DRN-4479208

The complaint

Ms T is unhappy that Unum Limited stopped paying the monthly benefit following a successful claim on a group income protection insurance policy.

What happened

Ms T has the benefit of an income protection insurance ('the policy') through her employer, the policyholder. Subject to the remaining terms, the policy can pay out a monthly benefit if Ms T was unable to work due to illness after the deferred period.

A successful claim was made on the policy in respect of Ms T's absence from work because of illness (back pain and pain in other limbs) in 2022, and Unum paid the monthly benefit until May 2023 (along with a payment equivalent to two months' benefit in lieu of notice of the benefit being terminated). That's because Unum concluded that the medical evidence supported that Ms T no longer met the policy definition of incapacity. Ms T appealed that decision.

Unum issued its final response letter maintaining its decision to stop paying the monthly benefit. Unhappy, Ms T complained to the Financial Ombudsman Service. Our investigator looked into what happened and didn't uphold his complaint. Ms T didn't agree. So, her complaint has been passed to me to consider everything afresh 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.

The insurance industry regulator, the Financial Conduct Authority ('FCA'), sets out rules and guidance for insurers in the 'Insurance: Conduct of Business Sourcebook' ('ICOBS'). ICOBS says insurers should act honestly, fairly and professionally in accordance with the best interests of its customers. It also says insurers should handle claims promptly and fairly - and shouldn't unreasonably reject a claim.

When making a claim, it's for Ms T to establish that she met the definition of incapacity. Ms T was able to do that, and the monthly benefit was paid.

I'm satisfied that it's fair and reasonable for Unum to keep the claim under review. As Unum terminated the claim - it's for it to show that Ms T no longer met the definition of incapacity, based on medical evidence. It's not for her to show that she continued to do so.

The relevant terms and conditions of the policy

I've included below some of the terms of the policy I think are relevant to this complaint.
A member is incapacitated if Unum is satisfied that they are:

- unable, by reason of their illness or injury, to perform the material and substantial duties of the insured occupation, and are

- not performing any occupation.

Insured occupation means: “the trade, profession or general role that the member was actively undertaking for you immediately prior to incapacity”.

Did Unum act fairly and reasonably when terminating Ms T’s claim?

I’m not a medical expert. So, I’ve relied on all the evidence available to me when considering whether Unum reasonably terminated Ms T’s claim, when it did. Having done so, for the reasons set out below, I think it has.

- I accept that from 2022, Ms T’s GP notes reflect that she was signed off work. I can also see that she is in receipt of certain welfare benefits and has been receiving treatment - including medication. She also says she has a disability badge. No-one is disputing that she has been experiencing pain which she is seeking to manage. But those things don’t automatically mean the policy definition of incapacity continued to be met when Unum stopped paying the claim. That’s because there’s a specific policy term which needs to be continually met for the benefit to be paid, as set out above.

- As of May 2023, when the decision was taken by Unum to stop paying the monthly benefit under the policy, I think it has reasonably concluded that Ms T no longer met the policy definition of incapacity.
- An independent functional capacity evaluation (FCE) was carried out on Ms T (by a registered occupational therapist and accredited functional capacity assessor) to assist Unum to understand Ms T’s functional and physical ability. The FCE report is dated April 2023 and reflects that Ms T “performed with inconsistent effort during the assessment and there was also evidence of significant symptom exaggeration present. Therefore, the deficits highlighted…cannot be used to infer barriers preventing Ms T from carrying out her normal role”. The author of the report then provides reasons for supporting their opinion based on observations from the assessment.
- The FCE report concludes that “based on the above inconsistencies and discrepancies, it is concluded that Ms T attempted to simulate disability during formal FCE testing, and therefore her reported levels of disability, exertion, and pain, and demonstrated markedly restricted and limited physical workday tolerances during formal testing cannot be viewed as barriers preventing her from returning to her normal role”.
- The occupational health report dated August 2023 (so after the decision was taken to stop paying the claim) reflects that Ms T’s symptoms impacted her daily activities including sitting and standing. And a scan had shown a deterioration in her condition and further changes to her lower spine. It goes on to say that her “medical condition… is impacting her fitness and is not fit to work at this stage”. And unless she’s able to have alternative treatment, “it is highly unlikely that she can return to even er sedentary role”. However, the report is based on Ms T’s self-reporting of symptoms and there’s nothing to suggest that the contents (and observations) of the FCE report was considered as part of the occupational health report.
- I don’t think Unum has unfairly placed more weight on the contents of the FCE report, giving the objective tests which were undertaken compared to Ms T’s reporting of symptoms which weren’t consistent. The FCE report reflects that Ms T was sat upright on a chair without any apparent discomfort or pain behaviour for a period of 39 minutes before verbalising discomfort…stood after 75 minutes for one minute”. And “the longest time standing was 17 minutes. Ms T did not request to sit down”.

Both times were significantly longer than she'd reported being able to do.

- So, I don't think Unum has unfairly concluded that there's a lack of overall medical evidence to support that Ms T continues to be unable to carry out the insured occupation, which was a sedentary based role. Particularly as the policy says the insured occupation doesn't include "the journey between the member's normal residence and the member's normal place of work".
- Ms T has also recently said that she's awaiting receipt of further medical reports. I'm considering the decision taken by Unum up to the final response. If Ms T obtains any further medical evidence (including from her physiotherapist) which supports that she continued to meet the definition of incapacity, she's free to forward that to Unum to see if it changes its position.

I know Ms T will be very disappointed with my decision and I have a lot of empathy for her circumstances. I hope it helps Ms T to know that her concerns have been considered by someone independent of the parties.

My final decision

I don't uphold Ms T's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms T to accept or reject my decision before 31 January 2024.

David Curtis-Johnson
Ombudsman