Ankenævnet *for* Forsikring

Den 20. november 2019 blev i sag nr. 93079:

xxxxxxxxxxxxxxxxxxxxx
xxxxxxxxxxxxxxxx
xxxxxxxxxxxxxxx

mod

Bupa Denmark Services A/S
Palægade 8
1261 København K

afsagt

k e n d e l s e :

_____

Forsikringstageren har helbreds- og hospitalsforsikring. I klageskema af 31/10 2016 til nævnet har klagerens repræsentant bl.a. anført:

> "**1. Statement of claim, a brief outline of the case. A Supplementary statement may be enclosed.**
> He recently underwent a surgery and required physiotherapy treatment post surgery. The policy has a provision for physiotherapy post hospitalisation. In the enclosed brochure, on page 3 of 18, in the last line there is a statement indicating that the physio must be pre-approved by the company.
>
> BUPA has declined to cover physiotherapy treatment in excess of 10 sessions.
>
> [The complainant] had shared updated medical reports which showed the need for ongoing physio treatment for recovery from the surgery. In the enclosed letter from BUPA, 'final Response.pdf' we note the following text on page 2, 2nd paragraph:
>
> If, upon evaluation by our Clinical Team, the prescribed physiotherapy is necessary for a successful recovery after the surgery although being carried out on an outpatient basis, we may approve coverage for a limited number of outpatient physiotherapy sessions. When the prescribed outpatient physiotherapy, from a medical perspective, enters the phase of self-exercise and continued training with periodical supervision, coverage of the costs will no longer be approved under the Hospital Plan. Coverage will in this case be eligible under the Module 1, Non-Hospitalisation Benefits, as general outpatient physiotherapy.
>
> This seems to have contradicted the stated from the attending Doctor (report also enclosed).

In view of this, [the complainant] would like an independent review of the claims decision, hence, we are writing to you for your assistance.

2. What specifically do you want to achieve from the insurance company/what do you want the insurance company to do?
To have ongoing physiotherapy sessions covered if due to recovery of the covered surgery."

Selskabet har i brev af 21/12 2018 til nævnet bl.a. redegjort for sagsforløbet og afgørelsen således:

"In his statement to Ankenævnet for Forsikring, the Complainant contests the Company's decision to reject coverage beyond 10 outpatient physiotherapy sessions following a left knee arthroscopic medial meniscus debridement performed on 14th August 2018. In their letter dated 30th October 2018, the Company justified the rejection by referring to the coverage offered by the Complainant's insurance plan combined with the Complainant's post-surgical medical status as described in reports provided by the Complainant's surgeon and physiotherapist.

The Complainant requests coverage for his ongoing physiotherapy sessions prescribed for a total of 5-6 months, under his Hospital Plan.

History of the Complainant's insurance policy
The Complainant Holds a Hospital Plan since 1st January 2014. The insurance was initially taken out via the Complainant's then employer as an 'International Health and Hospital Plan' insurance, consisting of a Hospital Plan with a USD 10,000 annual deductible and the Medical Evacuation Module. Upon the Complainant's request, the insurance changed registration to individual terms as from 22nd September 2018, when the Complainant left this employer.

During the process of changing to individual terms, in the period from 30th July to 26th September 2018, the Complainant was in e-mail contact with the Company concerning the terms of his continued insurance (cf. attachment 1). The Company offered the Complainant continued coverage with two separate 10% medical premium loadings, in accordance with the Future Individual Cover letter (cf. attachment 2) which was sent to the Complainant on 27th February 2014. After further correspondence concerning the application and the wording of the medical loadings, the Complainant accepted to continue his insurance with the offered loadings: 10% medical loading for back pain and its underlying causes and 10% medical loading for cartilage disorders of the right knee.

During this e-mail correspondence, the possibility of upgrading coverage, e.g. by reducing the annual deductible or adding other Modules, was discussed in general terms. In this connection, the Company informed the Complainant that any request for upgrade of coverage would require renewed medical underwriting by the Company, whilst continued coverage of the existing insurance, or downgrade of coverage, would not require renewed medical underwriting. On 21st August 2018 and again on 21st September 2018, the Complainant confirmed to the Company that he wished to continue his insurance at the existing level of coverage, thus without renewed medical underwriting; Hospital Plan with a USD 10,000 annual deductible and the Medical Evacuation Module.

