

Sent: Thursday, January 14, 2016 3:44 AM
To: EBSA, E-ORI - EBSA
Subject: Re: RIN 1210-AB39

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I am writing to comment on the Proposed Regulations issued by the Department of Labor, Employee Benefits Security Administration on November 18, 2015 (“Proposed Regulations”).

First, a huge thank you to the Department of Labor “Department” for this much-needed proposal. I emphatically approve of the comment made by the Department in the preamble that “disability claimants deserve protections equally as stringent as those that Congress and the President have put into place for health care claimants under the Affordable Care Act.”

I am presently a disability recipient under an employer-sponsored disability plan that I paid into every two weeks during my working years, governed by the Employee Retirement Income Security Act of 1974 (“ERISA”) and its requirements regarding claims procedures. I'm telling you first hand, of the potential abuses occurring under the current claims-procedure regulations and the urgent need to address these in the Proposed Regulations.

The proposed tightening of the conflict-of-interest rules is really necessary. Prohibition against a claims fiduciary (typically the insurance carrier insuring the disability claim under the employer plan) making any decisions regarding hiring, compensation, termination, promotion or similar matters with respect to any individual (such as a claims adjustor or medical expert), based on the likelihood that the individual will support the limitation or denial of disability benefits, should—going forward—help eliminate, or substantially reduce, the documented cases of such behavior by disability insurance carriers, most notably Unum/Provident (see John H. Lanbein, Susan J. Stabile, Bruce A. Wolk, Pension and Employee Benefit Laws at pp. 669-74). The insurance carrier would not be permitted to contract with a medical expert based on the expert's pattern of denying claims, as is clearly the typical situation today, which I know from my own experience, as my obvious level of disability was completely ignored! My hope is that this will add some measure of desperately needed integrity to independent medical exams (IMEs) used so frequently to contest, and ultimately deny, a disability claims notwithstanding the opinion of the claimant's doctor who's firsthand examination of the patient and in many cases long-standing knowledge of the patient's medical history is ignored!

The proposed amendments to the disclosure requirements should also prove helpful to disability claimants faced with a claim denial based on poor or ill-defined reasons. The requirement to produce a detailed description of the denied decision, including the basis for the plan's disagreement with the claimant's treating physician or the Social Security Administration as well as the internal rules, guidelines, protocols, standards or other criteria applied to deny the claim, should prove helpful in appealing denied claims in court.

The other proposed changes also have great merit and should be adopted as part of the final regulations. For example, the “de novo” standard of review in cases where the plan has not followed the correct procedures should provide an effective incentive for disability carriers to comply with the relevant rules—an incentive that is unfortunately so desperately needed.

The Proposed Regulations give disability claimants more procedural rights and safeguards to at least partially offset what is currently unacceptably and unjustifiably an uneven playing field at the least . In my personal experience I found that disabled claimants are faced with substantial procedural obstacles purposely placed in their way by disability carriers. This is particularly disturbing in light of the greatly diminished capacity of most claimants—due to the limitations imposed by their illness/disability—to get through all the extremely cumbersome procedural hurdles and grueling, harassing and often irrelevant requirements placed on them by the disability carriers. Given the lack of a jury trial, the prohibition against punitive damages and the potential deferential standard of review of denied claims, these proposed changes are critically essential to provide at least some hint of fairness to disabled claimants in a process that is heavily structured against them.

For the above reasons, I strongly support adoption of the Proposed Regulations be placed into effect as soon as possible.

Currently it is both grievous and despicable that claimants, such as myself, who are confined to home by sickness and suffering and often dependent for their basic daily needs, have lost the funds they need to simply survive! They are left dumb founded by the denials as they face through the devious, plotting and cutting edge political maneuvers employed by LTD! They responsibly paid into these LTD plans in good faith believing they'd be prepared in the event something catastrophic ever prevented them from working. As an RN I never dreamed I'd get the flu and never recover, a condition called myalgic encephalomyelitis/chronic fatigue syndrome, but I did! Prudential provided for two years and then in their infinite wisdom determined I was recovered and able to work despite my doctors reports and Social Security disability insurance report to the contrary. I was certain that my vivid descriptions of the life I now live clearly proved my inability to

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