Ankenævnet *for* Forsikring

Den 22. januar 2020 blev i sag nr. 93954:

xxxxxxxxxxxxxxxxxxxxx
xxxxxxxxxxxxxxxx
xxxxxxxxxxxxxxx

mod

Bupa Denmark, filial af Bupa Insurance Limited, England
Palægade 8
1261 København K

afsagt

k e n d e l s e :

_____

Forsikringstageren har en udstationeringsforsikring. I klageskema af 11/7 2019 til nævnet har klageren bl.a. anført:

> "**Kort redegørelse for sagen**
> The claim has not yet been submitted. The disagreement commenced during the 'preapproval' process.
>
> I went to a dentist in […] (where I was living at the time) and was diagnosed with an acute infection focus at the level of a root resorption of endogenous or traumatic origin. He did an xray, gave me antibiotics, referred me to an endodontist and a surgeon for more scans. He told me that the three specialists agreed that it was medically necessary to urgently remove the tooth and place an implant.
>
> I contacted BUPA to pre-authorize the procedure under their medical coverage policy 5.1, 'treatment of somatic disease as outpatient treatment' (acute infection), and 'physicians and specialists' because [doctor 1] is a surgeon, and [doctor 2] is an endodontist. They replied that they would cover the cost as a dental (rather than medical) case, therefore limiting their financial liability to 2000 euros.
>
> I submitted a complaint, stating that the procedure was medically necessary (with documentation from my Dr.), and requested that the case re-reviewed as a medical case (and therefore fully financially covered). They rejected the request without providing a reason.
>
> If a procedure can be considered for inclusion under 2 types of insurance coverage, and BUPA chooses the option that provides less financial coverage, this is a denial of coverage.

I have requested that BUPA provide me with a legitimate reason for denial of coverage 8 times, which they have refused to provide. On one occasion, they provided the reason that the issue was in my mouth, and therefore covered under the dental policy. Their medical insurance does not exclude the mouth however, and the argument for inclusion under the medical policy also exists. BUPA has failed to provide a reason for exclusion from this policy.

Please see the attached documents that outline the summary of communication, the pdf files of the email correspondence, and the documents that were provided to BUPA.

Hvad vil du konkret opnå hos selskabet?
BUPA has refused to provide a legitimate reason for denial of coverage. I would like to be reimbursed for all expenses related to this procedure.

I would also like BUPA to cover the cost of replacing the temporary crown with a permanent crown. I was unable to have the permanent crown placed during my insurance coverage period because there is a waiting period of at least 4-6 months following the surgery before the permanent crown can be placed."

Selskabet har i brev af 16/9 2019 til nævnet bl.a. redegjort for sagsforløbet og afgørelsen således:

"**Forsikringen**

- Forsikringen er en Udstationeringsforsikring, Appendix1 – Expatriate Insurance 2019
- Forsikringen er oprettet og betalt via Klagers daværende arbejdsgiver
- Udstationeringsland: [udland]
- Forsikringsperioden: 9.6.2017-16.3.2019
- Forsikrede er identisk med Klager

Kort sagsfremstilling
Klager har henover perioden 26.1.-25.2.2019 været i et tandbehandlingsforløb, udledt af diagnosen: Acute infectious focus at the level of a root resorption of endogenous or traumatic origin. Behandlingsforløbet er foregået i udstationeringslandet, […], og udført af odontologiske fagpersoner.

Klagers virksomhed har tilkøbt tillægsdækning for 'Dental treatment', § 10 og følgelig har Selskabet har i overensstemmelse med forsikringsbetingelserne § 10 udbetalt DKK 15.000, svarende til den maksimale dækningssum, hvilket fremgår af forsikringsbetingelsernes List of Reimbursement; Dental Treatment: 80% of expenses up to DKK 15,000/EUR 2,000.

Af skadeanmeldelsen – Appendix2: Claim Form received 24 June 2019 – fremlægger Klager udgiftsbilag for det samlede behandlingsforløb på EUR 5,029.26. Med henvisning til § 5.1 – Medical treatment , ønsker Klager udbetaling af forskellen mellem de DKK 15.000, refunderet under § 10, og den samlede udgift på EUR 5,029.26, hvilket er afvist af Selskabet.