Due to the change in registration of the insurance, from an employer paid insurance to an individual insurance, as from 22nd September 2018, the governing law for the insurance changed at the same date from [foreign] law to Danish law.

Coverage for outpatient physiotherapy under the Complainant's Hospital Plan

The Hospital Plan in essence offers coverage limited to inpatient medical treatment and major outpatient medical procedures performed in a hospital or clinic, and coverage for pre- and post-hospitalisation medical examinations that are directly linked to and medically necessary for the carrying out and verification of successful recovery from the eligible treatment, in a limited period of time. All other types of outpatient medical treatment would be covered under additional Modules.

In recognition that the initial physiotherapy sessions form an important outset for a successful recovery after an eligible surgery (inpatient as well as outpatient), the Company offers the possibility of coverage of costs for 'physiotherapy following surgery' under the Hospital Plan, despite the outpatient nature of the physiotherapy treatment. As per the List of Reimbursements in the 'International Health and Hospital Plan' membership guide (cf attachment 3), coverage of 'physiotherapy following surgery' must be evaluated and pre-approved by the Company.

The evaluation and pre-approval by the Company are carried out by the Company's Clinical Team who, on basis of medical reports from the customer's medical provider, may pre-approve coverage for a limited number of physiotherapy sessions at a time. For evaluation of coverage of further physiotherapy sessions, the Company will require updated medical information in order to, on a specific and objective basis, establish whether and for how long the prescribed sessions would be eligible as 'physiotherapy following surgery' under the Hospital Plan

When, from a medical point of view, the customer's post-surgery status has reached a medical stage where prescribed physiotherapy sessions no longer require manual therapy performed by the physiotherapist and the physiotherapy sessions take the form of self-exercises not requiring constant guidance by the physiotherapist, the Company will no longer perceive the physiotherapy sessions as 'physiotherapy following surgery' and, hence, the physiotherapy sessions will no longer eligible for coverage under the Hospital Plan.

For customers who have purchased the Module 1 - Non-Hospitalisation Benefits, this is the exact point in their course of physiotherapy treatment where the Company will perceive the customer's need for physiotherapy as suitable for general outpatient physiotherapy, thus with limited further coverage (max USD 85 per session and total max USD 1,200 per policy year as per the List of Reimbursements).

Approving coverage beyond this point for customers holding only the Hospital Plan would genuinely mean the Company undermining the value of the additional coverage purchased by the customers holding the Module 1 – Non-Hospitalisation Benefits. The Company strongly values the principle of treating customers fairly and, therefore, stands firm on not paying for medical treatment that is not eligible under the benefits paid for by the customers.

The evaluation of coverage for continued physiotherapy sessions is not to be perceived as the Company questioning the customer's need for further sessions, it is solely a question of coverage in accordance with the purchased insurance plan. In this respect, the Company would like to point

out that customers having purchased the Module 1 - Non-Hospitalisation Benefits could also not necessarily expect coverage of outpatient physiotherapy from the company's side until the medical status of 'full recovery' is established. For these customers, the max USD 85 per session and total max USD 1,200 per policy year, set limitations for coverage regardless of the medical necessity for further physiotherapy sessions, i.e. potentially before the medical status of 'full recovery' is achieved.

Chronology of events in connection with the physiotherapy treatment

On 7th August 2018, the Company sent a guarantee of payment for the Complainant's left knee arthroscopic medial meniscus debridement scheduled for 14th August 2018. Although this type of surgical procedure is carried out on an outpatient basis, the Company agreed cover one night's admission as an ex-gratia to the Complainant, as no medical necessity for the overnight admission was established. The guarantee of payment further included coverage for one session of 'post-operative physiotherapy' as per the request from the medical provider.

