

# Disability Income Benefits for Chiropractors: The Complex Application Process

By Gregory Michael Dell, Esq.

The most important aspect of a chiropractor's claim for long-term disability insurance benefits is the information contained within the initial application submitted to the insurance carrier. The application process is complex, and many chiropractors do not realize the manner in which insurance companies scrutinize and investigate their claims for disability benefits, simply based upon their occupation. Chiropractors often do not understand how specific characteristics of their practice can, and will be, used to mitigate or dismiss claims.

In our work with hundreds of chiropractors, we have found that they have a particularly difficult time establishing and maintaining their claims for disability. This article focuses on this issue, and provides insight about how chiropractors can best prepare themselves should they need to file a disability claim.

An application for benefits must contain specific information and be supported by the proper documentation. The application process involves collaboration between the applicant, the treating physician(s), an accountant and any co-workers at the time the applicant became disabled.

The disability application requires an applicant's occupational duties to be specifically broken down into

categories and the amount of time spent performing each duty must be established. In order to verify occupational duties, an insurance company will want to analyze the applicant's monthly and annual production reports, tax returns, profit and loss statements, appointment books,

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sign-in sheets, billing records and any other documentation that shows the work the applicant has performed during the two or three years prior to filing a claim, and the time period after filing a claim.

This is one area in which chiropractors can be vulnerable, depending upon how the practice is set up and managed. If, for example, the chiropractor also makes the services of a massage therapist or acupuncturist or other such services available, an insurance company can claim that the applicant's occupation is more a business manager than that of a chi-

ropractor, and deny the claim on this basis of "dual occupation."

Next in the application process, the insurance company will require the applicant's treating physicians to submit an Attending Physician Statement, which must state whether or

not the applicant has restrictions and limitations from performing the duties of his or her occupation. In addition, the insurance company may call the treating physician in order to discuss the applicant's claim for disability benefits. We regularly consult with an applicant's treating physician, so that the treating physician can properly evaluate an applicant's restrictions and limitations in conjunction with the applicant's daily occupational duties at the time of the disability.

Here is another area where chiropractors are at risk of having their

claims challenged. Many disability companies often don't have an understanding of the amount of physical strength required by the occupation, nor do they consider that some chiropractors must do things as physically challenging as leaning over the body of another and pulling the weight of that person up and toward them.

Also, the insurance company can seek to mitigate the completeness of the disability by focusing on the ancillary aspects of a chiropractor's practice, which he or she could continue to perform, such as applying hot packs, cold packs or manipulations aided by an activator or drop table.

While evaluating the applicant's claim for benefits, the insurance company will usually send out a company field representative to interview the applicant and review any financial documentation in the applicant's possession. These interviews can last several hours. Field representative interviews should never be conducted without the presence of an attorney.

In addition, the applicant may be required to undergo an independent medical examination (IME) and a functional capacity evaluation (FCE). In order to protect the rights of the applicant and ensure legitimate testing, we always recommend that these so-called independent medical

exams are video-taped and a copy of the report provided to the applicant upon completion.

Lastly, without the applicant's knowledge or consent, the insurance company will usually have a private investigator follow the applicant and conduct video surveillance for several days or weeks. We have seen many instances of this, including one in which the investigator followed a chiropractor client to a Home Depot and taped him lifting a five-gallon container of paint. The insurance company said this proved the client was able to perform his duties. What the tape failed to capture was how lifting affected this client afterward. But more importantly, because it was an isolated case of lifting, it did not legitimately demonstrate his ability to perform similar functions repeatedly, as he would need to in order to meet a standard of "reasonable continuity" were he still able to practice the profession of chiropractic.

For this and other reasons, we always ask the insurance company for a copy of the surveillance video, and give the applicant's treating physicians an opportunity to review the tape before any decision is made.

The disability insurance companies are not entitled to every piece of information they request, and an applicant must be aware of the legal implications of every communication

and document requested by the insurance carrier. Insurance companies have a lot of discretion under the terms of a disability policy, and an applicant must be prepared so that an insurance company will be forced to focus on the limitations and restrictions that prevent an applicant from performing his or her occupational duties at the time the disability started.

Establishing and growing a chiropractic practice is a challenging undertaking for many reasons. But those challenges can pale in comparison to those faced by practitioners who, having sustained an injury, find they can no longer practice. Chiropractors should always consult with qualified disability insurance attorneys, who are experienced in dealing with their types of claims, in order to protect the disability income benefits to which they are entitled.

#### About the Author:

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