840/10

Den 29. marts 2010 blev i sag nr. 76.146:

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mod

Bupa Insurance Limited
Palægade 8
1261 København K

afsagt sålydende

k e n d e l s e :

Forsikringstageren, der har sygeforsikring i Bupa Insurance Limited, klager ved sin repræsentant over, at selskabet har afvist at yde dækning til en operation for en ondartet ovariecyste.

Selskabet henviser til, at klageren ikke ved tegningen af forsikringen oplyste selskabet om, at hun tidligere havde haft en godartet ovariecyste.

Det fremgår af sagen, at klageren har været omfattet af sygeforsikringen siden 1/5 2005. Klageren blev optaget på sin mands police uden ekstra tillæg til præmien, da hendes Medical Questionnaire ikke gav anledning hertil.

Det er mellem parterne ubestridt, at klageren tidligere i 2005 ved en MR-scanning fik konstateret godartede ovariecyster, samt at selskabet ikke blev oplyst herom ved tegningen af forsikringen. Det fremgår af det Medical Questionnaire, som klageren skulle udfylde, at hun skulle oplyse om tidligere sygdomme.

2. 76.146

Klageren blev den 28/3 2009 opereret for ondartede ovariecyster. Selskabet har afvist dækning af denne operation med henvisning til, at klageren ikke havde oplyst om tidligere ovariecyster ved tegningen af forsikringen.

Klagerens repræsentant har ved skrivelse af 6/5 2009 over for nævnet nedlagt påstand om, at selskabet skal anerkende, at klageren er berettiget til at få dækket sine omkostninger i forbindelse med den foretagne operation. Klagerens repræsentant har til støtte herfor anført:

> "Tora Trading Services KK, a subsidiary of Tora Trading Services Limited, provides our Tokyo-based employees and their families with health insurance coverage through IHI Bupa. We pay sizable premiums (roughly US$300,000/year) with the understanding that IHI will cover the legitimate claims of our insureds as promised. Unfortunately, we are deeply dissatisfied with IHI's denial of coverage to Ms. A.S., spouse of our employee and policyholder T.R., for the March 28, 2009 removal of two malignant ovarian cysts and biopsy of potentially cancerous cells in her uterus.
>
> Ms. S. was added to Mr. R.'s policy in May 2008, and was first diagnosed with malignant cysts and potentially cancerous cells in February 2009. After she was examined by a second physician who confirmed the diagnosis, surgery was scheduled to remove the malignancies and retrieve a biopsy of the suspicious cells. In early March 2009, Ms. S.'s husband and the primary insured under the IHI policy, T.R., notified IHI of the situation and provided IHI with the requested information and documentation. On March 26, 2009, just two days before the surgery, IHI contacted Mr. R. to inform him that the procedure would not be covered by IHI. Ms. S. was forced to immediately obtain coverage with Japan's National Health Insurance to partially offset the costs of the procedure.
>
> IHI denied Ms. S.'s claim on the grounds that the 'diagnosis of ovarian cysts and suspicious cells should have been stated on I[Ms. S.'s] medical questionnaire since this is considered pre-existing.' (The April 14, 2009 letter from IHI to Mr. R. is attached hereto as Exhibit 1.) IHI's denial is based on 2005 medical records that Mr. R. provided to IHI before Ms. S.'s surgery (attached hereto as Exhibit 2). Specifically, Ms. S. underwent a MRI in 2005 which showed a slightly enlarged right ovary and *benign* cysts in her left ovary. Upon further examination, the treating physician determined that Ms. S. was in good health and found nothing to be concerned about with respect to the previously identified condition of her ovaries, including the *benign* cysts.
>
> IHI's assertion that ovarian cysts were a pre-existing condition that should have been stated on Ms. S.'s medical questionnaire defies explanation. IHI's medical questionnaire requires the disclosure of 'any disease, disorder or illness' or 'pre-existing medical conditions'. (See a copy of this questionnaire attached hereto as Exhibit 3.) The procedures/examinations performed in 2005 found only that Ms. S.'s right ovary was slightly enlarged and that benign ovarian cysts were present in her left ovary. As any competent medical professional can attest, ovarian cysts are an extremely common condition that usually resolves itself without necessitating treatment. Because the treating physician gave Ms. S. a clean bill of health and no further treatment or follow-up was recommended, she would have no reason to list benign cysts on her medical questionnaire. In fact, no applicant would have considered a clean bill of health from his or her physician to be a 'pre-existing condition' or 'disease,

disorder or illness' requiring disclosure on IHI's medical questionnaire. Further, at absolutely no time prior to February 2009 was there ever a finding of 'suspicious' or potentially cancerous cells in her womb. Therefore, IHI's assertion that Ms. S. should have disclosed the presence of suspicious cells on her application form is absurd.

