

complaint

Mrs A has complained about AXA PPP Healthcare Limited's decision to decline her claim for treatment of her frozen shoulder under her private medical insurance policy. AXA considers that Mrs A's condition was pre-existing and therefore excluded from cover.

background

The background to this complaint was set out in my provisional decision dated 19 October 2015, a copy of which is attached and which forms part of this final decision.

Briefly, in 2014 Mrs A made a claim for treatment of a frozen left shoulder. AXA declined the claim because it believed that her condition existed before she took out the policy. AXA said this because it thought her present condition was related to a frozen right shoulder from which Mrs A had suffered in 2012. It also thought that Mrs A had exhibited symptoms of a frozen left shoulder at that time.

In my decision, I explained why I was minded to uphold the complaint. I noted that Mrs A's treating consultant orthopaedic surgeon ("Mr F") had said that the underlying causes of frozen shoulder were unknown and that, as far as he was concerned, the occurrences in her left and right shoulders were two separate conditions. I therefore didn't think that AXA could reasonably decline the claim simply on the grounds that Mrs A had previously suffered from frozen shoulder in her other shoulder. Nor did I think there was any evidence to suggest that Mrs A had displayed symptoms in her left shoulder before the policy began. I therefore considered that AXA should accept and settle Mrs A's claim.

I invited both parties to comment on my provisional decision.

Mrs A has responded to say she accepts my provisional decision. She has provided further medical information and evidence to show the treatment costs she has so far incurred.

AXA has responded to say it doesn't accept my provisional decision. It has pointed to evidence that suggests someone who has suffered a frozen shoulder on one side is more likely to develop a frozen shoulder on the other side compared to the general population. It considers that this increased likelihood means that it is reasonable to regard the condition as bilateral and to say that Mrs A's condition was pre-existing even though she had previously suffered it only in her other shoulder. It also said that Mrs A was suffering symptoms of a frozen left shoulder before the policy began and that an x-ray in 2012 showed signs of osteoarthritis in that shoulder.

my findings

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 see no reason to change my provisional decision. I shall explain why.

I disagree with AXA that the increased likelihood of someone suffering a frozen shoulder on the other side having suffered it on one side means that it is reasonable to regard Mrs A's condition as pre-existing on both sides. There may be a number of reasons to explain this increased likelihood. The fact that this association exists doesn't mean that, in Mrs A's case, the two episodes were linked. Her consultant, Mr F, regarded her frozen left shoulder as an entirely separate condition to her frozen right shoulder. AXA hasn't shown that they are both

due to the same underlying cause. I don't think it can reasonably exclude the claim on this basis.

I have already explained why I don't think AXA has shown that Mrs A was suffering with symptoms of frozen left shoulder before the policy began. Its latest comments don't cause me to change that view.

Mrs A has provided details of the treatment costs she has incurred. I think that AXA should now reimburse her in accordance with the remaining terms of the policy.

my final decision

For the reasons given above, my final decision is that I uphold this complaint. I require AXA PPP Healthcare Limited to accept Mrs A's claim and settle it in accordance with the policy's remaining terms and conditions. For those invoices that Mrs A has already paid, I require AXA PPP Healthcare Limited to reimburse her directly and to add interest at the annual simple rate of 8%, calculated from the date she paid the invoices until the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs A to accept or reject my decision before 30 December 2015.

David Poley
ombudsman

COPY OF PROVISIONAL DECISION

complaint

Mrs A has complained about AXA PPP Healthcare Limited's decision to decline her claim for treatment of her frozen shoulder under her private medical insurance policy. AXA considers that Mrs A's condition was pre-existing and therefore excluded from cover.

background

In January 2014, Mrs A took out a private medical insurance policy through AXA. The policy had a moratorium style of underwriting which meant that any pre-existing condition was excluded from cover until Mrs A had been a member for two years, and had had a trouble free period of one year for that condition.

In August 2014, Mrs A experienced problems with her left shoulder. She saw a consultant orthopaedic surgeon ("Mr F") who suspected that she had a frozen left shoulder and recommended treatment.

