

Dual-Occupation Disability Claims: The Gotchas

Arthur Fries, RHU

Individual disability policies often provide both a total and partial (residual) definition of disability. As a result, things can get tricky at claim time. For instance, a chiropractor might be considered totally disabled if they can no longer perform adjustments/manipulations of the spine. However, if you can still work in your office, this might not be defined as total disability.

As an example, the insurance company may interpret the above claim as one in which you are merely partially disabled because you have continued to perform duties in the office and earn money. This is a very complicated area, and court decisions have varied by state and local jurisdictions. Variations in policy language as to what constitutes total disability or "substantial and material duties" can also affect decisions.

When the policy was purchased and how the policy was marketed by the broker / agent / insurance company or how the claim was submitted from a paperwork standpoint can also have an influence on how the insurance company interprets the claim. While in some cases it is difficult to know in advance how an insurance company will interpret your claim, there are a number of broad situations they will look at when evaluating whether or not you qualify for total disability versus partial disability:

1. Are you doing "hands-on" chiropractic or using instruments to perform manipulations? Insurers are more likely to accept a total disability claim from DCs who perform manual adjustments than from those who use instrumentation.
2. Have you delegated most or all of the non-chiropractic chores in your office to your staff, or are you doing most of them? If you are doing most of these chores, you may be considered both a manager and a chiropractor, and insurers will consider that in viewing the claim.
3. How much of your gross revenue is coming from product sales versus direct patient care?
4. Do you have a secondary job in addition to your primary care duties? This can include things such as part-time teaching at the local university or providing expert-witness testimony.

All of the above can have an influence on how the claim is paid; generally speaking, the more "non-chiropractic" work you are doing, the more likely that you will be considered a candidate for a partial disability claim.

Also keep this in mind: Partial disability usually only pays to age 65. Insurers have an incentive to push you into partial disability. You want to do everything right to fall into the total disability definition, so that if you have a lifetime benefit policy you can actually get paid for life.

Keep Close Records

In many cases, the level of claim boils down to whether you are considered to have a "dual occupation." For example, an insurer could consider that a claimant has a "dual occupation" in the case of the chiropractor whose duties include selling supplements and related products (even if the selling was done by your office staff). The chiropractor eliminates all adjustments/manipulations and

works less hours.

In addition, the chiropractor hires another chiropractor to do the adjustments/manipulations and now "manages" the practice, but continues to provide vitamin supplements to patients as a source of additional income.

Should the insurance company consider this a total or a partial disability? The answer is that it could go either way, although there is good case law that might substantiate total disability.

How They Evaluate

The insurance company's first consideration will be to evaluate how much "hands-on" adjustments/manipulations were performed prior to disability. At the time of claim, all insurance companies will ask for a copy of complete federal (not state) tax returns and if you are a corporation, the complete corporate tax return, including K-1s.

Expect to provide at least the past two years, but some companies, with respect to a partial claim, could request five prior years of tax returns.

In the latter scenario, they are typically evaluating which two consecutive years (out of five) were your highest earning years versus what your current earnings are.

With respect to a total disability claim, some contracts, in addition to a "Your Occupation" definition, may also say that you must have a "20 percent loss of earnings" and some may say you are "not working at another occupation". There are contracts that include both of those stipulations.

After an initial claim is submitted, the insurance company will ask for copies of procedure codes going back at least one year prior to going on either a total or partial claim. If another chiropractor is in the office, break down the codes for both of you. Again, they are looking at your earnings and the sources of those earnings.

There are many gray areas related to a disability claim, and often there are no clear answers. Nevertheless, how you complete the claim forms, financial and clinical records, and how your attending physician completes the claim forms, along with how you react to the various weapons at an insurance company's disposal, can determine the outcome of your claim.