

The complaint

Mrs R is unhappy that Legal and General Assurance Society Limited declined a claim she made for the serious illness benefit under her level term assurance plan ('the policy').

What happened

The details of this complaint are well known to both parties, so I won't repeat them again here. I'll focus on giving the reasons for my 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.

Having done so, I don't uphold Mrs R's complaint.

Before I explain why, I'd like to assure Mrs R that my decision is in no way intended to be dismissive of the health issues she's experienced. I can see that she's been through a very difficult time and her medical records reflect the pain she's been in for a number of years. I have a lot of empathy for her situation.

However, relevant to this case, for a claim for serious illness benefit to be accepted, it's for Mrs R to establish that she has a total and permanent disability ('TPD'). And that has a specific definition under the policy terms. It's defined as:

If the Life Covered has retired before age 65 or is not in employment when he becomes disabled, we will pay the Serious Illness Benefit if the Life Covered is unable to carry out four or more of the following activities of daily living unaided:

- Dressing and undressing including being able to put on and take off any surgical appliances usually worn.
- Washing and bathing in the bath or shower to maintain personal cleanliness.
- Preparing food using the usual kitchen utensils and appliances.
- General household duties including laundry, ironing and being able to maintain a reasonable standard of household cleanliness.
- Using the lavatory including being able to get on and off the lavatory and being able to maintain a reasonable level of personal hygiene.
- Being able to voluntarily control bowel and bladder function or to maintain a reasonable level of personal hygiene with or without the use of catheters, incontinence pads or other artificial aids.
- The ability to walk 400 metres on the level without stopping and without severe discomfort.

The decision to decline the claim

Legal and General has an obligation to handle claims fairly and promptly. And it mustn't unreasonably decline a claim.

I'm not a medical expert so I've relied on the evidence available to me when deciding whether Legal and General has acted fairly and reasonably by declining Mrs R's claim. For the following reasons, I think it has:

- Legal and General has concluded that the medical evidence supports that Mrs R was only unable to do one of the activities above unaided and that was walking 400 metres on the level without stopping and without severe discomfort.
- Mrs R's GP has completed a form ('the form') – which is undated - in support of Mrs R's claim which supports she was unable to do four of the above activities unaided (including walking 400 metres). It's reflected that Mrs R was also assisted with household duties by family and friends, she can't prepare food using usual kitchen utensils and appliances and when washing and bathing in the bath or shower, she's assisted by carers.
- However, the form doesn't provide any more detail in support of the GP's answers, and, on the balance of probabilities, I'm satisfied this was completed based on Mrs R's reporting of what she could and couldn't do. It doesn't look like there were any functional tests carried out when completing the form to support what's said.
- There's also a letter from a chronic pain advanced nurse practitioner dated October 2021 which reflects that Mrs R had no support at home. So for example, family, friends or carers to assist her to do some of the activities listed above. Although Mrs R has provided some invoices supporting that she has pre-prepared dinners delivered to her home, wears a neck collar and there's reference to having mobility aids stored at home, I'm satisfied that Legal and General has fairly concluded that the overall medical evidence doesn't support that she was unable to do the other three activities identified by her GP in the form and has placed less weight on what it says.
- Mrs R has also provided medical records showing, in September 2019, she was reporting urinary and faecal incontinence. It's not clear whether this was permanent or had improved. But even if this evidence does support that Mrs R was unable to voluntarily control bowel and bladder function or maintain a reasonable level of personal hygiene with or without the use of catheters, incontinence pads or other artificial aids, I don't think she meets the definition of TPD because she has to establish that she is unable to do four of the seven activities unaided.
- I've taken into account all submissions made by Mrs R and I thank her for the time this must've taken her. However, I think Legal and General has fairly relied on the overall medical evidence to conclude that the definition of TPD hasn't been met. And having looked at the totality of the available medical evidence, I don't think that was an unreasonable conclusion for it to reach.

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss R to accept or reject my decision before 28 October 2024.

David Curtis-Johnson
Ombudsman