Klagers anbringender
Klager ønsker 100% refusion af hendes samlede udgift på EUR 5.029,26, for et tandbehandlingsforløb henover perioden 26.1.- 25.2.2019.

Med henvisning til forsikringsbetingelserne §5 – Medical treatment, stiller Klager krav om, at Selskabet udbetaler forskellen mellem hendes udlæg på EUR 5,029.26 og de DKK 15.000 som Selskabet har refunderet jf. §10. Det er Klagers anbringende, at Forsikringsbetingelsernes § 5 ikke undtager sygdomme i munden og hun beder derfor Selskabet henvise til et sted i betingelserne, der underbygger Selskabets afslag på at dække tandbehandling under §5.

Selskabets begrundelse for afgørelsen
Indledningsvis beklager Selskabet, at vi henover sagsforløbet ikke har givet Klager en tydelig begrundelse for, hvorfor udgifter til aktuelle tandbehandlingsforløb ikke er dækket under § 5. Vi håber at nedenstående gennemgang bringer klarhed over Selskabets begrundelse for erstatningsopgørelsen.

Udledt af 6 mailtråde mellem Klager og Selskabet, fremlagt af Klager på portalen - mail chain 1,2,3,4,5 og 6, er det Selskabets standpunkt, at udgifter relateret til tandbehandlingsforløbet, alene skal opgøres i forhold forsikringens tillægsdækning for Dental treatment, §10. Standpunktet underbygges i Selskabets 2 klagebesvarelser, fremlagt af Klager på portalen - Bupa official complaint reply1_ March 15 and Bupa official complaint reply2 June 1.

For at sikre en korrekt forståelse af kompleksitet og terminologi for den udførte tandbehandling, har den klageansvarlige løbende drøftet sagen i samråd med Selskabets tandlægekonsulent. Dette gælder også forud for klagebesvarelsen af 12 juni 2019, hvor Klager forinden har indsendt supplerende information, der alene dokumenterer, at Klager er henvist til videre behandling hos endontolog, [doktor 2].

Som indlæg til erstatningsvurderingen lægger Selskabet vægt på tandlægekonsulentens faglige kommentar: Den udførte behandling er tandbehandling. Tænderne sidder i knoglen og knoglerne i munden hører med til 'tandsystemet'. Indgrebet på knoglen, hvis årsag udspringer fra tænderne, er omfattet under forsikringsbetingelserne 'Dental treatment', hvilket understøttes af at behandlingen er udført af en tandlæge. At der bruges antibiotika er ikke afgørende for, om her er tale om en tandbehandling. Tandlæger udskriver dagligt mange recepter af forskellig antibiotika i forbindelse med deres tandbehandlinger.

Selskabet konkluderer således, at der utvivlsom er tale om tandbehandling (dental treatment).

For så vidt angår Klagers krav om erstatning efter § 5 er det Selskabets standpunkt, at tandbehandling, som i dette tilfælde, fjernelse af tænder og /eller indsættelse af erstatningstænder, ikke indgår som dækningsberettiget behandlingstyper i forsikringsbetingelsernes § 5.1 Cover medical expenses a) – u). Videre henviser Selskabet til § 5.1, hvori der står; See Exceptions for reimbursement in Art 25. Relevant at fremhæve fra undtagelsesbestemmelserne (§ 25) er, at de eksplit nævner, at 'Medical expenses' dækningen ikke omfatter, 'Medical expenses: which concern, are due to or are incurred as a result of'

b) dental conditions that do not arise acutely during the Insured's trip, and where dental treatment received is not a temporary pain-stilling measure and could not have been postponed until the insured's arrival home, and all kinds of dentures,

g) cosmetic surgery and treatment unless medically prescribed by the Company

Et tandimplantat er en erstatning for en naturlig tand og må i den henseende betragtes som en tandprotese – i undtagelsesbestemmelserne § 25.1 b) omtalt som dentures. § 25.1 g) foreskriver Selskabets ordinering og accept af den udførte behandling.

