

From: Philip G. Fairbanks
Sent: Saturday, December 09, 2017 2:41 PM
To: EBSA, E-ORI - EBSA
Subject: 1210-AB39 comment

Dear Deputy Assistant Secretary Hauser:

I am an attorney, and a good portion of my practice involves representing claimants under long-term disability, life, accidental death, and health benefits governed by ERISA. I am writing to offer support for the implementation of the new disability regulations and to ask that you not delay their effective date. I do not believe these regulations will increase costs, and in any event, all interested parties have already had an opportunity to comment on the regulations and costs during the rule-making process.

I would like to comment specifically on a few provisions of the regulations.

I believe requiring insurers and/or plans to explain why their claim decisions differ from the disability determinations made by the Social Security Administration is a good idea. Many insurers do this already, and I am unaware how this could possibly increase costs for the insurers. In fact, it would seemingly decrease costs. For example, I have litigated cases where this very issue has arisen, only for the Court to eventually remand the claim back to the insurer. If insurers simply address this issue, costly litigation perhaps could be avoided.

Giving claimants an opportunity to respond to evidence generated by insurers during the claim process is also a good idea. Often, insurers will create new evidence after an appeal has been submitted, and this concerns a lack of due process and fairness to claimants. I do not believe this will increase costs because it gives claimants the option to respond, and I do not believe that it will result in an endless back-and-forth.

The deemed exhaustion requirement in the regulations is helpful. I have practiced cases where insurers fail to render decisions on claims, although many claims are decided within the timeframes set by the current regulations. Any effort to erode these timeframes, in my view, will add uncertainty and costs of litigation.

Finally, requiring insurers and plans to advise claimants when a potential contractual limitations period may run will promote certainty and fairness. This is a minimal requirement, and given the fact that the ERISA benefits process is supposed to be in the best interest of the beneficiaries, this would seem to be a logical regulation.

Thank you for your consideration.

Philip G. Fairbanks



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