Dynamic Chiropractic

So You Think You Have Disability Insurance: What You Need to Know

HOW TO PROTECT YOUR DISABILITY INSURANCE

Alice Wolfson, Esq; David Lilienstein, Esq; Ray Bourhis, Esq

As a professional chiropractor, you are prepared for all the contingencies. Like millions of others, you have paid disability insurance premiums for years. If anything should happen to your ability to work, you and your loved ones are financially protected. Your income is assured by your disability policy. You're covered, right? Wrong!

Regardless of what your disability policy says or how long you have had it, some insurance companies will go to extraordinary lengths to keep from paying you the benefits you are owed. What's worse, because claims under disability policies are often filed when the benefits are sorely needed for financial and health reasons, the failure or refusal of an insurer to pay can cause dire consequences.

First, some brief history. Beginning in the early 1980s, insurance companies like Provident Life of Chattanooga, Tennessee, Paul Revere of Worcester, Massachusetts, and Unum of Portland, Maine were engaged in heavy competition for premium dollars. Interest rates were at record high levels, often exceeding 19 percent. Most disability insurers were predicting that these high rates would continue into the 1990s. As a result, a competitive struggle ensued causing companies to outdo each other in the benefits and terms they were offering. All three companies wound up offering occupation-specific, noncancelable, fixed premium policies. Hundreds of thousands of insurance agents, motivated by high commission schedules, vied with one another to sell as many policies as possible. Provident Insurance alone had more than 40,000 agents aggressively promoting its policies, resulting in countless "own-occupation." policies purchased throughout the U.S. to professionals and successful self-employed individuals.

Contrary to industry projections, however, in the early 1990s interest rates plummeted. As a result of declining interest rates, Provident alone took a $423 million charge ("loss"). Heads rolled. Company presidents were replaced, outside studies were commissioned, and efforts were launched to address what became known as the "bad block" problem. Some companies attempted to make up for reduced interest rates by establishing what they tactfully called new "claims handling initiatives."

One high-ranking company official bragged to the company president that he could increase profits by up to $60 million per year by targeting and terminating high-end disability claims. This same individual launched practices that were so troubling to a company vice president/medical director that he resigned after more than 12 years with the company. He has since provided sworn testimony about the unethical nature of the new claims practices.

As a result of this situation, many disabled claimants began to experience serious problems. Horror stories surfaced. Many people had their benefits terminated, even those with conditions such as heart disease; brain damage; cervical and lumbar disc disease; cancer; repetitive stress injuries; debilitating

hand and joint injuries; severe mental and emotional problems; substance abuse issues; and even AIDS.

Within the last several years, the three former competitors, Provident, Paul Revere, and Unum became one company - UnumProvident. Its assets currently exceed seven billion dollars. In the last year, we have handled dozens of cases on behalf of terminated claimants. Most of these cases have settled with required secrecy agreements. Two that went to trial, however, both resulted in unanimous verdicts in which the juries specifically found Paul Revere/UnumProvident guilty of bad faith and unfair claims practices.

The first case involved a court reporter whose benefits were terminated because, the company said, she could still proofread. The second involved a chiropractor whose benefits were cut off under the rationale that she could still perform bookkeeping for the practice she no longer had.

You may be thinking that this could not happen to you. Think again. To protect yourself, you need to know some of the typical strategies employed by insurers to unfairly deny or cut off legitimate disability claims. These are some of the more common insurer tactics:

Redefining occupation: An "own- occupation" policy is meant to protect those who become disabled from their specific occupation. With this in mind, it has become common for an insurer to claim an insured has two occupations, and that while disabled from one, he or she can still perform the other. Thus the doctor who contributes to medical journals may be labeled a doctor/author and the sole practitioner becomes a doctor/business owner. In one case, a musician who had been referring overflow work to other musicians was denied benefits based on the argument that she was a musician/booking agent. Such redefining obviously contradicts the whole purpose of "own-occupation" coverage.

Redefining duties: Closely akin to the above is the argument that to be disabled, a claimant has to be unable to perform the "substantial and material duties" of his or her occupation. Sometimes insurers are reinterpreting this to require the claimant be disabled from "each and every one" of their duties. Thus, the insurer might say that a dentist who can still do dental examinations but not procedures is not disabled as a dentist.