Som nævnt har klagerens virksomhed købt tillægsdækningen 'Dental treatment', hvorfor vi har udbetalt DKK 15.000, svarende til den maksimale dækningssum.

Konklusion
Det følger af forsikringsaftalen, at ethvert erstatningskrav skal vurderes i forhold de gældende forsikringsbetingelser.

Supplerende til Selskabets 2 klagebesvarelser; Bupa official complaint reply1_ March 15 samt Bupa official complaint reply2 June 1, begrunder vi fastholdelse af erstatningsopgørelsen med som følger. Den udførte tandbehandling, foretaget i bopælslandet, […], indgår ikke blandt behandlingstyperne, der positivt nævnes som dækket i Forsikringsbetingelsernes § 5.1 a) – u). Supplerende hermed falder forsikrede krav inden for undtagelsesbestemmelserne nævnt i § 25.1. b) og g).

I forlængelse heraf fastholder vi, at Klager ikke er berettiget til erstatning ud over de DKK 15.000, som er opgjort jf. § 10 og udbetalt til Klager den 7. august 2019."

Klageren har i brev af 19/9 2019 til nævnet bl.a. anført:

"My comment is with respect to Bupa's claim in the letter: 'Furthermore, the Company refers to Art. 5.1 which reads See Exceptions for reimbursement in Art 25....which stipulates that "medical expenses" does not include "medical expenses which are a result of dental conditions that do not arise acutely during the insured's trip'.

In my case, the acute infection did arise during my expatriate insurance policy while I was based in […]."

Selskabet har i brev af 8/10 2019 til nævnet bl.a. anført:

"Udledt af ordlyden i Art 25 fremhæver Klager i sin mail af den 19. september i år, at det akutte tandbehandlingsforløb er foregået i udstationeringslandet, [udland]. Det er Selskabets forståelse at Klager fortolker sin samlede udstationeringsperiode som, at være på en rejse, og derved falder uden for undtagelsesbestemmelsen, Art 25.

Angående hvornår den forsikrede, ifølge forsikringsbetingelserne, anses for at være på en dækningsberettiget rejse, henviser vi til forsikringsbetingelserne Art 4. Specifikt angående tandbehandling beskriver pkt. 4.4 dækning for midlertidig smertestillende tandbehandling under rejser uden for udstationeringslandet.

Art. 4 Business trips and vacations
4.1 Business trips and vacations

> The Insurance shall cover for business trips and vacations, lasting no more than 90 days per trip. The travel Insurance shall provide coverage from the moment the Insured leaves his/her residence or workplace to begin his/her trip. The coverage shall cease when the Insured returns to his/her residence or workplace or when the Insurance period expires, if this occurs before the Insured's return.
>
> The Insurance provides unlimited cover for the Insured's medical expenses in case of acute illness or accident during business or leisure trips worldwide.
> ……
> 4.4. Temporary pain-stilling dental treatment when travelling:
> Coverage is provided for temporary pain-stilling dental treatment, when the insured is travelling outside his/her country of expatriation.
>
> Coverage is subject to an original statement from the locally authorized dentist being submitted to the Company. The statement shall specify which part of the dental treatment is temporary and pain-stilling.
>
> The Insurance shall not cover dental conditions that did not arise during the Insured's travel and where dental treatment is not temporary, pain-stilling and can await the Insured's arrival at home.
>
> Dentures and treatment as a result of a chewing or a dental injury is not included in this coverage.
>
> Med henvisning til ordlyden i Art 4 samt det faktum, at tandbehandlingen er foregået i udstationeringslandet er vi ikke enige i Klagers forståelse, at behandlingen er foregået under en rejse (trip).
>
> Vi fastholder således, at Klager ikke er berettiget til yderligere erstatning og er indforstået med, at sagen bliver vurderet med baggrund i vores klagesvar af den 16. september i år."

