

# DISABILITY CLAIMS SOLUTIONS CLIENT NEWSLETTER SPECIAL SOCIAL SECURITY DISABILITY INCOME



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## SSDI – The Silent Take Back

By Linda Nee, BA, HIA, ALHC, DIA, DHP, CPM

Martha Dewitt opened the envelope from the Social Security Administration and smiled with relief. She was awarded social security disability benefits since April 2006 for herself and her two children. “Gee, she thought”, carefully placing the award notice back into the envelope, “with my disability checks from CIGNA every month, I just might be able to give my kids a good Christmas this year” – every single mother’s dream.

Shortly thereafter, Martha was notified by the claims representative from CIGNA that starting right away her primary SSDI award for herself AND her children would be subtracted from her monthly disability check thereby reducing the amount of disability benefit to the \$100 minimum allowed by her policy. “How is it that CIGNA can take benefits awarded for my children?”, Martha cried, putting her head in her hands. “This can’t be right, this just can’t be right.”

The above case scenario happens to America’s working class – everyday. Of the 219 questions Disability Claims Solutions received in 2007 to date, 189 concerned SSDI and the authority of any disability insurer to reduce monthly benefits by Primary and Family Social Security. Of the 189 claimants who inquired about social security offsets only 3 individuals had any fore knowledge of their STD/LTD policies and provisions allowing the disability insurer to reduce benefits by the amounts awarded by the Social Security Administration. Only three.

While consultants and attorneys argue and challenge the system, federal and state governments and legislators allow social security benefits to subsidize the largest portion of the disability insurers liability to pay disability claims.

Consider. Let’s say Martha is entitled to receive \$2,049 representing 60% of her pre-disability earnings from her employer. Her recent SSDI award was \$1,453 and she also receives ½ of that award for her son and daughter – a total of \$2,180. Since the SSDI awards exceed her monthly benefit, Martha is now entitled to receive the \$100 required minimum payment amount from CIGNA.

From the government’s point of view Martha is actually ahead now because instead of \$2,049 monthly benefit, she receives a total of \$2,280 representing 66.7% of her pre-disability earnings of \$3,415. And, the disability insurer benefits because it can reduce its financial reserves by the amount of the social security award and show immediate contributions to profit.

Disability Claims Solutions is a company specializing in the disability claims review process. We are not attorney specialists in social security law, nor do we reference SSDI law in our writings. In our opinion, claimants are best served by social security attorney specialists located in their own state, and we make those referrals particularly when the claimant’s case requires a hearing by an Administrative Law Judge. We also do our best to keep the topic of SSDI simple. So, attorneys, relax. We’re more than happy to give you the stage and the applause on this one!

So where is the harm you might ask? There are no laws or regulations requiring the disability insurer and the employer to ensure all employees clearly understand the provisions of their employer provided disability policies. **The majority of American employees covered by employer sponsored group ERISA STD/LTD polices actually think they will be able to keep their full monthly disability benefit plus any award from social security. Unfortunately, this is a tragic disability myth.**

As a result, 99% of employees are not able to organize, plan or predict family income in case of an untimely, sudden inability to work. The disability insurers contractual authority to reduce monthly benefits is discovered only when the insurer informs the claimant it has the right to do so, usually after SSDI is awarded and a payment is made.

Some of the saddest days at DCS are those when we receive calls from mothers in tears asking, “They can’t take the money for my children can they?” Or, “Can Unum really take away my benefit?” **Our response is, “Yes they can if your policy says they can.”**

We hope this special issue is of value to those who have already been through the trials of SSDI awards and disability insurers, but mostly I’m hoping the message of this newsletter will reach American workers long before the disability fire bell in the night goes off with unexpected financial challenges.

No one with an employer group sponsored ERISA disability policy should be caught off-guard on the issue of social security offsets. It’s that important.

## Why Do I Have an Overpayment?

Nearly all disability insurers include policy provisions requiring claimants to apply for SSDI. While social security is reviewing your claim, 100% of your benefit is paid to you by the disability insurer. This means that when the Social Security Administration sends you an award letter and pays you a “lump sum” for retroactive benefits, the insurance company may claim they have overpaid you and demand the money back.

While no one really disputes the disability insurer’s right to have disability policies allowing an offset for SSDI, there is nothing in ERISA which allows an insurance company to bring a legal action against the claimant in order to recover the overpayment. Companies like Unum will reduce your monthly benefit to \$0 until the entire overpayment is recovered, preferably in the same taxable **year** SSDI was paid and the disability insurer paid you.

Further, most disability insurers will negotiate a repayment schedule or minimum offset to recover the overpayment if you can’t pay back the entire lump sum at once.

