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Dentist Misled By Deceptive Disability Insurer Tactics

BY DEBORAH BALSHEM

Many disability policies provide that an individual with a "partial" disability only be paid through the age of 65, while an individual with a "total" disability be paid for the duration of his or her life.

"So, to save themselves millions of dollars each year, insurance companies use ambiguous contract language that leads claimants to believe they are 'partially' rather than 'totally' disabled," alleged Gregory Dell, of the Florida-based national law firm Dell & Schaefer, PA. The insurers then entice claimants to surrender their contracts and all rights to their claim for unreasonably low prices, he added. Dell stressed it's a common practice he sees time and time again. This recent case illustrates how it works:

Fifteen years ago, "Dr. Smith" bought an insurance policy to protect his dental practice income in the event illness or injury prevented him from completely or partially working in his chosen profession. Over the years, his practice (and income) grew substantially. "As such, his insurance carrier made several offers to increase his monthly disability benefit in case of total disability," Dell noted. "Each time, Dr. Smith gladly accepted the increase in premium payments for the added protection."

Several years ago, though, Smith developed stiffness and pain that radiated through his right shoulder and down his arm. "At first, he dismissed the pain as overuse, applied home remedies and continued to treat patients. However, the pain became more severe, more frequent and lingered longer," Dell said. The doctor sought treatment from a rheumatologist, who subsequently diagnosed him with osteoarthritis.

Smith's practice consisted mainly of bridge and crown work, root canals, extractions and general dentistry. However, his pain – now excruciating after only two hours of use – forced him to forego bridge and crown work, root canals and more difficult extractions, according to Dell. After almost a year of cutting back many of his important duties, he finally decided to apply for disability income benefits.

A Fairy-tale Beginning

Less than 90 days after Smith mailed his application, he received a letter from his disability carrier, stating: "We conducted a thorough investigation into your claim for disability income benefits and are pleased to inform you that you are eligible to receive benefits under the terms of your disability income contract. As you are still working in your profession, you will receive partial disability benefits as long as you remain disabled and continue to suffer at least a 20 percent loss of earned monthly income."

Dell recalled that Smith was "pleased" by this news because many of his colleagues had had very different experiences with their insurance carriers when attempting to collect from their disability income policies. But, Dell added, "The hammer was about to drop."

Smith was then required to provide his carrier with monthly profit and loss statements. (Partial disability benefits are based on the percentage of earned income lost. Thus, unlike total disability benefits, if the individual does not suffer a loss, benefits are not paid.) Many months Smith received no benefit, since he did not sustain at least a 20 percent loss of earned income in those months.

Subsequently, he hired another dentist to perform procedures he could no longer safely perform. This resulted in fewer and fewer months in which Smith was "eligible" to collect his disability income benefit.

After two years, Smith's carrier approached him to request a lump-sum buyout of his disability income contract, offering him \$100,000 for the surrender of his contract.

"Dr. Smith found this fair, since most months he was collecting little or nothing in partial disability benefits," Dell said. "However, before signing the agreement, Dr. Smith contacted our office. After speaking with him and reading his contract, it became clear that not only was the offer unconscionably low but that Dr. Smith had fallen victim to what seems to be a common practice among many insurance carriers – advising an individual that he is 'partially disabled' when under the terms of his contract he is actually 'totally disabled.'"

Wolf in Sheep's Clothing

Smith's insurance policy states: "You are considered Totally Disabled, if due to injury or illness, you are unable to perform the Substantial and Material Duties of your Regular Occupation and are under the Regular care of a Physician ... You are considered Residually (Partially) Disabled if due to injury or illness, you are unable to perform



Gregory Dell

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one of the material and substantial duties of your regular occupation, have at least a 20 percent loss of earned income, and are under the regular care of a physician."

"Dr. Smith's post-disability duties consisted mainly of some simple extractions and consultations. But he was unable to perform all of the substantial and material duties of his occupation prior to his disability – root canals, simple and complex extractions, consultations and many cosmetic procedures – and so his insurer should have considered him totally disabled under the terms of his contract," Dell stressed. "Most significantly, Dr. Smith had been paying premiums for more than a decade to pay for this protection."

When Dell first explained his concerns to Smith, the doctor was hesitant at first, saying: "I am still working. I'm not totally disabled." It was reasonable for him to arrive at such a conclusion, Dell maintained, because like so many others, "Dr. Smith was convinced that total disability meant the complete inability to engage in his occupation."

"This erroneous assumption was given credence," he continued, "by the insurance carrier's simple statement: 'As you are still working in your profession you will receive partial disability benefits.' It was perpetuated by two years of similar statements by the carrier and eventually a seemingly gracious offer to buyout what appeared to Dr. Smith to be an all but useless policy, for the lump sum of \$100,000."

Smith ultimately turned down his carrier's offer to buy out his contract and retained Dell & Schaefer to assert his rights to total disability income benefits under the terms of his contract. The firm was able to secure Smith's total disability benefits, his back benefits of almost \$200,000, interest on his back benefits, and attorneys' fees.

"Ultimately, we negotiated a lump-sum buyout of Dr. Smith's contract – one well in excess of the meager \$100,000 the carrier once offered," Dell concluded. "In most states, ambiguous contract language is decided in favor of the insured. Unfortunately, most insureds look to their insurance carrier for clarification. Fortunately, Dr. Smith was able to realize the deception prior to surrendering his rights."

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