed Generali's decision and I've looked carefully at her appeal letter. Amongst other things, Mrs H stated:

'*I feel this is a mental injury that I sustained that caused physical symptoms that prevented me from being unable to continue to work from home.'*

As Mrs H had indicated she believed psychiatric symptoms were causing physical illness, I think it was appropriate for Generali to appoint an IME – a consultant psychiatrist - to assess whether Mrs H was psychologically fit for work – especially given it had already concluded that she wasn't physically incapacitated from carrying out her role. While I appreciate Mrs H has concerns that the IME wasn't UK-registered, I'm satisfied that as a consultant psychiatrist, the IME is an expert in their field and well-placed to comment on incapacity due to mental illness. So I don't think it was unfair for Generali to rely on the IME's conclusions. Again, I've set out their key findings:

'(Mrs H's) sick leave came about as she was not afforded the opportunity to continue working from home once Covid-19 restrictions were lifted…

Her symptoms are non-specific and in many ways are a reaction to her current circumstances, including her unresolved dispute with (sic) employer and no clear return to work pathway…

(Mrs H) has said she does not want to return to an office environment due to physical health issues. Aside from her relationship problems with her manager, there is no psychiatric reason why she cannot work…

(Mrs H) is not disabled from working on psychiatric grounds.'

I've thought very carefully about all of the evidence that's been provided and which was available to Generali when it made its final decision on Mrs H's complaint. It's important I make it clear that I'm not a medical expert. In reaching a decision, I must consider the evidence provided by both medical professionals and other experts to decide what evidence I find most persuasive.

It's clear that Mrs H was suffering from symptoms of fibromyalgia and PDSD/PTSD, which had been diagnosed some time before she was signed-off in February 2022. And she's told us that her symptoms have since deteriorated.

But, I have to bear in mind the contemporaneous medical evidence which was available to Generali when it assessed the claim and when it issued its final response to Mrs H's complaint. For the majority of the full deferred period, the evidence indicates that Mrs H would have been fit to work, if she could work from home full-time. The medical evidence

suggests that her fibromyalgia had changed little over the three years prior to December 2022 and she'd been undergoing psychotherapy for PTSD/PDSD since 2020. And the IME specifically stated that Mrs G wasn't incapacitated on psychiatric grounds. Instead, I find it was fair for Generali to take the view that the evidence suggested Mrs H's absence was due to a dispute with her employer, rather than a deterioration of her illnesses.

As such, taking into account the totality of the medical and other evidence available to Generali when it assessed this claim, I think it was reasonable for it to conclude that the evidence showed that during the deferred period, Mrs H was suffering from an understandable reaction to the very difficult situation in which she found herself due to workplace stressors And that the main reason for Mrs H's absence during the deferred period was likely a reaction to the stress she was experiencing as opposed to an incapacitating deterioration of her existing illnesses.

On this basis then, I don't think it was unfair for Generali to conclude that Mrs H's absence wasn't due to an incapacity in line with the policy definition. Instead, I think it fairly concluded that Mrs H's absence was more likely due to workplace stressors and a reaction to her circumstances. And while I appreciate Mrs H has been awarded PIP, the terms on which benefit claims are assessed differ from the way in which Generali assesses incapacity claims. I note too that the award seems to have been made some months into the deferred period. So I don't think I could reasonably direct Generali to accept Mrs H's claim on this basis either.

I'd like to reassure Mrs W that I'm not suggesting that she was fit for work. I appreciate she was medically signed-off. And I understand she's been through a very difficult time. But I need to decide whether I thinks she's shown she met the policy definition of incapacity for the whole of the 52-week deferred period. As I've explained, I don't think she has.

Overall, despite my natural sympathy with Mrs H's position, I find it was fair and reasonable for Generali to turn down her claim.

My final decision

For the reasons I've given above, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H to accept or reject my decision before 17 November 2023.

Lisa Barham
Ombudsman