

The complaint

Mrs L is unhappy with Unum Limited's decision to decline her income protection claim.

What happened

Mrs L suffers with lower back pain, depression and anxiety. Following pain relief injections she received in February 2024, Mrs L said her symptoms became much worse and she was unable to work. Mrs L claimed on her income protection policy with Unum in July 2024, however, her claim was declined. She'd like Unum to accept her claim and pay her benefit due under the policy.

The deferred period in this case is from 5 February – 5 August 2024.

Unum said it declined Mrs L's claim because there wasn't enough persuasive medical evidence to suggest that she was incapacitated to such a degree, she couldn't perform the material and substantial duties of her insured occupation. It accepted Mrs L suffers with back pain, and other medical conditions, but said she is fit to return to work.

Our investigator didn't uphold this complaint. She said the evidence doesn't persuade her that Mrs L meets Unum's definition of incapacity. She noted the functional capacity evaluation (FCE) completed in October 2024 concluded Mrs L was well enough to return to work and that Unum was entitled to rely on that to decline the claim.

Mrs L, unhappy with our investigator's opinion, asked that an ombudsman consider her case. In summary, Mrs L said the FCE applied a limited scope to capability as it only tested her physical mobility, rather than assessing her cognitive function. Mrs L said her pain levels aren't the only barrier preventing her returning to work, but her brain fog, caused by her pain relief medication, is also a contributory factor that the insurer hasn't considered.

Mrs L also said the FCE report is contradictory as it suggested she can only work 67% of the working week, yet also said she should return full time. She said this would be incompatible with the demands of her role. And so, it's now 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've decided not to uphold it. My reasons for doing so are similar to those already noted by our investigator. It's clear from the medical evidence that Mrs L is suffering with several medical conditions, however, Unum's policy terms have a definition for incapacity and the medical evidence provided doesn't satisfy that criteria. I'll explain why.

The relevant rule that applies in this case from the insurance conduct of business sourcebook (ICOBS) and is set by the Financial Conduct Authority. ICOBS says Unum must handle claims promptly and fairly and must not reject a claim unreasonably or avoid one. I've thought carefully about Unum's obligations under ICOBS whilst assessing Mrs L's complaint.

The policy terms say about incapacity;

“A member is incapacitated if we are satisfied they are:

Unable, by reason of their illness or injury, to perform the material or substantial duties of their insured occupation and are not performing any occupation”

- Mrs L became absent from work in February 2024. She'd suffered with lower back pain since November 2023, when she was diagnosed with mechanical lumbar facet joint osteoarthritis. Mrs L was previously able to manage her symptoms by working flexibly. In February 2024, Mrs L received facet joint injections in an attempt to relieve her pain, but she said this aggravated her existing symptoms and was unable to work from that point. Mrs L has a 26-week deferred period on her policy, which means she must show, through medical evidence, that she was incapacitated throughout the deferred period and beyond – as described by the policy – that her medical condition prevented her from working. The deferred period therefore runs from February – August 2024.
- Unum said the medical evidence doesn't support her self-reported symptoms. It noted that whilst there was evidence to support her diagnosis and some of her symptoms, it didn't think her prescribed medication was consistent with the severity of which she described her symptoms. It noted Mrs L was prescribed lower tier opioid medication to alleviate her pain symptoms in March 2024, however, that she didn't receive a repeat prescription for almost five months, until August 2024. Unum suggested it would have expected the medication to be issued more regularly given how Mrs L described her pain levels throughout the claims process.
- Mrs L said her mental health is another reason she's unable to work. She explained the issue with her lower back pain has exacerbated her depression and anxiety. Unum said Mrs L's poor mental health isn't supported by the medical evidence. Having carefully considered Mrs L's medical records, I can see that she suffers with these conditions and that she takes regular antidepressant medication. But that's not enough to say that she's incapacitated, as defined by the policy. The GP records state Mrs L was referred to the mental health team, because she'd reported a decrease in her mood because of the pain she was experiencing. Mrs L's GP also increased her antidepressant medication at that time.
- The mental health specialists discharged Mrs L back to the care of her GP because she didn't engage with them. I've seen evidence they tried to reach her on several occasions, but she didn't respond. Unum said it would have expected her to follow through with the referral had her symptoms been as severe as she'd explained and that because she didn't, the increase in antidepressant medication was enough to support her during that time. I should say I'm not a medical professional, however, I find Unum's argument here persuasive. There's not enough persuasive medical evidence to show Mrs L's mental health conditions were severe enough to render her incapacitated and unable to work.
- The main issue preventing Mrs L from working, according to her claim form and her GP FIT notes, was back pain. And that's the reason she first became absent from work in February 2024. I acknowledge Mrs L's subsequently said this has now extended to include the side effects she's experiencing from her pain relief medication, but the initial reason for her absence was back pain. I'll address Mrs L's reaction to her medication later in the decision. I've not seen any medical evidence that shows Mrs L's depression and anxiety prevented her from working during the deferred period. As Mrs L's back pain is well documented in her medical notes,

Unum commissioned a functional capacity evaluation (FCE) in October 2024, to better understand the limitation of her function. I should say I thought that was the right thing to do in these circumstances, given Mrs L's diagnosis of mechanical lumbar facet joint osteoarthritis and her described symptoms.

