



MANAGEMENT FILE

by DR CHARLES SHEPHERD, our medical adviser

This leaflet is based on an article which first appeared in the ME Association's quarterly *ME Essential* magazine.
MEA membership costs £18 a year for people living in the UK/BFPO.
For contact details, see foot of this page.



PERMANENT HEALTH INSURANCE POLICIES

CHECKING YOUR POLICY

Before you make a claim, challenge a decision to stop making payments or attempt to return to work, it is important to read through the small print in the policy – especially the exclusion clauses, how long-term illness/disability is defined, and what criteria you have to meet to qualify for payments.

For example, some firms try to exclude mental health disorders which can obviously cause problems if they (wrongly) conclude that ME/CFS is a psychiatric illness.

Most policies will make payments on the basis that you are unable to follow your usual occupation as a result of long-term sickness. But there are policies that say you must be unable to do any sort of occupation before benefits can be paid.

This type of clause can make it more difficult to claim in the first place and makes it more likely that you will be asked to return to work in a less demanding job once the claim has been in force for a period of time.

MAKING A CLAIM

This should be done as soon as it becomes clear that you are likely to be making a claim on your policy. Do not wait for the deferred period to expire when you are receiving sick pay.

You will need to complete a fairly detailed claim form. The insurance company may ask your doctor for a report or send you to one of their

Key Facts

- ❖ PHI is also known as Income Protection Insurance or Income Replacement Insurance. This is a type of insurance designed to provide a regular replacement income if someone is unable to work as a result of illness or accident.
- ❖ The level of payment is generally much higher than that provided by the state (eg, Employment and Support Allowance) and can be as high as 75% of gross salary.
- ❖ Policies are designed to pay a regular – normally monthly – income if someone has to stop work. Payments normally start after an initial waiting period, which can vary from four to 52 weeks. The waiting period is often linked to the amount of time that an employer is obliged to pay full or half pay when an employee is off sick.
- ❖ Payments should, in theory, continue until the person is able to return to work, dies, or the policy expires at normal retirement age – whichever happens first.
- ❖ For people who are able to return to work on reduced earnings, possibly as a result of going part-time or taking on a less demanding job, some policies have a degree of flexibility and will then pay a reduced rate of benefit.
- ❖ Some employees are covered as part of their salary package in what are known as Group PHI Schemes – where the payments are made by the employer. An important point here is that the person who is insured has no direct legal relationship with the insurer, and this can cause problems if the employer is not willing to be helpful or supportive when difficulties arise. The employer will probably hold the relevant papers. Other people, particularly those who are self-employed, buy individual policies.

own medical examination centres. Just because you are successfully claiming a state sickness benefit doesn't necessarily mean that the insurer will accept this as evidence of eligibility for their PHI Scheme.

WHAT HAPPENS NEXT?

Because PHI policies are in place to provide a fairly decent replacement income until normal retirement age, insurance companies are naturally very

keen to do all they can to avoid long-term claims.

So most companies now make increasing use of some form of regular medical and disability assessment. This may be in the form of periodic home visits from a disability assessor (who is likely to be a nurse, physiotherapist, or occupational therapist). Or you could be asked to have a periodic medical assessment with a private 'independent' physician, psychiatrist or psychologist, or be asked to attend a private centre where your capacity to work is assessed.

Unfortunately, in the case of ME/CFS, the type of medical, functional, and occupational health assessments that are carried out for the insurance companies may not be relevant to the sort of practical and mental functioning that people with this illness face in relation to a possible return to work. They may, therefore, provide a totally misleading and optimistic picture of what someone is actually capable of doing in the workplace.

If you asked to attend an assessment centre, and this is going to cause difficulty, especially in relation to the time of day or the travelling involved, write to the insurer as soon as possible after you receive notification to point this out and ask for any help that may be required on the day. There shouldn't be any problem with taking a carer or partner to a medical examination or functional assessment if you would find this helpful.

OTHER TYPES OF ASSESSMENT

Besides these assessments, some companies make use of private investigators and undercover video surveillance of people making claims – especially when they suspect that a claim is not genuine.

If your level of activity is in line with what you have told the company, and is also consistent with any management programme being undertaken, then this should be acceptable. But this sort of undercover video information can easily

be edited down and then misused to try and strike out a claim. If you believe that any form of undercover assessment is taking place, you need to take legal advice.

PHI PROBLEMS

People with ME/CFS experience a variety of problems when it comes to PHI claims. Not surprisingly, we receive anecdotal reports that indicate that some companies are not sympathetic, or even hostile, to claims relating to this illness. And some companies are worse than others.

