

STD, LTD, SSDI...and other Acronyms

The Pitfalls and Difficulties in Obtaining
Disability Benefits

By David A. Bryant

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Topics

- ▶ An introduction to Long Term Disability (LTD) benefits
- ▶ How to choose the right plan
- ▶ My top ten tips for applying for disability benefits
- ▶ An introduction to Social Security
- ▶ COBRA, Medicare, and Medicaid



An Introduction to Long Term Disability Benefits

Disability Insurance Policy Types



- ▶ The policies are distinguishable by the definition of disability.
- ▶ The crucial question is whether you must be disabled from performing your:
 - “Own Occupation” or
 - “Any Occupation”

“Own Occupation”

Unable to perform the “material and substantial duties” of your own occupation

- All or some?
- Classification: are your “material and substantial duties” the same if you are a rural family practitioner v. a neurosurgeon at a large urban hospital?



Other “Own Occupation” Issues



- ▶ When is occupation defined:
 - Time of disability, or
 - Time of application?
- ▶ May Oral & Written Modifications create specialty coverage?

“Any Occupation”



- ▶ You do NOT have to flip burgers
 - Any occupation the insured might be *reasonably* expected to engage in considering their *education, training or experience*
 - Pay should be a Living Wage, not ANY wage



Dual Occupations

Many people have more than one, or differing but interrelated occupations. For example, many doctors are also business owners which have material duties that go beyond the practice of medicine. This can be used for, or against you depending on who is making the assertion

- As a Defensive (insurer) Tactic:
 - You can do one of your two occupations, so you are not disabled
- As an Offensive (insured) Tactic:
 - I am totally disabled from performing the duties of the more demanding occupation.



Regular & Appropriate Care

- ▶ In addition to the inability to perform occupational duties, most policies also require that the insured be under “regular and appropriate” care of a physician”
 - Do I have to undergo risky surgery if it MIGHT help?
 - What if a mental impairment affects my ability to comply?
 - Do I have to be receiving care at the time of onset or application?



Partial v. Total Disability

- ▶ Definition of Residual Benefits
- ▶ Based on Job Classification
- ▶ Can you get BOTH?



How to improve your chances
BEFORE you make a claim by
choosing the right plan

Fools Gold versus Gold

ERISA policies versus Individual Disability Policies

Disadvantages of a Group Plan (ERISA) plan:

- Many ERISA plans contain discretionary language which allow insurance carriers to deny coverage with little judicial recourse
 - Burden lies with the *insured* to prove the denial was arbitrary and capricious
- No discovery
- No jury trials
- No extra-contractual damages



Fools Gold versus Gold

ERISA policies versus Individual Disability Policies

Advantages of an Individual Disability Insurance Policy:

- Jury trials
- Complete discovery, including depositions
- Testimony of witnesses and experts
- Potential to recover some of your Attorneys' Fees (IL) & Bad Faith damages (in some states)

Policies and premiums must not be purchased or paid by the employer, *ever*.

Do NOT include employees as participants under the same policy



Read the Plan!



- Do not rely upon what your agent tells you about what the plan contains
- Read it yourself: if you do not see the benefit in writing, then it does not exist!
- Watch out for provisions that take away benefits provided in other parts of the contract
- Consider having it reviewed by a knowledgeable third-party (NOT the agent) *before* you purchase

My top ten tips for applying for disability benefits

Use my “Top 10” to provide a good start to the claims process

1

- ▶ **Provide a Description of your job to your treating (attending) physician.**
 - Description should be detailed.
 - Include specific duties that are substantial and material to your specific occupation.
- ▶ **Ask your doctor to provide a statement commenting how your limitations prevent you from performing these duties.**
 - Particularly noting how you are precluded from performing such duties on a sustained basis.



2

► **Provide an addendum to the Attending Physician Statement (APS) form from the insurer.**

- Narrative letter describing in detail the functional restrictions and limitations caused by your medical condition
- State how long your doctor has treated patients with this condition, and that other patients with this condition have similar symptoms, complaints and limitations as you.



