

complaint

Mr B complains that Aviva Life & Pensions UK Limited terminated his income protection claim.

background

Mr B is a member of his employer's group income protection scheme, the aim of which is to pay benefit if he can't work in his normal occupation (known as 'own occupation').

After becoming injured in an accident, Mr B stopped work and made a claim. Aviva accepted the claim and payment began in 2012.

After two years, the definition of incapacity changed under the policy from 'own occupation' to 'suited occupation'. That meant that when reviewing the claim, Aviva needed to consider whether Mr B was able to return to his own occupation or another occupation to which he was suited by way of education, training or experience.

In 2016, Aviva thought Mr B was able to carry out a part-time suited occupation. It therefore terminated his claim payments. Unhappy with this, Mr B brought a complaint to this service.

Our investigator recommended the complaint be upheld. She thought the suited occupations Aviva had suggested weren't appropriate for Mr B. She recommended Aviva pay the backdated claim payments, plus interest.

Aviva didn't agree to our investigator's recommendations, so the matter has been passed to me to consider.

my findings

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

In terminating the claim, the onus is on Aviva to show that Mr B is able to carry out a suited occupation. I've therefore considered the medical evidence.

In July 2016, Mr B was assessed by Dr M (consultant occupational physician). Dr M said that Mr B's cognitive function remained impaired following his accident, and that he wasn't fit to return to his normal occupation. However, he thought Mr B would be capable of working in an alternative role on a part-time basis. He said that any such role should be supervised with clear instructions, and be predominantly manual. Dr M suggested work in the construction industry, postal delivery, and gardening and landscaping.

Following this assessment, Aviva arranged for surveillance on Mr B to take place. Aviva provided Dr M with a copy of the surveillance, as well as some social media posts relating to Mr B passing a sailing qualification.

Dr M thought this evidence showed there were some inconsistencies in Mr B's account of the impact of his condition. Nonetheless, he remained of the opinion that Mr B couldn't do his normal occupation. Given his sailing qualification, Dr M thought Mr B may be able to carry out an occupation within the sailing industry (as well as the other occupations he'd previously suggested).

Aviva made the decision to terminate Mr B's claim after receiving Dr M's comments.

Mr B disagreed with Dr M's conclusions and arranged his own assessment with Dr S (consultant occupational health physician) in November 2017.

Aviva says the only report that should be considered is Dr M's, as it was this report that led to its decision to terminate the claim. Also, Mr B saw Dr S some time after Aviva had terminated the claim.

Whilst I appreciate Aviva reached its decision based on Dr M's report, Mr B was entitled to arrange his own assessment with another specialist if he disagreed with Dr M's findings. Although the assessment with Dr S took place some time after Mr B was assessed by Dr M, as I understand it, Mr B's cognitive problems as a result of the accident had largely stabilised at the time of both assessments. So I'm satisfied it's reasonable for me to take into account Dr S's opinion.

Dr S said that given Mr B's neurological symptoms, she didn't think he could return to work in his normal occupation. She thought he'd be unable to carry out a role which has normal demands on concentration, memory and focusing. And that he would require the presence of another person when completing tasks, and would require repeated prompting to focus on the task (and that prompting may be as frequent as every 30 seconds). Dr S concluded that Mr B was able to carry out manual tasks, but given his limitations, she didn't think he could find a job within his requirements.

Dr S also commented on some of the roles suggested by Dr M. She explained she's provided occupational health services to the Royal Mail and the construction industry. Dr S didn't think Mr B could work as a postman, due to his problems with focusing. She also didn't think he could work in construction, as she thought he'd struggle to make quick decisions ensuring his safety. Dr S said he might be able to carry out a role in gardening and landscaping, but couldn't deal with any significant machinery, overhead work, or work on his own. I note that Dr S also reviewed the surveillance footage, and thought the activities were consistent with Mr B's own reporting and her observations during the assessment.

Having considered the evidence, overall, I don't think Aviva has done enough to show that Mr B is suited to the occupations that have been suggested. I'll explain why.

I think it'd be helpful if I set out Mr B's work history. After leaving college, Mr B worked in a largely manual role that was quite specialised and relevant to his qualifications. His employer then transferred to another company, and his role changed. Whilst he remained in the same specialised industry, his role wasn't as manual as it had been previously (apart from walking and standing) and I understand it required high levels of concentration and a good memory.