On 20th August 2018, the Complainant provided the Company with a letter from his surgeon stating the need for 'physiotherapy twice a week for at least 6 months' (cf. attachment 4). That same day, the Company sent confirmation of coverage to the Complainant by e-mail: *'We have approved the first 10 sessions of physiotherapy, after which we will need an update on your condition.'*

On 25th August 2018, the Complainant informed the Company that his chosen provider for the physiotherapy sessions would not deal directly with insurance companies. That same day, the Company replied to the Complainant explaining how to claim for self-paid medical costs, and further informed the Complainant: *'In case, you will need more than 10 sessions, please kindly submit a progress report from your physiotherapist/or treating doctor for further pre-approval by [the Company]'*.

On 27th September 2018, the Complainant provided the Company with medical information from his physiotherapist as well as from his surgeon (cf. attachment 5), and requested approval of coverage for further physiotherapy sessions. The report issued by the Complainant's physiotherapist on 24th September 2018 states that the Complainant at this point in time (after 9 physiotherapy sessions according to the Company's claims files) *'has achieved full active range of movement and his terminal VMO activation is good and pain free.'*

On 11th October 2018, the Company informed the Complainant that their Clinical Team had evaluated the medical information provided and established that the prescribed continued physiotherapy sessions no longer would be eligible under his Hospital Plan, with reference to the medical status of the left knee. The Complainant raised a complaint concerning this rejection later that same day.

On 24th October 2018, further medical reports from the Complaint's physiotherapist and surgeon were provided to the Company by the Complainant.

On 30th October 2018, the Company sent their final response to the Complainant, maintaining the rejection of coverage of further physiotherapy sessions beyond the 10 sessions initially approved, and detailing their reasons for the rejection, based on all medical reports provided by the Complainant.

Conclusion
The Complainant holds a Hospital Plan only. In his statement to Ankenævnet for Forsikring, the Complainant expresses his request that the Company cover his ongoing outpatient physiotherapy sessions beyond the pre-approval sent for the initial 10 physiotherapy sessions. As per the above description of the insurance purchased by the Complainant, it is obvious that this request largely exceeds the coverage offered under the Complainant's Hospital Plan.

After 9 sessions of physiotherapy, the Complainant reached a post-surgical stage which, according to the evaluation and re-evaluation of the case made by the Company's in-house Clinical Team physiotherapist and by the head of the Clinical Operations, determines the breakpoint of when the physiotherapy sessions are no longer eligible under the Complainant's Hospital Plan.

The Company already compensated the Complainant for his expenses for the initial 10 sessions of physiotherapy, as per the pre-approval. The Company, thus, believes to have provided medical coverage to the Complainant in accordance with his purchased Hospital Plan and in accordance with what the Company communicated to the Complainant during the course of events."

Klagerens repræsentant har i mail af 1/2 2019 til nævnet bl.a. anført:

"In addition to BUPA's reports, we request to take the following into consideration:
1) All medical records

2) BUPA didn't took the option of having a 3rd party doctor of their choice to assess the patient, something that the insured proposed.

3) We understand that BUPA has not contacted the attending Doctor or Physiotherapist.

4) The plan has a provision for post hospitalisation physiotherapy coverage. The outpatient physiotherapy cover referred to by BUPA is primarily meant for outpatient cover (i.e. if someone sprains his back and is referred to the physio for some exercises without having a hospitalisation event)."

Til dette har selskabet fremsendt brev af 18/2 2019, hvori det bl.a. er anført:

"The Company has the following comments:
1. The Company notes that all medical reports provided to the Company, which are of relevance for the request for coverage of outpatient physiotherapy sessions, have been taken into consideration in our letter to Ankenævnet for Forsikring dated 21st December 2018. The relevant medical reports are:

- [Doctor 2], dated 15th August 2018, informing of need for physiotherapy twice a week for at least 6 months. Based on evaluation of this report, the Company on 20th August 2018 sent their guarantee of payment for the first 10 sessions of physiotherapy following surgery. On 29th August 2018, the Complainant provided the Company with a revised version of the report, in which [doctor 2] had changed the term of 'meniscus repair' into 'meniscus debridement'. This change of terms has, however, no relevance for the evaluation of cover of continued outpatient physiotherapy treatment.