3

- ▶ **Submit Medical Evidence Supporting your Primary Treating Physician's Opinion**
 - Clinical examinations, observations, diagnostic testing, and any objective labs, x-rays, tests, MRIs etc. that your physician relies on for his opinion.



4

- ▶ Encourage your doctor to be honest and thoughtful with these responses, but **DO NOT EXAGGERATE.**
 - Exaggeration will only hurt your claim, as it will appear that your doctor is an advocate and not objective. It will damage the credibility of your doctor.



5

Include Statements from Colleagues and Co-workers

- Describe the difficulties caused by your disability, including those you endured while working if your medical condition predates the date you file as your disability date.
- Include any accommodations that you made, or that others made for you to allow you to continue working with your condition, how often you were late or absent due to your condition, loss of productivity, hiring replacements, etc.



6

▶ Narratives from family and friends

- State their personal observations
- Include how you have deteriorated since the onset of your disabling condition.
- Discuss things you used to do that you can no longer do.
- Describe your daily activities or inactivity.



7

▶ **Submit ALL your medical records in support of your physician's statement.**

- Hospital discharge reports
- Physical therapy treatment notes, etc
- All providers, All conditions, not just that doctor that treated you for the "Disabling" condition



8

- ▶ Submit pictures or video evidence demonstrating your disability and accommodations you have made in your home.

- *Also beware of video surveillance!*



9

- ▶ **If you have a 2 year mental–nervous limitation in your policy inform your doctor not to include depression on the APS.**
 - While it is a well–known fact that individuals suffering from chronic conditions often experience depression (especially individuals suffering from conditionals where pain results in significant functional limitation; musculoskeletal fibromyalgia, chronic fatigue, lyme disease, and migraine headaches), you should care that your physician demarcates that the depression or anxiety is the not disabling medical condition unless of course it is.



10

- ▶ **Do not communicate over the phone with your claim's representative and inform your physicians of the same.**
 - Send an initial letter with your application to your claim's representative stating, "in order to avoid miscommunication, I ask that all communications to myself or to my physician[s] be in writing and sent to via certified mail."
 - Review your HIPPA authorization and insert a note by the authorization to contact your physician stating that it must be in writing.



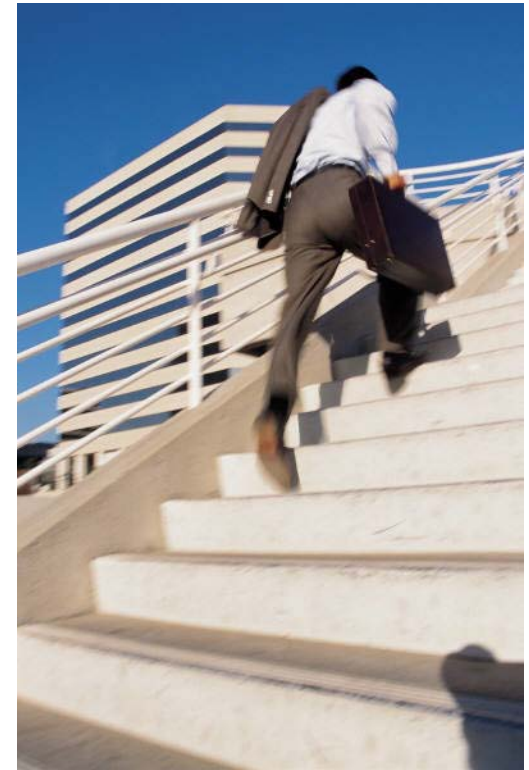
An Introduction to Social Security

Social Security Disability Insurance (SSDI)

- ▶ By law, Social Security Disability benefits are paid only to workers who are both “insured” and “disabled”
 - “Insured” means that you have a sufficient work history to qualify you for participation in the program
 - “Disabled” means being unable to engage in any substantial gainful activity by reason of a medically determinable physical or mental impairment that is expected to last a year or result in death.

