

CR44

- *Non-disclosure - disability claim repudiated on the basis of material non-disclosure – incidents of minor back pain prior to the application date not disclosed.*

The complainant applied for cover on 9 April 1999. On the application form he answered “no” to all health questions including the question: “Do you suffer or have you ever suffered from any of the following: Complaints of sickness of the skin, muscles, skeleton and joints, including spinal complaints, polio and any congenital and acquired disfigurement, etc?”

In 2000 he had injured his back when loading a motor bicycle onto a bakkie, and he subsequently had back surgery (spinal fusion). His condition deteriorated and he submitted a claim for disability in 2003. At this stage it was discovered that the complainant had visited his GP in November 1997, complaining of discomfort over the sacro-ileac area and coccyx. He was treated with Voltaren, Mobil and Stilpane and according to the doctor no follow-up treatment was necessary and the condition cleared up within a few days. The claim was repudiated on the grounds of non-disclosure. Only the 1999 incident was mentioned in the letter of repudiation but it appeared from the GP’s notes that the complainant had also visited him for a back complaint during 1992 when he was diagnosed with lumbago and treated with medication. Again the doctor stated that the problem was not serious and had cleared up within a few days.

The matter was discussed at an adjudicators’ meeting. The issue was whether a reasonable prudent person in the position of the proposer, faced with the question posed, would have revealed the two instances of minor back pain so that the insurer could form its own view as to the assessment of the relevant risk. The meeting was of the view that it would be helpful to obtain the view of a re-assurer even if it was not conclusive. It would not be conclusive because the appropriate test was not the reasonable underwriter but the reasonable proposer.

The underwriter responded: “In terms of my extensive experience as an underwriting consultant in terms of what the underwriter/claims consultant will apply when faced with a potential non-disclosure at claim stage is “what would the prudent reasonable man” consider discloseable. I believe it is clear in this case that with a single consultation with no sequelae at all, the average man on the street would not believe this to be something significant and requiring disclosure. At claim stage, with this past history exposed, I believe that given the reality of the consultation, the reasonable man would not be expected to disclose such information.

The view as expressed accorded with that of the office and the claim was accordingly upheld.

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