

complaint

Mr B complains that AXA PPP Healthcare Limited has refused to pay for further treatment under his private medical insurance policy.

background

Between 1998 and 2005, AXA paid for treatment relating to Mr B's back problems. In 2005, it decided that Mr B's condition was chronic and it applied an exclusion to his policy for treatment of spinal pain and related symptoms (but definitive surgery would still be considered).

In 2016, Mr B was involved in a road traffic accident. He asked AXA if it would pay for an MRI scan. AXA authorised this. Later, AXA said it had authorised the scan in error, because it should have applied the exclusion. As a gesture of goodwill, it agreed to cover the cost of two MRI scans Mr B had had, plus the consultations he'd had with his specialist, as well as 10 physio sessions. Mr B said the physio hadn't helped and he wanted to consider further treatment. AXA said it wouldn't cover this, unless Mr B needed definitive surgery. Unhappy with this, Mr B brought a complaint to this service.

Our investigator didn't recommend the complaint be upheld. He thought AXA was entitled to rely on the exclusion.

I issued a provisional decision on 26 October 2017. My provisional findings were:

"The exclusion applied to Mr B's policy in September 2005 was:

"No further benefit for the continuing treatment including pain relief procedures of spinal pain and related symptoms, including neck pain and arm pain, with effect from 28 November 2008. Definitive surgery will still be considered."

Although the above exclusion refers to 2008, it seems both parties understood it to mean 2005.

The exclusion was applied because AXA thought Mr B's condition was chronic. The exclusion doesn't change the terms of the policy, it merely clarifies that AXA wouldn't cover any further treatment for Mr B's spinal pain that he was experiencing at the time because it thought this was chronic and therefore no longer covered under the policy.

The issue for me to consider is whether Mr B's claim in 2016 was for the same chronic condition and therefore not covered.

The policy defines 'chronic condition' as:

"A chronic condition is a disease, illness or injury that has one or more of the following characteristics:

- It needs ongoing or long-term monitoring through consultations, examinations, check-ups or tests.*
- It needs ongoing or long-term control or relief of symptoms.*
- It requires your rehabilitation, or for you to be specially trained to cope with it.*
- It continues indefinitely.*

- *It has no known cure.*
- *It comes back or is likely to come back.”*

I see that in 1998, Mr B experienced some problems with his back. He had treatment at that time, including injections and a discography. Then in 2002, Mr B was involved in a motorcycle accident and experienced whiplash. Following this, he had regular injections for pain relief. Despite this, his specialist noted he was having persistent cervical thoracic pain, and this was treated using denervation in 2004.

Mr B continued to have residual symptoms in the thoracic area. In 2008 he was found to have C5/6 and C6/7 disc prolapses. He had a cervical discectomy procedure at this time. I understand this resolved his symptoms.

In 2016, Mr B was involved in a further road traffic accident. In October 2016, a consultant neurosurgeon noted that Mr B had a previous road traffic accident in 2002 which resulted in fractures at C4 and T12, which led to C5/6 and C6/7 cervical discectomies and fusion. The consultant said that Mr B has very occasional lumbar spine pain and the previous episode was around 15 months ago. On examination, the consultant said Mr B had tenderness of the spine from about C3 to the upper thoracic region, and he had limitation in his neck movements. An MRI scan showed that Mr B had foraminal stenosis in C4. He said that Mr B's symptoms could be partially explained by the foraminal stenosis but he thought it likely that Mr B had a degree of thoracic outlet compromise as a result of the crash. The consultant was optimistic that Mr B would have a good outcome if he continued with a physio/chiropractor, but he noted it could take several months.

In December 2016, another consultant neurosurgeon saw Mr B. He also noted that a previous road accident had led to discectomy and fusion. He said Mr B had a recent road accident which had left him with a variety of axial symptoms. The consultant then clarified that the area of the concern was the T3/T4 scapular tenderness with an area of numbness bilaterally around the T7/T8 level. Also, Mr B was experiencing some neck pain. The consultant concluded by saying he thought Mr B most likely had symptoms of quite severe whiplash following his (recent) road traffic accident.

That same consultant saw Mr B again in January 2017. He wrote to Mr B's GP and said "As you know, he [Mr B] has developed new upper thoracic and cervical symptoms which I believe are directly related to the recent road traffic accident that he has suffered and, in effect, he has a form of whiplash."

Based on the above, it seems to me that Mr B's previous back problems largely resolved following his discectomy in 2008, other than some occasional lumbar spine pain. I think the evidence supports that the problems Mr B was experiencing in 2016 and 2017 were acute and related to his recent road accident, rather than an existing problem. I don't think AXA has shown that Mr B's 2016 claim was for a chronic condition.

That being the case, I think AXA should deal with the claim."

I asked both parties to provide me with any further comments they wished to make.

Mr B accepted my provisional decision.

AXA responded and made the following points:

- It says Mr B's spine is clearly diseased and it's not medically sound to argue that the compromised condition of his spine played no part in how it behaved mechanically during the recent road traffic accident.
- It makes the point that one of the specialists said Mr B's symptoms could be partially explained by the foraminal stenosis in C4. It says this is a vertebra that has previously been fractured.
- It says it treats the spine as a whole, because if someone has received treatment for their back they are more likely to suffer from back problems in the future than someone who has never had back trouble. Therefore, if back problems have become chronic in nature, it will withdraw cover for treatment of spinal pain and related symptoms. It thinks the exclusion does therefore apply.

my findings

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

AXA says Mr B's spine is clearly diseased, as he's required treatment for pain, fractures at C4 and T12, discectomies and fusions. I accept Mr B has had previous problems with his spine, but as I've pointed out in my provisional decision, it seems his problems had largely resolved by 2008 (following his discectomy at that time).

For AXA to rely on the chronic conditions exclusion to turn down the claim, the onus is on AXA to show that Mr B's recent upper thoracic and cervical symptoms (which were symptoms not experienced previously) fall under the exclusion. To simply say that the condition of Mr B's spine played a part in how it behaved during his recent road traffic accident is not enough for me to conclude that the claim falls under the exclusion.

AXA makes the point that one of Mr B's specialists noted his symptoms could be partially explained by the foraminal stenosis in C4. AXA thinks this makes it very clear that Mr B's medical history at this level in his spine is relevant to the current claim.

I don't agree with AXA that this is very clear. The specialist did indeed acknowledge that Mr B's symptoms could be *partially* explained by the foraminal stenosis in C4. But he thought it was likely that Mr B's thoracic outlet was compromised as a result of the crash. That same specialist later said he believed Mr B's new upper thoracic and cervical symptoms were directly related to the accident, and that he effectively had whiplash.

I therefore remain satisfied that the evidence supports Mr B's symptoms were new and likely unrelated to his previous spinal problems.

I don't agree with AXA that if someone has a chronic condition affecting their back, then there should be no treatment for any future problems which may affect a different area of their spine. If AXA wants to rely on the chronic conditions exclusion to turn down a claim, it must show that the claim falls under that exclusion. In this case, it hasn't done so.

my final decision

My final decision is that I uphold this complaint. I require AXA PPP Healthcare Limited to deal with the claim under the remaining policy terms. If Mr B has paid for valid treatment himself then AXA should reimburse him directly and add interest at the rate of 8% simple per annum from the date the invoices were paid to the date of settlement.

If AXA considers that it's required by HM Revenue & Customs to take off income tax from the 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.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 20 December 2017.

Chantelle Hurn-Ryan
ombudsman