

Re: RIN 1210-AB39

I wish to comment on the proposed regulations issued by the Department of Labor ("Department"), Employee Benefits Security Administration on November 18, 2015 ("Proposed Regulations").

I commend the Department for their proactive step in putting forward these positive and much-needed changes. I agree with and fully support the rationale of the Department for making this proposal. As noted by the Department in the preamble to the Proposed Regulations, "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 a disabled individual who has been affected by practices allowed by the Employee Retirement Income Security Act of 1974 ("ERISA"), which heavily favors insurance companies over claimants. I have some experience of the potential and actual abuses occurring under the current claims-procedure regulations and agree that there is an urgent need to address these in the Proposed Regulations.

Here are the items that stand out to me, and my reasons for supporting the changes.

- 1) Medical experts may not be hired based on their reputation for outcomes in contested cases rather than based on their expertise.
- and 2) Claims adjudicators and medical experts may not be hired, compensated, terminated or promoted based on the likelihood of their denying disability benefits or supporting the denial of such benefits.

Discussion: Some of the most devastating aspects of my claim for benefits were the responses of the claim adjustor and doctor hired by the insurance company to review my claim. Despite my personal doctor's extensive and detailed documentation of both the evidence of my disability and its impact on my functional capacity (just the list of my limitations was 2 pages long - addressing in detail every conceivable aspect of work- and non-work related activity), both the adjustor and the doctor hired by the insurance company declared that no evidence was presented establishing disability nor limits on functional capacity. Although my lawyer later laughed about it because he was aware of how blatantly the insurance companies are allowed to misrepresent cases, I was dumbstruck. As a person of integrity, who trusted the insurer to help when I needed it, I had no idea they were allowed to simply lie, or that the companies could (and do!) hire

adjustors, doctors, and purported experts based on their willingness to deny claims. I know of patients who have committed suicide after being desperately ill and denied benefits by decisions of insurance company doctors who have never seen them, or who dismiss compelling evidence because they are paid to do so. The stress of being desperately ill and without resources is crushing. Being denied in this fashion is abusive and in some cases endangers lives. Doctors take an oath that says "First, do no harm." Your proposal to end this practice is most needed.

3) The notice of claim denial must include a discussion of the decision, including the basis of disagreement with a disability determination by the Social Security Administration or a treating doctor.

4) The notice of claim denial must include a statement that the claimant is entitled to receive—at that stage and not only at the later stage of denial of the appeal—all relevant documentation supporting the denial of the claim.

5) The notice of claim denial must include internal rules, guidelines, protocols, standards or similar criteria of the plan that were used to deny the claim.

Discussion: When I applied for Social Security Disability Insurance ("SSDI"), my claim was approved on the first attempt, without any denial or delay. The evidence and support that I provided to the Social Security Administration ("SSA") were identical to the materials sent to my long-term disability ("LTD") company. The LTD company never explained why they denied my claim despite SSA's approval, even when they knew that my SSDI claim had been approved. No discussion of the rationale or basis of denial was given, nor clues as to what additional evidence may have been desirable. This denial was cited as being based on the evaluation of the insurance company doctor described in the previous example, a doctor who had never seen me and who apparently simply disregarded copious evidence that the SSA found compelling. These proposed changes would allow claimants to have a clearer understanding of the process as well as a better grasp of what is needed for appeal, and the chance of appeal being granted. I see these as very positive and important.

6) Claimants must be given the right to review (free of charge), and respond to, new or additional evidence or rationales for denial considered, relied upon or generated during the appeal process and not only after the claim has been denied on appeal. The

information would have to be made available as soon as possible and sufficiently in advance of the deadline and the plan would be obligated to consider the claimant's evidence and written testimony in response to the plan's new or additional information before making a decision on appeal.

Discussion: This seems extremely important to me. Under the current rules, claimants have no opportunity to review, and respond to, new evidence or new rationales used by the insurance companies during the appeal process. Under the new rules, claimants would have a meaningful opportunity to address such new evidence and rationales, making it much more likely that a legitimate claim will be approved upon appeal and sparing claimants having to go to court.

- 7) If the LTD plan has not followed all procedural rules (except in cases of minor errors), a claimant may proceed straight to court without first exhausting all administrative remedies.
- and 8) If the LTD plan has not followed all procedural rules, the reviewing court will consider the matter de novo.

Discussion: Far too many claimants have been held hostage to the insurers' tactics of delays and denials to basically wear the claimant down so they go away and stop pursuing benefits they're owed. These two changes would help considerably in curtailing those tactics. Particularly removing the standard of accepting the plan's determination in court seems much more favorable to the claimant. The insurance companies have had it their way under the guise of protecting themselves from fraud for far too long. The real fraud could be considered selling benefits the companies have no intention of providing.

I also support the broadening of the definition of "adverse-benefits determination" as proposed, to protect claimants from being denied benefits for inadvertent errors.

The simple truth is, most people who find themselves disabled have never had to deal with the process of securing benefits. They (we!) are severely compromised in our ability to represent ourselves effectively because of the constraints of being disabled. The Proposed Regulations, if enacted, would give disability claimants more procedural rights and safeguards to partially offset the current unfair advantage held by insurance companies. As a member of a large class of disabled people, many of whom have been denied benefits due to these disadvantages and the way they have been leveraged by the

insurers, I feel strongly that the proposed changes will increase the fairness of the situation for people who contract in good faith to receive benefits, and through no fault of their own end up being nearly abused by the very companies they pay to help them.

Disabled people, including myself, have been faced with a disturbing and unethical level of resistance and manipulation by these companies. My attorney explained to me that insurers are basically allowed to lie, delay, and deny without cause-- without fear of penalty or damages being awarded to claimants, without the risk of a jury trial, and because the law's structure gives preference to the word of the insurance company over the claimant. The Proposed Regulations put forth by the Department go some distance toward rectifying this situation.

Thank you for taking the time to read my comments.