



DISABILITY NEWS

VOLUME 2, ISSUE 2

FEBRUARY 2013

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Introduction

We created our newsletter, Disability News, to keep our current and former clients informed about new rules and regulations affecting social security, long-term disability, and disability insurance claims. All of our past newsletters can be found on our website at www.buchanandisability.com

What Do You Mean, “My Disability Policy Doesn’t Cover That?” - By Jeremy L. Bordelon

Our firm represents people pursuing two different types of disability benefits – those from the Social Security Administration, and those from private benefit plans or insurance policies. If someone comes to us to talk about social security benefits, we’ll know the rules that apply because the same rules apply to everyone. The same is not true for private plans – these often have sneaky little exceptions and exclusions that nobody told you about when you signed up for long term disability (LTD) coverage at work, or purchased a disability policy from an agent. Knowing about these exceptions ahead of time may help you avoid a nasty surprise later.

One of the most common differences between social security’s disability program and employee LTD plans is the “pre-existing conditions” exclusion. Most LTD policies contain a clause that says if you leave work with a disability less than one year after you signed up for LTD coverage, then any medical conditions for which received

treatment in the months before your coverage took effect are excluded. Most of the time, this hits new employees, but sometimes strange circumstances cause it to affect long-time employees, too. Recently, I reviewed the case of a woman who had worked in the same place, and had LTD coverage there for years. However, in the last year she worked before becoming disabled, her office became a division of a larger company. Along with that change, everyone got enrolled into the new company’s benefit plans. Because they were new enrollees, they were subject to the new company’s pre-existing conditions clause, and there was no way around it. This was something the woman’s employer could have avoided, if the company had been thinking about it and asked for the right exceptions to be put into the policy, but because they didn’t, this woman had to abandon a benefit she’d been paying for for years.

Pre-existing conditions exclusions hit any kind of condi-

tion, as long as it falls within the timeline described in the policy. One other type of exclusion that’s becoming more and more common in LTD policies is a specific exclusion for so-called “hard to prove” conditions. For years, most LTD plans have limited “mental and nervous conditions” to two years of benefits – i.e., if you’re disabled because of a bad back, you may be able to receive benefits until you turn 65, but if you’re disabled because of depression, bipolar disorder, or schizophrenia, you can only get two years of benefits. Some people ask me how this can be legal when it’s so unfair. The answer, unfortunately, is that fairness has nothing to do with it. Except for a few key terms having to do with appeal rights, the law doesn’t regulate the terms of these plans.

Many LTD policies now also have duration limits or complete exclusions for “subjective symptoms,” which, when interpreted the way some companies do, would exclude just about

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everything short of an amputated limb. A “subjective symptom” is anything you tell your doctor about that he can’t definitely prove with a test or procedure. Pain is the prime example of a subjective symptom – if you have a herniated disc in your back, your doctor can see the disc on an MRI, and he knows that such a condition is likely to cause pain, but the pain itself can’t be measured or proven. The same goes for pain due to other conditions, like migraines or fibromyalgia.

One recent court case from Georgia had an employee challenging a limit on “neuromusculoskeletal or soft tissue disorders” (which probably encompasses the majority of disability claims). The challenge was based on the fact that the employee had no opportunity to negotiate or change the terms of the LTD plan (that’s

called an “adhesion contract”), and that the coverage was not what a “reasonable employee” would expect to get when he signed up for LTD coverage. The court recognized the truth of those arguments, but held that it didn’t change the terms of the plan. *“The fact that the Plan is a contract of adhesion or that ... employees would be surprised to learn that their disability coverage is not what a reasonable employee would think, is of no consequence. [The Employer] is the master of its plan and no ... provision [of the law] bars it from excluding coverage for neuro-musculoskeletal disorders.”* In other words, these policies can contain all sorts of exclusions that may be unfair or surprising to employees, but the courts will enforce them as they’re written in most cases.

Insurance companies are getting more creative with these exclusions, and

employers don’t seem to care what they’re offering to their employees, so it falls on the employees themselves to make sure they’re being adequately protected. Anyone who has disability insurance, whether through work or purchased from a private insurance agent, should carefully review the exclusions and limits in those policies. In certain cases, it may be best not to count on the coverage you got from work and get your own, better, policy from a private agent. Other people may be able to avoid the application of certain terms, like pre-existing condition exclusions, by hanging on and staying at work a few months longer before filing a disability claim. In any case, forewarned is forearmed. Everyone should know what his or her policy does and does not cover before they need to file a claim.

Photo Gallery



Jessica Geselbracht
Senior Legal Assistant



Jaime Styles
Legal Assistant



Meg Rogers
Legal Assistant

Legal Assistants hard at work on your disability case.

