

Before the Arbiter for Financial Services

Case ASF 212/2023

TY ('Complainant')

vs

Insurem Insurance Limited

(C 91883)

('Service Provider'/'Insurer')

Sitting of 13 March 2024

The Arbiter,

Having seen the complaint, whereby, the complainant disputes the insurer's decision to repudiate the claim submitted for the veterinary expenses incurred for her pet's surgery on 4 March 2022.

The Complainant claimed¹ that her cat was suffering from a toothache. She promptly took the cat to the veterinary centre where it underwent necessary surgery on the same day. Later, she submitted the treatment sheet and the relevant invoice to ECA Assurance with a request for reimbursement of the expenses incurred.

However, she stated that, ten days after her request, she was asked to provide the pet's medical history from birth. She submitted the medical history provided by the clinic that has been following her cat for the past eight years. But, the insurer insisted on also receiving the pet's medical history from previous years, which the Complainant eventually submitted.

¹ Pages (p.) 73 - 74

Complainant stated that after 15 days, she received the first refusal of her claim on the basis that any accident or pathology, along with its consequences that first occurred before the subscription date or during period deficiency, would not be covered. The reason for denial was because:

'in 2020 my cat had the same problem, so it is a lower disease'.²

The Complainant acknowledged that, according to the cat's medical records, scaling was planned for 2020, but scaling was carried out in 2021 with the description being *'scaling and a cavity with a clean appearance'*, and no pathology or accidents were observed. She insisted that descaling was related to the cat's age rather than to any pathology.

She claimed to have received a second refusal for reimbursement with the main reason then being that:

'Tooth resorption and gingival bleeding lesions are clearly described in the medical history in June 2021. Odonto-clastic diseases are highly prone to recurrence, especially since in June 2021, extractions were refused.'³

The Complainant emphasised that during a check-up in June 2021, no lesions or other issues were found in her cat, and the only treatment required was scaling, and this due the cat's age. The scaling procedure performed in June 2021 resolved the issue, and no disease was detected. In fact, the *'care sheet'* document dated 4 March 2022 clearly states that there was no relation with any previous health issues – *'Relation with a previous pathology – No.'⁴*

In July 2022, the Service Provider sent a definitive refusal stating that *'It appears that the lesions of dental resorption and gingival bleeding are described in the medical history of June 2021. Therefore, we classify your complaint as an unfavourable opinion.'⁵*

The Complainant argued that the primary purpose of obtaining pet insurance is not to receive reimbursement for a small amount of money spent on a vaccine,

² P.73

³ *Ibid.*

⁴ P. 138

⁵ P. 4; 57.

but to receive reimbursement in the case of an illness or accident which, however, the Service Provider is insisting on not reimbursing.

In this respect, she is requesting⁶ full reimbursement of €1,308.30 for the surgical care of her cat, as per the table of guarantees. She insists that no pathology or lesion had been found prior to the surgery in question.

Having seen the reply⁷ by the Service Provider which, in essence, submits that:

'Mrs TY took out an animal health policy which took effect on 30 December 2021 and which she cancelled on its anniversary date of 29 December 2022.

On 4 March 2022, she applied for cover for a surgical operation.

After studying the medical history of Mrs TY's pet, the veterinary surgeon noted that the lesions suffered by Mrs TY's pet pre-existed her membership (present in the medical history of June 2021).

In accordance with the provisions of the information leaflet, "the following are excluded from all cover: all costs arising from an illness, accident or pathological condition of any kind, as well as its consequences, which occurred or first became apparent before the date on which the policy was taken out or during the waiting period."

In view of the above, we have refused to cover the surgery.

We hereby inform you that we are maintaining our position on this matter.

Please do not hesitate to contact us should you require any further information.'

Hearings

The first hearing⁸ of 16 January 2024 had to be postponed due to problems of communications on the part of the Complainant. The Arbiter formally requested the Complainant to present translations of two main documents submitted with

⁶ P. 5

⁷ P. 129

⁸ P. 130

the original complaint form, these being, Index A and Index D, that is, the 'Hospital Care sheet' and the 'Chat History' respectively.

During the second hearing of 29 January 2024,⁹ the Arbiter pointed out that the Office had not yet received the translations as requested during the previous hearing.

The Complainant declared that:

'Basically, the insurance is saying that the cat was ill before the tooth came into place.

I say that the cat was not ill before that and to do the tooth descaling is something we have to do after ten years.

