

The complaint

Mr R is unhappy that BUPA Insurance Limited declined a claim made under his private medical insurance policy for the cancer cash benefit (for receiving chemotherapy through the NHS).

What happened

The details of this complaint are well known to both parties, so I won't repeat them again here. The facts aren't in dispute, so I'll focus on giving the reasons for my decision.

What I've decided – and why

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

BUPA has an obligation to handle insurance claims fairly and promptly. And it mustn't unreasonably decline a claim.

I know Mr R will be very disappointed, and I have much empathy for his situation, but I'm satisfied BUPA has acted fairly and reasonably by declining his claim. I'll explain why.

The relevant terms and conditions of the 2021 policy

The policy terms and conditions in place in 2021, and relevant to the period when the claim was first made, sets out the NHS cash benefit for treatment for cancer. It says:

We pay this NHS cash benefit as follows:

- for each day you receive radiotherapy and/or proton beam therapy in a hospital setting
- for each day you receive IV–chemotherapy treatment
- for each day on which you have a consultation with your consultant [sic] and they provide you with a prescription for cancer treatment taken by mouth
- for the day on which you undergo a surgical operation

when such treatment is eligible treatment for cancer carried out as out-patient treatment, day-patient treatment or treatment in your home, and is provided to you free under the NHS.

We only pay NHS cash benefit if your treatment would otherwise have been covered for private out-patient treatment, day-patient treatment or treatment at home under your benefits.

It goes on to say:

For cancer treatment taken by mouth we pay this benefit...

Where we refer to 'cancer treatment taken by mouth' we mean:

- chemotherapy, or
- one of the following biological therapies: monoclonal antibodies (MABs)
- blood cell growth factors
- cancer growth blockers
- drugs that block cancer blood vessel growth (anti-angiogenics)
- Immunotherapy (including Interferon and Interleukin-2)
- gene therapy, or
- hormonal therapy

that can only be prescribed under a consultant's supervision and is not available from a GP and which you take by mouth.

Please also see benefit 4.1.5 out-patient cancer drugs.

Benefit 4.1.5 says:

We pay recognised facility charges for common drugs, advanced therapies and specialist drugs that are related specifically to planning and carrying out out-patient treatment for cancer either:

- when they can only be dispensed by a hospital and are not available from a GP, or
- when they are available from a GP and you are prescribed an initial small supply on discharge from the recognised facility to enable you to start your treatment straight away.

We do not pay for any common drugs, advanced therapies and specialist drugs that are otherwise available from a GP or are available to purchase without a prescription. We do not pay for any complementary, homeopathic or alternative products, preparations or remedies for treatment of cancer.

BUPA's decision to decline a claim for the cash benefit

From reading a leading cancer charity website, I'm satisfied that the treatment Mr R has is a hormonal therapy drug administered to treat prostate cancer. It's given as an injection into a muscle every 28 days or, as a longer-acting injection, every three to six months. "A practice nurse at your GP surgery gives you the injection. If you are unable to visit the GP surgery, a district nurse can give you it at home".

I'm satisfied that under the terms of the policy, BUPA has fairly concluded that hormonal therapy drug didn't constitute radiotherapy and/or proton beam therapy in a hospital setting, IV chemotherapy, wasn't a cancer treatment taken by mouth and didn't require Mr R to undergo a surgical operation.

However, in its final response letter dated March 2023, BUPA says it would allow injected chemotherapy (rather than hormone therapy) under the same rules that apply to IV chemotherapy.

Mr R says a reasonable person with no expert knowledge would consider the hormonal therapy drug to amount to chemotherapy. Relying on the Oxford English Dictionary, he says chemotherapy is "the use of chemicals, especially drugs, in the treatment of disease. The term is often used specifically to denote drug therapy for cancer, as distinct from treatments with radiation".

I've taken what Mr R says into account and accept chemotherapy isn't defined in the 2021 policy terms.

I've also looked at how the NHS describes chemotherapy. It says:

There are many different types of chemotherapy medicine, but they all work in a similar way. They stop cancer cells reproducing, which prevents them from growing and spreading in the body

Two leading cancer charity websites describe chemotherapy as:

Chemotherapy uses anti-cancer (cytotoxic) drugs to destroy cancer cells. Cytotoxic chemotherapy drugs disrupt the way cancer cells grow and divide. But they also affect some of the healthy cells in your body. These healthy cells can usually recover from damage caused by chemotherapy. But cancer cells cannot recover, and they eventually die.

And:

Chemotherapy is a type of anti-cancer drug treatment. It works by killing cancer cells. It is a systemic treatment which means it works throughout your body

I'm more persuaded by how chemotherapy is described by the NHS and the two leading charities. I'm satisfied that's more in line with how a reasonable person would reasonably

consider chemotherapy to work: that it destroys cells in the body, including cancer cells. That's different to the hormonal therapy drug that's administered to Mr R. I'm persuaded that this is used to stop the testicles making testosterone, reducing testosterone levels and this in turn can shrink the prostate cancer or stop it growing. It isn't to kill cells in the body – including the cancer cells. So, I don't think chemotherapy was administered to Mr R, either by way of IV, orally or injection.

Further, even if I'm wrong on that point – and in any event - I don't think BUPA has unfairly relied on the terms of benefit 4.1.5 to say the cash benefit isn't payable in the circumstances of this case because the hormonal therapy drug isn't only dispensed by a hospital. Based on what I've read, it's available from a GP.

Overall, I'm satisfied BUPA fairly and reasonably concluded that Mr R doesn't meet the policy requirements for the NHS cash benefit for treatment of cancer to be paid to him.

When making this finding, I've considered all other points made by Mr R including about the 16-page oncology booklet dated April 2021 provided by BUPA. Page 11 sets out the cancer cash benefit. However, I don't think this booklet was misleading in any way or impacts whether the claim for the cash benefit should be made in this case.

I agree with BUPA's conclusion in its final response letter that the booklet is only intended to provide an overview of the benefits to its members who contact BUPA to advise they'd received a cancer diagnosis. And any claim is subject to the terms and conditions of the policy. It broadly coincides with the terms and conditions of the policy relating to the cash benefits available.

The relevant terms and conditions of the 2022 policy

When the policy renewed in 2022 the terms were updated.

Benefit CB6.2 states:

We pay this NHS cash benefit for...

- each day you receive chemotherapy, other than oral chemotherapy...

Benefit CB6.3 states:

We pay NHS cash benefit for oral drug treatment for cancer for each three-weekly interval, or part thereof, during which you take:

- oral chemotherapy
- oral anti-hormone therapy that is not available from a GP.

The booklet entitled: "Important information. Changes to your BUPA personal health insurance" dated January 2022 reflects (at page two of two) that this change has been made to the policy.

Chemotherapy is specifically defined in the 2022 policy as: "Systemic Anti-Cancer Therapies (SACT), excluding anti-hormone therapies. SACT are therapies used to destroy or prevent growth of cancerous cells".

So, I'm satisfied that Mr R's claim for the cash benefit still isn't covered under the terms of the 2022 policy as chemotherapy expressly excludes anti-hormone therapies – which I think BUPA has reasonably concluded includes the hormonal therapy drug Mr R has administered.

Further, the anti-hormone therapy administered wasn't administered orally and was available from his GP. So, I'm satisfied isn't covered under the terms of the 2022 policy.

My final decision

I don't uphold Mr R's complaint. Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 23 February 2024.

David Curtis-Johnson
Ombudsman