

Ombudsman's Determination

Applicant	Mrs N
Scheme	Local Government Pension Scheme (the Scheme)
Respondents	Rhondda Cynon Taf (the Council)

Outcome

1. I do not uphold Mrs N's complaint and no further action is required by the Council.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mrs N's complaint is that she has been refused Tier 1 ill health pension benefits.

Background information, including submissions from the parties

4. Mrs N was diagnosed with Fibromyalgia. She was subsequently referred to Dr Thomas, an independent registered medical practitioner (**IRMP**).
5. On 12 May 2014, Dr Thomas certified that, in his opinion, Mrs N was not permanently incapable of discharging efficiently the duties of her employment. In his report to the Council, Dr Thomas confirmed he could not say that, "on the balance of probabilities she would remain unable to undertake her current occupation from the present time until her normal retirement age in 21 years' time."
6. On 4 September 2014, the Council turned down Mrs N's application, following Dr Thomas' report.
7. On 16 September 2014, Mrs N appealed the decision made by the Council. It subsequently agreed that Mrs N's case would be referred to another IRMP, Dr Hancock for a further medical opinion.
8. On 2 October 2014, Dr Hancock considered the occupational health notes, including Mrs N's general practitioner (**GP**) records. Dr Hancock certified that Mrs N is permanently incapable of carrying out her employed duties. He further said that she is unlikely to be capable of undertaking any gainful employment within the next three years but is likely to be capable of undertaking gainful employment at some time

thereafter and before her normal pension age. He recommended that Tier 2 ill health benefits should be awarded.

9. On 20 November 2014, the Council awarded Tier 2 benefits to Mrs N and backdated the award to 2 May 2014, the date of Mrs N's initial appointment with IRMP Dr Thomas.
10. On 26 January 2015, Mrs N invoked the Scheme's two stage internal dispute resolution procedure (**IDRP**). She disagreed with the decision to award her Tier 2 ill health benefits. She enclosed a report from Professor Choy, Consultant Rheumatologist who said that in his opinion it is unlikely that Mrs N can return to work full time after three years, given the degree of current symptoms.
11. On 24 April 2015, in light of the new information provided by Mrs N, the Council referred the matter back to the IRMP, Dr Cooke, for reassessment.
12. On 30 April 2015, Dr Cooke said, after having reviewed the evidence submitted, it is his opinion that on the balance of probabilities Mrs N was permanently incapable of carrying out the duties of her previous employment. However, she is likely to be capable of undertaking some form of gainful employment at some time thereafter and before her normal retirement age. Dr Cooke certified that in his opinion Tier 2 ill health benefits should be awarded.
13. On 7 October 2015, the Specified Person for the Council turned down Mrs N's stage 1 appeal and said that Tier 2 ill health benefits remained appropriate. After considering the available evidence he concluded that the Council had followed the correct process and regulatory requirements. He stated that there was still further treatment options available to Mrs N that may enable her to undertake employment prior to her normal pension age.
14. On 9 November 2015, Mrs N appealed under stage 2 of the IDRP.
15. On 29 February 2016, the Council issued its stage 2 IDRP response to Mrs N. The decision maker held that the decision to award Mrs N Tier 2 ill health benefits was reasonable given all the medical evidence to support the award and was satisfied that all regulations were applied correctly.

Adjudicator's Opinion

16. Mrs N's complaint was considered by one of our Adjudicators who concluded that no further action was required by the Council. The Adjudicator's findings are summarised briefly below:-
 - In order to be eligible for Tier 1 ill health benefits under Regulation 35 (5) Mrs N must be unlikely to be capable of undertaking gainful employment before her normal retirement age.