Nævnet har fået forelagt bilag fra sagen, hvoraf nogle gengives nedenfor. Af brev af 21/2 2019 fra tandlæge fremgår bl.a.:

> "Following your consultation appointment of January 26, 2019.
>
> The clinical examination revealed pain and mobility of the upper-left central incisor tooth #21 where there is a periodontal lesion (gingiva and mucosa).
>
> Radiological examination performed that same day revealed an infectious focus on the bone and the root of the concerned tooth.
>
> To be certain of the diagnosis I asked for a complementary radiological examination cone beam 3D imaging at a colleague (endodontist [doctor 2]) who confirmed the diagnosis on February 4, 2019, which is why I referred you to a surgeon [doctor 1] to take care of you medically."

Af brev af 2/4 2019 fra tandlæge fremgår bl.a.:

"I can only confirm what you already know. You came in on a Saturday in emergency on 26/01/2019, for dental pain. A radiological examination performed that same day revealed an acute infectious focus at the level of a root resorption of endogenous or traumatic origin. I confirm that the diagnosis is not a periodontitis or a chronic problem.

I prescribed you antibiotics, and referred to a fellow dental endodontist specialist, [doctor 2]. On 04/02/2019, [doctor 2] made conebeam images, confirmed my diagnosis, and recommended that surgery be medically necessary. I did not refer you to a periodontist for a chronic problem, [doctor 2] is an exclusive endodontist.

Then I sent you to a surgeon, [doctor 1], who did a Maxillary scan on 19/02/2019, and he also found the urgency to treat the issue. Only one diagnosis and one possible emergency treatment to be performed, and this according to the opinion of three specialists."

Af brev af 26/2 2019 fra læge 1 fremgår bl.a.:

"On February 28th 2019, in one single intervention, I completed the extraction of tooth #21, followed by the immediate placement of an osseo-integrated implant for [klageren].

Implant Specifications

Site	Implant type	Length	Surgery Diameter	Prothesis diameter
21	V3-MIS	11.5 mm	3.9 mm	Code rose

Description of Implant Technique
Immediate Load Dental Implant technique, also called same day implants, with establishment of the intermediate element on the implant and installation of a provisional crown under occlusion and a Multi Unit abutment.

I filled the various bone defects using a biomaterial and membranes 'PRF' (Platelet Rich Fibrin) and I completed the intervention with a tissue graft.

There were no issues during the procedure and I must see the patient in 15 days for a postoperative check."

Af forsikringsbetingelserne fremgår bl.a.:

"**List of reimbursements**

Medical expenses and medical transportation	**Insurance sum**	**Art 5**
Hospital, emergency room treatment, outpatient treatment, doctor and specialist	Unlimited	
…		
Dental treatment	**Insurance sum**	**Art 10**
Examination, tooth-cleaning, filling, root treatment, tooth extraction, pivots, bridges, gold inlay, crowns, occlusion bar, periodontitis treatment and dentures. Tooth adjustment up to the age of 18	80 % of expenses up to DKK 15,000/EUR 2,000	

…
Art. 5 Medical expenses
5.1 Cover medical expenses
The Company assesses and decides whether the expenses are reasonable and relevant to establish whether the insured suffers from an illness, is in need of treatment or check-up of treatment received.

The insurance comprises the following services:

a) Treatment of somatic (physical) diseases during hospitalization or as outpatient treatment,

…
See Exceptions for reimbursement in Art. 25.
…
Art. 10 Dental treatment
10.1 Covered dental treatment
The Company shall reimburse the following treatments up to the annual limit stated in the List of Reimbursements:

a) examination, tooth-cleaning, filling, root treatment, tooth extraction, pivots, bridges, gold inlay, crowns, occlusion bar, periodontitis treatment and dentures.
b) tooth adjustment up to the age of 18.

