

Interpretation / Policy wording

Interpretation - policy requiring that certificate by a medical practitioner be furnished for a sickness benefit claim - certificate provided by policyholder issued by a psychologist, not a medical practitioner - insurer refusing to pay claim

Background

1. The complainant, a senior public prosecutor, had an episode of depression/anxiety in October 2010 during stressful divorce proceedings. He consulted a psychologist, who diagnosed major depression and booked him off work for eight working days. When he claimed for a sickness benefit under his policy the insurer declined the claim, rejecting the certificate from the psychologist and stating that *"psychologists are not registered as medical or dental practitioners and are also not approved by us"*.
2. The relevant clause in the policy read as follows:

"A policyholder, who is totally or partially unable to attend to his usual professional duties on account of sickness and who complies with all the applicable requirements of his contract for valid claims, may receive Sick Pay Benefit in terms of this contract, provided that:

1. *he submits to [the insurer] ... a claim for Sick Pay Benefit and a certificate from the medical or dental practitioner or any other practitioner who attended to him, which practitioner has to be both registered with the Health Professions Council of South Africa and approved by [the insurer] (both the claim and the certificate must be on the prescribed form provided by [the insurer])"*.

Discussion

3. In its first response to our office the insurer maintained that it was entitled to insist on a certificate from a doctor or dentist registered with the HPCSA, stating that *"one has to accept that a certificate, signed by any practitioner could lead to various claims that are perhaps not based on scientific diagnoses but on mere speculation"*.
4. It was then established, however, that the psychologist was indeed registered with the HPCSA and we pointed out to the insurer that the contract provided for a certificate to be submitted from a medical or dental practitioner, *"or any other practitioner who attended to him"*. As long as that practitioner was registered with the HPCSA the insurer would therefore have a discretion as to whether or not to approve the

practitioner, and such discretion would have to be exercised reasonably.

5. The insurer responded that psychologists are registered under ancillary professions, not as medical practitioners. The insurer pointed out that the prescribed form referred to in the abovesaid clause is entitled "*Claim for sickness benefit (declaration by doctor/dentist)*", and Part A of the form adds that it is "*To be completed by the attending doctor/dentist ONLY*". The form goes on to ask for the primary and secondary diagnoses, and it was contended by the insurer that requiring a "*proper medical diagnosis*" is a reasonable exercise of its discretion, and that only medical practitioners can make medical diagnoses.
6. The complainant maintained that the requirement that psychologists must have been registered with the HPCSA gives recognition to psychologists as health practitioners, and therefore as professionals able to diagnose and treat ill-health/sickness of a particular kind. He felt that the wording of the contract should have precedence over that on the claim forms, and stated that "*it can also be argued that [the insurer] has been careless and/or slothful by failing to synchronise the wording of their official documents and that clients should, therefore, be given the benefit of the doubt*". He also stated that he had never been given a list of approved practitioners.

Result

7. The matter was referred to a meeting of the office's adjudicative staff for consideration. In the view of the meeting there was no reason why a registered psychologist should not make a diagnosis of depression since this lay within his field of training and competence. The fact that a psychologist may not prescribe medication does not preclude him from making a reliable diagnosis, or from being able to certify a period during which a patient was unable to perform his normal duties. The insurer had not suggested any specific reason why the psychologist in this case, as a registered practitioner who attended to the policyholder, should not be approved by the insurer.
8. It was furthermore pointed out that the claim form and certificate were not part of the contract, and that the wording of the contract must take precedence.
9. We made a provisional determination that the insurer should pay the complainant's sickness benefit claim, together with interest from the date of repudiation to date of payment, and the insurer accepted it.