Overall, we receive very little feedback about problems with the initial claim – in most cases this is accepted provided a firm diagnosis of ME, CFS or Post Viral Fatigue Syndrome has been made and you are obviously unable to go to work. Problems tend to arise once the claim has been going for a period of time – often as a result of a further medical or occupational health assessment.

Common problems include pressure to take part in certain forms of management such as Cognitive Behaviour Therapy (CBT) or Graded Exercise Therapy (GET). The insurer might also come to the conclusion that you are now fit to return to work as a result of a subjective functional assessment, even though you and your doctor do not agree.

WHAT TO DO IF PROBLEMS ARISE

In relation to pressure to take part in CBT and/or GET, it is worth noting that the 2002 Chief Medical Officer's Report clearly stated (in section 4.4.2) that it is not appropriate to make participation in a particular treatment regime an absolute condition for continuation of sickness/disability payments.

The National Institute for Health and Care Excellence's 2007 Guideline on ME/CFS also makes it clear that any type of treatment programme must be mutually agreed. So, if you and your doctor do not agree that a particular form of treatment is going to be helpful, or could even be harmful, there is no

obligation to pursue this.

Unfortunately, an insurer may then use refusal to take part in a CBT or GET programme as one reason to start thinking about ways in which the policy might be terminated.

If the insurer does threaten to terminate your policy, or actually terminates it, you have a number of options:

- **APPEAL PROCEDURES** – normally the first choice. Many insurers have a form of internal appeal procedure or a panel of independent arbitrators. If not, it's still worth writing to the Chief Executive or Chief Medical Adviser. If you are appealing, it's helpful to obtain a good medical report which support your case – preferably from a doctor with recognised expertise in ME/CFS.
- **LEGAL ACTION** – this can turn out to be very expensive, so do find a solicitor who has experience in this area of the law. Some solicitors offer a free initial consultation and your household insurance policy may include legal cover. It's certainly worth checking. The Law Society can provide details of solicitors who deal in this area of the law. www.lawsociety.org.uk Citizens Advice may be able to provide more local information on helpful solicitors.
- **THE FINANCIAL OMBUDSMAN SERVICE (FOS)** provides a free and independent procedure to try and settle PHI disputes. Their decisions are binding on the insurer. Feedback to The MEA about this service is mixed and it has been reported that, in around 70% of cases, the ruling is in favour of the insurance company. www.financial-ombudsman.org.uk Tel: 0800 023 4567 (free calls).

Whatever you decide, always talk to your union or professional body representative, and employer, before taking

any action. If you are going to challenge a decision, it's vital to have good medical evidence from your GP, consultant, and possibly ME/CFS specialist to support your cause.

FURTHER INFORMATION

- ◆ The ME Association has raised the whole issue of PHI disputes with the All Party Parliamentary Group on ME. This resulted in a full APPG meeting being devoted to the subject – with medical, legal and personal case history presentations being made. A summary of this meeting appeared in the February 2005 issue of our *ME Essential* magazine. Please contact our office (*address at the foot of the front page*), if you would like to see this report.
- ◆ We work closely with Richard Brooks, a partner with Royds Withy King Solicitors, on this issue. The firm have represented a number of people with ME/CFS who have had problems with these type of policies. They have a page of Frequently Asked Questions about the subject up at their website: <https://tinyurl.com/y86rz2py>
- ◆ PHI and other employment matters are covered in more detail in Chapter 16 of my book *Living with ME (Vermilion, 1999)*.

DISCLAIMER

Medical information contained in this leaflet is not intended to be used as a substitute for medical advice or treatment from your own doctor.

The ME Association recommends that you always consult your own doctor or healthcare professional about any specific problem.

We also recommend that any of the medical information provided by The MEA in this leaflet is, where appropriate, shown to and discussed with your own doctor.

HELPFUL TIPS ON MANAGING YOUR PHI CLAIM

- Ask for a copy of your policy from your employer if cover is provided under a company scheme.
- Keep in regular contact with your GP and ask for a referral to an ME/CFS clinic – a good specialist report can be very helpful if problems arise.
- Keep in regular contact with your employer's human resources/ personnel and occupational health departments.
- Type out letters, keep copies, and send important ones by Recorded Delivery.
- Make a careful diary note of any telephone conversations, the date and name of person spoken to.
- Keep a diary of what happened at medical or disability assessments, especially if any disagreements or problems occurred.
- Ask to see any medical report on your case to that you have legal access to under the 1988 Medical Records Act.
- If you are making a complaint, find out the name of the person who is assigned to investigate and resolve the issue. Try to deal with this person each time.



Our quarterly ME Essential magazine. It goes out to all members. If you would like to receive it regularly, please phone our office on 01280 818 963 or email: admin@meassociation.org.uk