

The complaint

Mrs J complains about how Vitality Health Limited dealt with a claim against her employer's group private medical insurance policy.

What happened

Mrs J had the benefit of private medical insurance via her employer's group policy. I understand that Mrs J had investigations in relation to colorectal issues and on 7 July 2022, she contacted Vitality for authorisation for treatment. Vitality authorised up to four sessions of physiotherapy in relation to '*Bulging or prolapse of the rectum*'.

Mrs J had treatment sessions on 21 July 2022, 26 September 2022 and 22 December 2022. Vitality didn't pay the treatment provider in relation to the treatment in July and September 2022. The treatment provider contacted Mrs J about that and she took the matter up with Vitality.

In response to Mrs J's complaint, Vitality said that the invoices it had declined related to biofeedback, which isn't covered by the policy. It relied on an exclusion in the policy relating to monitoring or managing long-term conditions. Mrs J didn't accept that and pursued her complaint.

Mrs J says that she had physiotherapy, which Vitality authorised. She says that Vitality has paid for one treatment session and wants it to settle the remaining invoices.

One of our investigators looked at what had happened. He said that Vitality had acted fairly in declining the claim. The investigator said that the policy covers curable, acute conditions, not chronic conditions and doesn't cover treatment to keep symptoms under control. He said that he'd looked at Vitality's internal guidance on biofeedback and he was satisfied that the biofeedback sessions Mrs J had fall into the category of treatment for chronic conditions prescribed to enable better management of the condition, rather than to cure it.

The investigator noted that Mrs J said that she didn't have biofeedback but said that the e-mail Mrs J had provided from the treatment provider referred to biofeedback. He said that if Mrs J believes that she didn't have biofeedback she should take the matter up with the treatment provider.

Mrs J didn't agree with the investigator. She said Vitality paid for one treatment and had authorised four sessions. Mrs J said that Vitality didn't tell her that there was a dispute about payment. She said that if she had been told she'd have to pay, she wouldn't have had physiotherapy. Mrs J says that Vitality paid for the final session but not the others.

The investigator considered what Mrs J said but didn't change his view. There was further correspondence and it came to light that Vitality had paid the invoice relating to Mrs J's treatment in December 2022. It said that it had done so in error.

Mrs J asked that an ombudsman consider her complaint, so it was passed to me to decide.

In this decision, I'm dealing with the matters Vitality addressed in its final response to Mrs J dated 16 June 2023. If Mrs J wishes to complain about matters arising since then, such as Vitality's proposal to reclaim a payment it now says it made in error, she must complain to Vitality about that in the first instance.

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 relevant rules and industry guidance say that Vitality has a responsibility to handle claims promptly and fairly and it shouldn't reject a claim unreasonably. I don't uphold Mrs J's complaint and I'll explain why:

- Mrs J is responsible for the costs she incurs in having private treatment. However, if her treatment is authorised by Vitality it pays the costs that are covered under her benefits and in accordance with the terms of cover. Any costs not authorised by Vitality are Mrs J's responsibility.
- Where there's a dispute about what happened – as there is here – I base my decision on the balance of probabilities, in other words, on what I consider is most likely to have happened in light of the available evidence and the wider circumstances.
- Mrs J says that she had physiotherapy, which is what Vitality authorised. The policy terms define physiotherapy as '*Treatment carried out by a person who is registered with the Health and Care Professions Council (HCPC) as a physiotherapist and who is recognised by us.*'
- Vitality says that Mrs J had biofeedback, not physiotherapy. On balance, I don't think Vitality is at fault in concluding that Mrs J didn't have physiotherapy. That's because the letter dated 7 July 2022 from the treatment provider to Mrs J refers to an appointment with a colorectal specialist nurse, not a physiotherapist. And the treatment referred to in that letter is biofeedback, not physiotherapy. In addition, the e-mail of 30 January 2023 from the treatment provider to Mrs J says '*You attended for biofeed back (sic) on the following dates:...*'. And the invoice Vitality received from the treatment provider said '*BIOFEEDBACK NURSE LED*'. So, on balance, I'm satisfied that Mrs J saw a nurse and had biofeedback and didn't have physiotherapy.
- I don't think that Vitality was at fault in declining the payments for biofeedback provided by a nurse, as it hadn't authorised that treatment.
- I've thought about whether it's fair and reasonable to direct Vitality to pay the outstanding invoices in any event on the basis that Mrs J's treatment could have been provided by a physiotherapist or a nurse, but I don't think it is and I'll explain why.
- Subject to the policy terms, Mrs J's cover provides treatment for acute conditions, that is, conditions that respond quickly to treatment which aims to return her to her previous state of health or which leads to her full recovery. There's an exclusion in

the policy in relation to chronic conditions. A chronic condition is defined in the policy as a disease, illness or injury that has at least one or more of the following characteristics:

- *'it needs ongoing or long-term monitoring through consultations, examinations, **check-ups**, and/or tests*
 - *it needs ongoing or long-term control or relief of symptoms*
 - *it requires your **rehabilitation** or for you to be specially trained to cope with it*
 - *it continues indefinitely*
 - *it has no known cure*
 - *it comes back or is likely to come back'*
- Vitality says that biofeedback doesn't resolve an acute medical condition but is for monitoring and managing a long term condition. It's provided this service with confidential information from its medical team to support that stance. I'm afraid I can't share that information with Mrs J because it's business sensitive information. I think it's reasonable for Vitality to rely on the information from its medical team and conclude that biofeedback isn't treatment for an acute condition.
 - Mrs J said from the outset that Vitality paid for one of the treatments. Vitality said initially that its payment related to blood tests but has said recently that it had in fact paid the invoice for one of Mrs J's treatments in error. I appreciate that it was frustrating for Mrs J that Vitality said that it hadn't paid for one of the treatments, when it had in fact done so. But I don't think that means that Vitality is obliged to pay the remaining outstanding invoices.
 - I'm sorry to disappoint Mrs J but there's no basis on which I can fairly direct Vitality to pay the outstanding invoices in this case.

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 J to accept or reject my decision before 10 May 2024.

Louise Povey
Ombudsman