
ERISA & DISABILITY BENEFITS NEWSLETTER

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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. Eric Buchanan and R. Scott Wilson are certified as Social Security Disability Specialists by the National Board of Social Security Disability Advocacy. For more information, visit our website at www.buchanandisability.com.

VOLUME 9, ISSUE 3, JUNE 2017



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INSURANCE COMPANIES MUST CONSIDER THE COMBINATION OF THE CLAIMANT'S IMPAIRMENTS IN A DISABILITY BENEFITS CASE

BY R. CHANDLER WILSON

In its simplest form, a disability benefits case has a claimant with a single medical condition which causes some level of functional impairment. However, reality is typically much more complex. What if an individual has more than one medical condition contributing to their functional impairment? How is an insurance company required to analyze such cases? The short answer is that insurance companies must consider the full combination of impairments when making a disability determination. This article will explore the law on this subject.

The Social Security Disability Context

As is often the case, the law on this question as it applies to long term disability (LTD) insurance borrows heavily from the law on social security disability. The 8th Circuit notably addressed the issue of the combination of impairments in *Landess v. Weinberger*, 490 F.2d 1187 (8th Cir. 1974):

In evaluating whether a claimant is capable of engaging in any gainful activity it is essential that the Secretary view the individual as a whole. It is senseless to view several disabilities as isolated from one another as the medical advisers did here. Each illness standing alone, measured in the abstract, may not be disabling. But disability claimants are not to be evaluated as having several hypothetical and isolated illnesses. These claimants are real people and entitled to have their disabilities measured in terms of their total physiological well-being. Different people react in markedly different ways to similar injuries. A back condition may affect one individual in an inconsequential way, whereas the same condition may severely disable another person who has greater sensitivity to pain or whose physical condition, due to age, obesity, deformity, or general physical

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well-being is generally deteriorated. To attempt to evaluate disability without personal examination of the individual and without evaluation of the disability as it relates to the particular person is medical sophistry at its best.

severe impairments that, when considered together, would prevent her from doing even a sedentary job, much less her work which fell in the light-to-medium range.

Id. at 1190.

In 1984, amendments to the Social Security Act required the Secretary to consider the combined effect of all of a claimant's impairments in determining whether the claimant is disabled:

(c) Combined effect. In determining whether your physical or mental impairment or impairments are of a sufficient medical severity that such impairment or impairments could be the basis of eligibility under the law, we will consider the combined effect of all of your impairments without regard to whether any such impairment, if considered separately, would be of sufficient severity. If we do find a medically severe combination of impairments, we will consider the combined impact of the impairments throughout the disability determination process.

20 C.F.R. § 404.1523. Courts have subsequently applied this regulation with regularity. *Layton v. Heckler*, 726 F.2d 440, 442 (8th Cir. 1984); *Gentry v. Comm'r of Soc. Sec.*, 741 F.3d 708, 725 (6th Cir. 2014); *McDonald v. Sec'y of Health & Human Servs.*, 795 F.2d 1118, 1126 (1st Cir. 1986).

The Long-Term Disability Context

Courts nationwide have since adopted this rationale from the law of social security disability and applied it to the realm of long-term disability insurance. Citing to *Layton*, the court in *Willis v. Baxter Int'l, Inc.*, 175 F. Supp. 2d 819, 831 (W.D.N.C. 2001), held that the insurance company abused its discretion by considering each impairment in isolation:

Review of the record and arguments reveals that the plan administrators never considered plaintiff's ailments in combination. It is apparent that plaintiff was suffering from a combination of