- [Physiotherapist], dated 24th September 2018 and [doctor 2], dated 25th September 2018, providing updated status of the knee and informing of continued need for physiotherapy twice a week for 4-5 months. Based on these reports, the Company on 11th October 2018 informed the Complainant that continued outpatient physiotherapy would not be eligible for cover under his Hospital Plan.

- [Physiotherapist] and [doctor 2], dated 24th October 2018, informing that the Complainant's knee has not recovered fully and of the need for further 3 months of physiotherapy in order to ensure full function of the knee. These reports were received after the Complainant had raised his complaint to the Company and were taken into consideration in the Company's final response letter to the Complainant dated 30th October 2018.

In addition to the above mentioned medical reports, the Company received medical reports prior to the Complainant's knee surgery, in connection with the request for a guarantee of payment for the left knee arthroscopic medial meniscus debridement on 14th August 2018. As the pre-surgical status of the knee does not provide any medical indication for the Company's evaluation of eligibility of cover for continued physiotherapy following surgery – this evaluation must be based on the post-surgical status and after the initial sessions of physiotherapy have taken place - these reports were not mentioned in the Company's final response to the Complainant nor in the letter to Ankenævnet for Forsikring.

These reports are: MRI report from [doctor 1], dated 1st August 2018, and medical reports from [doctor 2], dated 2 and 7th August 2018. Today's review of these reports confirms the Company's stand that they contain no information of relevance to the complaint.

All of the above mentioned medical reports are attached, in chronological order, for your reference.

2. A review of the complete case files, from the period from August through October 2018, including all emails sent to the Company, show no evidence that the Complainant suggested that the Company have an impartial medical doctor see the Complainant or assess the provided medical reports.

The Company notes, however, that an examination or assessment by an impartial doctor should lead to the exact same objective findings as stated in the medical reports received in September and October 2018; full range of movement, good and pain free terminal VMO activation, patello-femoral pain and need for continued physiotherapy for the next 4-5 months.

The Company, hence, finds that a such additional examination would not have provided any new information to the evaluation of eligibility for cover for continued outpatient physiotherapy treatment.

3. It is correct that the Company did not contact the treating doctor or physiotherapist for further information after the receipt of the medical reports in September and October 2018. It is not a common practice for the Company to contact the treating doctors directly unless there are lacking specific medical information or third party requests the Company to do so, neither of which was the case here.

In line with the comments to point 2, the Company finds that a direct contact with the treating doctor, [doctor 2], would not have provided the Company with any medical information different to the objective findings described in [doctor 2s] medical reports dated 25th September and 24th October 2018.

4. The Complainant's Hospital Plan provides coverage for 'physiotherapy following surgery', under condition that the physiotherapy treatment is evaluated and pre-approved by the Company.

The Hospital Plan almost exclusively offers cover for inpatient and specified major outpatient medical procedures. Cover for 'physiotherapy following surgery' was added to the Hospital Plan in 2011 (please see the attached List of Changes) despite the clearly outpatient nature of the treatment. Before 2011, no cover whatsoever was provided for outpatient physiotherapy under the Hospital Plan.

The addition of the 'physiotherapy following surgery' cover is to the benefit of all customers holding an International Health and Hospital Plan, as the Hospital Plan is the core plan of this insurance type, and the addition was made as the Company recognised the importance of the initial physiotherapy sessions following a surgery as an integral part of the patient's recovery. The 'physiotherapy following surgery' cover is thus perceived as a supplementary benefit covering the outpatient physiotherapy sessions up until the point where the medical need for continued physiotherapy is not directly linked to the recovery from surgery or where the patient has made progress enabling self-exercises with sporadic supervision. In such case, the Module 1 Non-Hospitalisation benefit, 'physiotherapy, Ergotherapy/occupational therapy' would be applied for ongoing therapeutic treatment. However, the Complainant did not purchase this cover.

The Company refers to our letter to Ankenævnet for Forsikring dated 21st December 2018, in which we have argued for the establishing of the point in time when the medical status of the Complainant's knee no longer corresponded to what the Company perceives as eligible for coverage under the Hospital Plan.

