

SINCLAIR

LAW ⊕ FIRM

December 11, 2017

Via Electronic Mail

Office of Regulations and Interpretations,
Employee Benefits Security Administration
Room M-5655
U.S. Dept. of Labor
200 Constitution Avenue NW
Washington D.C. 20210

Re: Re-Examination of Claims Procedure Regulations for
Plans Providing Disability Benefits
RIN No.: 1210-AB39
Regulation: 29 C.F.R. §2560.503

Dear Deputy Assistant Secretary Hauser:

For the past 17 years, I have represented claimants pursuing disability benefits provided through ERISA-governed plans. I have reviewed thousands of ERISA-governed disability claims.

After lengthy and thoughtful consideration, as well as a commentary period during which more than 200 comments were collected, the Department enacted certain Claims Procedure Regulations for Plans Providing Disability Benefits which would govern claims filed after January 1, 2018. At the eleventh hour, disability insurance carriers provoked a delay and have asked to submit additional evidence in support of maintaining the status quo. Transparency and clarity in the administrative process (both here and in disability claims) is crucial. Your Regulations as presently drafted offer consumers, the industry and ultimately the courts that clarity. Those clarifications came about after a process that reflected the thoughtful consideration of recent U.S. Supreme Court opinions.

Transparency and clarity in these Regulations are crucial to tens of millions of insured Americans who rely upon these benefits as their safety net. To understand the importance of the clarifications contained in the present drafting of the regulations, we need to look no further than this process which insurance carriers have muddied to the point that highlights the importance of not delaying these Regulations.

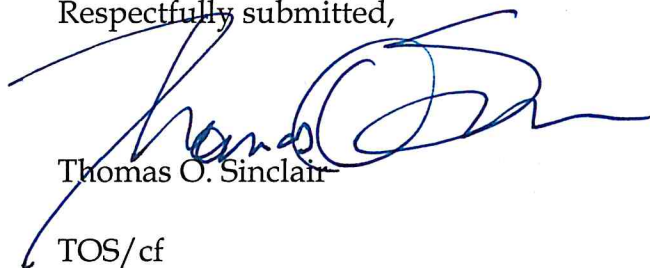
The insurance lobbyists who have written you and asked for you to re-open the commentary window and delay the enforcement of these Regulations are going to perform at the eleventh hour a document dump in which they provide you with evidence that no other party has an opportunity to examine and comment on. That is exactly the problem that courts across the country have had to address with regard to these same entities' behavior in administering ERISA-governed disability benefits. This type of behavior was exactly what was addressed by the currently drafted regulations.

The suggestion by the disability insurance industry and industry lobbyists that these Regulations will somehow deny hard working Americans their benefits could not be farther from the truth. Presumably, in support of their position (one which they surely could have and did suggest during the original commentary period), the industry apparently intends to submit "new evidence" in support of their contention. Again, this will be done in the blind so that no one outside of the Department and the industry will have an ability to examine those evidentiary submissions in support of their position.

This sort of behavior by the industry is precisely what one of the clarifications enacted by the Department intended to address when it arose in terms of a disability claim. The industry had an opportunity to submit the evidence, make it available to all those who wish to address in comment, and the industry chose not to.

Take for example the industry's claim that allowing claimants to review and respond to decisions will create a "costly" process. Compare that to the industry's complaint in asking this Regulations' comment period be reopened. It would seem that on the one hand additional response to administrative decisions is good when the industry is responding to regulatory decisions but bad (and "costly") when individual claimants are seeking to respond to industry denial of benefits decisions. Consistency is not their strong point. The rule of law should not be left in the hands of those who describe two sets of laws - one for them and one for everyone else.

Respectfully submitted,



Thomas O. Sinclair

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