So, I am asking the insurance to get the money back, but the insurance is refusing stating that the cat was already sick while it wasn't. There was nothing wrong with the cat.¹⁰

During the cross-examination,¹¹ it was declared that:

'It is being said that for the perfect understanding of the way they are proceeding in the insurance company, it is important to know that the insurance company was not directly handling the claims. They were handled by the TPA, SA ECA based in France and all the exchanges were made in France.

It is being said that the insurance company wants to secure the fact that I had clearly understood that before making the claim, the TPA asked me about some elements about the medical record, and that I provided the TPA with the medical record by myself. Asked whether this is true, I say, yes.

It is being said that this medical report indicated different exam, previous intervention by the vets, especially in 2021, regarding the teeth of the cat. Asked whether this is true, I say, yes.

⁹ P. 131 - 133

¹⁰ P. 131

¹¹ P. 131 - 132

At this point, the Arbiter is asking the Service Provider if she is referring to one of the documents that he requested a translation of, and the Service Provider confirms that it is so.

It is being said that this document has been analysed by a vet because it is complicated, its medical indication, and it has been evaluated by an independent vet who gave me the answer. That all the discussions and the answers were done by the veterinary consultant of the TPA, not directly by a handler. Asked whether this is true, I say this is true.

The Service Provider continues to say that there are some documents, the discussion with the veterinary of the TPA explaining to the Complainant that it was a pathology referring to the examination of 2021, that is, six months before the subscription of the contract.

Asked whether it is true that I subscribed my contract in December 2021, I say it is true.”

Catherine Pigeon, on behalf of the Service Provider, stated¹² that:

‘The contract has two months waiting period before taking into consideration any disease because in the document that the Complainant provided to the Arbiter – Tableau Des Garanties (Template of Benefits, pg. 070) - it clearly indicates that there is a 60-day waiting period, meaning two months in case of a disease.

I say that the claim was made in March 2022, which means a little bit more than 65 days after the subscription. And that is why the veterinary asked the Complainant for some documents to analyse the disease because it was an earlier claim. It is the normal procedure to analyse the different documentation that the Complainant provided to the veterinary who is independent from the TPA, where the veterinary concluded that it was a pre-existing condition linked to the previous observation made by the Complainant’s veterinary which is indicated in the document, the medical record of 2021. And that is why this is a pre-existing condition which leaves no doubt to the veterinary.

¹² P. 132 – P. 133

The Arbiter asks whether there is a document which proves what the independent veterinary has said. The Service Provider states that it is written in different documents, especially in a document on page 044, where ECA (the TPA) announced to the Complainant the decision of the vet.

The Service Provider clarifies that ECA is a TPA working with an independent veterinary to analyse the different claims and that this is the conclusion of the vet.'

The Arbiter pointed out that although he is seeing a letter of the TPA, the conclusion of the vet has not been submitted, and is thus requesting the Service Provider to produce evidence regarding the conclusions of the independent vet, whilst also requesting the translated documents already indicated in the previous hearing from the Complainant.

The latter declared that she has no questions by way of cross-examination to the Service Provider.

Having seen the statements by the Complainant

Having seen the statements by the Service Provider

Considers

The complaint mainly revolves around the fact whether the main reason behind the surgery undergone by the Complainant's cat, was a pre-existing medical condition or not.

The Arbiter shall determine and adjudge a complaint by reference to what, in his opinion is fair, equitable and reasonable in the particular circumstances and substantive merits of the case.¹³

Upon review of the original complaint form, the Arbiter notes that the Complainant did not provide specific details about the cat's surgery and its main purpose. She simply stated that the cat had a toothache and had surgery the same day.

¹³ As provided in Article 19(3)(b) of Chapter 555 of the Laws of Malta.

She claimed that the Service Provider denied her request for compensation because they believed that her cat's current condition was similar to that experienced in the year 2020 and is, therefore, considered as a '*lower disease*'.

She further claimed that for the second refusal, the Service Provider quoted that '*Tooth resorption and gingival bleeding lesions are clearly described in the medical history in June 2021. Odonto-clastic diseases are highly prone to recurrence, especially since in June 2021, extractions were refused.*'¹⁴

She insisted that in June 2021, the cat needed scaling due to his age. No lesions or pathology had been found before and stated that in fact, the care sheet clearly indicates that '*Relation with a previous pathology – No.*'

Again, reference has been made to descaling. But, when considering the '*Claim Declaration and Refund Request*'¹⁵ document, which the Complainant is referring to as the '*care sheet*', the section regarding the information concerning the procedure or therapeutic procedure, indicates '*Oral surgery, tooth extraction*'.

