



PROTECTING YOU AND YOUR FAMILY

To be forewarned is to be forearmed

By Jason Newfield, Esq., and Justin C. Frankel, Esq.

Navigating the minefields of long term disability (LTD) insurance policy claims has stymied more of your chiropractic colleagues than you would think.

Even sophisticated, intelligent people are first surprised, then panicked, when they learn how deliberately complex and spring-loaded the disability insurance claims process can be.

Do you need a disability insurance policy? Absolutely. A disability insurance policy protects you and your family if illness or injury prevents you from working or working in your present capacity.

But the insurance company's first priority is protecting its shareholders and reserve funds, and more than any

other insurance product, disability insurance policies are written to minimize the company's exposure.

Knowing how to chart a course through this minefield can make a significant difference in your life and your families.

Sending a message

Two court decisions, including one from the U.S. Supreme Court, have begun holding LTD insurance companies accountable for their policies of delay and denial. They send a message that these tactics, which include medical reviews that are anything but independent, are no longer going unchallenged.

Until the Supreme Court case *Met Life v. Glenn*, insurance companies held all the cards and the deck was stacked against the policyholder.

The disability insurance company reviewed the medical

records, hired the doctor who reviewed the claim, decided what medical tests to use to evaluate the claim, selected what results to consider, served as judge in an administrative process, and conducted a very restrictive and limited appeals process that was controlled by the insurance company.

In *Met Life v. Glenn*, the Supreme Court issued a decision concerning disability insurance policies that are part of an employee benefits package.

The question at issue: Can the same company that pays a claim be truly fair and impartial when it is also the same fiscal entity that decides whether or not payments should be made?

For the first time, the court said this structure creates an inherent conflict of interest which must be considered when reviewing the legitimacy of the claim determination.

Met Life v. Glenn was quickly

followed by a federal court decision in *Burgio v. Prudential*. This decision expanded on the *Glenn* case: Not only is there a clear conflict of interest when one company is “calling all the shots,” but the independent medical exam, or IME, truly isn’t independent.

How can a doctor hired and compensated by an insurance company prepare an impartial review of the record when the report is a significant deciding factor in determining whether or not the claim is paid?

As long as the doctor reviewing the medical file is hired and compensated by the insurance company that makes the claim payment, there can be nothing independent about the evaluation.

No need to fight

These two cases mark a turning point in two key issues of LTD insurance cases. But until all claims are reviewed fairly, the best strategy is to be so well prepared for the claims process that your claim never needs to be fought, in court or at the negotiating table. Here are some tips:

- **Talk with your treating doctor.** Tell your treating doctor you are about to file a claim or have just filed a claim. Your record must contain specific evidence of the restrictions and limitations you are unable to perform.

It is not the diagnosis that qualifies you as disabled, but your inability to perform the tasks necessary for your occupation.

Explain this to your treating physician so he or she does not inadvertently doom your claim. Your treating physician is your front-line advocate for your disability claim.

- **Locate your policy and read it carefully.** Every policy is different, and policies dating back 10 or 20

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Do you have an "own occupation" policy that insures your ability to be a chiropractor, or an "any occupation" policy that insures your ability to perform tasks associated with any job?

If you can't use your arms to adjust a patient, you cannot function as a chiropractor (own occupation), but if you can review a medical chart, there may be other tasks at your office that you can perform (any occupation).

• **What tests are you required to take?** Carefully read the sections concerning IMEs. In light of the *Burgio v. Prudential* decision, courts must now consider that the IME is not at all independent, but that does not preclude you from having to attend an IME.

If your policy requires an IME, bring a witness, ask to videotape the exam, and be mindful that your answers can be used against you. Beware of the functional capacity examination (FCE), which may not even appear as a requirement in your contract.

The FCE is used to test maximum effort, which can pose a real danger to an injured person. FCE results are questionable and controversy surrounds the test.

However, if you have to take the test under penalty of being found in breach of contract, be careful. If you know you are unable to perform the required tasks, say so and let the test reflect your inability.

• **Are they really watching you?** Field investigations are not at all unusual in high-benefit situations. Insurance companies may retain an investigator in which case claimants

may be videotaped, unannounced home visits may be made, and neighbors may be contacted and asked about your activities.

Be mindful of your activities and behave as if your every move outside your home is being videotaped.

Doing simple work around the house or going to the gym — even if your doctor prescribes a therapeutic exercise program — may be used to build a case against you.

The bottom line is this: Your

objective is to protect yourself and your family's well-being. If you need to file a claim, be prepared to fight for your policy and your future. ☺

Jason Newfield, Esq., founder, and his partner Justin C. Frankel, Esq., run Frankel & Newfield PC, a national law firm focusing on disability claims and litigation based in Garden City, N.Y. They can be reached at 516-222-1600, at jan@frankelnewfield.com, or through www.longtermdisabilityclaim.com.

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