Ankenævnet for Forsikring

902/12

Den 5. november 2012 blev i sag nr. 82.030:

xxxxxx xxxxx
xx xxxxxxx xxxxx
xxxxx
xxxx xxx
xxxxxxx

mod

Alpha Insurance A/S
Sundkrogsgade 21
2100 København Ø

afsagt

k e n d e l s e :

Forsikringstageren har sundhedsforsikring i Alpha Insurance A/S. Han klager over, at selskabet har afvist at yde dækning for en operation.

Selskabet har afvist at yde dækning for klagerens ankeloperation med henvisning til, at hans ankellidelse er en følge af en lidelse, der var til stede før forsikringens ikrafttræden den 21/11 2008.

Sagen har været behandlet af selskabets agent i England.

Det fremgår af sagen, at klageren den 27/4 2009anmeldte, at han havde ankelsmerter. Selskabets agent indhentede journal fra klagerens læge, hvoraf det af journalnotat af 26/3 2009 fremgår, at klageren oplevede højresidige ankelsmerter, efter at han i januar vred om, da han var ude at løbe. Vedlagt lægejournalen var fysioterapeutisk afslutningsnotat af 23/10 2008, hvoraf bl.a. fremgår:

> "Comment's: [Klageren] self referred with ® calf pain and had made some improvement - . He did not make a follow up appointment - after the 11/9/08 and has now been discharged."

På baggrund af disse oplysninger bevilgede selskabets agent 6 behandlinger hos en fysioterapeut. Da klagerens ankel ikke blev bedre, bevilgede selskabets agent konsultation hos en speciallæge, som i en lægeattest underskrevet den 3/2 2010 angav, at der var tale om posttraumatisk tendinitis, hvilket havde generet klageren siden januar 2009. På speciallægens anbefaling anerkendte selskabets agent herefter at yde dækning til MRI-skanning af anklen. Ved brev af 15/9 2010 ansøgte klageren om dækning for en operation af højre ankel, som var planlagt til den 13/10 2010.

Selskabets agent sendte brev af 28/9 2010 til klageren. Af brevet fremgår bl.a.:

> "Thank you for returning part B of your claim form. We have reviewed the information provided by Mr. ... and are happy to pre-certify the mentioned impatient procedure of T6770. Peroneal sling/groove reconstruction & replacement of dislocated peroneal tendons.
> …
> Payment will be made shortly.
>
> Freedom Healthnet Ltd. reserves the right to decline any claim if the proper authorisation has not been obtained and we may request medical notes at any time."

Ved brev af 6/10 2010 anmodede selskabets agent fysioterapeuten, som havde behandlet klageren i 2009, om at fremsende journalmateriale. Af fysioterapeutisk journal dateret den 20/5 2009 fremgår bl.a.:

> "**History of Current Episode:** ® Ankle … June '08 ankle sprain ... -> … running. Now … walking + running. Had episode ® calf … Had Physio last Autumn. … sprain."

Af fysioterapeutisk afslutningsnotat af 28/9 2009 fremgår bl.a.:

> "Comment's: [Klageren] attended physia for a complaint of ® ankle pain following on injury in June 2008. He complained of intermittent pain + clicking … activity + being unable to run. He also complained of tenderness in his ® Achilles tender. On palpation there has tenderness over his lateral collateral ligments but no obvious instability. There has been same improvement with treatment + strength/pr… caption exercises. He is also going to try some orthotico. There has been no contact since so I shall assume he is managing in."

På baggrund af oplysningerne fra fysioterapeuten meddelte selskabets agent den 8/10 2010 klageren afslag på dækning med henvisning til, at lidelsen var til stede før forsikringens ikrafttræden. Klageren var utilfreds med afgørelsen og angav, at der måtte være tale om en fejl fra fysioterapeutens side.

Fysioterapeuten har i brev af 24/12 2010 til selskabets agent anført følgende:

"I can confirm that [klageren] originally injured his ankle in January 2008 which is when he first had right ankle pain. He then had an episode of right calf pain in June 2008 which exacerbated his symptoms."

