

complaint

Mr H complains about Unum Ltd's decision to terminate a claim under his employer's income protection scheme.

background

Mr H had an income protection claim in payment. In 2014 Unum carried out a review of that claim. After doing so, it concluded that Mr H could work in his previous occupation. So it terminated the claim. Unhappy with this, Mr H brought a complaint to this service.

Our adjudicator upheld the complaint. He thought Unum had acted unfairly in terminating the claim based on the available evidence. He recommended it reinstate the claim, and also pay Mr H £250 compensation for the inconvenience he'd been caused.

Unum didn't agree with the adjudicator's recommendations, so the matter has been passed to me.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

The policy pays incapacity benefit if the following requirements are met:

"a) Unum is satisfied that the member is unable, by reason of his illness or injury, to perform the material and substantial duties of his insured occupation, and

b) The member is not following any occupation..."

'Insured occupation' is defined as "...the gainful occupation that the member was actively undertaking for the employer immediately prior to incapacity."

Mr H was previously employed as a Business Development Manager. The role was field based and involved a lot of driving. Mr H had stopped work after being diagnosed with cancer, and Unum had accepted his claim.

Unum carried out a review of Mr H's claim in 2014. It obtained his medical records, and saw that he rarely attended his GP surgery and was no longer under the care of a specialist. It called Mr H to find out why he was still prevented from working. Mr H said he couldn't lift or carry anything, spent much of his day lying down, and couldn't sit down for long periods. And he could only drive short distances.

Given the lack of medical evidence to support Mr H's restricted ability, Unum arranged for surveillance to be carried out over a three day period. This showed Mr H going to a public house on a few occasions (although I note he remained standing whilst there), and able to carry shopping bags. I also understand he was able to drive around 30 miles in total on one of the days when he was being observed.

Unum thought that Mr H had a far greater level of function than he had reported to it. And it thought his activities whilst under surveillance were compatible with the material and substantial duties of his occupation.

I agree with Unum that whilst Mr H was under surveillance he was more active than he'd led Unum to believe he was. But that doesn't necessarily mean that Mr H could return to work. I don't agree with Unum that Mr H's activities during the period of surveillance were compatible with the material duties of his previous occupation (which involved driving over 400 miles a week).

As Mr H is no longer under the care of a specialist, I think Unum should have arranged for Mr H to attend an independent medical examination (and shown the examiner the surveillance), so it could establish whether or not he remained incapacitated.

As Unum didn't do so, I find it didn't have enough evidence to conclude that Mr H could carry out the material and substantial duties of the role of Business Development Manager when it terminated the claim. I therefore require Unum to reinstate the claim. Interest should be added to the backdated payments to recognise that Mr H has been without use of that money since the claim was terminated.

I agree with the adjudicator that Mr H has been caused inconvenience by Unum's handling of the matter. I think it would be reasonable for Unum to pay £250 compensation to recognise this.

my final decision

My final decision is that I uphold this complaint. I require Unum Ltd to reinstate the claim and pay Mr H the backdated benefit owed. Interest should be added to this at the rate of 8% simple per annum (less tax if properly deductible) from the date each payment was due to the date of settlement.

I further require Unum Ltd to pay Mr H £250 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 11 April 2016.

Chantelle Hurn-Ryan
ombudsman