DRN-4574099

The complaint

Mrs C complains that AXA PPP Healthcare Limited paid for treatment under her private medical insurance policy, but then asked for the payments back.

What happened

Mrs C held private medical insurance cover with AXA. It was taken out on 22 July 2021 on a moratorium basis, which meant AXA wouldn't cover any pre-existing conditions from the previous five years.

In August 2022, Mrs C made a claim for a nerve root block and epidural injection. AXA accepted the claim and covered the cost of the injections.

In December 2022 Mrs C made a claim for spinal surgery, and AXA obtained medical information to consider the claim. When reviewing this information, it thought that Mrs C's condition pre-dated the start of the policy. AXA therefore turned down the claim for the surgery, which Mrs C accepted.

AXA also concluded that the claim for the injections should not have been paid, and said that Mrs C had wrongly told it at the time that she only became aware of her symptoms after the policy had started. AXA therefore asked Mrs C to pay back the amount it had paid for her injections. Unhappy with this, Mrs C brought a complaint to this Service.

Our investigator didn't recommend the complaint be upheld. She thought it had been reasonable for AXA to conclude that Mrs C's condition fell under the moratorium. She also found it had been reasonable for AXA to ask Mrs C to repay the amount paid for the injections, as the claim had been paid in error based on the information Mrs C had given AXA.

Mrs C didn't accept our investigator's findings, 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.

Mrs C's membership certificate explained her cover had been accepted on moratorium terms. It said:

'That means that treatment for pre-existing medical conditions and specified medical conditions are excluded for at least the first two years of joining.'

It then referred her to the policy wording for more information. This said that AXA wouldn't cover medical problems in the previous five years before joining until the insured had been a member for two years, and they'd had a period of two years in a row where they had been trouble-free of the condition.

The policy defines a pre-existing condition as:

'…any disease, illness or injury that:

- *you have received medication, advice or treatment for in the five years before the start of your cover, or*

- *you have experienced symptoms of in the five years before the start of your cover: whether or not the condition was diagnosed…'*

I've first of all considered the medical evidence.

I've reviewed a letter written by Mrs C's specialist on 21 July 2021 (the day before the policy was taken out). He said that Mrs C had been diagnosed with a back condition affecting L5/S1, and that she continued to have significant low back pain and left leg sciatica. The specialist said that as Mrs C's symptoms had been ongoing for more than a decade and seemed to be getting worse over the previous five years, she wanted to proceed with surgery.

A surgical procedure then took place in October 2021. Following this, it was reported that Mrs C had significant residual pain, but some injections calmed the symptoms. She was discharged from her specialist's care in January 2022.

However, the specialist stated in July 2022 that Mrs C's left leg symptoms had returned, and she also complained of functional weakness in the L4 myotome. He thought given the nature of the previous procedure, she might need surgery in the future for the L4/5 level. He arranged to see her for some injections, and it was these that AXA covered.

Mrs C says that she experienced new symptoms after her procedure in October 2021, and that's why she needed the injections.

When Mrs C made the claim online for the injections, she told AXA she was experiencing left-sided sciatica and left-sided functional foot drop (the information from her specialist supports that she needed injections for these two problems). AXA asked Mrs C the date she was first aware of her symptoms, and her response was '*8 October 2021'*. AXA also asked if she'd experienced the symptoms previously, and she answered '*no'*. I understand Mrs C also sent AXA her specialist's letter dated 12 July 2022 that I've referred to above. Based on this information, AXA accepted the claim and didn't obtain further medical information.

It seems that Mrs C symptom of foot drop did begin after her procedure of October 2021 (though I understand AXA's medical team thinks this was linked to her pre-existing back problems). However, it's clear that Mrs C had experienced left-sided sciatica before the policy was taken out. So I find that it was reasonable for AXA to say that she hadn't given it accurate information about her sciatica when making the claim. If Mrs C had given AXA accurate information, it wouldn't have covered the injections as her condition causing the symptoms was pre-existing and therefore the claim fell under the moratorium.

Mrs C questions why AXA didn't request further information about her claim. Sometimes insurers will require medical evidence before accepting a claim, but that decision is up to the insurer. I see nothing wrong with AXA accepting the claim based on the information Mrs C gave it. Mrs C didn't give AXA any reason to think that she was unsure when her symptoms had started, or that she wasn't giving it accurate information. The letter from her specialist dated 12 July 2022 referred to her procedure in 2021 after the policy had started, but didn't indicate that she'd experienced sciatica before 22 July 2021.

AXA wants Mrs C to repay the amount it spent on the injections. I don't find anything wrong with this, as the claim was paid in error because of the wrong information Mrs C gave AXA. The policy explains that Mrs C should make sure that all the information she provides AXA is sufficiently true and accurate, and that if she breaks any terms of the plan considered fundamental then it can recover from her any loss caused by this. I understand Mrs C is concerned about repaying this as she isn't currently working, and so I'd suggest she asks AXA if it will agree to a reasonable repayment plan.

My final decision

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 C to accept or reject my decision before 19 February 2024.

Chantelle Hurn-Ryan
Ombudsman