- The FCE report is the most persuasive piece of evidence in this case as it gives an answer to the initial barriers Mrs L said were preventing her from returning to work. The report said Mrs L was asked to complete several different exercises over a two-and-a-half-hour period, including using a computer and associated accessories. It noted she was able to do that relatively well and with minimal pain. The report also said Mrs L had a greater functionality between the exercises, when she was unaware, she was being observed. In addition, she was able to sit, with her legs crossed, for most of the interview and showed no signs of discomfort – which Unum said was in direct contrast to the way she'd described her symptoms previously. The report ultimately recommended Mrs L was able to return to work. Unum, after reviewing the report, declined her claim.
- I thought that was fair. The report was conducted by an independent, suitably qualified professional and the findings were supported with evidence. I acknowledge Mrs L disagreed with the findings and her reasons for that. But I find her arguments less persuasive as her testimony isn't supported by the evidence accumulated by the report, nor her medical records. I also note Mrs L hasn't provided a report from a suitably qualified professional to challenge these findings and support her arguments and so I think Unum has declined her claim fairly, because it did so by relying on the evidence.
- The report found that Mrs L had a greater capacity to perform tasks she's previously said she was unable to. In her claim form, she'd mentioned being unable to sit for more than 30 minutes, yet demonstrated a higher tolerance throughout the 2.5 hour interview. The examiner also noted Mrs L perceived herself to be crippled, yet she disclosed she's able to drive a manual car and complete some activities of daily living. He also said her demonstrated ranges of movement in the lumbar spine during formal testing increased on distraction observations and testing. Meaning her actual movement was greater than she demonstrated during formal testing. The report concluded she was able to perform her role from a physical perspective.
- Mrs L argued the report was inaccurate and said the conclusions are incompatible with the demands of her role. She highlighted the examiner recommended she could only work 67% of the working week, which wouldn't be accepted by her employer. I've considered what she says about that and I disagree. The report said '*she is able to constantly (over 67% of the working day) sit with regular breaks*'. The reference to 67% is the threshold she needs to meet or exceed to classify as being constantly able. In this case, the FCE report determined Mrs L could sit constantly at a desk with regular breaks. The report also sets out these findings are the minimum of Mrs L's functional capacity.
- It was also observed that Mrs L's reported pain symptoms throughout the testing were inconsistent with organic and physical responses usually elicited. It concluded there was evidence of significant symptom exaggeration throughout the tests. Unum is entitled to rely on this evidence to decline the claim. I also saw that it considered this report in the context of Mrs L's job role and the other evidence provided from her line manager and her own testimony. And so, I'm satisfied its considered all the necessary and relevant information about her insured occupation, prior to making its decision.

- Mrs L explained her insured occupation requires significant cognitive ability and the medication she takes severely impacts her. She's described suffering symptoms of brain fog and highlighted the FCE report doesn't explore that. But that wasn't within the aim or scope of the FCE – which was to explore the physical barriers preventing her from working. I should say it's Mrs L's responsibility to show she has a valid claim and not for Unum to evidence. Because there was evidence of Mrs L's physical limitations in her medical records, Unum needed to better understand the extent of that. But Mrs L needs to evidence the other aspects of her illnesses through independent objective medical evidence.
- Her GP records don't persuasively demonstrate she's suffered with a negative reaction to her medication within the deferred period. The evidence I've seen shows in March 2024, she asked the GP to change her medication from co-codomol to co-drydomol. She reported it was more effective and didn't give her any negative side effects. The GP agreed to do that, and I saw she asked for the same medication again in August 2024. And so, there's not enough persuasive medical evidence to support her argument about that.

Having taken everything into consideration, I don't think Mrs L has persuasively shown that she's met the definition of incapacity in this case. I know this'll likely come as a disappointment to Mrs L but the available evidence doesn't satisfy the policy's definition. But as things currently stand in this case, I'm persuaded the evidence doesn't support that she was incapacitated, as defined by the policy, throughout the deferred period of this claim – which was between February – August 2024.

My final decision

For the reasons I've explained, I don't uphold Mrs L's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs L to accept or reject my decision before 25 December 2025.

Scott Slade
Ombudsman