The Company does not dispute the Complainant's medical need for continued outpatient physiotherapy treatment beyond the 10 sessions approved under the 'physiotherapy following surgery' cover under the Hospital Plan. It is, however, the Company's stand that the continued outpatient physiotherapy sessions are not eligible for coverage under the Complainant's Hospital Plan."

Klagerens repræsentant har i mail af 15/3 2019 til nævnet bl.a. anført:

"2. Contrary to what Bupa implies that only a limited amount of Physiotherapy sessions can be approved under the Hospital plan, the below emails from Bupa on August 20 and October 5 2018 have given the insured the impression that the approval of additional sessions would be a formality once medical reports indicate of the continuous need for the same.
…
Both emails imply that additional sessions can be approved depending on the medical reports. Following which, the medical reports clearly referring to the need of additional sessions, it is to be expected that the insured be extremely surprised that the request for approval was rejected.

This therefore contradicts the position of Bupa.

Either Bupa has a clear policy on the limited amount of physiotherapy sessions approved under the hospital plan.
Or
Bupa has a policy on approval based on medical reports
…
With the combination of the following, we feel that additional physio sessions should be covered:
1. BUPA Confirming the medical need
2. BUPA requesting additional information for the approval of physio
3. The policy wording does not limit 10 physio sessions."

Hertil har selskabet i brev af 28/3 2018 til nævnet bl.a. anført:

"The Company has the following comments:

The Company informed the Complainant of the rejection of coverage of the continued outpatient physiotherapy sessions on 11th October 2018. Prior to this, the Company informed the Complainant of their need for updated medical information in order to evaluate the possibility of coverage of further outpatient physiotherapy sessions, following the 10 sessions initially approved, on four occasions; on 20th and 25th August and on 5th and 6th October 2018 (full e-mail correspondences attached separately):

20th August 2018:
…
We have approved the first 10 sessions of physiotherapy, after which we will need an update on your condition.

Will you receive the treatment at [hospital]? As soon as we know where it will take place we will be happy to send a guarantee of payment.
…
25th August 2018:
…
Thank you for your e-mail. You have indeed a free choice of providers and you are right saying that clinics generally do not accept direct billing with insurance companies for outpatient treatment/physiotherapy.

Please, kindly submit all your claims and paid bills online here (and not by e-mail to us), so they can reach our Global Claims department directly:
…
***In case, you will need more than 10 sessions, please kindly submit a progress report from your** physiotherapist/or treating doctor for further pre-approval by BUPA.*
…
5th October 2018:
Thank you very much for your email.

We have previously approved 10 sessions of physiotherapy, and if you need more than that, we asked for an updated medical report showing your progress.

Please let us know, how many sessions you have had until now.

You can pay for the sessions yourself first, and then make a claim with BUPA at our website to have your money back.

If the clinic accepts our guarantee, we can also send them a guarantee for direct payment.

Please keep us informed – we look forward to hearing from you.
…
6th October 2018:
…
Thank you for your e-mail and for your request for additional physiotherapy sessions.

The request with the medical reports from your physiotherapist and surgeon are well received and we will proceed with the evaluation of the cover.

In the meanwhile could please get back to us with how many session do you receive so far? (We have previously approved 10 sessions of physiotherapy).
…
The Company finds that in each of the four above e-mails, they have provided the Complainant with correct and conforming information; after the initially approved 10 sessions of physiotherapy, the Company will require updated medical information for evaluation of approval of further sessions. Hence, it is clear that any approval of further outpatient physiotherapy sessions will depend on the updated status of the Complainant's knee, as per the updated medical information, after the 10 initially approved sessions, and will not just be a matter of formalities.

It is correct that the wording in the List of Reimbursements does not state any limited number of outpatient physiotherapy sessions that can be approved for coverage under the Complainant's Hospital Plan.

As explained in the Company's letters dated 21st December 2018 and 18th February 2019, the Company will evaluate the updated medical information and accordingly approve a number of outpatient physiotherapy sessions up until the point where the medical status no longer is directly linked to the recovery from surgery or where the patient has made progress enabling self-exercises with sporadic supervision.