I brev af 22/2 2011 til selskabets agent har fysioterapeuten anført følgende:

"It has been brought to my attention that in my last letter of the 24.12.2010 the year of the injury was stated as January 2008 this is incorrect and unfortunately was a typing error as was the date of birth.

I can confirm that [klageren] originally injured his ankle in January 2009 which is when he first had right ankle pain. He then had an episode of right calf pain in June 2009 which exacerbated his symptoms."

Selskabet sendte brev af 26/8 2011 til klageren. Heraf fremgår bl.a.:

"In your letter of complaint to Alpha insurance A/S you seem to believe that Freedom Healthnet have rejected your claim solely on the basis of the mix up in the dates on the reports provided by the Woodland Hospital Physiotherapy Department. It is true that your claim was initially rejected due to the evidence provided by your physiotherapist, as confirmed in a letter to you from Freedom Healthnet dated 9th February 2011. As you are aware, Freedom Healthnet had queried the information contained in the copy of the physiotherapist's notes they had been supplied with in October of 2010 and Freedom Healthnet received a letter from the Hospital dated 24th December 2010 confirming that the initial injury to the ankle was indeed in January of 2008 and that the initial ankle injury was exacerbated by a later calf injury.

However, in a letter from February 2011 the Hospital, no doubt at your request, sent a letter to Freedom Healthnet which amended both the date of the initial ankle injury and the later calf injury to January 2009 and June 2009 respectively. Clearly the alteration of the dates by the Hospital seems to support a conclusion that your ankle injury was first sustained in January of 2009, after the inception of your insurance policy and not before.

However, in the letter from February 2011 the Hospital also amended the information relating to your right calf injury. The date there was altered to June 2009 and is therefore not credible, since the first consultation where the dates were noted took place already in May of 2009 and could not therefore refer to a calf injury from June of 2009. In addition, in your letter of complaint dated 17th March 2011, which you enclosed with your letter of 2nd August 2011, you confirm that you had sustained a calf injury in June 2008.

The physiotherapist, in her notes and in both letters reports that the right calf-injury has exacerbated the symptoms of a pre-existing right ankle injury. Since you confirm the calf-injury was sustained in June of 2008, despite the letter changing the dates, all the evidence points to an ankle and/or calf injury that precedes the inception of your insurance policy.

…

Pre-operation Treatment costs

Freedom Healthnet have already reimbursed you for various costs associated with your 2009 ankle injury. You have received payment for physiotherapy treatment, radiology, an MRI scan and your consultation with a specialist. These expenses are potentially recoverable from you because they are associated with an injury that is not covered by your insurance

policy. Freedom Healthnet advised you in their letter of 9th February 2011 that they 'reserve the rights of our company to monies paid in relation to this claim to date'. However, you are of course aware that no action has been taken to obtain reimbursement.

This decision has been taken because the treatments were pre-authorised at a time when there was no indication that your claim was associated with a pre-existing condition. In the interests of demonstrating that you have been treated fairly it has been decided not to request reimbursement from you.

Operation costs

Unfortunately the potential benefit under your policy of GBP 2,357.50 associated with your ankle operation is not payable. It is most unfortunate that the existence of the pre-existing condition which excludes treatment for your ankle injury under your policy did not come to light at an earlier stage.

As you are aware, it was only when you submitted the claim form associated with the imminent operation that a standard request to your physiotherapist was made by Freedom Healthnet and as soon as the records were received and the existence of a pre-existing condition was discovered, you were contacted and advised that your claim was not eligible for benefit. This was admittedly close to the scheduled operation date, but was the earliest possible opportunity Freedom Healthnet had to advise you that the claim was not covered after all.

Even though you have noted that the Freedom Healthnet letter to you dated 28.th September 2010 stated, 'Payment will be made shortly', that letter goes on to write, 'Freedom Healthnet Ltd. Reserves the right to decline any claim if the proper authorisation has not been obtained and we may request medical notes at any time'. Clearly this stipulation is included so that any claim can still be declined should the medical notes indicate that it should not be covered - and that is precisely what has happened in your case.

