

Ombudsman's Determination

Applicant	Miss L
Scheme	John Lewis Pension Trust (the Scheme)
Respondent	John Lewis Partnership Pensions Trust (the Trustee)

Outcome

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

Complaint summary

3. Miss L's complaint is that her incapacity pension (**IP**) has ceased upon review.

Background information, including submissions from the parties

4. Miss L was employed by John Lewis Partnership (**the Partnership**) as a Supermarket Assistant at Waitrose.
5. In April 2006, Miss L stopped working at the Partnership due to chronic back pain and was awarded an incapacity pension (**IP**) from the Scheme.
6. In April 2012, the Trustee's determined that all IP should be reviewed in five years.
7. On 15 May 2017, as part of the review process Miss L was referred to the consultant occupational physician, Dr Junker, who was provided with; the ill-health checklist completed by Miss L and the Partnership in 2006; Miss L's GP reports dated 27 February 2012 and 25 January 2017; Miss L's consultation records from January 2015 to January 2017 and specialist reports dated, 11 December 2014, 14 April 2015 and 14 May 2015. Dr Junker noted that Miss L was no longer under review by the pain clinic or neurologist regarding her back pain and was discharged in December 2014 by the pain management consultant and in April 2015 by the pain clinic's physiotherapist.
8. Dr Junker was of the opinion that Miss L was likely to benefit from further psychological therapy in order to address her depressive symptoms and there also appeared to be significant psychological overlay regarding her physical symptoms.

She said Miss L may benefit from physiotherapy for her shoulders. Dr Junker further was of the opinion that patients with chronic lower back pain receiving multidisciplinary biopsychosocial rehabilitation are likely to experience less pain and disability than those receiving usual care or a physical treatment. Dr Junker said that there was no medical reason why Miss L should not be capable to return safely to her role as a supermarket assistant, if she felt capable of doing so, and she would not be at risk if she decided to return to work. She further added that there was no medical reason why Miss L should not be able to work full time, if necessary with pain management, should she wish to do so.

9. In July 2017, Miss L's IP came up for review.
10. On 2 July 2017, Miss L was referred to the Scheme's medical advisor (**MA**), Dr Eraneva, a consultant occupational physician. Dr Eraneva in her report took into consideration Dr Junker's report including all the medical evidence and provided a report to the Trustee. Dr Eraneva said that there were specific treatment options that had remained untried. She suggested, for mood disorder and in the context of pain management, psychological intervention with cognitive behavioural approaches, a review of anti-depressant medication and graded exercise and reconditioning. Dr Eraneva further said these interventions were non-invasive, evidence based and low risk and as such she considered them to be reasonable. It was her view that the medical evidence did not support incapacity that is substantial in duration or permanent until normal retirement age.
11. On 10 July 2017, a sub-committee of the Trustee, called the Pensions Management Committee (**the PMC**), which has authority delegated from the Trustee to consider IP review cases, considered Miss L's case. It took into account Dr Junker's report, Dr Eraneva's report and all the medical evidence provided. It concluded that the available evidence did not demonstrate that Miss L's condition would seriously impair her earning capacity for a substantial period of time as there were treatment options available to her which had a good prognosis for improving her condition. Accordingly, the PMC decided to suspend Miss L's IP as it determined that she did not meet the requirements to qualify for an IP from the Scheme.
12. In October 2017, Miss L, unhappy with the PMC's decision, appealed by invoking the Scheme's two stage internal dispute resolution procedure (**IDRP**).
13. On 6 December 2017, the PMC sent a response to Miss L under the stage one of the IDRP. The PMC considered if there was an identifiable point of difference between the circumstances of Miss L's case in April 2006, when Miss L was awarded an IP, and at the date of the current review. It determined that the medical evidence indicated that Miss L's condition had significantly improved as a result of her engagement with a pain management program in 2015. The PMC therefore determined that, as there had been an improvement in Miss L's condition since the IP was first awarded in 2006, it was therefore appropriate to consider if Miss L met the test for incapacity under the Scheme Rules as at the date of the review.

14. The PMC reconsidered the medical evidence including Dr Junker's report, Dr Eraneva's report and the additional information that Miss L had provided with her stage 1 complaint. The PMC considered the treatment options outlined in Dr Eraneva's report. It concluded that the available evidence did not demonstrate that Miss L condition would seriously impair her earning capacity for a substantial period of time as there were treatment options available to her which had a good prognosis for improving her condition further and enabling her return to work. Accordingly, the PMC determined that Miss L did not meet the requirements to qualify for an IP from the Scheme and upheld the decision to stop her IP.
15. On 8 May 2018, Miss L appealed the decision under stage 2 of the IDRP.
16. On 7 June 2018, a separate committee, called the Appeals Committee (**the Committee**) considered Miss L's appeal. The Committee took into account; all previous medical evidence, Dr Eraneva's report, Dr Junker's report, additional information provided by Miss L at stage 1 IDRP. It also asked Dr Eraneva to confirm if her advice had changed as at the date of the stage 2 complaint. The Appeals Committee upheld the PMC's decision to stop Miss L's IP. It concluded that the evidence demonstrated that her condition had improved since 2006 and the evidence did not support a conclusion that Miss L's condition would seriously impair her earning capacity for a substantial period of time. In particular, the medical evidence indicated a number of treatment options, in addition to physiotherapy, which were considered low risk, non-invasive and likely to improve her condition further. As such Miss L did not meet the test of incapacity under the Scheme Rules.