When this exact point in the medical status is reached will vary from patient to patient, hence the Company's decision not to state a limited number of outpatient physiotherapy sessions which can be approved as 'Physiotherapy following surgery' under the Hospital Plan.

In the Complainant's case, the updated medical information from [physiotherapist], dated 24th September 2018, and from [doctor 2], dated 25th September 2018, clearly shows that this point in the medical status was reached after 9 sessions of outpatient physiotherapy, and the Company thus rejected coverage of further sessions in accordance with the List of Reimbursements of the Complainant's Hospital Plan.

In accordance with the pre-approval sent on 20th August 2018, the Company paid the Complainant for the first 10 sessions of outpatient physiotherapy, despite the medical evaluation that the

10th session was not eligible for coverage as per the Company's definition of 'Physiotherapy following surgery'.

In summary, the Company affirms to have:
- informed the Complainant correctly of the procedure for evaluation of continued coverage of the outpatient physiotherapy sessions
- paid the Complainant's medical expenses as per the given pre-approval and
- based their rejection of further coverage of outpatient physiotherapy sessions solely on the updated medical information issued after 9 sessions of outpatient physiotherapy.

all in accordance with the terms and conditions of the Complainant's Hospital Plan."

Klagerens repræsentant og selskabet har udvekslet yderligere indlæg af 28/7 2019 og 13/8 2019. Nævnet har fået forelagt bilag fra sagen. Et uddrag gengives i det følgende.

Af speciallægebrev af 15/8 2018 fremgår bl.a.:

"This gentleman presented with left knee pain and swelling to our clinic on 31 July 2018. He has experienced locked knee as well.

MRI showed left knee meniscus tear.

He underwent left knee arthroscopic surgery with meniscus repair on 14 August 2018.

He will require physiotherapy twice a week for at least 6 months."

Af fysioterapeutbrev af 24/9 2018 fremgår bl.a.:

"To whom it may concern:

Please be informed [the complainant] is receiving Physiotherapy following a left partial medial and lateral meniscus debridement.

He has achieved full active range of movement and his terminal VMO activation is good and pain free. He is currently able to straight leg raise and single leg bridge pain free, however he has experienced patellofemoral pain on increased loading.

The PFPS is being managed by reducing the tension in associated structures such as Vastus Lateralis and Tensor Fascia Lata. We are also prioritizing the activation of his VMO.

He is advised to continue with bi-weekly therapy for the coming 4-5 months to ensure a full recovery."

Af speciallægebrev af 25/9 2018 fremgår bl.a.:

"This gentleman is 6 weeks status post left knee arthroscopic medial meniscus debridement.

He has patella tendonitis and muscle atrophy.

He requires continuing twice weekly physiotherapy for 4-5 months."

Af fysioterapeutbrev af 24/10 2018 fremgår bl.a.:

"To whom it may concern:

Further to my previous letter, [the complainant] will require continuing Physiotherapy for the coming months.

As previously stated, he is still experiencing patellofemoral pain on increased loading of the knee. We are alleviating this through patellofemoral joint and knee joint mobilization and strengthening of the Vastus Medialis Oblique muscle.

We will gradually increase the loading of the knee but this must be done slowly due to the nature of the meniscus debridement. This is important to ensure the return of full function to the knee and to avoid further injury or deterioration in the future."

Af speciallægebrev af 24/10 2018 fremgår bl.a.:

"This gentleman underwent arthroscopic left knee bilateral meniscus debridement.

His knee has not fully recovered. He requires another 3 months of physiotherapy.

Af forsikringsbetingelserne fremgår bl.a.:

"**Hospital Plan**
Reimbursements under the Hospital Plan are effected according to the List of Reimbursements below.
…
Hospital Services – during Hospitalisation
…
Surgery
…
Pre-examinations that are medically necessary in order to perform the *surgery* or *treatment* which is to take place during *hospitalisation* are covered up to 30 days prior to *hospitalisation*.

Check-ups that are medically necessary in order to verify that the *insured* is recovering successfully from the surgery or treatment received while hospitalised are covered up to 180 days after *hospitalisation*.