Conclusion

The confusion created by the dates contained in the physiotherapists notes, the letter in confirmation of those dates and the letter apparently correcting the dates, but still containing conflicting information has naturally hampered Freedom Healthnet in reviewing your claim and dealing with your subsequent complaint. They have however been consistent in advising you that your claim for the payment associated with cost of your operation is not due to you because the injury is excluded from coverage under your policy."

Af klageskemaet fremgår bl.a.:

"

Information about your complaint	
Brief summary of what the complaint is about	Alpha Group are refusing to pay my claim because one physiotherapist incorrectly recorded the dates of my injury. The General Practitioner, Surgeon and I recorded the dates correctly. Initially they said they would pay, but after I paid for the operation, they refused to reimburse me.

5. 82.030

Date of the facts that generated the dispute	Initial injury: January 2009

"

Selskabet har i brev af 29/2 2012 til nævnet bl.a. anført:

"[Klageren] purchased Health insurance from Alpha through Freedom Healthnet Limited with a commencement date of 21st November 2008.

The case was underwritten on a Moratorium basis and therefore no medical condition needed to be disclosed at the point of application. The following disclosure was however agreed to in the application form and is printed on the Claim form (Attachment 2):

'We exclude any conditions for which you have received medication, advice or treatment or you have experienced symptoms whether the condition has been diagnosed or not in the five years before the start of your cover (pre-existing conditions).

Related conditions (those which are medically considered to be associated with a preexisting condition) will also not be covered.

However, if you have not had any such symptoms, treatment, medication or advice for a pre-existing condition or any related condition for a continuous period of 2 (two) years after the start date of your Policy for a particular condition, the condition will become eligible for cover under this Policy. This period is known as the Moratorium.'

This Moratorium is printed on the Individual Certificate of Insurance provided to [klageren] (copy enclosed as Attachment 1) and is stated there as follows:

'Moratorium
Pre-existing conditions that occurred during the last five years prior to the Moratorium Date will be excluded for cover for the first two years your policy is in force.'

[Klagerens] complaint is stated to be that Alpha are refusing to pay his claim because hus physiotherapist incorrectly recorded the dates of his injury.

It is true that Alpha has refused to pay for the operation to [klagerens] ankle, and that this refusal was initially based on evidence that came to light when our agent Freedom Healthnet Limited requested copies of the physiotherapists notes, which clearly referred to an ankle injury from January of 2008.

There appears to have been some confusion over dates and the physiotherapist later sent a new letter correcting the date of the ankle injury to January 2009, but in that second letter she also referred to right calf pain from June 2009 exacerbating [klagerens] symptoms.

The change of the right calf pain date from June 2008 to June 2009 is not trustworthy, since the physiotherapists notes on the dates were originally made in May of 2009 and could not therefore have referred to right calf pain from the following month. However, [klageren] has confirmed having suffered from right calf pain in June of 2008, so that date must by his own admission be correct.

We have pointed out to [klageren] that he himself confirmed a pre-existing right calf injury, prior to the inception of his policy, which the physiotherapist has reported exacerbated the symptoms of a right ankle injury.

The right ankle injury is thereby a 'related condition' as far as the right calf injury is concerned, according to the definition contained in the application form, because it is 'medically considered to be associated with a pre-existing condition'.

The physiotherapist is a medical expert and she has provided us with documentary evidence linking the two conditions. (See copy Physiotherapy Discharge report Attachment 2, and letters from 24 December 2010 and 22 February 2011) and since treatment of 'related conditions' 'will also not be covered' under the insurance policy, our refusal to pay for the ankle operation is correct.

Our full position on the above is as stated in our letter to [klageren] from 26th August 2011 which was enclosed with the complaint [klageren] has submitted. While we regret that the existence of the pre-existing condition did not come to light at an earlier stage, we were within our rights to decline to pay for the ankle operation."

Hertil bemærker klageren i brev modtaget den 21/3 2012 af nævnet bl.a.:

"Alpha is continuing to use the Physiotherapist's confused letters to avoid paying for my operation. In one sentence they say she is not trustworthy and in another sentence she is a 'medical expert'.

