

**RECENT FOS DECISION**

# “Following the advice” of a medical practitioner...

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The Applicant had an income protection policy with the FSP. She made a claim on that policy when she became unable to work due to depression. The FSP denied her claim on the ground that she did not meet the definition of “Total Disability” in the policy.

One of the grounds the FSP put forward was that the Applicant was not “following the advice of a Medical Practitioner” in accordance with one of the limbs of the relevant policy definition.

The Applicant did not attend appointments with her doctor, psychiatrist, or psychologist during the relevant period, so it was argued by the FSP that she was not following the advice of a medical practitioner during this period.

**Issue**

This issue is the scope of the concept of “following advice”.

**Held**

The FOS pointed out that, a requirement that the Applicant follow advice was not the same as having to be under regular care. In other words, the Applicant could be following the advice of a medical practitioner even when he or she was not regularly attending consultations with a medical practitioner (unless of course regular attendances were actually part of the advice they received).

The FOS stated that to “follow advice”, the Applicant must have complied with recommendations and treatments prescribed by her medical practitioner and that, in assessing whether the Applicant had followed advice, there needed to be consideration of what was reasonable to expect from a person in the Applicant’s position at the time.

In this case the Applicant was suffering depression. The Applicant did not attend some planned sessions with her treating doctors during the relevant period. The FOS considered she was prevented from doing so by her condition, and not because she was wilfully disregarding the doctor’s advice. In these circumstances the FOS thought it would not be reasonable to consider the non-attendance as a failure to follow advice.

The FOS considered that the Applicant also satisfied the policy requirement because she continued other types of therapy even if it was not with the practitioners to whom she was initially referred, as well as continuing to take her anti-depressant medication throughout the relevant period.

**Implications**

This Determination contains useful insights into how the FOS interprets policy conditions in relation to the advice or care of medical practitioners. These can be distilled as follows:

1. “Following advice” is a less onerous requirement to a claimant than “being under the regular care”, in that the FOS does not consider regular attendances with medical practitioners to be essential unless the claimant has been specifically advised to do so.
2. Whether a claimant has followed advice is a question of reasonableness. This involves a consideration of whether the claimant’s condition has affected his or her ability to follow any advice and whether the claimant has, in fact, engaged in therapy consistent to any advice.