

December 11, 2017

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:

I am writing to discourage the Department from modifying or further delaying the final disability claims regulations (Final Regulation on Claims Procedure for Plans Providing Disability Benefits, 81 Fed. Reg. 92316 (Dec. 19, 2016)) that are now scheduled to go into effect on April 1, 2018. I am an attorney working in Florida and I have been representing individuals with ERISA claims and litigation for more than 20 years. While ERISA was designed to be an equitable law, this is far from how it is implemented currently for those individuals whose benefits are subject to this law.

Disability Insurance Costs Will Not Increase

The industry claims if the final rules go into effect there will be an increase in costs that will increase premiums resulting in less access to disability benefits. These assertions are false.

ERISA disability claimants who are denied their benefits face hurdles unlike other civil disputes. These include a complicated pre-suit internal appeals process; no jury trials; a closed record from the claims process that can rarely be supplemented in litigation; an unfavorable standard of review in most cases; and no extracontractual remedies to discourage unfair and vindictive claims practices. The insurers will deny many claims which results in a windfall to the insurer when insureds fail to appeal or do so unsuccessfully and never proceed to litigation. This will never be a level playing field much less one that favors plan participants.

These policies typically insure the individual for a percentage of one's pre-disability earnings, usually 50%-60%. However, the policies almost universally have offsets to the monthly benefit and many medical conditions are limited in duration for coverage purposes. Additionally, there are oftentimes definitional changes to the term "disability" from own occupation to any occupation after a period of time. Plainly put, the industry already has a cost savings schematic built into the policies as established by company actuaries. These policies are extremely lucrative for the insurers.

The Appeals Process Is Not Equitable To The Insured

Following an appeal filed by disability claimants for denial of disability coverage, most disability insurers will seek new physician reviews in their final claims decision. The insurers will then attempt to bar any response by a claimant in an effort to restrict the contents of the claim file in order to prove that they were "reasonable" in their review efforts under the applicable ERISA judicial standard of review.

It is common for disability insurers to manipulate the appeal deadlines in order to gain additional time to create further reasons for denial and the claimant rarely is provided the opportunity to challenge these additional reasons for denial. During this process the claimant is in limbo until the insurer issues its final denial. The ability of the insured to file suit as "deemed denied" at least provides the claimant somewhat of a remedy to rectify this conduct.

The disability insurers often suffer from overt conflicts of interests. This comes from many different angles. From employee bonus incentive programs, ownership interest in the company, to physician reviewers beholden to the carrier and insurance industry.

Conclusion

Thank you for the opportunity to address these issues and I implore the Department to allow these regulations to be implemented without further delay.

Sincerely,

John P. Murray