So, contrary to that implied by the Complainant, the surgery was a tooth extraction with the presented pathology being '*Dental abscess – Dental resopha*'.

Reference is being made to the pet's medical history,¹⁶ translated version of which was submitted following the Arbiter's request. Such history shows that in October 2020, dental descaling was to be planned and that it would have costed around 250 euros. However, despite the Complainant repeatedly stating that descaling was necessary due to her cat's age, the procedure had not been performed until June 2021.

It is crucial to note that, based on the same medical history, on 14 June 2021,¹⁷ reference had already been made to a possible extraction of the tooth.

¹⁴ P. 3

¹⁵ P. 138

¹⁶ P. 141 – P. 143

¹⁷ The original document submitted in French shows (P. 23) that for 14 June 2021, part of description included the following: *Kesium en attente soins dentaires (detrartrage sous AG + exeresse de la carnassiere au besoin)*. However, when translated, that is, in the translated document, such quote was shown for the 18 June 2021. The Arbiter will rely on the original document.

On 18 June 2021, descaling was performed, but it was specifically quoted that extraction was refused.¹⁸ It would therefore appear that the surgery claimed for, which was executed in March 2022, was prescribed and refused in June 2021.

It is crucial to note that no pet insurance policy was in force at the time the tooth extraction was refused. In fact, as per the veterinary's declaration, the pet insurance in question was issued in December 2021. This clearly implies that, prior to purchasing the policy, the need for extraction of the cat's tooth was already in place, which was however refused.

It is worth noting that, as stated¹⁹ by the independent veterinarian, the surgery was performed only four days after the expiry of the waiting period which, as per policy wording, is defined as the '*period of time from the date the cover takes effect during which the cover is not due ...*'.²⁰

The policy also expressed that '*Any accident or pathology whose first manifestation or occurrence occurs during the waiting period will be excluded from coverage for the entire duration of the contract.*'²¹

The Arbiter refrains from commenting on whether the situation where a claim was made soon after the 2 months waiting period expires was purely coincidental or not.

The Arbiter does not possess the necessary expertise to judge whether or not the claim relates to a pre-existing condition excluded from policy cover.

However, the Arbiter does not doubt that the independent veterinary appointed by the Service Provider holds such competence. He declared that:

'After my request for additional medical reports, I found that the animal was examined on June 16, 2021, for oral symptoms caused by gingivitis and other dental issues. Periodontal care was performed on June 18, 2021, during which the prescribed dental extractions were refused by Mrs TY. Irreversible dental lesions were described and documented. It appears that the dental treatments performed on March 4, 2022, are a consequence of the incomplete treatments

¹⁸ P. 143

¹⁹ P. 145

²⁰ P. 81

²¹ P. 84

in June 2021. Consequently, I conclude that the periodontal and odontoclastic diseases, the subjects of the reimbursement request on March 4, 2022, precede the effective date ...'.²²

Whilst the Complainant failed to submit any kind of proof or statement disputing the independent veterinary's version, the Arbiter finds the latter's submission to be clear, precise, and more credible.

Decision

For reasons explained, the Arbiter dismisses the complaint and does not impose on the Service Provider any obligation to reimburse the Complainant for the expenses incurred in relation to her pet's surgery.

Each party is to bear its own costs of these proceedings.

Alfred Mifsud

Arbiter for Financial Services

Information Note related to the Arbiter's decision

Right of Appeal

The Arbiter's Decision is legally binding on the parties, subject only to the right of an appeal regulated by article 27 of the Arbiter for Financial Services Act (Cap. 555) ('the Act') to the Court of Appeal (Inferior Jurisdiction), not later than twenty (20) days from the date of notification of the Decision or, in the event of a request for clarification or correction of the Decision requested in terms of article 26(4) of the Act, from the date of notification of such interpretation or clarification or correction as provided for under article 27(3) of the Act.

Any requests for clarification of the award or requests to correct any errors in computation or clerical or typographical or similar errors requested in terms of article 26(4) of the Act, are to be filed with the Arbiter, with a copy to the other

²² P. 145

party, within fifteen (15) days from notification of the Decision in terms of the said article.

In accordance with established practice, the Arbiter's Decision will be uploaded on the OAFS website on expiration of the period for appeal. Personal details of the Complainant(s) will be anonymised in terms of article 11(1)(f) of the Act.