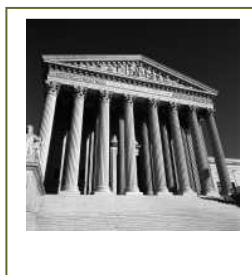
Unfortunately for some claimants, the repayment of SSDI retroactive lump sums also results in a claim denial after the 24<sup>th</sup> month change in definition.

Here is the typical chain of events:

- ☞ Claimant is told by the disability insurer he/she must apply for social security.
- ☞ Claimant is eventually awarded SSDI and a demand for the overpayment is made by the disability insurer.
- ☞ Claimant repays the overpayment in a lump sum.
- ☞ LTD claim is then denied at the 24<sup>th</sup> month change in definition.
- ☞ Employer integrated LTD with Health Benefits terminates employee and claimant loses access to health and life insurance.
- ☞ Claimant is offered COBRA, but the premiums are too high and unaffordable.
- ☞ Claimant loses lump sum award, disability benefits and access to health care.

One way to avoid an overpayment is to allow the disability insurer to offset your monthly benefit at the very beginning of the claim in anticipation of receiving an SSDI award. But, who can realistically do that? LTD benefits are already 20%-30% percent lower than job earnings just prior to disability. Very few claimants chose the “estimated offset” option when asked to chose how they would like to get paid.

Bottom line, if you are receiving monthly disability benefits AND you have applied for SSDI, it is likely the insurance company will demand repayment of the retroactive lump sum paid by social security. This includes any awards made to dependents under 18 if your policy allows it.



Social Security Disability Income is one of many take backs or reductions from monthly benefits usually found under a heading of “WHAT ARE DEDUCTIVE SOURCES OF INCOME” in the disability policy. Other offsets include worker’s compensation, certain pension and retirement income, and amounts received from third party settlements. Check your policy to see what offsets are allowed.

### Key Words

There are two types of group disability policies - **integrated** and **non-integrated**. Integrated policies allow reductions (offsets) for other income, non-integrated policies do not. Non-integrated policies are expensive, therefore the majority of group policies are integrated and allow offsets from the monthly benefit.

## Access to My What?

Unum is now sending out letters with the following wording:

**“To make it easier to reimburse us, we now offer a free service, in which the amount of the repayment (of SSDI lump sum) can automatically be withdrawn from your checking or savings account. If you would like to take advantage of this service, please contact me at the toll-free number below.”**

DCS response.....Not in this lifetime! Never allow a disability insurer to have access to the location of your social security lump sum payment. If you have already given permission, close your account and start over.

Allsup, Inc. is another company who markets SSDI repayment services:

**“Allsup withdraws overpayment funds directly from claimant’s bank account using our patented electronic process.”**

Allsup also markets the “sharing of additional information” to the insurance company when representing claimants during the SSDI application phase.

**This is really a very bad idea! It is always unwise to allow a disability insurer to have control over your personal finances for any reason.**

## How Does the Disability Insurer Treat SSI? (Social Security Supplemental Income)

Disability insurers do not reduce monthly benefits for SSI initially. However, since SSI converts to SSDI when the claimant is finally awarded, the I insurer computes the overpayment for SSDI, by going all the way back to the SSI award and claims repayment for that time period as well. If the insurer tells you SSI is not an offset, that’s not entirely accurate.

## The Claimant Dilemma – Catch 22 And Then Some.....

As a former lead claims specialist with Unum I can certainly attest to the fact that claims handlers at all levels receive training on how to conduct business applying management approved internal procedures. Workshops are given, and regular follow-up staff meetings reinforce the claim review principles to be followed within the context of administering disability claims. This is especially true with respect to the referral process for Social Security Disability Income benefits.

How is it possible for Unum, for example, to deny a claim at the 24<sup>th</sup> month change in definition when the claimant has also been awarded SSDI? In other words, how can it be possible for a claimant to have been determined to be “totally and permanently disabled” by the Social Security Administration, only to have Unum ( or any other disability insurer) claim the insured could do a sedentary occupation after 24 months and deny the claim?

Claimants ask this question all the time and so did the Multi-State Insurance Commissioners who eventually insisted in the RSA (reassessment and amended RSA) that UnumProvident consider the decisions of the Social Security Administration in making their claim decisions. Although this may have appeared to be a “good” thing, it actually works against at least 30% of claimants making application for SSDI. UnumProvident, now Unum Group’s denial letters, often parrot Administrative Law Judge decisions. Remember, the directive to consider social security decisions was binding on UnumProvident and has not affected the decision-making of the other major disability insurers such as Reliance, CIGNA, Aetna, or Prudential.

DCS is of the opinion it is very unwise for a claimant to repay a retroactive lump sum to a disability insurer without first obtaining written confirmation from the insurer benefits will be approved beyond the 24<sup>th</sup> month change in definition to any occupation. Since the claimant has been determined to be totally and permanently disabled by social security, taking this position with the disability insurer requires an admission of total disability beyond the 24<sup>th</sup> month. The disability insurer may conduct their “any occupation investigation” sooner in order to recover the money. Don’t be afraid to stay your ground even if the insurer threatens to reduce your benefit to \$0 in order to recover monies due.