SSDI Benefit Eligibility

- ▶ **Sequential Evaluation Process (5 Steps)** In determining, for initial entitlement to benefits, whether an individual is disabled, SSA considers
 - Current work activity
 - Severity and duration of the impairment
 - If the impairment meets a “listing”
 - Ability to do past work, and
 - Ability to do other work (in light of the individual's age, education and work experience)




Supplemental Security Income (SSI)

- ▶ Individual must be both “disabled” and “indigent”
- ▶ “Indigent” means that you have income (both actual and “deemed”) and “resources” below established limits).
- ▶ Stated another way, SSDI is an insurance program (some would say a quasi-insurance program), and SSI is a needs-based program.



COBRA, Medicare, and Medicaid

The Consolidated Omnibus Reconciliation Act (COBRA)

- ▶ The Consolidated Omnibus Reconciliation Act (COBRA) extends health–insurance coverage to employees and dependents
 - ▶ COBRA can continue group health coverage for up to 18 months. Employee's spouses can obtain COBRA coverage for up to 36 months after divorce or death of the employee, and children can receive up to 36 months of coverage when they reach the age at which they are no longer classified as dependents under the group health plan.
 - ▶ The federal COBRA plan applies to all companies with more than 20 employees. However, many states have similar laws that pertain to much smaller companies, so even if your company is exempt for federal insurance laws, they may still have to extend benefits under certain circumstances.
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Medicare



- ▶ Medicare is a health insurance program for:
 - people age 65 or older,
 - people under age 65 with certain disabilities, and
 - people of all ages with End-Stage Renal Disease (permanent kidney failure requiring dialysis or a kidney transplant).^[1]

- ▶ Medicare should not be confused with Medicaid which is available only to certain low-income individuals and families who fit into an eligibility group that is recognized by federal and state law. Medicaid is a state administered program and each state sets its own guidelines regarding eligibility and services.

- ▶ ^[1] Centers for Medicare and Medicaid Services, available at <http://www.cms.hhs.gov>
- ▶ ^[2] Centers for Medicare and Medicaid Services, available at <http://www.cms.hhs.gov>
 - ▶ See haney notes for Sereboff companion case
 - ▶ Verdate pdf

Medicare Eligibility



- ▶ Individuals who are under the age of 65 are eligible for Medicare hospital insurance benefits if they have been a Social Security disability beneficiary for 24 calendar months. 42 USC § 426.
- ▶ The 24-month waiting period starts from the month the individual was entitled to receive cash benefits, 5 months after disability begins (29 months total)

Medicaid

- ▶ Medicaid is available only to certain low-income individuals and families who fit into an eligibility group that is recognized by federal and state law
- ▶ Medicaid is a state administered program and each state sets its own guidelines regarding eligibility and services
- ▶ More information, including links to State Medicaid Program websites can be found at www.cms.gov

Managed Care Denials

How does the HMO deny care?



- ▶ Medical Necessity
- ▶ Financial Incentives
- ▶ Overly Broad Application of Exclusions & Definitions
- ▶ “Experimental” Procedures
- ▶ Disease Management Companies/Hospitalists
- ▶ Slow pay/No pay

