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Submitter Information

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General Comment

Re: RIN 1210-AB39

I am writing to comment on the Proposed Regulations issued by the Department of Labor, Employee Benefits Security Administration on November 18, 2015 ("Proposed Regulations").

First of all, I want to commend the Department of Labor ("Department") for this very constructive proposal. I strongly approve of the comment made by the Department in the preamble that "disability claimants deserve protections equally as stringent as those that Congress and the President have put into place for health care claimants under the Affordable Care Act."

I am presently a disability recipient under an employer-sponsored disability plan governed by the Employee Retirement Income Security Act of 1974 ("ERISA") and its requirements regarding claims procedures. I can speak first hand to the potential abuses occurring under the current claims-procedure regulations and the urgent need to address these in the Proposed Regulations.

The proposed tightening of the conflict-of-interest rules is particularly welcome. Prohibition against a claims fiduciary (typically the insurance carrier insuring the disability claim under the employer plan) making any decisions regarding hiring, compensation, termination, promotion or similar matters with respect to any individual (such as a claims adjustor or medical expert), based on the likelihood that the individual will support the limitation or denial of disability benefits,

should go forward help eliminate, or substantially reduce, the documented cases of such behavior by disability insurance carriers, most notably Unum/Provident (see John H. Lanbein, Susan J. Stabile, Bruce A. Wolk, *Pension and Employee Benefit Laws* at pp. 669-74). The insurance carrier would not be permitted to contract with a medical expert based on the expert's pattern of denying claims, as is clearly the typical situation today, which I know from my own experience. This will, I hope, add a measure of integrity to independent medical exams (IMEs) used so frequently to contest, and ultimately deny, a disability claim notwithstanding the opinion of the claimant's doctor.

The proposed amendments to the disclosure requirements should also prove helpful to disability claimants faced with a claim denial based on ill-defined reasons. The requirement to produce a detailed description of the denied decision, including the basis for the plan's disagreement with the claimant's treating physician or the Social Security Administration as well as the internal rules, guidelines, protocols, standards or other criteria applied to deny the claim, should prove helpful in appealing denied claims in court.

The other proposed changes are meritorious as well and should be adopted as part of the final regulations. For example, the "de novo" standard of review in cases where the plan has not followed the correct procedures should provide an effective incentive for disability carriers to comply with the relevant rules an incentive that is unfortunately so desperately needed.

The Proposed Regulations give disability claimants more procedural rights and safeguards to partially offset what is an unacceptably and unjustifiably uneven playing field at present. I can speak from personal experience that disabled claimants are faced with substantial procedural obstacles put in their way by disability carriers. This is particularly disturbing in light of the diminished capacity of most claimants due to the limitations imposed by their disability to get through all the gratuitously cumbersome procedural hurdles and grueling, harassing and irrelevant requirements placed on them by the disability carriers. Given the lack of a jury trial, the prohibition against punitive damages and the potential deferential standard of review of denied claims, these proposed changes are critical to provide at least some fairness to disabled claimants in a process that is heavily structured against them.

For the above reasons, I strongly support adoption of the Proposed Regulations as soon as possible.