Instead of rectifying the situation after being notified of its error, IHI has stated that it will cover Ms. S.'s procedure only if a medical loading of 20% from the date of her addition to the policy is paid. We believe this is unjustified, and that the denial of Ms. S.'s claim is clearly erroneous. Therefore, I am requesting that IHI acknowledge their error in denying Ms. S.'s claim, pay all costs associated with Ms. S.'s procedure that have not been covered by Japan's National Health Insurance (approximately US$7,000 to date), cancel the 20% medical loading currently applicable to Ms. S.'s policy and refund all additional payments made to IHI (if any) to cover the medical loading premium (approximately US$1,850)."

Selskabet har ved skrivelse af 28/5 2009 fastholdt sin afgørelse over for nævnet. Selskabet har til støtte herfor anført:

"Forsikringstager har tegnet en sygeforsikring hos selskabet, jf. vedlagte brochure. Forsikringen har været gældende siden d. 1. maj 2008. Klager optages på daværende tidspunkt i International Health Insurance danmark a/s uden ekstra tillæg til præmien, da hendes Medical Questionnaire ikke giver selskabet anledning hertil.

I forbindelse med A.S.'s operation på K. University Hospital d. 28. marts 2009, bliver selskabet bekendt med, at klager tidligere har haft ovariecyster tilbage i 2005. Ved optagelsen af A.S. blev selskabet ikke gjort bekendt med, at klager tidligere havde haft ovariecyster, hvilket af klager burde være oplyst i forbindelse med udfyldelsen af medical questionnaire, og det har derfor ikke været muligt for selskabet at tage de pågældende forhåndsregler ved optagelsen af A.S. Medical questionnaire er underskrevet af klager d. 11. maj 2008.

Klager anfører dog, at ovariecysterne tilbage i 2005 var godartede, og at det ikke er at sammenligne med de ondartede ovariecyster, som viser sig hos klager i 2009. Selskabet skal dog pointere, at der ikke skelnes mellem godartede og ondartede ovariecyster, men i stedet ses på ovariecyster som helhed. Klager udvikler ovariecyster samme sted to gange, og det må være påregneligt for klager, at selskabet har interesse i at vide, at klager har haft ovariecyster i 2005.

I den vedlagte brochure ses det under art. 8.1, at forsikringen kun dækker udgifter i forbindelse med sygdom, som ikke har været kendt af klager ved indgåelsen af forsikringen. Undtagelsen hertil er dog, hvis selskabet har accepteret dette. Selskabet vidste ikke og fik ikke information omkring klagers tidligere ovariecyster, og klager burde vide, at denne oplysning er i selskabets interesse. Det er endvidere i art. 12.2 anført, at A.S. har pligt til at informere selskabet om relevant information, som har en betydning for selskabets behandling af klagers krav.

Selskabet har afvist at dække klagers operation af ovariecyster, da klager inden optagelsen i selskabet ligeledes har haft ovariecyster. Hvis informationerne om klagers tidligere ovariecyster havde været tilgængelige for selskabet på det tidspunkt, hvor klager udfyldte medical questionnaire, havde selskabet tilbudt klager en forsikring, hvor der enten havde været en eksklusion omkring ovariecyster.

Dog har ihi Bupa nu tilbudt A.S. en forsikring, hvor der enten er en eksklusion på ovariecyster eller en medical loading på 20%. Ved en loading på 20% vil selskabet dække de nuværende og fremtidige udgifter i forbindelse med ovariecyster."

Klagerens repræsentant anførte herefter i skrivelse af 26/8 2009 til nævnet:

"In ihi Bupa's 28 May 2009 response to the above-referenced complaint, it asserts that, 'benign and malign cysts are considered as a whole and undistinguishable.' Based on the medical data provided in this case, this assertion is preposterous, Specifically, when benign cysts were detected during Ms. S.'s MRI in 2005, the physician informed her that she was in good health and no further procedures were recommended, However, when malignant cysts were discovered in 2009, Ms. S. was immediately scheduled for surgery to remove the cysts. Based on the treatment protocol for each, benign and malign cysts are most certainly separate and distinguishable.