- The Ombudsman's role is not to decide whether Mrs N is eligible for Tier 1 ill health retirement that is a matter for the Council to decide after obtaining the requisite certification from an IRMP.
 - The Ombudsman's role is to decide whether the Council had abided by the Regulations, asked relevant questions, considered all relevant evidence and explained the reason(s) for its decision in a transparent way. The Ombudsman can request that the Council look at Mrs N's case again should he find flaws in the decision making process. The medical evidence is reviewed in order to determine whether it is appropriate and supports the decision made. However, it is up to the Council to decide which evidence it wishes to attach any weight. The Council can prefer the advice of its own medical advisers unless there is a cogent reason why it should not.
 - Mrs N contends that Professor Choy's opinion seems to have been ignored. However it is for the Council to attach weight (if any) to the relevant medical evidence. At IDR stage 1 Dr Cooke confirmed that he had considered Professor Choy's report of 6 January 2015.
 - Dr Cooke certified that Mrs N is unlikely to be capable of undertaking any gainful employment within the next three years, but is likely to be capable of undertaking gainful employment at some time thereafter and before her normal pension age.
 - Mrs N disagreed with Dr Cooke's assessment and Professor Choy's supports her application. However, the Adjudicator was of the view that this is not sufficient for the Ombudsman to say that the Councils' preference for Dr Cooke's opinion was perverse.
 - The Adjudicator was satisfied that the Council in its IDR stage 1 response clearly explained its reasons for concluding why a Tier 2 ill health benefit is appropriate for Mrs N. She said this was because the Council's decision maker stated that the medical evidence available suggests there is no conclusive long term prognosis for Mrs N's condition and there is further treatment available to her which may enable her to undertake gainful employment prior to her normal pension age.
 - Mrs N says that the Council delayed in responding to her complaint. The Adjudicator was of the opinion that the time the Council had taken was reasonable. In addition, the Council had backdated Mrs N's Tier 2 benefits to the date of the original decision made by Dr Thomas and as such she has suffered no injustice.
17. Mrs N did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mrs N provided her further comments which were:-
- The Council's decision is incorrect as it was based on Dr Cooke's flawed medical report.
 - The Council failed to give a detailed decision following Dr Thomas' opinion.

- Dr Cooke misinterpreted Professor Choy's report, therefore making his opinion factually incorrect.

Ombudsman's decision

18. It is my view that Dr Cooke's report covered all the necessary requirements and provided the Council with a comprehensive opinion in order for it to reach a decision. I have not seen any evidence to show that it did not review any aspect of Mrs N's concerns or condition. Dr Cooke's opinion took into account relevant evidence and referred to appropriate medical research. I appreciate that Mrs N disagrees with the conclusions reached, and presented her counter arguments, but while I recognise that Mrs N disagrees with Dr Cooke that is not enough to say that the report is an inadequate basis for the Council's decision.
19. Mrs N has said that the Council failed to give a detailed decision following Dr Thomas' opinion. While I accept that the Council's decision on 4 September 2014 fell short of what was expected from it, it has since then provided reports at IDRP stages 1 and 2 which has dealt adequately with the issue. The medical opinions of Dr Hancock and Dr Cooke and the Council's subsequent decision at IDRP stage 1 and 2 were sufficiently thorough and sets out why Mrs N has not met the criteria for early retirement on grounds of ill health.
20. Mrs N suggests that Dr Cooke misinterprets Professor Choy's report regarding ongoing medication/CBT. However, I do not find that there is sufficient evidence provided that supports this assertion. Particularly, Dr Cooke concludes in his report on balance of probabilities and at the time of the tier 2 assessment, he could not say Mrs N was likely to continue to have symptoms or functional impairment at a level sufficient to prevent any gainful employment for the next 20 years.
21. I find that, based on the evidence that has been presented to the Council, it has considered the relevant factors in arriving at its decision not to grant Mrs N Tier 1 ill health benefit. There are no justifiable grounds for me to find that the Council's decision was perverse or that the process it undertook in reaching its decision was flawed.
22. Therefore, I do not uphold Mrs N's complaint.

Anthony Arter

Pensions Ombudsman
21 September 2017