

ERISA & DISABILITY BENEFITS NEWSLETTER

ABOUT OUR FIRM

Eric Buchanan & Associates, PLLC is a full-service disability benefits, employee benefits, and insurance law firm. The attorneys at our firm have helped thousands of disabled people who have been denied social security disability benefits, ERISA LTD benefits, health insurance, life insurance and other ERISA employee benefits, as well as private disability and health insurance benefits.

For more Information about Eric Buchanan & Associates, PLLC, visit our website at www.buchanandisability.com.

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ERISA COLLATERAL DISABILITY BENEFITS AT WORK: WHAT THE HECK ARE THEY? BY: ERIC BUCHANAN

If a person becomes disabled and unable to continue working, the person is usually eligible to file for Social Security disability benefits. Most attorneys know about Social Security disability, and can either help their client with a claim or can refer the claim to a firm that handles Social Security disability.

But, attorneys should also know that when an employee becomes disabled, the employee may have other benefits at work that he or she can claim. Private employers often offer employee benefits to their employees, such as long-term disability benefits, health insurance, dental insurance, life insurance, accidental death and disability insurance, and others. Long-term disability (LTD) benefits can provide the disabled person an additional income above Social Security benefits.

When a potential client comes in with a disability matter, the attorney should ask if the person has long-term disability insurance at work and should encourage the person to file a claim for LTD benefits. In some instances, receipt of these LTD benefits can open the door to automatic receipt of other employer-provided benefits. For example, some employers set up their benefits so that if a person is receiving LTD benefits, the person automatically can continue to be covered under the company health insurance plan at employee premium rates, which is usually significantly cheaper than COBRA.

Other benefits might be available, but require a separate application. One common example of this is a life insurance "life-waiver of premium" or ("LWOP") claim. If an employer offers life insurance with an LWOP provision, then an employee who becomes disabled can file an application with the life insurance company, and, if the employee proves to the life insurance carrier that he or she is

disabled, then the employee can keep the life insurance coverage in place without paying premiums for the duration of the disability.

So, how do you determine what benefits your client is entitled to? The simple starting place is to ask the plan administrator, who is usually the employer, in writing. So, the first question an attorney should ask is, "Dear employer, please provide me with copies of all plan documents or other documents describing what benefits an employee may be entitled to if he or she becomes disabled. If you are not the plan administrator for any such plans, please tell me who the plan administrator is and provide me their address so I can request the documents from them." The second question to ask is, "because my client is disabled, please tell me what actions my client needs to take to file a claim for any benefits he or she may be entitled to under any of those plans on account of his or her disability."

The employer should answer your questions; in fact, if they are the ERISA plan administrator, they have an affirmative fiduciary duty to communicate with a plan participant, and to fully inform a plan participant of the material facts necessary to assist with a claim. Plan Administrators are fiduciaries under ERISA, and courts have held that an ERISA fiduciary is specifically charged with the obligations of a trustee, including "a duty to communicate to the beneficiary material facts affecting the interest of the beneficiary ... which the beneficiary needs to know for his protection." *Krohn v. Huron Memorial Hospital*, 173 F.3d 542, 548 (6th Cir. 1999).

In addition to having an affirmative fiduciary duty to explain to your client about any benefits your client may be entitled to, a Plan Administrator who fails to provide requested documents within 30 days of a written request

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may be liable to your client for a penalty of up to \$110 per day. See, ERISA § 502(c), 29 U.S.C. § 1132(c). ERISA does not have a statute of limitations for this penalty, but courts have applied the most analogous state law statutes of limitations, usually applying a 1 year SOL for a "statutory penalty."

What documents should you be able to obtain? In addition to the specific documents described in the ERISA statute itself, at ERISA § 104(b)(4), 29 U.S.C. § 1024(b)(4), such as the summary plan descriptions and other documents under which the plan is operated, the Secretary of Labor's ERISA claim procedures regulations, set out in 29 C.F.R. § 2560.503-1 (h)(2)(iii) state that, in order to provide a full and fair review, the Plan must "provide... all documents, records, and other information relevant to the claimant's claim for benefits." The Secretary explains at Paragraph (m)(8) what documents are relevant to the claim, and are thus required to be produced under ERISA:

A document, record, or other information shall be considered "relevant" to a claimant's claim if such document, record, or other information.

(i) Was relied upon in making the benefit determination;

(ii) Was submitted, considered, or generated in the course of making the benefit determination, without regard to whether such document, record, or other information was relied upon in making the benefit determination;...

(iv) In the case of a group health plan or a plan providing disability benefits, constitutes a statement of policy or guidance with respect to the plan concerning the denied treatment option or benefit for the

claimant's diagnosis, without regard to whether such advice or statement was relied upon in making the benefit determination.

Beware that in many cases, the employer, who is nominally the "Plan Administrator" may not have all the "relevant documents." Many times, the benefit provided is actually provided by an insurance company, and that insurance company acts as a "claims fiduciary." Therefore, under the ERISA regulations, the insurance company has an obligation to provide all the "relevant documents" in its possession. Also, as an ERISA fiduciary, the insurance company has a fiduciary duty to fully answer any questions and to affirmatively give information that your client needs to pursue a claim.

ERISA § 502(c)(1) provides that "any administrator" who "refuses to comply with a request for any information which such administrator is required by this title to furnish" shall be, in the court's discretion, liable to the participant for up to \$110 a day. Unfortunately, most circuits have read into ERISA an additional implied term that the language "any administrator" actually means only the Plan Administrator. See, e.g., *Addison v. Hartford Life and Accident Insurance*, 2003 WL 23413737, *3 (E.D. Tenn. 2003) ("the Sixth Circuit has expressly held that an insurance company, which is not a plan administrator cannot be held liable for statutory damages [under § 1132(c)] for failure to comply with an information request.").

In sum, attorneys should get in the habit of writing to the employer (attention "Plan Administrator") and to the insurance company, asking for any plan documents, including any insurance policies, summary plan descriptions or other documents describing what benefits an employee might be entitled to, and what the employee needs to do to apply for those benefits. If necessary, the attorney should follow up, in writing, to ensure the information is provided.

ERIC BUCHANAN & ASSOCIATES, PLLC UPCOMING CLE SPEAKING ENGAGEMENTS

NOSSCR Conference in Washington, DC scheduled for May13-16, 2009

NEED A SPEAKER?

The attorneys at Eric Buchanan & Associates are available to speak to your organization regarding Social Security Disability, ERISA Long-term Disability, Group Long-term Disability, Private Disability Insurance, ERISA Benefits, Denied Health Insurance Claims and Life Insurance Claims.

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