Get to Know our Attorneys & Staff



K. Molina Haynes
Office Manager

Molina's natural instinct to help those in need motivates her to help our clients as they go through the process of obtaining disability benefits.

Molina has over 16 years of experience in office administration and management in the disability field. With seven years of experience in prosthetics and nine years in disability law,

Molina is sensitive to the needs of our disabled clients. Her experience and knowledge assists her as she strives to improve our office procedures and our customer service to better meet the needs of our clients.

The last couple of years, Molina has spent a lot of time reading and learning about different personality types and communication styles. Molina gets very excited about these topics and enjoys sharing the information with others. She has found that these new skills have helped her to become a better

manager, employee and overall individual.

When Molina is not hard at work, she enjoys listening to Joel Osteen on her hour drive to and from work. Joel's positive and motivational messages help keep Molina focused on having a life that is full of gratitude and joy.

Molina enjoys being home in the country with her husband and her "baby," Bella Boo. Weekends are spent counting wild turkeys, spotting deer coming out of the trees and hours of playing frisbee with Bella.



Bella Boo
Welsh Terrier

Social Security Press Release - January 7, 2013

Michael J. Astrue, Commissioner of Social Security, today announced the agency is expanding the services available with a *my Social Security* account, a personalized online account that people can use beginning in their working years and continuing throughout the time they receive social security benefits. More than 60 million social security beneficiaries and Supplemental Security Income (SSI) recipients can now access their benefit verification letter, payment history, and earnings record instantly using their online account. Social security beneficiaries also can change their address and start or change direct deposit information online.

"We are making it even easier for people to do their business with us from the comfort of their home, office, or library," Commissioner Astrue said. "I encourage people of all ages to take advantage of our award-winning online services and check out the new features available through an online *my Social Security* account."

Social security beneficiaries and SSI recipients with a *my Social Security*

account can go online and get an official benefit verification letter instantly. The benefit verification letter serves as proof of income to secure loans, mortgages and other housing, and state or local benefits. Additionally, people use the letter to prove current Medicare health insurance coverage, retirement or disability status, and age. People can print or save a customized letter.

Social security processed nearly nine million requests for benefit verification letters in the past year. This new online service allows people to conduct business with social security without having to visit an office or make a phone call, and very often wait for a letter to arrive in the mail. It also will reduce the time spent by employees completing these requests and free them to focus on other workloads.

People age 18 and older can sign up for an account at www.socialsecurity.gov/myaccount. Once there, they must be able to provide information about themselves and answers to questions that only they are likely to

know. After completing the secure verification process, people can create a *my Social Security* account with a unique user name and password to access their information.

People age 18 and older who are not receiving benefits can sign up for a *my Social Security* account to get a personalized online *Social Security Statement*. The online *Statement* provides eligible workers with secure and convenient access to their social security earnings and benefit information, and estimates of future benefits they can use to plan for their retirement. In addition, the portal also includes links to information about other online services, such as applications for retirement, disability and Medicare.

"Given our significantly reduced funding, we have to find innovative ways to continue to meet the needs of the American people without compromising service," said Commissioner Astrue. "These new enhancements will allow us to provide faster service to more people in more places."

For more information, please go to www.socialsecurity.gov/myaccount.

"This new online service allows people to conduct business with Social Security without having to visit an office or make a phone call..."



Eric's Answers



I'm sure people ask if their case can be sped up. Is there anything you can do?

For the most part the answer is no. Over two million people a year apply for social security disability benefits and it takes time to resolve a claim. The system often gets backed up and with so many people

already waiting to have their claim addressed, it would be unfair to move anyone ahead in the system.

However, there are a few exceptions. If you are about to lose your house because you are being evicted or your home is being foreclosed upon, submit that proof to social security; this can offer a valid reason for having social security move your claim up in the system and process it faster. Also, if, you have been diagnosed with a terminal illness, social security

may speed up your case if it puts your case under SSA's terminal illness program, TERI.



Eric L. Buchanan
President

"If you are about to lose your house because you are being evicted or your home is being foreclosed upon, submit that proof to social security..."



Join us on Facebook and LinkedIn



Physical Address:

414 McCallie Avenue
Chattanooga, TN 37402

Mailing Address:

PO Box 11208
Chattanooga, TN 37401

Phone: (423) 634-2506

Toll Free: (877) 634-2506

Fax: (423) 634-2505

E-mail: info@buchanandisability.com

Website: www.buchanandisability.com

If you prefer to receive our newsletter via email, please send an email to mhaynes@buchanandisability.com