Claims specialists are often under the misguided impression given to them by management that the definition of total disability for Social Security and the claimant’s group policy are different. Actually, the two definitions are not different.

SSA and federal law defines disability as follows, “**The inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months.**” (citing 42 U.S.C. § 423(d)(1)(A) and 1382c(a)(3)(A).

A typical group LTD policy usually defines any occupation disability as:

**Unable to perform the material and substantial duties of any occupation for which you have training, education or experience.**

Despite the similarities of these two definitions, claims specialists are trained to inform claimants, “ We have to adjudicate the policy and are not bound by social security since they use different standards.” Actually, the standards are NOT different since both definitions require an inability to work at any “gainful” activity. In addition, both social security and group policies allow the insured to work under certain conditions. (Partial or residual disability.)

Also, from a monetary perspective, it appears financially sound to put the money (particularly if the award is substantial) into an interest bearing Money Market Account and draw out of the account an amount equal to what the monthly benefit would have been. Let the insurance company reduce benefits to \$0 since the effective interest rate for Money Market Funds can actually increase your monthly spending over time.

Therefore, all persons insured by group STD/LTD policies should know the following in advance of filing a claim for disability benefits:

1. Your disability insurer **can offset** (reduce) your monthly benefits for Primary SSDI (you) AND your dependent children (FSS) **if your policy says it can**. Always obtain a copy of your “Certificate Booklet” from your employer as soon as you are eligible or enrolled for LTD, and locate the section under “WHAT ARE DEDUCTIBLE SOURCES OF INCOME” to determine if you have an integrated policy allowing the offsets. Always know in advance how much money you will actually have should you become disabled long-term and plan accordingly.
2. If your policy allows reductions from monthly benefit for PSS and FSS, understand very clearly that if you apply for SSDI **the insurance company will claim they overpaid you** and demand you turn over to them most or all of the lump sum payment you receive from social security. Overpayments occur only when the insurer AND social security paid you for the same time period.
3. If you meet certain income guidelines, the Social Security Administration may give you Social Security Supplemental Income benefits while you are waiting to be awarded regular SSDI. Although the insurance company **may not offset your benefit immediately for SSI**, once you are awarded SSDI, the calculation of the overpayment **will include payments for SSI**.
4. Some disability insurers (like Unum) **give you credit for the 25% attorney fee** removed from your retroactive benefit by social security. Request a copy of the repayment calculations from the insurance company and make sure, or ask about the **credit for attorney fees**. Those insurers who advertise “application assistance” also charge the 25% attorney fee, and therefore the help is not free.
5. SSDI pays claimants an annual Cost of Living Allowance each year. Group policies **DO NOT offset for the COLA increases**. This is actual money the claimant keeps each year and the SSDI offset should always be the amount of the original SSDI award and not increase over time.
6. If feasible for your situation it is preferable to **place the lump sum award into an interest bearing Money Market account** and allow the insurer to reduce monthly benefits to \$0. You may also negotiate the lowest offset from benefit in severe hardship, but it is at the discretion of the disability insurer to agree, or not agree, to pay a monthly benefit and not reduce benefits to \$0.
7. It is **unwise to pay back an overpayment before a decision has been made on continued benefits beyond the 24<sup>th</sup> month change in definition**. Consider the possibility of repaying your SSDI money only to have your claim denied by the disability company. You may wind up with no money and no benefit, and for some, no health insurance. Use repayment as a negotiation tool to get written approval of benefits beyond the change in definition.
8. Never allow a disability insurer access to personal checking or savings accounts for obvious reasons.
9. If you feel your social security attorney or representative has not earned the 25% fee he/she charged you, you may write to the Social Security Administration and request the attorney or representative be paid a lesser amount. You need to do this before you are awarded any benefits.
10. If you are denied SSDI benefits and do not continue to appeal within the allowed 60 days, you will be asked to begin the process all over again from the beginning. It's better to keep appealing denial decisions ending with the Administrative Law Judge hearing.

If you have any other questions concerning SSI, SSDI, and integrated group LTD policies please feel free to contact Disability Claims Solutions. Again, we refer all of our clients to attorney specialists in the respective states because we are of the opinion claimants are best served at Administrative Law Judge hearings by the attendance of an attorney from their own state. The key to understanding SSDI and offsets by disability insurers is to know in advance what policy authority the insurer has, and how these reductions in monthly benefits will affect you and your family in a time of crisis. Always obtain a copy of your policy in advance and understand what you are entitled to and what your disability insurer is entitled to. Happy Thanksgiving!