Mrs A made a claim to AXA but it declined cover on the grounds that her condition was pre-existing and therefore excluded under the policy's moratorium. AXA explained that the medical evidence showed that the problem with her left shoulder started in 2012. It noted that she had been diagnosed and treated for a frozen right shoulder at that time and it believed her current problem was related to the same underlying cause.

Mrs A disputed this and provided evidence from Mr F and her GP to support her argument that her present condition was unrelated to her earlier frozen shoulder. AXA, however, wouldn't change its position. Mrs A therefore referred the matter to this service.

Our adjudicator did not recommend that the complaint be upheld. He felt that the evidence suggested that Mrs A's problem with her left shoulder pre-dated the policy and that AXA had not acted unfairly by declining to cover the cost of this treatment.

Mrs A didn't accept the adjudicator's findings. She said that the problem she experienced in 2012 affected the left side of her neck but didn't extend to her left shoulder.

In view of the continued disagreement, the matter has been passed to me to review.

my provisional findings

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 am minded to uphold this complaint. I shall explain why.

The terms and conditions of the policy state that no cover is provided for at least the first two years of the policy for pre-existing conditions. The policy defines a pre-existing condition as:

"any disease, illness or injury for which:

- you have received medication, advice or treatment; or*
- you have experienced symptoms;*

whether the condition has been diagnosed or not in the five years before the start of the policy."

Mrs A saw her GP in 2012, complaining of pain to her neck and right shoulder. Her GP arranged an X-ray of her neck and shoulders. The radiologist's report concerning her left shoulder was as follows:

“minor degenerative changes are seen in the acromioclavicular joint. No other significant bony abnormality or soft tissue calcification is seen”

Mrs A continued to suffer pain and her GP referred her to Mr F. He reported as follows:

“She has a 9 month history of discomfort which started with the neck, initially left sided but now a problem on both sides but predominantly the right shoulder. The neck itself is quite stiff but didn’t really provoke any of her pain and the left shoulder has good movement.”

Mr F went on to diagnose and treat a frozen right shoulder.

AXA says that although her frozen shoulder is now on the left, it is related to her earlier problem and she is therefore suffering from the same condition which has now simply manifested itself on a different side at a different time. However, Mr F has said that he disagrees with this. He says that the underlying causes of frozen shoulder are unknown and that, as far as he is concerned, the occurrences in Mrs A’s left and right shoulders are two separate conditions. On balance, I am inclined to put more weight on the opinion of Mr F as he is a specialist in this field and has personally treated Mrs A. I therefore don’t think that AXA can reasonably decline the claim simply on the grounds that Mrs A had previously suffered from frozen shoulder in her other shoulder.

AXA has also said that, even if the two instances were regarded as separate, her frozen left shoulder was still pre-existing because in 2012 Mrs A reported left-sided pain which was significant enough to warrant an x-ray of her left shoulder. However, while Mrs A reported pain in the left side of her neck, she didn’t report pain in her left shoulder. And although the x-ray was of both shoulders, it was undertaken because of pain in the right shoulder. Furthermore, it didn’t reveal anything of significance in the area of the left shoulder and Mr F reported that she had good movement. I’m not therefore persuaded that Mrs A had a pre-existing condition of frozen left shoulder at the time she took out the policy.

In view of the above, I am minded to conclude that AXA should reasonably accept Mrs A’s claim.

my provisional decision

For the reasons given above, my provisional decision is that I uphold this complaint. I am minded to require AXA PPP Healthcare Limited to accept Mrs A’s claim and settle it in accordance with the policy’s remaining terms and conditions. I understand that Mrs A has already paid some of the invoices for her treatment herself. If this is the case, I am minded to require AXA PPP Healthcare Limited to reimburse her directly and to add interest at the annual simple rate of 8%, calculated from the date she paid the invoices until the date of settlement.

Both parties now have one month to make further submissions before I issue my final decision.

David Poley
ombudsman