DRN-3759685

The complaint

Mr S complains about the decision by Unum Ltd to turn down his income protection claim.

What happened

Mr S is covered under his employer's group income protection policy. The policy will pay a monthly benefit if Mr S can't work because of illness or injury, after a deferred period of 26 weeks.

In March 2021 Mr S stopped work in his sedentary role. He made a claim to Unum, however this was turned down as Unum did not think that Mr S was incapacitated, according to the policy definition of this. Unhappy with Unum's claims decision, Mr S brought a complaint to this service.

Our investigator recommended the complaint be upheld. He thought the medical evidence supported that Mr S did meet the policy definition of incapacity. He recommended that Unum pay backdated benefit due to Mr S, plus interest.

Unum did not agree with our investigator's recommendations, and so the matter has been passed to me for a 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.

The policy explains a member is incapacitated if they are:

"…unable to perform the material and substantial duties of their insured occupation because of illness or injury."

I've therefore considered the medical evidence.

In early 2020, Mr S had a seizure, but the cause was unknown. Then in November 2020, Mr S saw a consultant ophthalmic surgeon (Mr D) as he noticed his vision had deteriorated in his left eye.

In April 2021 Mr S had an appointment with an optometrist where he reported having frontal headaches with eye ache for the last month. It was noted he had been signed off work with stress and exhaustion. Mr S was later found to have high pressure in his left eye and was given drops for this. He was also referred back to Mr D.

Mr D saw Mr S in May 2021 and said he had experienced around 12 episodes of pain in his left eye over the previous two weeks. In June 2021, Mr S was still experiencing some eye pain.

Mr S was reviewed by Dr F (consultant neurologist) in June 2021. Dr F reported that he first met Mr S the previous year, after Mr S had experienced a seizure. Dr F said that Mr S's health had deteriorated since the autumn of 2020, and he felt generally unwell. Dr F explained that Mr S had reached a crisis point in the first quarter of 2021 and acknowledges that he was experiencing a lot of work-related stress. He said that Mr S struggled to use a computer because he would develop a severe pressure sensation over the front of his head, also radiating into the left eye, after around 15 minutes use.

Dr F also said the medication Mr S had been given had reduced the high pressure in his eye, but not the headaches. He explained that Mr S was still in considerable difficulties with his physical and psychological health. Dr F suggested withdrawing one of Mr S's medications, to see if this had been impacting his mood.

Dr F reviewed Mr S again a few weeks later. He explained that Mr S was still struggling with neurological symptoms, and that he felt low and had become anxious because he was unable to work. Dr F said Mr S's work difficulties were that he found lights and computer screens intolerable, and was now prone to very significant headaches. Though Dr F did not know why Mr S was experiencing headaches. Dr F noted that the GP had been treating Mr S for low mood, and thought this should continue.

In July 2021, Mr S was reviewed by his GP. He reported feeling very low and depressed, and was still having significant headaches. His GP referred him to Dr H (consultant psychiatrist & medical psychotherapist).

Mr S saw Dr H in August 2021. He thought Mr S presented with typical symptoms of burnout, with chronic work stress leading to mental exhaustion and a secondary depression. He said that for diagnostic purposes, he would classify it as a moderate depressive episode. He adjusted Mr S's medication. He also considered therapy but thought Mr S should continue with a medication only approach, but said that if there were clear indications for cognitive behavioural therapy (CBT) for any focal aspects of Mr S's anxiety, then he would refer him for this.

Dr H wrote to Mr S's GP and said that, following Mr S's seizure (in 2020), he went back to work which was very stressful with long hours. Dr H said there was an extended period of time where Mr S was functioning at high stress levels, and the chronic stress led to mental exhaustion and then the emergence of a secondary depression. By the end of February 2021, Mr S realised he wasn't coping, and the GP started him on antidepressant medication. Dr H said that Mr S experienced disturbed sleep, mental exhaustion and weakness, and some feelings of hopelessness. Dr H noted that Mr S also had daily severe headaches.

In October 2021, Dr H wrote a report. He explained he had started treating Mr S on 2 August 2021, and that Mr S's diagnosis was that of severe anxiety which led to a severe depressive episode. He confirmed this would be considered a severe mental illness. Dr H explained that Mr S had experienced considerable ophthalmic problems which led to stress and anxiety, and he was unable to carry out his functions in the workplace.

Dr H further confirmed that, as a result of Mr S's mental health, he was unable to function at normal capacity on a daily basis, and that he struggled with cognitive processing, mental and physical exhaustion, and memory problems (amongst other things). Dr H thought these symptoms prevented Mr S from carrying out his occupation, and did not think that Mr S would be able to return to his role in the foreseeable future.

<u>Conclusions</u>

The evidence supports that Mr S's health deteriorated before he stopped work in March 2021. Dr H described Mr S as having burnout from chronic work stress, and Mr S's GP signed him off initially with work-related stress and exhaustion (after starting him on antidepressant medication). However, Dr H also explained that this burnout led to Mr S experiencing depression. He was also experiencing headaches and left eye pain.

Dr H's later evidence (provided some time after the deferred period had ended) said that Mr S had experienced severe anxiety which had led to a severe depressive illness. I haven't seen much medical evidence past the end of the deferred period. Though I would assume that Mr S's mental health deteriorated further after Dr H's initial evidence of 2 August 2021 (as he described Mr S as having a moderate depressive episode at this time, rather than severe). Though it is still the case that Dr H had been treating Mr S since August 2021, and concluded that he could not work from that time because of his symptoms.

Unum's company medical officer has made the point that Mr S was not prescribed the highest dose of antidepressant medication at the time of the deferred period, and had not been referred for further treatment. However, I see that Dr H wanted to make changes to Mr S's medication initially, to see if this improved his symptoms. My understanding is that this is not an uncommon approach for patients taking antidepressant medication. Dr H chose not to refer Mr S for therapy, but it was still the case that Mr S remained under Dr H's care, as a specialist.

I recognise this is not a clear-cut situation, as Mr S was not only experiencing mental health problems in the deferred period, but also experienced eye pain and severe headaches. Although a cause could not be found for his headaches, there has been no suggestion that he was not experiencing these. I understand he is still under the care of a specialist for this medical problem.

I appreciate Mr S's eye pain was resolved with eye drops. However, I think the evidence supports, on balance, that Mr S was not able to work throughout the deferred period. This was due to the symptoms he was experiencing relating to his mental health (as described by Dr H), as well as his severe headaches which prevented him from using a computer for longer than 15 minutes.

I therefore require Unum to accept the claim.

I've noted Mr S's request that Unum reimburse him for his legal fees. Our rules say that, in most cases, consumers should not need to have professional advisers to bring a complaint to us. It was Mr S's decision to employ a solicitor to represent him. I don't think this was something he needed to do in the circumstances, as Mr S could have brought his complaint directly to our service himself. I therefore don't require Unum to reimburse him for his legal costs.

My final decision

My final decision is that I uphold this complaint. I require Unum Ltd to accept the claim and pay backdated benefit due to Mr S.

Interest* should be added at the rate of 8% simple per annum from the date the benefit was due to the date of settlement.

*If Unum considers that it's required by HM Revenue & Customs to take off income tax from that interest, it should tell Mr S how much it's taken off. It should also give Mr S a certificate showing this if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 13 January 2023.

Chantelle Hurn-Ryan
Ombudsman