Ihi Bupa further asserts that, 'the insurance only covers expenses incurred for any illness or disease not known to the Complainant at the time of application,' When Ms, S. completed ihi Bupa's medical questionnaire in 2008, she was not aware that in 2009 she would develop malignant cysts or potentially cancerous cells in her womb, nor could she possibly have been aware that the benign cysts found in 2005 were considered an 'illness or disease' in light of her doctor's declaration that she was in good health and no follow-up was necessary.

Lastly, ihi Bupa asserts that Ms. S. 'develops ovarian cysts at the same place twice' and rejects coverage of the procedure because Ms. S. 'had ovarian cysts before her subscription with the Company.' Based on the medical report in 2005, benign cysts were discovered on only Ms. S.'s left ovary. In 2009, Ms. S. underwent the removal of malignant cysts in both ovaries. Further, Ms. S. did not have malignant cysts or suspicious and potentially cancerous cells in her uterus at any time prior to the 2009 diagnosis and ihi Bupa provides no explanation whatsoever for its refusal to cover Ms. S.'s biopsy of the suspicious cells.

In short, ihi Bupa provides no legitimate basis for its denial of Ms. S.'s claim. Therefore, we respectfully request that ihi Bupa (1) pay all costs associated with Ms. S.'s procedure that have not been covered by her alternative insurance; (2) pay the costs to Mr. R. and Ms. S. of the alternative insurance they were forced to obtain in light of ihi Bupa's refusal to cover Ms. S. on the eve of her surgery; and (3) refund the 20% medical loading premium that Tora Trading Services KK has been forced to pay on Mr. R.'s policy as a result of ihi Bupa's unreasonable claim denials. Finally. to the extent it is within the Board's power, we respectfully request that the Board impose a penalty on ihi Bupa in light of its unreasonable behavior and denial of the relevant claims."

Selskabet anførte som følge heraf i skrivelse af 4/9 2009 til nævnet:

"During a MRI scan in 2005 it was discovered that the right ovary of Ms A.S. was enlarged and that there were cysts on the left ovary. Although, the cysts were benign in 2005, it is clear that the cysts were present in 2005 and that Ms A.S. had been informed of this fact.

Ms S. is obliged to disclose all relevant information in the medical questionnaire and despite the findings of 2005, there was no mention of the ovarian cysts when Ms S. applied for medical insurance with ihi Bupa in May 2008. If this information had been available for the company at the time Ms S. submitted the medical questionnaire, Ms S. would have been offered an insurance with exclusion of all expenses which concern, are due to or are

incurred as a result of ovarian cysts and possible consequences hereof by the company due to the increased risk and uncertainty."

Af forsikringsbetingelserne fremgår bl.a.:

"Art. 8 Exceptions for reimbursement
8.1: The insurance shall not cover expenses incurred for any disease, illness or injury known to the policyholder and/or the insured at the time of application, unless agreed upon with the Company.
…
Art. 12 Information necessary to the Company
…
12.2: The policyholder and/or the insured shall also be under the obligation to provide the Company with all obtainable information required for the Company's handling of the policyholder's and/or the insured's claims against the Company."

Nævnet udtaler:

Klageren svarede ved optagelsen i forsikringen i maj 2008 benægtende på, at hun havde forskellige former for "illnesses/disorders', selv om hun i 2005 havde fået konstateret, at hun havde godartede ovariecyster.

Efter det oplyste havde klageren ikke symptomer fra disse godartede cyster, som er forholdsvis almindeligt forekommende, og nævnet finder derfor, at klageren ikke har afgivet urigtige oplysninger i forbindelse med optagelsen.

De udgifter, der søges om dækning for, angår operation for ondartede ovariecyster. Efter forsikringsbetingelserne er der ingen dækning for udgifterne herved, hvis forsikringstageren var bekendt med denne sygdom på tidspunktet for optagelsen.

Nævnet må lægge til grund, at klageren ikke på tidspunktet for optagelsen var bekendt med, at hun havde ondartede ovariecyster, og nævnet finder derfor, at selskabet med henvisning til den nævnte dækningsundtagelse ikke er berettiget til at afslå dækning.

Herefter

b e s t e m m e s :

Selskabet, Bupa Insurance Limited, skal betale klagerens udgifter ved operationen og betale renter heraf efter forsikringsaftalelovens § 24.

Marianne Højgaard Pedersen
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