...
25.1 Exceptions
The Company shall not be liable to pay compensation incurred for any accident and illness/death and shall not be liable to reimburse expenses which concern, are due to or are incurred as a result of:
…

b) dental condition that does not arise acutely during the insured's trip, and where dental treatment received is not a temporary pain-stilling measure and could have been postponed until the insured's arrival home, and all kinds of dentures,

…

g) cosmetic surgery and treatment unless medically prescribed and approved by the Company,"

Nævnet udtaler:

Klageren har anmeldt, at hun den 26/1 2019 fik "Acute infectious focus at the level of a root resorption of endogenous or traumatic origin. Medically-necessary emergency treatment included antibiotics, scans, surgery". Klageren var i perioden 26/1 2019 til 25/2 2019 igennem et behandlingsforløb med en samlet behandlingsudgift på 5.029 EUR.

Klageren har anført, at "I would like to be reimbursed for all expenses related to this procedure… I would also like BUPA to cover the cost of replacing the temporary crown with a perma-

nent crown. I was unable to have the permanent crown placed during my insurance coverage period because there is a waiting period of at least 4-6 months following the surgery before the permanent crown can be placed". Klageren har anført, at behandlingen var medicinsk nødvendig, og at der er tale om en "medical expense", og ikke en "dental treatment".

Selskabet har udbetalt 15.000 kr./2.000 EUR. svarende til den maksimale dækningssum for tillægsdækningen "dental treatment", og selskabet har afvist at udbetale yderligere erstatning. Selskabet har anført, at der er tale om tandbehandling, at denne alene skal opgøres efter forsikringsbetingelsernes tillægsdækning ved "dental treatment", at den udførte tandbehandling ikke indgår blandt behandlingstyperne, der positivt er oplistet i forsikringsbetingelsernes § 5.1a, og at tandbehandlingen er undtaget i forsikringsbetingelsernes § 25, 1b og 1g.

Det fremgår af brev af 21/5 2019 fra tandlæge, at "The clinical examination revealed pain and mobility of the upper-left central incisor tooth #21 where there is a periodontal lesion (gingiva and mucosa). Radiological examination performed that same day revealed an infectious focus on the bone and the root of the concerned tooth". Det fremgår af brev af 26/2 2019 fra læge 1, at "in one single intervention, I completed the extraction of tooth #21, followed by the immediate placement of an osseo-integrated implant".

Det fremgår af artikel 5 "Medical expenses" i forsikringsbetingelserne, at "The insurance comprises the following services: a) Treatment of somatic (physical) diseases during hospitalization or as outpatient treatment", og af forsikringsbetingelsernes "list of reimbursements" fremgår det, at forsikringssummen er ubegrænset.

Det fremgår af artikel 10 "Dental treatment" i forsikringsbetingelserne, at "The Company shall reimburse the following treatments up to the annual limit stated in the List of Reimbursements: a) examination, tooth-cleaning, filling, root treatment, tooth extraction, pivots, bridges, gold inlay, crowns, occlusion bar, periodontitis treatment and dentures", og af forsikringsbetingel-

sernes "list of reimbursements" fremgår det, at forsikringen dækker 80 % af udgifterne, men med et dækningsmaksimum på 15.000 kr./ 2.000 EUR.

Efter en gennemgang af sagen finder nævnet ikke grundlag for at kritisere, at selskabet har afvist at udbetale yderligere erstatning for klagerens udgifter i forbindelse med behandlingsforløbet den 26/1 2019 til den 25/2 2019. Nævnet finder endvidere ikke grundlag for at pålægge selskabet, at dække klagerens udgift til udskiftning af midlertidig krone.

Nævnet har blandt andet lagt vægt på, at der efter nævnets opfattelse er tale om tandbehandling, at det af forsikringsbetingelserne fremgår, at der gælder en særskilt dækning ved "dental treatment", hvor der gælder et årligt dækningsmaksimum på 15.000 kr.

Nævnet bemærker, at forsikringens specielle dækning ved "dental treatment" må finde anvendelse forud for forsikringens generelle dækning ved "medical expenses", jf. princippet om lex specialis.

Som følge heraf

b e s t e m m e s :

_____

Klageren får ikke medhold.

Jens Kruse Mikkelsen
formand