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From: Patrick Derkacz [mailto:patd@smdalaw.com]

Sent: Wednesday, January 13, 2016 1:50 PM

To: EBSA, E-ORI - EBSA

Subject: RIN 1210-AB39

Please consider these comments regarding the proposed amendments to revise and strengthen the rules related to claims for disability benefits governed by ERISA.

I strongly support the Department's efforts to improve the procedural protections for workers who become disabled and make a claim for disability benefits.

I applaud the Department's attempt to ensure independence and impartiality in the decision making process. As an attorney representing claimants it has been my experience that the claims denial process frequently results from a cursory review of the medical records performed by a physician who reliably favors the entity paying for their services. Many times the paid paper reviewer will simply conclude, without any explanation at all, that the claimant has no restrictions and limitations preventing them from working. Frequently, this is after they acknowledge the claimant has been properly diagnosed and treated for a recognized medical condition which indisputably causes pain.

I hope that the proposed changes requiring an explanation of why the LTD insurer and its paid paper reviewer disagrees with the recommendations of the treating physicians (and the SSA) will result in fewer claim denials. However, my hope is tempered by the structural conflict of interest of the LTD insurers.

I also support the Department's recommendation that the claimant be provided an opportunity to review and respond to any new evidence or rationale developed during the administrative appeal process. I agree that the claimant is deprived of a true "full and fair review" when they do not get the "last bite at the apple."

I agree that the timing may be a challenge. However, it is really the claimant who must survive with no income while the administrative appeal is in process. Accordingly, the claimant may need to weigh the need to respond to new information against their own economic circumstance.

Finally, I support the Department's recommendation that the final denial letter should advise the claimant of any applicable contractual limitations period and identify the specific expiration date of the time limit to pursue a lawsuit.

In my experience determining the actual date that the statute of limitation may accrue is often confusing and unclear. In fact, I have litigated this exact issue.

Requiring the denial letter to identify the date the statute of limitations expires will result in certainty for all involved and reduce the need for time consuming litigation.

Sincerely,

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