Id. at 832. Other courts have similarly held that multiple impairments must be considered in combination. *Kalish v. Liberty Mutual/Liberty Life Assurance Co. of Boston*, 419 F.3d 501, 510 (6th Cir.2005) (the court reversed for an award of disability benefits where the district court and the parties "treated the diagnosis of depression as distinct from the diagnosis of the heart condition"); *Javery v. Lucent Techs., Inc. Long Term Disability Plan for Mgmt. or LBA Employees*, 741 F.3d 686, 702 (6th Cir. 2014) (the court reversed for an award of disability benefits where the medical evidence showed that plaintiff was unable to work due to a combination of his physical and mental conditions); *Laser v. Provident Life & Acc. Ins. Co.*, 211 F. Supp. 2d 645 (D. Md. 2002) (remanded to the defendant for further consideration where it was shown that defendant "failed to consider all of plaintiff's medical evidence, failed to consider his injuries and illnesses in conjunction with one another, and took an 'adversarial approach' to the evidence presented"); *Curtis v. Hartford Life & Accident Ins. Co.*, 64 F. Supp. 3d 1198, 1213 (N.D. Ill. 2014) (ruling for plaintiff where the vocational expert reports relied upon by Hartford failed to account for the plaintiff's cognitive impairments in combination with her physical impairments).

Furthermore, insurance companies are required to "make a reasoned assessment of how [multiple] impairments in the aggregate would impact [the claimant's] ability to maintain a job, assuming he could be hired at one." *Nickola v. Grp. Life Assurance, Co.*, No. 03 C 8559, 2005 WL 1910905, at *9 (N.D. Ill. Aug. 5, 2005). See, e.g., *Ruggerio v. Fedex*, No. Civ. A. 01-11809-RWZ, 2003 WL 21955024, at *3 (D.Mass. Aug.14, 2003) (overturning benefits denial because of lack of consideration of the combined effect of plaintiff's problems, "which at best, make her an unreliable worker as they do not manifest in a linear fashion and, at worse, totally disable her for unspecified and unpredictable periods of time"); *Dix v. Sullivan*, 900 F.2d 135, 138 (8th Cir.1990) (overturning denial of SSA benefits because "[a] finding that a claimant is able to engage in substantial gainful activity requires more than a simple determination that the claimant can

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find employment and that he can physically perform certain jobs; it also requires a determination that the claimant can *hold* whatever job he finds for a significant period of time”) (quoting *Singleton v. Bowen*, 798 F.2d 818, 822 (5th Cir.1986)) (emphasis in original). The defendant in *Nickola* did not make the required reason assessment, and as such, the court held that its decision to terminate the plaintiff’s LTD benefits “were not sufficiently reasoned even to pass arbitrary and capricious review.” *Id.* at 9. As a result of these and other court decisions, it is now well-established that insurance companies must consider the claimant’s impairments in combination and make a reasoned assessment of how the combined impairments would

impact the claimant’s ability to work in order to pass even arbitrary and capricious review.

Conclusion

Courts all over the country have held that insurance companies must consider a claimant’s combination of impairments and make a reasoned assessment of how those impairments in the aggregate would impact a claimant’s ability to hold a job. This is an issue to look out for in long term disability cases, as insurance companies will still try to consider multiple impairments in isolation despite the overwhelming case law against this practice.

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R. Chandler Wilson graduated from the Washington and Lee University School of Law in 2015. During law school, he participated in the John W. Davis Moot Court Competition. In his third year of law school, he worked at the Community Legal Practice Center where he represented low-income clients in the Rockbridge County, Virginia area in a variety of civil matters, with a focus on child custody cases. Chandler loves to see his hard work have a positive impact on his clients and their families. Prior to law school, he attended the University of Florida and graduated cum laude in 2012 with a major in history and a minor in anthropology.

Chandler enjoys spending his free time with family and friends, playing the guitar, playing golf, and working with computers.

ERIC BUCHANAN & ASSOCIATES, PLLC: UPCOMING CLE SPEAKING ENGAGEMENTS

Eric Buchanan will be speaking at the following events:

- AAJ Annual Convention in Boston, MA on July 24th, 2017
Topic: Recent ERISA decisions and how to use them in your practice

NEED A SPEAKER?

The attorneys at Eric Buchanan & Associates, PLLC 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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- Private Disability Insurance
- ERISA Benefits
- Denied Health Insurance Claims
- Life Insurance Claims
- Long-Term Care Claims
- Social Security Disability

**We appreciate the opportunity to work with you on any of these cases.
Contact our Intake Team at intaketeam@buchanandisability.com.**

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