The young inexperienced physiotherapist made ONE mistake in her notes, and this has allowed Alpha to avoid paying for this after they initially agreed to pay.

The highly experienced surgeon recorded the correct date, and my family doctor also recorded the correct date. The surgeon and doctor make NO mention of the calf problem which had completely healed prior to this ankle injury.

Alpha's agent agreed to pay, then refused the day before the operation.
This operation was available to me without payment via the National Health Service, so there is no way I would have had this operation (privately) if I felt there was any possibility that I shouldn't be reimbursed."

Afslutningsvis har selskabet i brev af 16/4 2012 til nævnet bl.a. anført:

"It is most regrettable that our agents initially agreed to pay for the private operation to [klagerens] ankle and then were forced to withdraw that agreement when the fact that the operation was excluded from coverage under the policy came to light. This was admittedly close to the operation date booked, but was not the day before. [Klageren] was advised on 8th October 2010 that his claim was not eligible for payment, yet he chose to proceed with the operation on 13th October."

Af skadeanmeldelsen modtaget den 27/4 2009 af selskabets agent fremgår bl.a.:

"**Moratorium explained**

We exclude any conditions for which you have received medication, advice or treatment or you have experienced symptoms whether the condition has been diagnosed or not in the five years before the start of your cover (pre-existing conditions).

7. 82.030

Related conditions (those which are medically considered to be associated with a pre-existing condition) will also not be covered.

However, if you have not had any such symptoms, treatment, medication or advice for a pre-existing condition or any related condition for a continuous period of 2 (two) years after the start date of your Policy for a particular condition, the condition will become eligible for cover under this Policy. This period is known as the Moratorium."

Af policen fremgår:

"**Endorsement:**
Moratorium
Pre-existing conditions that occurred during the last five years prior to the Moratorium Date will be excluded for cover for the first two years your policy is in force. Cover excluded by the moratorium may be reinstated at a later date provided you have not consulted any General Practitioner or Specialist for treatment or advice (including check-ups) or you have not suffered symptoms or taken meditation (including drugs, medicines, special diets or injections) for a continuous period of two years after your Cover Start Date."

Af forsikringsbetingelserne fremgår:

"**For the following, benefits will not be paid:**
...

- Pre-existing conditions unless such conditions have previously manifested themselves but have been declared to and accepted by us in writing. However, after two years' continuous cover, all preexisting conditions (and related conditions) will become eligible for benefit providing you have not:
  a) consulted any General Practitioner or Specialist for treatment or advice (including check-ups) or from which you have suffered, signs or symptoms; or
  b) taken medication (including drugs, medicines, special diets or injections)

  for a continuous period of two years after the start of your cover (known as the Moratorium period).

  unless

  c) such medical conditions have previously manifested themselves but have been declared and accepted by us in writing.

...
Pre-existing medical conditions
A pre-existing condition means a disease, illness or injury for which you have received medication, advice or treatment or you have experienced symptoms whether the condition has been diagnosed or not in the five years before your joining date.

Freedom is underwritten on a Moratorium basis. This means that any medical condition that occurred during the five years prior to the inception of your Freedom plan will be excluded for the first two years your policy is in force. Cover excluded by the Moratorium may be reinstated later if the medical condition has not recurred for a continuous period of two years since the date it was last treated."

8. 82.030

Nævnet udtaler:
Efter sin gennemgang af sagen finder nævnet at måtte lægge til grund, at klageren vred om og beskadigede sin højre ankel i januar 2009 i forbindelse med løb, samt at han i september 2008 modtog behandling ved en fysioterapeut for en skade på højre læg.

Nævnet finder, at selskabet ikke har bevist, at der er en sådan sammenhæng mellem skaden på anklen og skaden på læggen, som opstod før forsikringens ikrafttræden, at selskabet har været berettiget til at afvise at yde dækning for ankeloperationen med henvisning til bestemmelserne om forudbestående lidelser.

Som følge heraf

b e s t e m m e s :

Selskabet, Alpha Insurance A/S, skal yde dækning for klagerens ankeloperation med tillæg af renter i henhold til forsikringsaftalelovens § 24.

Poul Sørensen