

Disability Claims: Smooth Sailing or Nightmare?

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The profession of chiropractic is unique. You typically work with your hands in a manipulative fashion, your movements must be precise, and there is little room for error. You must feel well mentally and physically. Your senses must be keener than most, since you must be able to "read" your patient: to know when to stop and when to proceed. You must instill confidence in your patient by completing the task you were trained to do in a fashion that you can be proud of.

However, if you become a danger to your patients because of a physical or mental problem, you must understand your options. Your very livelihood may depend on your next course of action.

Many chiropractors have disability insurance to cover themselves and their business. This article will provide some guidelines and what to expect if you ever have to file a claim. I would suggest that you place this article with your disability policies for future reference.

Types of Claims

In my capacity as a disability claim consultant, I have handled claims for a multitude of symptoms and problems: vision and hearing; accidents; stress/depression; cervical, low back injury; essential tremor of the hands; carpal tunnel syndrome; gastro-intestinal disorders; alcohol/drugs; Parkinson's disease; arthritis; neurological disorders; chronic fatigue syndrome; and migraines. Claims may be for a single condition or for multiple symptoms. Cervical/low back problems and carpal tunnel syndrome (conditions that create pain or numbness) are the most prevalent claims.

Considerations Before You File a Claim

The key question is, are you a danger to yourself or your patients? Perhaps you are affected by medication you are taking and your concentration level is not 100 percent. Is the numbness or pain in your hands affecting your manipulation style? Could your nonprecise movements cause permanent damage to your patient? Are you having trouble remembering the name of the patient sitting in the chair in front of you? Can you respond quickly and effectively to emergencies?

A Partial or Total Disability Claim?

If you have a partial disability, you may be able to reduce the number of hours you work to assuage the problem. Cutting out certain procedures may help, or a combination of reducing hours and eliminating procedures. In such cases, if your income is reduced (typically by 20 percent) you may be able to collect on a partial (residual) claim. However, if your policy says that you must first be totally disabled for the waiting period (e.g., 90 days) before you can collect, it is likely that you will never get a partial (residual) claim. Being out of the office for 90 days could cause your practice to "go down the toilet," and you may never be able to recover.

How the definition of disability is worded in your policy can also determine if you have a total disability claim, and that wording will determine if you get a paid 100 percent of the benefit or a lesser amount. You may be covered if you can't perform the substantial and material duties of your occupation; if the words "and not working in any other occupation" are added; if there is an "earnings clause" that relates to the practice continuing to pay you some money, which could reduce the amount of money paid to you by the insurance company. You might be restricted to a six-month or two-year maximum benefit for alcohol/drug-related claims, or your benefits could be reduced/offset by your being able to collect from state disability, Workers' compensation or Social Security. Knowing what your policy states from a contractual standpoint becomes crucial in determining how to proceed.

How you act also becomes a major issue. You may ask yourself, "Can I still play tennis or golf? What should I do? What shouldn't I do? How do I handle my practice from a sales standpoint as it relates to my claim? Do I work "full load" to build up the gross, or maintain status quo to maximize the value of my practice, or is there a better way to handle matters?"

Beware of Landmines

Insurance companies today go well beyond the completion of a claim's form before they hand over any money. You may have to complete forms that are anywhere from two to ten pages. They will want attending physician statements and medical records/notes. Expect video surveillance; CPA scrutiny of your tax returns (up to the last five years, federal and corporate); visit by local field investigator, either unannounced or by appointment; an IME by the insurance company physician; and a continual quest for additional information to substantiate your claim.

If your claim is denied, terminated or you are subjected to harassment on an existing claim, there is an alternative to seeking the services of an attorney: A disability claim consultant can help in reviewing your claim and may be able to strengthen your position.

What Does a Disability Consultant Do?

- reviews all disability policies and the original application/medical exam included with policies;
- reviews diagnosis/prognosis reports from attending physicians;
- helps answer questions on the claim forms or any related questionnaire;
- provides advice on how to communicate with physicians with respect to attending physician statements;
- determines if a total or partial disability (residual) claim applies;
- determines if the claim relates to "your occupation," earnings (or both) or some other definition;
- advises how to handle visits by claims investigators, CPAs and IMEs;
- advises how to prepare a list of pre/post-disability duties, broken down hourly and weekly;

- helps determine what you can do to post disability duties, especially when there is more than one policy;
- explains the meaning of exclusions, offset provisions, earning clauses and a host of other contractual wording;
- determines if another consultant (CPA, physician) is needed;
- prepares an overall strategy in connection with your claim.

Insurance companies have at their disposal a number of defenses to keep money in their pockets and out of yours: incontestability; pre-existing condition(s); The Employee Retirement Income Security Act, or ERISA; loss of license; dual occupation; "choice" (unwilling vs. not able to go back to work); financial gain; and activities inconsistent with disability and the insurance defense medical (IME).

The disability claim consultant, through a forensic approach, may be able to persuade the insurance company to pay or reinstate a claim. If this approach fails, despite the medical merits and other favorable aspects of your claim, the consultant can help clarify issues to enable an attorney to proceed with a legal action against the insurance company. Often the consultant can recommend an attorney proficient in this specialized area of law.

The amounts of disability claims paid can be substantial. As an example, a 45-year-old chiropractor faced with total disability and having a \$5,000 monthly benefit, could anticipate receiving almost \$1.2 million if the benefits were paid to age 65. With a lifetime payout, that benefit might be closer to two million dollars. If a COLA option was included in the policy, the potential payout could be even higher. For these types of numbers, going it alone can be dangerous from a financial standpoint.

Whatever you do, get competent advice from those having expertise in the area of disability claims.

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