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Claims Procedure for Plans Providing Disability Benefits

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Claims Procedure for Plans Providing Disability Benefits

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General Comment

As a union representative I represent thousands of members who in many cases have an up hill battle to fight in order to get their disability benefits approved while at the same time fighting whatever ailment afflicts them. In my experience, there are some cases where the abuse is beyond reason. Major problems with self-insured employers consist of non-impartiality of claims determinations. It is our contention that claims administrators have a strong bias when granting disability claims as can be seen in the example of a March 22, 2006 email from Sedgwick claims reviewer [REDACTED] assuming that disability insurance claimants falsely exaggerate the severity of their conditions and I have attached a letter from our Attorney General Richard Blumenthal (Now our Senator), written on behalf of our members explaining his position on these activities. He details the [REDACTED] letter and other unfair practices to the Dept. of Labor in 2001. I have tried to call attention to this matter for a number of years and applaud these actions to try to provide more objectivity and fairness to the determinations made by an employer and their TPA.

Please keep me informed and if there is anything I can do that will help these rules become final, please let me know.

Attachments

Letter from Blumenthal to DOL

May. 21. 2001 11:21AM AGO FRAUD DEPT No.5159 V. j

State of Connecticut

Hartford

May 17, 2007



RICHARD BLUMENTHAL
ATTORNEY GENERAL

Mr. James Benages
Director, Boston Regional Office
United States Department of Labor
Employee Benefits Security Administration
JFK Federal Building, Room 575
Boston, MA 02203

Re: Claims Management Services, Inc.

Dear Mr. Benages:

I write to communicate to you a letter of protest I have received from the Connecticut Union of Telephone Workers (the Union) concerning the operations of Sedgwick Claims Management Service, Inc. (Sedgwick), the claims administrator for the short term disability benefits plan operated for the employees of the Southern New England Telephone Company (SNET). See Attachment A.

These union members complain convincingly that Sedgwick as claims administrator, and SNET as the plan sponsor and administrator, have violated their fiduciary duties to determine coverage for short term disability insurance in a fair and evenhanded manner.

On behalf of the members of the Connecticut Union Telephone Workers, and pursuant to 29 C.F.R. 2560.502-1(a), I ask that you take action to require Sedgwick and SNET to reform their coverage determination process so that employees can receive unbiased consideration of their claims for disability coverage.

As you know, one of ERISA's essential goals is to protect the interests of welfare benefit plan participants and beneficiaries. Congress expressly imposed certain standards of conduct for fiduciaries of such plans. A person is a fiduciary of a plan if he "exercises any authority or control respecting management or disposition of its assets. [or] renders investments advice for a fee or other compensation, direct or indirect, with respect to any moneys or other property of such plan." 29 U.S.C. § 1002(21) (A). By nature of their responsibilities to the plan, trustees and plan administrators are ERISA fiduciaries; See

Bd. of Trustees v. Weinstein, 107 F.3d 139, 141- 42 (2d Cir. 1997) (citing 29 C.F.R. 2509.75-8D-3 (19%) Donovan v. Mcer. 747 F.2d at 304 309 (5th Cir 1984).

A fiduciary has “a duty to deal fairly and honestly with its beneficiaries” Ballone v. Eastman Kodak Co., 109 F.3d 117, 124 (2d Cir. 1997). “[When a plan administrator affirmatively misrepresents the terms of a plan or fails to provide information when it knows that its failure to do so might cause harm, the plan administrator has breached its fiduciary duty to individual plan participants and beneficiaries.” In re Unisys Corp. Retiree Med. Benefit “ERISA” Litig, 57 F.3d 1255,1264 (3d Cir **1995**). “**An ERISA** fiduciary has an obligation to provide full and accurate information to the plan beneficiaries regarding the administration **of the plan**” Recher v. Long Island Lighting Co., 129 F.3d 268,271 (2d Cir. 1997):

While the Union’s protest letter mentions several problem areas, I am particularly concerned with apparent abuses that I believe deserve your immediate attention.

In substantiation of its complaint, the Union has supplied me with documentation that demonstrates a strong bias by Sedgwick and SNET reviewers against the granting of disability benefits. For example, on March 22, 2006 Sedgwick claims reviewer [REDACTED] sent an email to a Union advocate that suggests that Sedgwick claims reviewers assume that disability insurance claimants falsely exaggerate the severity of their conditions:

As we both are aware, the medical information relayed to a lay person (w/o medical background), by an employee will always sound worse than it is because:

1. Usually the employee is trying to continue out of work
2. By pleading w/you and **embellishing** any symptom they **have, is their way of making you believe** that they are on “Death’s door”.
3. You are the union benefit rep and it is your job to assist them. **And of course, you want to have** a positive experience w/your member and **don’t want to appear** the “bad guy” because if you can’t turn the employee’s request into a plus instead of remaining negative.

(Attachment B) (Emphasis added). In effect, this Sedgwick employee, and by implication Sedgwick reviewers generally, apparently assume that disability claimants are lying and stated prejudice against claimants is antithetical not conducive to impartial decision making.

Attachment C to this letter is a page from a computer case log showing communications between Sedgwick and SNET concerning particular disability claimants. Once again, these administrators state openly their belief that the **claimant is lying about his** condition. SNET and Sedgwick appear to be working together to defeat and limit the employee’s claim,for coverage:

Don has had repeated discussions with the SMAART Rep to determine *if* and when ■ will return and if he will be able to do the (OND)job. **We also have asked SMAART to follow ■ because we believe he is not as injured as he says he is. SMAART has not been able to do this for us but the Rep is taking** a more aggressive stance to move this case along.

The Union has also documented the unfairness of the Sedgwick review process and apparent misinformation provided to claimants. Attachment D is a Sedgwick claim denial form letter telling the employee, a claimant for disability benefits, that new evidence may be submitted only if the claimant requests an appeal:

In order for the At&T Integrated Disability Service Center (IDSC) Quality Review Unit (QRU) to consider this and any additional information, you must submit a written appeal to the QRU as described in your denial letter. In fact, however, the Union has demonstrated that Sedgwick has stated that it does indeed accept and consider new medical information even where the claimant has not filed an appeal. The email exchange below shows that the policy described in Attachment D), distributed routinely to every employee whose initial claim is denied, is actually untrue:

Question: If the participant submits the appropriate medical information to Sedgwick before an appeal **is** filed; can't there be dates of absence that could be overturned without the appeal?

[Answer): **It is not necessary to file an appeal in order** to get the case **approved, if the** employee has additional/new **medical** information] to submit. The employee has 180 days (from the date on the denial letter) to submit medical for review. (Attachment E) (Emphasis supplied).

By mis-representing its policy concerning the consideration of new evidence Sedgwick has discouraged claimants from submitting evidence unless they also file an appeal. The Sedgwick misrepresentation also coerces employees into filing appeals immediately, even when the claim is not fully documented, because the employee has been misled into believing that is the only way new evidence will be considered.

An appeal submitted prematurely is more than a summary, the Union has submitted strong evidence that the short term disability insurance coverage determination process administered by Sedgwick and SNET is deeply biased and unfair.

On behalf of the ERISA participants and beneficiaries involved, I ask that you exercise your enforcement authority and order that immediate appropriate remedial measures be taken.

In summary, the Union has submitted strong evidence that the short term disability insurance coverage determination process administered by Sedgwick and SNET is deeply biased and unfair. On behalf of the ERISA participants and beneficiaries involved, I ask that you exercise your enforcement authority and order that immediate appropriate remedial measures be taken.

Very truly yours,

RICHARD Blumenthal