Adjudicator's Opinion

17. Miss L's complaint was considered by one of our Adjudicators who concluded that no further action was required by the Trustee. The Adjudicator's findings are summarised briefly below: -
 - The Ombudsman's role is not to decide whether Miss L was eligible for IP; that was a matter for the Trustee to decide after obtaining requisite certification from a MA. Nor is it for the Ombudsman to agree or disagree with any medical opinion.
 - The Ombudsman's role is to decide whether the Trustee has abided by the Regulations, asked relevant questions, considered all relevant evidence and explained the reason(s) for its decision in a transparent way. If there were flaws in the decision-making process, the Ombudsman can require the Trustee to look at Miss L's case again. However, the weight attached to any of the evidence was for the Trustee to decide, including giving some of it little or no weight. It was also open to the Trustee to prefer the advice of its own MA's unless there was a cogent reason why it should not.
 - Rule D3(b) of the Scheme rules states that "...the Trustee may decide to pay an incapacity pension to a Pensionable Member...who...is leaving Service

before attaining the later age of 65 and Normal Pension Date and who is Incapacitated.” The Rule further states “the Trustee may vary, suspend or re-instate the incapacity pension as it considers appropriate at any time before the Member reaches Normal Pension Date.” Rule D3 (b) does not set out a particular test that the Trustee must apply when reviewing a pension. The Trustee has accepted that a relevant consideration for the decision maker reviewing an incapacity pension is the fact that an IP is already in payment and therefore the Trustee must turn its mind to whether or not there are grounds to consider overturning the status quo and stopping the payment of the pension. This requires the Trustee to consider if there has been an improvement in Miss L’s condition since the IP was first awarded in 2006; or if there has been change in the prognosis or updated medical information since the IP was awarded in 2006.

- The Adjudicator was of the opinion that, in considering the whole process from the time Miss L was referred to Dr Junker and Dr Eraneva and the first and second stage appeals, the Trustee had asked themselves the right questions and taken all the relevant, and no irrelevant, matters into account. In addition, they had obtained advice from the Scheme’s MA. Therefore, she was satisfied that they had applied the Scheme rules properly. The medical evidence indicated that Miss L’s condition had significantly improved as a result of her engagement with a pain management program in 2015. As such it was determined that there had been an improvement in Miss L’s condition since the IP was first awarded in 2006. It was therefore appropriate to consider if she met the test for incapacity under the Scheme rules as at the date of the review. The fact that the MA’s opinion differs from that of Miss L’s GP does not mean it is incorrect. She was of the opinion that the Trustee had considered all the relevant information.
- The Adjudicator was satisfied that the MA had considered all of the relevant medical evidence when making her assessment, so there has been no error or omission of fact in the Trustee’s reasoning, it did not misconstrue the Scheme’s criteria for IP. Further, the Trustee has given the reason for its opinion to not award Miss L IP and consequently it was reasonable, not perverse, for the Trustee to decide to turn down her application.

18. Miss L did not accept the Adjudicator’s Opinion and the complaint was passed to me to consider. I agree with the Adjudicator’s Opinion and I will therefore only respond to the key points made by Miss L for completeness.

Ombudsman’s decision

19. As explained by the Adjudicator in the Opinion, my role is not to review the medical evidence and come to a decision of my own as to whether Miss L’s IP should be suspended. My role is to consider the decision making process.

20. The relevant rule is D3(b) which provides the Trustee with the discretion to vary, suspend or reinstate an IP. However, as this is a discretionary power, the Trustee is required to follow the well-established principles; it must take only relevant matters into account and no irrelevant ones, it must correctly interpret the relevant rule, it must ask the right questions and it should not come to a perverse decision.
21. It is my view that the MA's opinion at stage 1 and 2 of the appeal process provided the Trustee with a comprehensive opinion, allowing it to reach a decision. There is no sign that it failed to review Miss L's concerns or condition properly. Further I find that the Trustee has exercised its discretion in a proper manner and interpreted rule D3(b) correctly. I appreciate that Miss L disagrees with The Trustee's decision not to grant her IP. However, Miss L's disagreement is not a sufficient reason for me to remit the matter back to the Trustee for her application to be reconsidered.
22. I find, based on the evidence that has been presented, that the Trustee has considered the relevant factors in arriving at its decision not to grant Miss L IP. I do not consider that there are justifiable grounds for me to find that the process the Trustee undertook in reaching its decision was flawed.
23. Therefore, I do not uphold Miss L's complaint.

Karen Johnston

Deputy Pensions Ombudsman
22 May 2019