DRN-5364041

The complaint

Miss C is unhappy Legal and General Assurance Society Limited (L&G) declined a claim she made on her employer's group income protection scheme.

What happened

Miss C is the beneficiary of her employer's group income protection scheme. The policy is underwritten by L&G and has a deferred period of 26 weeks.

In January 2023 Miss C became absent from work due to anxiety and her father being unwell. Sadly in April 2023 her father passed away which understandably impacted Miss C's health further.

She made a claim on her policy which was declined by L&G. They said she didn't meet the policy definition of incapacity.

Miss C appealed and provided additional medical evidence that showed she suffered a form of breakdown in November 2023. L&G reassessed the claim and said Miss C still didn't meet the policy definition of incapacity. The claim remained declined.

Unhappy, Miss C, complained to our service. Our investigator looked into what had happened. She said she thought L&G had handled the claim and appeal fairly based on the medical evidence they had at the time. She agreed there wasn't enough to show Miss C was incapacitated throughout the 26 week deferred period on her policy.

Miss C disagreed. In summary she said:

- When she'd had a breakdown her body shut down and stopped working – she couldn't even sit up and had attend her MRI scan in a wheelchair.
- Her body became reconditioned having been in bed for over three months.
- She was having constant panic attacks for over three months and wasn't eating.
- She had weekly visits from a physiotherapist to help her become mobile again.
- She has only recently been able to look at a screen due to her dizziness.
- She is unable to concentrate for long periods or perform complex tasks.
- A year on and she still doesn't feel fully recovered.

Miss C also provided a letter from her physiotherapist in relation to her physical limitations. Our investigator explained that this new evidence was in relation to physical symptoms that hadn't been previously considered. So she advised the new evidence should be sent to L&G for them to reconsider the claim on the basis of her physical symptoms. We wouldn't be able to comment on it at this stage.

So, the case has now 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 relevant rules and industry guidelines say L&G has a responsibility to handle claims promptly and fairly and shouldn't reject a claim unreasonably.

The policy terms and conditions define incapacity as:

"the insured member is incapacitated by illness or injury that prevents him from performing the essential duties of his occupation immediately before the start of the deferred period."

Essential duties are defined as:

"*the duties that are normally required for the performance of the insured member's insured occupation and which cannot reasonably be omitted or amended."*

I've carefully considered the medical evidence that was available to L&G to decide if they fairly concluded there wasn't enough to show Miss C met the definition of incapacity.

Our investigator has already explained that I'm only able to comment on evidence provided to L&G up until the point they declined cover after Miss C's appeal. The new evidence from Miss C's physiotherapist, regarding her physical limitations, will need to be sent to L&G for them to reconsider the claim. I won't be commenting on it as part of this complaint.

<u>The claim</u>

- I appreciate Miss C was signed off by her GP throughout her absence, but fit notes alone aren't sufficient evidence to demonstrate incapacity. L&G also needs supporting objective evidence to explain why her symptoms are preventing her from carrying out her role.
- Miss C provided a report from her Occupational Health (OH) therapist in January 2023. The therapist deemed Miss C unfit for work. But they explained the barrier to her working was because she'd been told she had to attend the office one day a week. The therapist concluded Miss C wouldn't be able to work again until the office working issues had been overcome. She recommended a phased return over two to three weeks and discussions to take place with her employer to resolve the workplace issues.

  I think it was reasonable for L&G to say this evidence suggested it was a workplace issue rather than an illness preventing Miss C from working. Absence caused by workplace issues or stress isn't covered by the policy.

  I'm also mindful that the OH therapist considered Miss C was capable of commencing a phased return to work, which suggests she wasn't incapacitated.

- Miss C was seen by a Vocational Clinical Specialist in April 2023. She reported still feeling stressed and worried about working in an office and being told by her manager that she had to go in one day a week. She said she wanted to work from home permanently and repeated she couldn't return to work if she had to go into the office. She also mentioned that her manager had informed her she'd had some errors in her work just before she became absent. The VCS concluded that in their clinical opinion, Miss C's absence was due to bereavement and perceived work-related issues, rather than a clinical reason.

I think it was fair for L&G to rely on this specialist opinion. It supports what the OH therapist concluded, so it was reasonable for them to add significant weight to both corroborating medical opinions.

Based on the above, I think was reasonable for L&G to decline cover in May 2023 on the basis the evidence suggests Miss C's absence wasn't due to an illness.

The appeal

In April 2024 Miss C provided further evidence from her GP and treating physicians to show she met the definition of incapacity. This evidence was from appointments that took place after the 26 deferred period, so L&G considered if the new evidence changed anything.

- The GP said Miss C wasn't psychically, mentally or emotionally able to work. He explained she had recently suffered "*an acute and profound stress reaction, with severe anxiety - essentially a nervous breakdown*".

- The OH report from October 2023 deemed Miss C not fit to return to work as she was still suffering with grief and anxiety which meant she was unable to complete tasks. She was seeing a grief counsellor, but she hadn't seen any improvement in her symptoms.

- A further OH assessment in March 2024, concluded Miss C was still unfit for work. It explained she had been diagnosed with Benign Paroxysmal Positional Vertigo (BPPV) around November 2023 and she said she'd been confined to her room since. Miss C said the vertigo had improved after a few weeks, but she still suffered from dizziness. She explained she was referred for an MRI scan which came up clear. Her treating ENT specialist felt that her remaining symptoms were related to her anxiety and grief. Miss S said she was being referred to a psychiatrist for further support and had started taking antidepressants.

- In April 2024, Miss C saw a consultant psychiatrist. He said that she had been doing well, but suffered from severe anxiety disorder and panic disorder, that he felt could be considered a form of "pathological bereavement" in addition to severe agoraphobia and general avoidance. But he reported that things had now improved, and her panic disorder was in remission, so Miss C was feeling better.

It's clear there was a significant deterioration in Miss C's health in November 2023. The medical evidence shows she sadly suffered a severe breakdown and was unable to leave her bedroom. However, the medical evidence says Miss C's health improved after three months. So I don't think this makes a difference because her deterioration in health wasn't long enough to demonstrate she was incapacitated for the 26 week deferred period set out in her policy schedule.

I can see L&G referred the matter to their Chief Medical Officer (CMO) during the appeal. I think it was fair in the circumstances for L&G to obtain a medical opinion on the additional evidence provided by Miss C. The CMO said the evidence showed the initial absence in January 2023 was related to workplace issues, so they agreed it wouldn't be covered under the policy. But they thought there was a change in health in November 2023 and this could result in a brief period of incapacity, however not for a long enough duration to meet the terms of Miss C's policy. So he didn't think there was sufficient evidence to support total incapacity throughout the deferred period and beyond.

Based on the above, I think it was fair for L&G to maintain the claim decline on appeal and conclude there still wasn't enough medical evidence to demonstrate Miss C was unable to perform the duties of her role due to an illness.

I know this will be disappointing for Miss C, but I couldn't reasonably ask L&G to do anything more here.

My final decision

For the reasons set out above I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss C to accept or reject my decision before 23 April 2025.

Georgina Gill
Ombudsman