

DOES STATE OR FEDERAL LAW GOVERN A DISABILITY INSURANCE CLAIM AND WHAT IS ERISA?

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To effectively represent a Social Security disability client, an attorney must think beyond the Social Security disability case. Approximately one third of U.S. employers offer long term disability insurance coverage as an employee benefit. It is quite common that a claimant for Social Security disability benefits may also have a concurrent claim for long-term disability insurance benefits (LTD benefits). A claim for LTD should always be top of mind when preparing and litigating your client's SSDI case. Claims for LTD are significantly different than SSDI claims as eligibility for LTD is defined by the terms and conditions of the claimant's disability policy. There are more than 50 different insurance companies that sell long-term disability policies and the policy language and terms for eligibility are often different in every policy. Unlike an SSDI claim, the statutes of limitations are different in every policy and the definition of disability is different in almost every policy. It is often a challenge to determine whether the disability policy is subject to state or federal law (ERISA) and failure to choose appropriately could result in a claim dismissal with prejudice. The purpose of this article is to make you aware of some of the intricacies and potential minefields associated with an LTD claim. We asked Gregory Dell, a nationwide disability insurance attorney with Attorneys Dell & Schaefer, to discuss the importance of complying with the appropriate law for an LTD claim.

In any LTD claim, it is imperative to first determine if the claim is governed by state or federal law. The general rule is that if an individual purchased their LTD coverage from anyone other than their employer, then the policy is almost always governed by state

law. In a state law claim, a disability insurance company's failure to pay LTD benefits gives the claimant the right to file a first-party breach of contract cause of action. If a claimant obtained their LTD coverage through their employer as an employee benefit, regardless of who paid the premiums, then the policy is usually governed by the Employee Retirement Income Security Act (ERISA). An ERISA-governed policy is referred to as a group disability policy and a non-ERISA policy is known as an individual disability policy. More than 85% of people with LTD have a group disability policy governed by ERISA. Most ERISA disability policies require a claimant to apply for SSDI as the disability insurance offsets the LTD monthly benefit by the amount of the SSDI benefit.

ERISA is a complex law that provides specific administrative requirements, guidelines and time frames that must be complied with during both the application and denial stage of a claim. For example, if an ERISA governed disability claim is denied, then a lawsuit can never be filed without the filing and resolution of an administrative appeal. Some ERISA LTD policies require two appeals, and the appeal is reviewed by the same insurance company that made the initial denial. A lawsuit filed in an ERISA claim is a breach of fiduciary duty action, and a highly litigated issue is whether the court will apply either a denovo review or a deferential arbitrary and capricious standard of review. The deciding factor in determining the standard of review will be whether the subject disability plan contains a discretionary clause. A discretionary clause is policy language that grants the insurance company or plan administrator the power to administer and interpret the terms of the disability plan. If a plan contains a valid discretionary clause, then the arbitrary and capricious standard will apply.

The state of Ohio has not abolished discretionary clauses in ERISA disability policies, but more than 15 states have passed laws preventing insurance companies from selling LTD policies containing discretionary clauses. A valid discretionary clause puts significant limitations on a judge's ability to reverse a claim denial, as the judge must be able to determine that the insurance company was not only wrong in their claim decision, but that the company also acted unreasonably in their claim review and handling. Furthermore, in every ERISA lawsuit, the judge can only consider information that was submitted prior the insurance company's final decision of an administrative appeal. If a claimant gets hit by a bus the day after a final administrative appeal decision is made, then the court would not be permitted to consider the new information. Unlike an SSDI final hearing, most ERISA lawsuits are resolved by a summary judgment motion and the court is prohibited from conducting a trial to hear any new evidence. The discovery in an ERISA disability claim is usually limited to conflict of interest fact-finding in an effort to get the court to apply a denovo standard review rather than arbitrary and capricious. Jury trials are unfortunately prohibited in an ERISA action.

The Department of Labor regulations governing ERISA disability claims have recently been revised by the department of labor and the new regulations are planned to be effective sometime in 2018.



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