



Curbside Consult

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Q: *I'm an orthopedic surgeon who developed debilitating osteoarthritis in my right shoulder and arm and had to give up practicing. I applied for, and received, "total disability" benefits and have been collecting for almost a year. Recently, my insurer presented videotaped evidence of me doing some minor activities – such as food shopping and playing outside with my kids – and is now denying my benefits. What should I do?*

A: We've all seen the "Shocking Videos" or "Caught on Tape" TV reality shows. Someone files a disability claim, and then is videotaped carrying groceries, taking out the garbage, and performing other activities and chores that seemingly contradict the "disability" for which he or she is collecting benefits.

The fact that you were videotaped over the course of several days driving,

shopping and carrying groceries; and twirling your kids around the front yard – does not make it an open and shut case.

Like a great Hollywood movie, much gets left on the editing room floor.

For example, the videotape might show you performing an activity, but fail to record any pain, swelling or other symptoms experienced afterwards – or if you required rest or treatment from a physician. The tape also might not reveal if you needed pain medication prior to and after accomplishing the videotaped tasks.

Even more "shocking" is that you (the claimant) and your treating physicians usually are not invited to provide an explanation of the videotape prior to the insurer's reliance on it to deny disability benefits.

Activities accomplished by a claimant on any given day generally do not correlate to the ability to perform his/her "own occupation." Carrying groceries once a week or lifting a child is not the same as performing intricate knee or back surgeries several days a week. If your insurer claims to have videotaped evidence, insist that your treating physician be given the opportunity to

review it and provide comments.

It's important not to lose sight of the main issue in a disability claim – whether a claimant meets the policy definition of "total disability" – which dictates, in large part, whether a claimant qualifies for disability benefits. The definition of "total disability" does not require an individual be bedridden, hospitalized or helpless.

Typically, the definition of "total disability" requires a claimant be unable to perform the material and substantial duties of his/her own occupation. Just because a claimant has the ability to perform certain activities or hobbies does not mean he can perform with any reasonable continuity in his stated profession.

So, if your insurance company presents videotape evidence in an effort to deny your disability benefits, don't back down. Things aren't always as they appear.

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