Objective or subjective findings of disability: No policy requires an "objective evidence of disability," but insurers sometimes require it anyway. An insured with serious, debilitating back injuries but without positive MRI findings may be in for a long fight. Even if an MRI is positive, some insurers will argue that the positive findings are insufficient to cause the subjective complaints. They do this even though they realize that there is no objective test for pain.

Independent medical examination (IME): Some insurers demand what they call "independent" medical exams. Yet these exams are often anything but independent. Sometimes the doctors are chosen by wholly owned subsidiaries of the insurance company; other times, the doctors are selected through a rigorous screening in which companies search for pro-insurance "forensic experts." In addition, insurance companies often do not give the correct definition of disability to the examining doctor. One "independent" medical examiner for UnumProvident saw 18 claimants and found that every single one could return to work. Then, although an insured might have two or three treating physicians certifying a disability, the insurer may terminate benefits based solely upon the IME.

ERISA: If an employer pays for a policy, and often even if not, an insurer may attempt to claim that

one's policy benefits are governed by the federal ERISA law. If successful, this tactic limits an insurer's liability to the past benefits due. Claimants cannot recover for any future benefits or for emotional distress, attorney fees, or exemplary damages. They are also deprived of every individual's constitutional right to a jury trial. All of this has the effect of reducing or even eliminating the leverage to simply get a claim paid. Internal documents from one company discuss the company's ability to reduce disability settlements by more than 90 percent by designating a claim as preempted by ERISA.

Surveillance: Insurance companies will often conduct videotaped surveillance and other secretive investigations of claimants. It is not uncommon for investigators to surreptitiously film claimants from darkened vans or hidden locations, or to follow insureds as they drive around their neighborhoods. The company may be attempting to argue that if insureds can carry groceries, hold their children or exercise, then they are not disabled from their occupations. One surveillance company followed a claimant in her car to prove her powers of concentration were sufficient to return to work. After six hours they realized they were following the wrong person.

Knowing what lengths some insurers will go to wrongfully deny legitimate disability claims, you can start protecting yourself by doing the following:

Save everything: You probably throw away those promotional materials telling you how good your policy is. Keep them, and every letter your insurer writes you. Do not rely on telephone conversations without either taking notes or without following up every conversation with a note, letter or email.

Document everything: Never pick up the telephone to talk to any insurance company representative without a pen and paper. Write down everything - the name of the person you speak with, the date, the time and everything that is discussed.

Know your rights: Educate yourself on the insurance laws and regulations applicable in your state. Read your policy and ask questions about anything you do not understand (and get the answers in writing).

Obtain advice: Before discussing your claim with your insurance company, you should know what you are talking about. If you speak to an attorney, make sure the attorney is a specialist in the area of insurance bad faith law; many lawyers are not. "Bad faith" attorneys will usually provide free legal advice and assistance to you.

Finally, in any dispute with an insurance company, you need to know all available remedies. If all else fails, and your insurer refuses to pay you benefits under your policy, you have certain rights under the law. Although these rights differ from state to state, in most jurisdictions, a company that unreasonably or unfairly terminates benefits can be held responsible not only for the policy benefits up to the present time, but for the following:

1. The present value of all your future policy benefits;
2. general damages for all losses suffered as a result of an unlawful denial or termination of benefits (i.e., if you were forced to sell your house or to declare bankruptcy);
3. emotional distress caused by your insurer's acts;
4. attorney fees (many states require insurers to pay for your attorney fees if you are forced to sue them to recover your benefits); and
5. exemplary damages. Many states permit the recovery of damages to serve as a deterrent to insurers acting unlawfully in an attempt to increase profits.

For additional information, see www.insuranceconsumers.com.

1. Ray Bourhis, Alice Wolfson, David Lilienstein and the law firm of Bourhis & Wolfson have specialized in insurance law and policyholder representation for over 30 years. The firm has represented insureds in cases involving dozens of major insurers and all major lines of insurance. Recently, the firm obtained two unanimous verdicts totaling in excess of $9 million against UnumProvident Life Insurance Company for acting in bad faith in discontinuing disability benefits. The firm is located in San Francisco. www.bourhis-wolfson.com

OCTOBER 2002