DRN-4131703

The complaint

Ms R complains about Zurich Assurance Ltd's decision to turn down her income protection claim.

What happened

Ms R is covered under her employer's group income protection policy. This will pay benefit, after a deferred period of 26 weeks, in the event she cannot work because of illness or injury.

In December 2020, Ms R stopped work and was signed off by her GP with work-related stress. A claim was submitted to Zurich. This was turned down because Zurich did not consider that Ms R was incapacitated, in line with the policy terms. Ms R brought a complaint to this service about Zurich's claim decision.

Our investigator thought the complaint should be upheld. He was of the view that the medical evidence supported that Ms R was incapacitated, according to the policy terms. He therefore recommended that Zurich pay the claim, plus interest.

Zurich didn't accept 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.

For a claim to be paid, Ms R needs to show she's incapacitated. The policy explains this means the member is unable to carry out the material and substantial duties of their occupation because of illness or injury.

Ms R's situation is slightly unusual, as she was living abroad during the deferred period. She was still under the care of her GP in that time though, and did start talking therapy. Unfortunately, when the talking therapy service became aware that Ms R was abroad, this service was withdrawn. Ms R didn't have medical treatment abroad, due to the cost of this.

Taking this into account, I think it's reasonable to consider the evidence provided by Dr M (consultant psychiatrist), as Dr M assessed Ms R around a month after the deferred period had ended.

Dr M noted that Ms R had been signed off work with work-related stress after an incident at work. Dr M concluded that she was suffering with a major depressive disorder episode, which he thought was severe. He thought she had experienced this since stopping work, and said her health was badly affected with pervasive and daily low mood, anxiety and avoidance of normal social and work activities. He also said she was unable to carry out her job, she'd had weight gain, disrupted sleep, tearfulness, self-neglect and poor concentration. Dr M concluded that Ms R was unfit for work, even on a part-time basis.

It's clear that Dr M's evidence supports that Ms R couldn't work because of her symptoms, and that she was incapacitated.

However, Zurich's chief medical officer (CMO) (who has confirmed he is not a psychiatrist) believed that Ms R was experiencing a work-related stress matter.

Dr M was provided with the CMO's view and assessed Ms R again in February 2022. Dr M accepted that an incident in work was one factor that had caused Ms R's stress before he had diagnosed her with depression. He said this was among the causes of her illness. But he said the *effect* of this stressor (and others) was to trigger a mental breakdown. Dr M noted that Ms R was under the care of a clinical psychologist at that time. He thought she had partially recovered, but was still unable to return to duties similar to her former role for the next few months.

Whilst I appreciate Ms R's GP and Zurich's CMO thought that Ms R was suffering with stress, this service will generally place greater weight on the opinion of a specialist. Though I see that, although Ms R's GP initially thought she was suffering with work-related stress, her sick notes from August 2021 named depression as being the reason she couldn't work. Dr M thought the fact that the GP had initially signed Ms R off with work-related stress was immaterial, and said the confusion between the cause of an illness and the fact of an illness is a common one, especially in the early weeks of an illness.

Zurich arranged for Ms R to be assessed by Dr F (consultant psychiatrist) in May 2022. Dr F has also provided further comments in a more recent report.

I've read Dr F's reports, and it's apparent that Dr F disagrees with a lot of Dr M's opinions and findings. Zurich says that Dr F has raised valid points to undermine Dr M's diagnosis. However, I'm not medically qualified, so I don't think it would be appropriate for me to comment on Dr F and Dr M's medical differences of opinion. Ultimately, Dr F concluded that Ms R didn't present with a depressive episode or adjustment disorder. He said she was not suffering with a medical illness that was preventing her from returning to work.

It's therefore the case that we have two equally qualified specialists who have both carried out independent assessments of Ms R, yet they have reached very different conclusions about her health. I therefore must weigh up which specialist's view I'm more persuaded by.

On balance, I find that greater weight should be placed on Dr M's opinion. I say that because he assessed Ms R shortly after the deferred period had ended, and Dr F's assessment took place nearly a year later. This service will often place greater weight on contemporaneous evidence. I note that Dr M had also assessed Ms R a second time, a few months before Dr F met with her, and he thought she had partially recovered by that point. So it may be that Ms R had improved further by the time she met Dr F.

I appreciate this is a balanced case, given the opposing views of the two specialists. However, for the reasons I've stated, I find that Ms R was incapacitated according to the policy terms. I therefore require Zurich to pay the claim.

I also note that Ms R was later assessed by a third consultant psychiatrist (Dr B) in January 2023. He thought Ms R had suffered from a major depressive illness (which had since resolved). This was some time after the end of the deferred period, so I have not relied on this to reach my finding that Ms R was incapacitated. I only mention it because it does go against Zurich's view that Dr M was the only doctor to conclude that Ms R had a depressive illness rather than stress.

My final decision

My final decision is that I uphold this complaint. I require Zurich Assurance Ltd to accept the claim. It should pay backdated benefit due in line with the policy terms. Interest should be added at the rate of 8% simple per annum from the date each benefit payment should have been paid until the date of settlement*.

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms R to accept or reject my decision before 27 July 2023.

Chantelle Hurn-Ryan
Ombudsman