

**BETWEEN**

**AJ  
APPLICANT**

**AND**

**ZQ Ltd  
RESPONDENT**

Date of Order:

18 July 2014

Referee:

Referee Perfect

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**ORDER OF THE DISPUTES TRIBUNAL**

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**The Tribunal hereby orders that the claim is hereby dismissed.**

## **Facts**

[1] Following a routine eye examination in January 2008, AJ (the applicant) was referred to an eye specialist to be tested for suspected ocular hypertension. The testing at the eye specialist showed slightly lower readings than at the optometrist and the eye specialist noted that AJ's thicker than average corneas meant that the pressures should be adjusted lower again. Her letter back to the referring optometrist included the statements "AJ does have ocular hypertension" and "At this stage I do not think that AJ requires treatment but does require monitoring. I have therefore arranged to see him again in one year."

[2] AJ says that the eye specialist assured him at that appointment that his eyes were within normal limits when adjusting for thicker corneas. He regards that test as showing no condition or issue and did not go back for further testing the following year.

[3] In October 2012, AJ joined ZQ Ltd (the respondent) and the following March, in 2013, AJ returned to another optometrist for a new pair of glasses. Again as part of routine testing, his interocular pressures were checked. As they were raised, he was referred again to the same eye specialist.

[4] When AJ attempted to get prior-approval for the cost of these testing procedures through ZQ Ltd, ZQ Ltd declined prior-approval on the basis that interocular hypertension was a pre-existing condition and added it as such to his policy as an exclusion.

[5] As part of AJ's contract of insurance with ZQ Ltd, there is a term that states that 'pre-existing conditions' are excluded from cover. The definition of 'pre-existing condition' is included in the findings below.

[6] AJ claims that ZQ Ltd' interpretation of its terms and conditions is wrong in this situation and that they are therefore in breach of their contract with him to provide cover. He claims \$1535.00, being the costs related to testing for and treatment of interocular hypertension since he took out medical insurance with ZQ Ltd.

## Issues

[7] The issues to determine are:

- (a) Has ZQ Ltd incorrectly applied the definition of 'pre-existing condition' to AJ's claims?
- (b) Is AJ due the payment he claims?

## Law and Decision

*Has ZQ Ltd incorrectly applied the definition of 'pre-existing condition' to AJ's claims?*

[8] I find that, based on the definition of 'pre-existing condition' in AJ's contract of insurance with ZQ Ltd, ZQ Ltd is entitled to exclude the costs of treatment of interocular hypertension from cover.

[9] AJ, based on the eye specialist's verbal advice to him in 2008, does not regard himself as having had a condition or even symptoms of a condition until 2013 and therefore contends there is no pre-existing condition. He says he did not see the letter back to the optometrist which included the statement "AJ does have ocular hypertension" even though it was apparently copied to his GP and himself.

[10] The definition of pre-existing condition is as follows:

'Pre-existing condition' means any health condition occurring or existing, or any health condition which relates to a sign, symptom or event occurring or existing:

- (a) In relation to the Policyholder and each Dependent named in the Application Form, before the Policy Start Date; and
- (b) In relation to any Dependent....
- (c) In relation to any upgrade...

Where the Policyholder or the Dependent was aware or ought reasonably to have been aware, of the health condition, sign, symptom or event.

[11] Assuming AJ did receive a copy of the specialist's letter dated 7 February 2008, he 'ought to have been aware' that the specialist regarded him as having ocular hypertension even though the adjustments apparently put his pressures just within the upper range of 'normal'. Even if he did not receive the letter, the fact that he was advised to have ongoing monitoring was, in my view, the key signal that there was an issue that required ongoing attention.

[12] AJ's specialist, AA, has stated in a letter obtained for these proceedings, that she did advise AJ in 2008 that his eyes were within normal limits and advised ongoing monitoring

because of the initial higher pressure readings and because of a family history of glaucoma. She does not explain the seeming inconsistency of 'within normal limits' and the statement in the 2008 letter that 'AJ does have ocular hypertension'.

[13] AA also points out that ocular hypertension does not imply any pathology and in an earlier letter to ZQ Ltd writes that it is "not a disease but just a statistical classification which allows us to monitor risk factors".

[14] However ZQ Ltd, as an insurer, is also in the business of monitoring risk factors and the word 'condition' is in my view broader than 'disease' – it encompasses something like 'ocular hypertension' even if this is merely a statistical classification, because it is a classification that entails ongoing health screening costs and involves symptoms that can be measured.

[15] Given the raised pressure readings in 2008 (even though the lower ones at the specialist were adjusted to within normal range), the statement in the letter in 2008 and the advice for ongoing monitoring, ZQ Ltd has applied the definition of pre-existing condition in the contract reasonably and is entitled to take the view that AJ 'ought reasonably to have been aware of the health condition, sign, symptom or event'.

*Is AJ due the payment he claims?*

[16] For all the reasons above, the claim is dismissed.