

SUMMARY

Non disclosure – could it reasonably have been expected from the applicant to have mentioned her condition at proposal stage?

Background:

On 21.10.2005 Mrs. X applied for a policy with PPS Insurance. In the application form she disclosed that she suffered from hyperthyroidism and ulcers and that she had previously undergone a hysterectomy. The policy was issued without any restrictions. During 2007 Mrs. X underwent a breast reduction and submitted a claim to Professional Provident Society Insurance Company Limited (PPS Insurance) for payment of the Sickness Benefit. This is a daily benefit paid while the life assured is not able to work due to sickness. On 13.11.2007, in assessing the claim, PPS Insurance requested certain information from her. In response Mrs. X advised on 27.11.2007 that her breasts had increased in size after the birth of her children. The increase in size had been from a B cup to a D cup, and had taken place over a period of more than 10 years prior to the inception of the policy. She saw her general practitioner a “few times for the rash underneath my (her) breasts” and she “suffered with back pain.”

Upon receipt of this additional information, PPS Insurance declined the claim, and also imposed a backdated exclusion clause for Hypertrophy of the Breast (abnormal large breasts) and placed a loading for Dorsalgia (back pain) on the policy. In their letter of 08.04.2008 PPS Insurance explained that Mrs X should have informed them that the size of her breasts had increased from 1994. They suggested that this should have been disclosed in response to the following question:

“Have you ever experienced or are you experiencing any abnormal functioning or growth in or of any of your female organs, this includes but is not limited to, breast masses, abnormal breast size, uterus, cervix, ovaries, fallopian tubes, infertility, menstruation, miscarriages, confinements?”

Mrs X then explained that she did not consider the change in her breast size to have been “abnormal”. She understood it to be a normal occurrence after having children.

Assessment:

This matter was discussed at a meeting of the office’s adjudicators and, after a consideration of all the submissions it was decided that the increase in size of

Mrs. X's breasts after having children could not be regarded as being so unusual as to be an "abnormal" occurrence. A reasonable prudent person would not consider it to be an "*abnormal functioning or growth in or any of (her) female organs*". The meeting therefore took the *prima facie* view that she had answered the questions in the proposal form honestly and truthfully. The provisional ruling was therefore that the claim be considered on the merits, and that the exclusion clause be removed.

The provisional ruling was forwarded to PPS Insurance and in accordance with our normal procedure they were given the opportunity to provide additional facts not previously disclosed, or new contentions that the insurer would like the office to take into account if they did not agree with it. Mrs X was also given the opportunity to respond to the provisional ruling.

PPS Insurance responded by providing more information regarding hypertrophy of the breast, which was furnished to Mrs X for comment. She reiterated her previous contention that she had not considered the change in her breast size to be abnormal. She also provided clinical extracts from her general practitioner's records, which indicated that she had not specifically consulted him for the rash underneath her breasts, and that there was only one consultation for backache which was not related to her breasts. She emphasised that her general practitioner had not indicated at the time that the rash or backache were related to her increased breast size. This information was only given to her in February 2007 when she consulted him about a breast reduction operation.

Outcome:

The matter was again considered at an adjudicators' meeting, and the unanimous decision was to confirm the provisional ruling.

An amount of R4107.20 was due to be paid to the complainant.

H.E. 23/04/2009

DETERMINATION

We refer to previous correspondence regarding the above.

This matter was again discussed at an adjudicators' meeting on 25.03.2009, presided over by the Ombudsman, Judge B Galgut.

Our understanding of the matter is as follows:

On 21.10.2005 Mrs. X applied for a policy with PPS. In the application form she disclosed that she suffered from hyperthyroidism, ulcers and that she previously underwent a hysterectomy. The policy was issued without any restrictions. During 2007 Mrs. X underwent a breast reduction and submitted a claim to PPS in terms of the Sickness Benefit. On 13.11.2007, during the assessment process, PPS requested certain information from her. In response Mrs. X on 27.11.2007 advised that her breasts had increased in size after the birth of her children. The increase in size from a B cup to a D cup was over a period of more than 10 years and prior to the inception of the policy. She saw her general practitioner a "few times for the rash underneath my (her) breasts" and she "suffered with back pain."

Upon receipt of this additional information, you imposed an exclusion clause for "Hypertrophy of the Breast (abnormal large breasts) and placed a loading for Dorsalgia (back pain)" on the policy. In your letter of 08.04.2008 you explained that Mrs. X should have informed you that the size of her breasts increased since 1994. You suggested that this should have been disclosed in regard to the following question:

"Have you ever experienced or are experiencing, any abnormal functioning or growth in or of any of your female organs, this includes but is not limited to, breast masses, abnormal breast size, uterus, cervix, ovaries, fallopian tubes, infertility, menstruation, miscarriages, confinements?"

Mrs. X then explained that she did not consider the change in her breast size to be "abnormal". She understood it to be a normal occurrence after having children.

This matter was discussed at an adjudicators' meeting on 19.11.2008 and, after carefully studying all the submissions, the meeting decided that even though Mrs. X's breasts increased in size after having children, this was not abnormal, as it is not so unusual as to be regarded as being an "abnormal" occurrence amongst females after having children. A reasonable prudent person would not consider this to be an "abnormal functioning or growth in or any of your (her) female organs". The meeting therefore took the view that she answered the questions in the proposal form honestly and truthfully. The meeting's *prima facie* view was that the exclusion clause should be removed and that the claim be considered on the merits.

Our provisional ruling was forwarded to you and you were given the opportunity to provide additional information not previously disclosed, or new considerations that you would like this office to bear in mind, if you did not agree with it. Mrs. X was also given the opportunity to respond to the provisional ruling.

You responded by providing more information regarding hypertrophy of the breast and this response was then provided to Mrs. X for comment. She reiterated her previous contention that she did not consider the change in her breast size to be abnormal and provided clinical extracts from her general practitioner, which indicated that she did not specifically consult him for the rash underneath her breasts and there was only one consultation for backache, which was not related to her breasts. She

emphasised that her general practitioner had not indicated at the time that the rash or backache was related to her increased breast size. This information was only given to her in February 2007.

The matter was again discussed at an adjudicators' meeting held on 25.03.2009 and the meeting again gave due consideration to all the facts. The unanimous decision of the meeting was to confirm our provisional ruling.

Our ruling is now binding on you. Kindly inform us on or before 28.05.2009 that the ruling has been implemented so that the file may be closed.

We await your response.