During Dr M's assessment with Mr B, he noted that Mr B had done some voluntary work on a ship, but this amounted to no more than sanding timbers. He also said that Mr B was able to mow the lawn and do some household tasks (such as washing and vacuuming). Dr M also recorded that Mr B's previous interests included riding and maintaining a motorcycle. It seems that based on these capabilities, Dr M concluded that Mr B was able to carry out a manual role. He then suggested some manual roles that he thought Mr B could do – working in construction, postal delivery, and gardening and landscaping.

Taking into account Mr B's education, training and experience, I'm not persuaded that he's suited to the roles suggested by Dr M. Whilst Mr B had previously worked in a manual role, this was very specialised and relevant to his qualifications. In my view, Mr B being able to maintain his own motorbike and sanding some timbers on a voluntary basis doesn't, on its own, mean that he's suited to a manual role such as construction. And being able to mow the lawn doesn't mean that he's suited to a gardening role. I appreciate he may well be *capable* of such a role (as confirmed by both Dr M and Dr S), but that doesn't necessarily mean he's suited to it by way of training, education or experience, as set out in the policy. As far as I'm aware, Mr B doesn't have any construction or gardening experience, and has no skills in these areas.

Dr S has explained why she doesn't think the role of postal delivery would be suitable for Mr B. Given that she's provided occupational health services to the Royal Mail, I think it's reasonable to accept her opinion in this respect.

The remaining point to consider is whether Mr B is suited to working in the sailing industry. I understand Mr B has been sailing for leisure since childhood. Then after his accident, Mr B and his wife both completed a five-day sailing course. This gave Mr B a sailing qualification which allows him to skipper a yacht in familiar waters during the day.

Dr M thought that given Mr B's sailing qualification and experience, he could work on boats. He also thought Mr B could take bookings for courses within the sailing industry, or work within a sailing retail shop.

I think this is quite balanced. On the one hand, we know Mr B can skipper a yacht. However, I also note that his wife accompanied him on the course and says she provided him with explanations regarding instructions and ensured he had regular rest breaks. And as I understand it, the qualification Mr B gained doesn't allow him to have paid employment in the sailing industry - he would need further qualifications in order to fulfil the legal requirements to work on British vessels operating in the UK.

I also think it's important to note Dr S thought Mr B wouldn't be able to carry out a role which has normal demands on concentration, memory and focusing. And both Dr M and Dr S thought Mr B would need supervision when carrying out a role.

Because of this, on balance, I'm not satisfied that Mr B is suited to working on a boat. I accept he's able to take out a boat with family and friends present (perhaps including his wife who is also able to skipper a boat). But I think there's a fairly significant difference between this and working on a boat as an occupation, where I would imagine someone would need to have sustained levels of concentration and focus, as well as likely need to work with minimal supervision.

Furthermore, whilst I accept Mr B is probably capable of working in a sailing retail shop, as well as able to take bookings for courses within the sailing industry, I don't think he's suited to those occupations by way of training, education or experience. I see that Dr M didn't actually comment on the suitability of these occupations, he merely said Mr B was capable of them.

Finally, Aviva says that Mr B is already carrying out a suited occupation. That's because Mr B volunteers as a mechanical engineer for a charity. That charity has provided some feedback on Mr B's work there. They've explained that Mr B works there one morning a week under supervision. They've said he's not always capable of sustained concentration or memory, and sometimes falls short of expectations. They've observed that after 20-30 minutes his attention can wander. They thought he appeared to have limited resources for sustained concentration.

I don't think that Mr B volunteering for a few hours a week shows that he's able to work on a part-time basis in a mechanical engineering role. I think that to be suited to a role such as a mechanical engineer, Mr B would need to have good cognitive function and be capable of sustained concentration and memory. However, Mr B's cognitive function remains impaired, which also appears to be evidenced from the charity's feedback on Mr B's voluntary work there.

Overall, given that I'm not satisfied Aviva has shown that Mr B is able to carry out an occupation to which he's suited by way of training, education or experience, it follows that his claim should be reinstated.

my final decision

My final decision is that I uphold this complaint. I require Aviva Life & Pensions UK Ltd to reinstate Mr B's benefit from the date this terminated.

Interest should be added to the backdated payments at the rate of 8% simple per annum, from the date each payment was due to the date of settlement. *

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 16 February 2020.

Chantelle Hurn-Ryan
Ombudsman

*If Aviva considers that it's required by HM Revenue & Customs to take off income tax from that interest, it should tell Mr B how much it's taken off. It should also give Mr B a certificate showing this if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.