Physiotherapy following *surgery* must be evaluated and pre-approved by the *Company*.
…
Outpatient Treatment in a Hospital or Clinic

*Surgery**
…
*Pre-examinations that are medically necessary in order to perform the *surgery* are covered up to 30 days prior to *surgery*. Check-ups that are medically necessary in order to verify that the *insured* is recovering successfully from the *surgery* are covered up to 180 days after *sugery*. Physiotherapy following *surgery* must be evaluated and pre-approved by the Company.

Other *outpatient treatment* is reimbursed under Module 1 – Non-*Hospitalisation* Benefits.
…
Module 1
Non-Hospitalisation Benefits
Reimbursements under this module are according to the List of Reimbursements below
…
Therapists
…
Physiotherapy, ergotherapy/occupational therapy, per consultation
EUR 85 Max per policy year EUR 1,050"

Nævnet udtaler:

Klageren blev opereret i knæet for en meniskskade den 14/8 2018, og ifølge lægebrev af 15/8 2018 udstedt af den opererende læge ville klageren have behov for fysioterapeutisk genoptræning to gange om ugen i mindst 6 måneder. Klageren ansøgte selskabet den 20/8 2018 om godkendelse af genoptræningen med henvisning til lægebrevet. Selskabet godkendte samme dag de første 10 konsultationer og oplyste, at der herefter skulle indsendes en opdateret status på klagerens tilstand. Den 27/9 2019 fremsendte klageren en status fra sin fysioterapeut, og selskabet har den 11/10 2018 afslået at betale for flere konsultationer end de 10 godkendte med henvisning til, at klageren var overgået til vejledende træning hos fysioterapeuten og derfor ikke længere var dækket for fysioterapi på den dækning, Hospital Plan, som han havde tegnet.

Klagerens krav er fortsat betaling for fysioterapikonsultationer til genoptræning. Han har anført, at læge- og fysioterapeutrapporterne bekræfter behovet for et længere genoptræningsforløb efter operationen. Han har endvidere anført, at selskabet i sine mails har givet klageren det indtryk, at dækning af yderligere behandlinger var en formssag, når de lægelige rapporter bekræftede det fortsatte behov for fysioterapikonsultationer, og at forsikringsbetingelserne ikke begrænser dækningen til 10 konsultationer.

13. 93079

Selskabet har anført, at det på forsikringsdækningen Hospital Plan tilbyder muligheden for dækning af "physiotherapy following surgery" i anerkendelse af, at den indledende fysioterapibehandling udgør en vigtig forudsætning for en vellykket helbredelse efter en dækningsberettigende operation, og at det følger af forsikringsbetingelserne, at dækningen skal vurderes og forhåndsgodkendes af selskabet. Selskabet har oplyst, at selskabets lægekonsulenter vurderer, om og i givet fald hvor længe der kan ydes dækning under Hospital Plan, og at der gives forhåndsgodkendelse til et begrænset antal konsultationer ad gangen. Når sikredes post-operative tilstand ud fra et lægeligt synspunkt har nået det stadie, hvor konsultationerne ikke længere omfatter manuelle fysioterapibehandlinger, men overgår til øvelser, som ikke kræver konstant vejledning af fysioterapeuten, betragter selskabet ikke længere konsultationerne som "physiotherapy following surgery" og dermed dækningsberettigende under Hospital Plan. På dette stadie kan der ydes dækning til fysioterapibehandlingerne over tilvalgsdækningen Module 1 - Non-Hospitalisation Benefits, som klageren ikke har tilkøbt. Selskabet har anført, at det vil svække værdien af tilvalgsdækningen for de kunder, som har købt Module 1 – Non-Hospitalisation Benefits, hvis klageren gives dækning til fortsatte behandlinger på Hospital Plan, og at selskabet ikke ønsker at forskelsbehandle sine kunder.

Af lægebrev af 15/8 2018 fremgår blandt andet, at klageren "underwent left knee arthroscopic surgery with meniscus repair on 14 August 2018. He will require physiotherapy twice a week for at least 6 months".

