DRN-5384314

The complaint

Mr C is unhappy with Vitality Health Limited's decision to decline his claim.

What happened

Mr C has private medical insurance with Vitality. He claimed on his policy for treatment of his dermatochalasis and ptosis for both eyes, however, his claim was declined. Mr C would like Vitality to cover his claim.

Vitality said it originally declined Mr C's claim because it believed the treatment was purely cosmetic. However, after reconsidering Mr C's claim a second time, it decided to decline it because there was a specific policy term that excluded cover for his condition.

Our investigator said there was an exclusion for medical issues related to sleep apnoea, which included dermatochalasis and ptosis and so she agreed Vitality had applied the exclusion correctly the second time around. However, she partially upheld Mr C's complaint because Vitality didn't apply the exclusion earlier. She said this unfairly raised Mr C's expectations that Vitality may have accepted his claim, when in reality, the exclusion would have always applied. She recommended £100 compensation for the distress and inconvenience caused.

Both Mr C and Vitality disagreed with her findings. Mr C said Vitality should pay the claim because he's not received an official diagnosis for sleep apnoea and so doesn't think it's fair to apply the exclusion. Vitality said it's tried to support Mr C by giving him the opportunity to supply more evidence to show the treatment was medically necessary.

And so, it's for me to make a final 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 too have decided to partially uphold it. I agree with the outcome reached by our investigator and for the same reasons. I don't think Vitality should pay the claim as it's shown there's an exclusion for this type of treatment under the policy. However, Vitality didn't tell Mr C about that at the earliest opportunity and so I think the service could have been better. I also disagree with Mr C's arguments about sleep apnoea and Vitality unfairly applying the exclusion in the circumstances. I'll explain why.

Vitality must show that it's adhered to rules set by the Financial Conduct Authority (FCA) whilst assessing Mr C's claim. The relevant rule is from the Insurance Code of Business Sourcebook (ICOBS). This rules say Vitality must handle claims promptly and fairly and must not avoid a claim. I'm satisfied Vitality missed the mark here because it didn't decline Mr C's claim fairly the first time around. I say that because the letter from Mr C's specialist in January 2024 explained he was suffering with upper and lower eyelid dermatochalasis, which is excluded under the policy.

"We will not pay claims relating to:

- *treatment of sleep apnoea (except treatment to correct Childhood Obstructive Sleep Apnoea), snoring, insomnia or other sleep disorders or treatment which results from, or is in any way related to, these conditions*
- *treatment for dermatochalasis (baggy eyes) or ptosis (drooping) of the eyelid or brow"*

Vitality declined the treatment on cosmetic grounds, however, for the reasons I've just explained, that wasn't the correct reason in the circumstances. And so, ICOBS hasn't been satisfied in the circumstances of this complaint. Vitality has suggested this makes little difference to Mr C because essentially, a decline is still a decline. However, I disagree with its position on that. I say that because what followed was a back and forth between Vitality, Mr C and his specialist throughout February - May.

Vitality gave the impression that it would consider Mr C's claim further, should he provide evidence from a consultant that the surgery was medically necessary. I'm satisfied this unfairly raised Mr C's expectations that his claim might be successful, when in reality, it would never have succeeded.

Mr C went to some trouble to get more evidence to support his claim, undergoing a visual field test and further discussions with his specialist to gather the information Vitality had requested. I'm persuaded that was unnecessary and caused Mr C inconvenience as Vitality's terms exclude treatment for his condition. And so, had Vitality declined his claim for the correct reason the first time around, he wouldn't have had to go through any of that. And that's why I think it's fair that Vitality pay compensation in the circumstances.

Mr C has made arguments about what he considered to be the unfair reliance on the policy exclusion. His reason being that he hadn't actually been diagnosed with sleep apnoea. I've considered what he's said here, however, I'm unpersuaded by his argument. I say that because the specialist's letter in January 2024 explained that he reported suffering with sleep apnoea. Further, the specialist later confirmed in March that Mr C was undergoing an investigation with his GP for sleep apnoea.

The condition Mr C claimed for is closely linked with sleep apnoea and so whether he'd been diagnosed at the point of the claim makes little difference to my final decision as I'm satisfied, by his own testimony, that Mr C was suffering with the symptoms of that condition. And so, Vitality is able to rely on the policy exclusion to decline his claim fairly in the circumstances.

My final decision

I'm partially upholding Mr C's complaint for the reasons I've explained, Vitality Health Limited must now pay him £100 compensation for the distress and inconvenience caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 22 April 2025.

Scott Slade
Ombudsman