

Ombudsman's Determination

Applicant	Ms I
Scheme	NHS Injury Benefit Scheme (the Scheme)
Respondent	NHS Business Services Authority (NHS BSA)

Outcome

1. I do not uphold Ms I's complaint and no further action is required by NHS BSA.

Complaint summary

2. Ms I has complained that her permanent injury benefit (**PIB**) payments should be payable from March 2017; she was not given a forecast of her PIB payments; a PIB deterioration review was delayed; and her data was not shared with due regard by NHS BSA.

Background information, including submissions from the parties

3. In October 2009, Ms I applied for PIB, which was initially rejected by NHS BSA, but was later accepted upon receipt of further medical evidence. The Scheme medical adviser recommended that Ms I had suffered a permanent loss of earnings ability (**PLOEA**) of 36%, classed by NHS BSA as 'Band 3'.
4. In June 2012, Ms I applied for a deterioration review, claiming her condition had worsened from May 2011. Upon receipt of an Occupational Health (**OH**) report, in October 2012, NHS BSA agreed that Ms I's PLOEA had increased to 51%-75%, which was classed as 'Band 4'. NHS BSA increased Ms I's PIB award from the date of the OH report. Ms I challenged this date and, after reviewing further medical evidence, NHS BSA backdated the increase to 1 August 2011.
5. On 21 April 2017, NHS BSA received an ill health retirement (**IHR**) application form from Ms I.
6. On 24 April 2017, Ms I told NHS BSA that her IHR application should be considered as a request for another PIB deterioration review. NHS BSA reviewed the new evidence Ms I had submitted with her IHR application for consideration of a PIB deterioration review request.

7. On 4 April 2018, the Scheme medical adviser issued its decision that Ms I's PLOEA had increased to 100%, which qualified her for 'PLOEA Band 5'. NHS BSA subsequently increased Ms I's PIB award from 24 April 2017, the date it received her request for the deterioration review. Ms I challenged this date and NHS BSA decided to make the increased award payable from 10 January 2017, the date of Ms I's most recent review by OH at that time.

Adjudicator's Opinion

8. Ms I's complaint was considered by one of our Adjudicators, who concluded that no further action was required by NHS BSA. The Adjudicator's findings are summarised below:-
 - NHS BSA confirmed that it backdated Ms I's latest increase in her PIB award to 10 January 2017, so Ms I's complaint that it should be payable from March 2017 is unsupported.
 - Ms I complained that she did not receive a forecast of her PIB award, but this is not part of the PIB process. A full breakdown of calculations is provided once a PIB award has been granted or revised.
 - NHS BSA could not reasonably have known that Ms I wanted a PIB review until her communication on 24 April 2017, so NHS BSA did not cause any delay.
 - There is no evidence to suggest that NHS BSA shared Ms I's information with anyone other than those parties directly involved in her PIB and IHR applications.
9. Ms I did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Ms I provided her further comments, which do not change the outcome. I agree with the Adjudicator's Opinion and I will therefore only respond to the key points made by Ms I for completeness.

Summary of Ms I's response

10. Ms I argues that NHS BSA used incorrect data in its calculations of her PIB awards in 2006 and 2010.
11. The letter issued by the Scheme medical adviser on 4 April 2018, has been ignored by the Pensions Ombudsman.
12. Ms I submitted a subject access request to NHS BSA, through which she obtained a copy of its internal 'Worksheet for calculation of Injury Benefit including typing instructions' (**the Worksheet**), dated 18 April 2018. Ms I considers that the data in the Worksheet, which followed her deterioration review in April 2018, is incorrect. In particular, Ms I thinks she should have been recorded as Band 6 instead of Band 5 and that the Worksheet incorrectly shows her injury award to be 85% instead of 100%.

Ombudsman's decision

13. My Office issued its jurisdiction decision to Ms I on 29 June 2018, which set out the reasons why her complaints about events in 2006 and 2010 will not be considered. I will not comment further on her responses involving these events, as it was dealt with in the jurisdiction decision letter of 29 June 2018.
14. The summary, set out in paragraph 7 above, shows that the letter dated 4 April 2018, has been reviewed and the contents taken into account, so this part of Ms I's response has no basis.
15. I have reviewed the Worksheet Ms I has referred to. This is an internal calculation worksheet used by NHS BSA. The 'Band 5' entry on the Worksheet refers to the PLOEA banding, which is in line with NHS BSA's decision of April 2018. NHS BSA has confirmed that this is the maximum figure on the PLOEA scale. Given that Band 5 represents a PLOEA of 100%, I find that Ms I's claim that the Band should be higher to be without merit.
16. Ms I has also questioned the figure of 85%, however this figure is used within one of the calculations for obtaining Ms I's award, and is not, as Ms I claims, NHS BSA's record of her PLOEA. The Band 5 entry correctly refers to Ms I's recorded PLOEA at that time.
17. The evidence shows NHS BSA has correctly incorporated Ms I's details when considering and calculating Ms I's PIB award.
18. Therefore, I do not uphold Ms I's complaint.

Anthony Arter

Pensions Ombudsman
30 September 2019