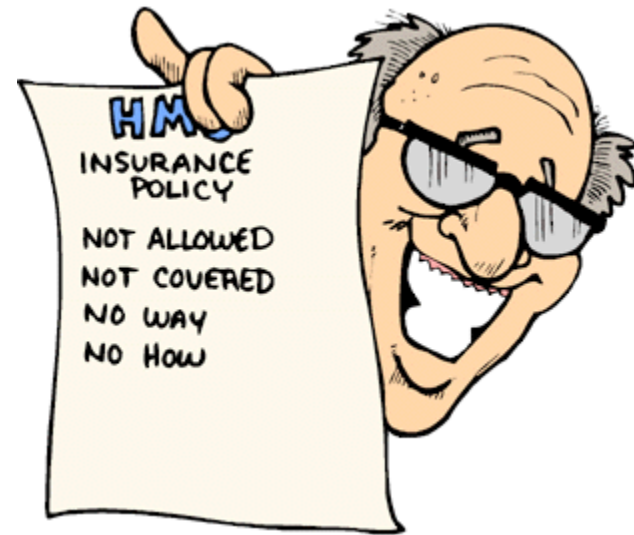
Medical Necessity

- ▶ The managed care companies have set up a scheme by which they misrepresent their health care
- ▶ Medical necessity defined in certificate of coverage is generally:
 - Broadly worded; and
 - Open-ended



Coverage Determinations

- ▶ In reality, the managed care companies coverage determinations are based on undisclosed, uniform, cost-based criteria, and financial incentives unrelated to, and more restrictive than “**medical necessity**.”



Financial Incentives

- ▶ The managed care companies have set up systematic internal policies and procedures which provide financial incentives, including cash bonuses, to claims reviewers who deny claims for services or limit hospital admissions and stays, regardless of “**medical necessity.**”



Exclusions & Definitions

- ▶ Daphne B. went to doctor with eraser sized growth on the side of her nose
 - Basal cell carcinoma – doctor wanted to remove
- ▶ Denied as “cosmetic”
 - Grew – then denied plastic surgeon with ENT for surgery
 - Grew more – delay 1 1/2 years

"Cosmetic" Surgery

- ▶ Required team of three physicians who agreed to do surgery for free, or until HMO agreed to pay.
- ▶ This photo is post-op for the alleged “cosmetic” procedure.



Liberal "Definitions"

- ▶ One common method of denial is to “define” a covered service as actually being an excluded service
- ▶ For example, most HMO’s provide coverage for “Skilled Nursing Services” but not “Custodial Care”

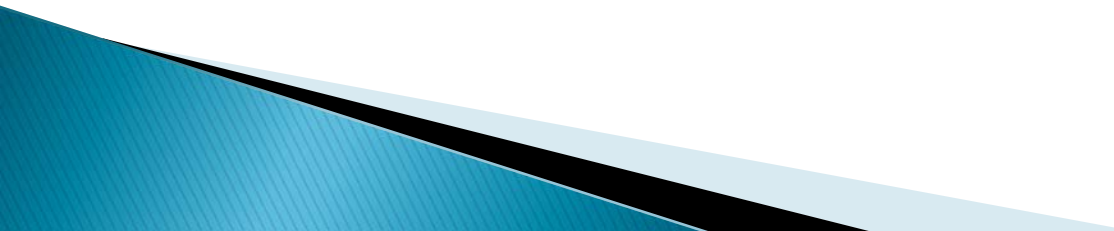


"Experimental" Procedures

- ▶ Another way to save money is for HMO's to classify a covered procedure as being "experimental" and therefore excluded.



"Experimental" Procedures (cont.)

- ▶ Mr. A needed a Stem Cell Transplant and his claim was denied, despite no exclusion in the policy for the procedure as:
 - Stem Cell Transplants are experimental, and if not,
 - The policy excluded Bone Marrow transplants
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Delay

- ▶ Of course, they waited until after Mr. A underwent chemotherapy to determine that the procedure was not experimental and not the same as a bone marrow transplant, so that the window for having the procedure had passed.
- ▶ Mr. A had to undergo a second round of chemotherapy once the decision was reversed, and died as in his weakened condition he was unable to resist infection.



The Real Concern

- ▶ Medical Case Management(MCM) generates **cost savings** by the use of alternate, accelerated and/or palliative treatment care programs, using quality care facilities and providing a monitoring system which **reduces the usual high cost** and fragmentation of health care delivery.



Any Questions?