

Disability Protection As Promised?

By Paul J. Cella CLU, ChFC Managing Partner

The KeyArx Group

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To protect your clients' potential sole source of income should disability strike, you should understand the ingredients to disability benefits so your client can obtain the benefits of the policy.

During the 1980s, disability insurers aggressively marketed competitively priced long-term disability products for employees and professionals. The policies promised protection from the devastation a disability wreaks on financial security. Competing for premium dollars, insurance companies offered specialized policies such as "own-occupation" which provides benefits if one cannot perform the important duties of one's regular occupation even if capable of working in another field.

Starting in the late '80s, it became clear that insurance companies had not financially provided for the onslaught of new claims arising from the generously underwritten policies of earlier years. Some sold their disability business to other companies; others revamped, restructured and refocused their approach from claims payment to claims management. Today, policies are written strictly on an income-replacement basis, without the earlier protections afforded by the pure "own occupation" coverage. Based on the financial fallout, companies that survived the process directed their attention to financially strengthening their fortress and, in so doing, revamped their institutional methodology in reviewing claims from claim payment to claim management.

Part of the motivational force driving the terminations and denial of claims was placed in the lap of the claim representatives. Bridled with the responsibility to make claims decisions, they often receive bonuses and are rewarded for their contributions to the company's bottom line. It is within this climate that new claims are scrutinized.

Based on these developments, it is imperative that holders of disability policies understand the assault that will be staged if a claim is made and plan for it. The following ideas should be at the top of any list when one is selling a policy, assisting a client to file a claim.

Ingredients for a Successful Claim.

First of all, I do not suggest that producers get involved in the claim submission process. We have sold the policy, and stand in a unique position to assist as a liaison to inform our customer on the process for filing a claim. That is when our input should end. Otherwise we risk begin drawn into a potential dispute with the insurer. Any unhappy client is the last thing we want. My best advice is to suggest that the client contact an attorney to help them navigate through the process. After all, these contracts are legal documents which may require interpretation and we not experts in that arena.

Some basics that I have learned from the cases I have referred to counsel for representation:

When the initial claim is filed, the claimant must provide the most thorough information on the on his /her medical condition and details of their occupational duties that favor the claim. These include medical production data, earnings data, and financial records. The insurer will ask for it all, and an experienced attorney will know the limits of reasonable disclosure.

Your clients need be careful when providing occupational data, because insurers often try to utilize the “dual occupation” argument. The insurance carrier may attempt to recast the claimant’s job into a multitude of occupations, some of which can still be performed. For example, a surgeon who performs hospital procedures and administers his office may be unable to operate, but still can examine and treat patients and do the bookkeeping. Thus, the insurer may claim the surgeon is only partially disabled and not entitled to benefits.

The client must detail the substantial and material duties of their occupation, and what physical and mental level of functioning is necessary to perform them with reasonable continuity. Beware, the company may find the claimant only residually disabled, which opens a whole new area of inquiry into the income derived from the duties that can still be performed. Also, residual-disability benefits are usually limited to age 65, while an individual disability policy may provide lifetime benefits for total disability.

A recurring topic is whether occupational stress is disabling. Fortunately, one of the best cases in this area is in our own backyard: *Lasser v. Reliance Standard Life Ins. Co.*, 146 F. Supp. 2d 619. (3rd Cir. 2003) An orthopedic surgeon suffering from serious cardiac problems reduced his schedule significantly and omitted performing surgery because stress was likely to induce further cardiac complications. The 3rd U.S. Circuit of Appeals confirmed the district court’s finding that Reliance’s failure to consider occupational stress evidenced arbitrary and capricious decision-making. Reliance also argued Dr. Lasser was not totally disabled because he could still examine patients in his office, although he could not perform surgery. The court reasoned an “occupational” disability policy defines disability as the inability to perform the material duties of one’s “regular occupation.” The court reasoned that “a duty is material when it is sufficiently significant in either a qualitative or quantitative sense that an inability to perform it means that one is no longer practicing the regular occupation.” He was found totally disabled despite the residual clause in the policy.

Your client must be prepared for the company’s investigation into whether an exclusion from coverage applies, such as pre-existing medical conditions or misrepresentations regarding medical or income issues on the application.

Even when the claim is approved, it is likely claimants will be surveilled by a videographers, clamoring for a view of them doing something arguably inconsistent with

the disability. Most courts are savvy to the limited uses of surveillance in a disability setting. Lastly, once the claim is validated, the insurance company will closely monitor all treatment. Your clients should be prepared to continue to prove their case and tell their treating doctor to expect contacts from the company and forms to complete. A hastily completed form may convey the wrong status of a medical illness and spiral the claim into denial. Having an advocate ready to respond to the insurer's frequent update demands will bode well for your client in the short run and the long run. A happy client means we have done our job, which of course will inspire them to refer colleagues to us.