Af brev af 24/9 2018 fra klagerens fysioterapeut fremgår, at klageren "has achieved full active range of movement and his terminal VMO activation is good and pain free. He is currently able to straight leg raise and single leg bridge pain free, however he has experienced patellofemoral pain on increasing load. The PFPS is being managed by reducing the tension in associated structures such as Vastus Lateralis and Tensor Fascia Lata. We are also prioritizing the activation of his VMO. He is advised to continue with bi-weekly therapy for the coming 4-5 months to ensure a full recovery".

14. 93079

I brev af 24/10 2018 har klagerens fysioterapeut supplerende forklaret, at "As previously stated, he is still experiencing patellofemoral pain on increased loading of the knee. We are alleviating this through patellofemoral joint and knee joint mobilization and strengthening of the Vatus Medialis Oblique muscle. We will gradually increase the loading of the knee but this must be done slowly due to the nature of the meniscus debridement. This is important to ensure the return of full function to the knee and to avoid further injury or deterioration in the future".

Af forsikringsbetingelserne for Hospital Plan fremgår, at "Physiotherapy following surgery must be evaluated and pre-approved by the Company", og at "Other outpatient treatment is reimbursed under Module 1 – Non-Hospitalisation Benefits".

Af selskabets mail af 20/8 2018 til klageren fremgår, at "We have approved the first 10 sessions of physiotherapy, after which we will need an update on your condition".

Af selskabets mail af 11/10 2018 til klageren fremgår, at "Our medical team has now assessed your request for approval of further physiotherapy sessions. The evaluation is as follows: 'As member has now achieved good range of movement and is planned for supervised bi-weekly the coming 4-5 months, we find it to be considered as outpatient physiotherapy on long term basis and not eligible as following surgery.' And as you do not hold Module 1: Non-hospitalisation Benefits, we regret to inform you, that further physiotherapy sessions are not eligible on your current plan, which is the Hospital Plan only".

Efter en gennemgang af sagen finder nævnet, at selskabet skal dække klagerens udgifter til fysioterapibehandlinger under Hospital Plan, indtil klageren efter en lægefaglig vurdering er rehabiliteret efter meniskoperationen.

Nævnet har blandt andet lagt vægt på, at selskabet har vurderet, at der har foreligget et lægeligt behov for fysioterapikonsultationer efter knæoperationen, og at selskabet ikke betvivler klagerens behov for yderligere konsultationer.

Nævnet har endvidere lagt vægt på, at selskabets praksis med at skelne mellem manuelle fysioterapibehandlinger og øvelser, der ikke kræver konstant vejledning af fysioterapeuten, ikke fremgår af forsikringsbetingelserne. Nævnet finder, at det følger af god forsikringsskik, at forsikringsdækning ikke kan afhænge af selskabets skjulte politikker, og at et forsikringsselskab på klar og tydelig måde skal kommunikere, hvorledes dækningen er i en given situation, således at kunden kender sin retsstilling. Nævnet bemærker, at selskabet med hensyn til dækning på Hospital Plan af forundersøgelser og efterfølgende kontroller har præciseret i forsikringsbetingelserne, hvilke undersøgelser og hvor længe der dækkes, og nævnet finder, at selskabet kunne have foretaget samme præcisering med hensyn til fysioterapibehandlinger.

Det, som selskabet har anført om, at dækning på Hospital Plan af den fulde genoptræning vil medføre en forskelsbehandling af kunder, der alene har Hospital Plan, og af kunder, der har tilkøbt Module 1 Non-Hospitalisation Benefits, kan under de foreliggende omstændigheder ikke føre til andet resultat.

16. 93079

Som følge heraf

b e s t e m m e s :

_____

Selskabet, Bupa Denmark Services A/S, skal anerkende at dække klagerens udgifter til fysioterapikonsultationer, indtil klageren efter en lægefaglig vurdering er rehabiliteret efter meniskoperationen. Allerede forfaldne udgifter skal forrentes efter forsikringsaftalelovens § 24.

Klagegebyret tilbagebetales.

Svend Bjerg Hansen
Udskriftens rigtighed bekræftes

Carsten Sennels