

# DISABILITY CLAIMS SOLUTIONS CLIENT NEWSLETTER WORDS SAY THEMSELVES

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## Words Mean What They Say - Or do They? by Linda Nee

One of the hardest things for me as a new employee with Unum in 1994 was appreciating my indoctrination into the world of Executive HR and the dictionary of corporate acronym. The then Vice President of Corporate Compensation, my boss, often ridiculed me for lack of superficiality and pretense. Yes, I was a greenhorn, but how could I help it?

One overly dramatized HR report stated, *“Executive Management of Enterprise HR, a subsidiary of Unum America, places a stake in the ground and strongly supports the above described paradigm thereby creating a hierarchy of silver threads to achieve the goals and objectives of the current band level endeavor.”* Huh? It makes you wonder whether any employee really understood anything.

However, over time even the U-Nummies began to fit in and talk like everyone else. After all, it’s really important in the insurance industry for everyone to talk, dress and act basically the same. Back in 1994 all the corporate women wore big choker pearl necklaces with perfectly accessorized suits and crisscrossed white blouses. Pretty phony, really, but necessary to the creation of the insurance corporate culture and maintenance of Unum’s Life’s famed lighthouse image of, “We see farther.”

Of course, one of the characteristics of any culture is a language unique unto itself, and certainly Unum created its own communication wave kindly referred to as UNUM SPEAK. Learning to decipher UNUM SPEAK qualified a new employee as “significantly useful” to the organization and took approximately 18-24 months to learn. No kidding.

Nearly all disability insurance industry communications are worded the same. Have you noticed that? Letters from Reliance-Standard use the same language to support an any occupation claim denial that are used by CIGNA, MET Life, Northwestern Mutual, Broadspire, and so on. It seems odd at first that all of the major disability insurers communicate using the same terminology until you realize it’s the same industry and an identical culture.

*“Mrs. Jones, I’m calling you today to let you know Dr. Pitts has given you restrictions and limitations releasing you to work in any occupation for which you have training education and experience. We completed a TSA and LMS and have located alternative sedentary occupations you can do that are gainful.”*

Do claimants get it? No they don’t. And, they’re not meant to.

“Claimant is a 45-year old Secretary TD and oow due to SLE with LDW of 8/16/2007 and DOD of 8/17/2007. BME is \$60,000 and BMB of \$1153.85. Cx is most likely td own occ with dx of SLE and tx with antibiotics. AP Richards signed latest APS 8/20/2007 with R&Ls of cx is totally and permanently disabled. Refer claim to OSP, CRC, and MP for review. Probable SIU referral at any occ prior to TSA and LMS. Contract series CXC with EDOC of 9/1/1994 with expected ERD of 8/20/2010. Policy LWOP referral in Oct. Team RTR and MDR appropriate within 5 days. Req Supp and refer to PMSI.”

A mini clip of UNUM SPEAK.....?

The really bad thing about creating a UNUM SPEAK, for example, is that after a while the claims organization begins to see advantages in “interpreting” other things, such as policy contract provisions and medical information supplied by claimant primary physicians. This takes corporate claims staff culture indoctrination to a whole new level- an illegal one.

It isn’t as monumental a leap as you might think to start out with “paradigm” and “silver threads” and end up with “internal claims strategy” and breach of contract to increase profitability.

After all, it is very easy to deny disability claims when the reviewer chooses to ignore the acceptable meaning and intent of words by creating its own “interpretation” of the words not written. In fact in today’s terms most disability insurers have basically adopted the contract principle, “the policy means what we say it means.” (Discretionary provisions?)

The purpose of January’s DCS Newsletter is to draw attention to the manner in which all of the major disability insurers distort and interpret disability contracts in their own favor and financial self-interest. Words underwritten in a disability policy are deliberately vague sufficient to allow the insurer to supply any interpretation to the words when it is profitable to do so.

Although this topic is not in itself humorous, we can have a bit of fun with it. In 2008, we can only hope for significant improvement in our federal and state laws brought about by our brightest attorneys and litigators. Breach of contract and state consumer laws can protect us only if they are enforced.

## Material and Substantial Duties

It continues to amaze me that in so far as disability insurers use the term “material and substantial duties” as often as they do, companies really have no technical conception of what these two words mean. Or, if they do know what the words mean, insurers deliberately ignore technical definition in favor of preferable interpretations of their own in order to deny more claims. Let’s talk turkey here.....

“**Material duties**” are those which are characteristic to specific occupational tasks without which the occupation could not be distinguishable into any specific category or job specification. These duties are qualitative in nature and are those duties, which if eliminated, indicate the occupation, as defined, would not exist. In other words, material job tasks are those which are necessary as part of the defined occupation. “Material duty” is often interchangeable with “important duty.”

“**Substantial duties**” are job tasks which represent the largest proportion of total tasks performed in an 8-hour work day. These duties are quantitative, and suggest the performance of specific occupational duties, expressed as a percentage, for the majority of an 8-hour workday.

“**Material duties**” refer to specific job-related tasks and is generally a qualitative measurement, while “**substantial duties**” refers to proportionate time spent and is an identifiable quantitative determination. **These definitions are normally taught by the insurance industry in their credentialing courses.**

When the issue of “material and substantial duties” arises in claim review, disability insurers do not appear to place any particular definition to the terms, nor do they define “material” separately from “substantial” although the two terms have different meanings.

I once defined “material and substantial” in an expert report I wrote for a case. At deposition Unum’s attorney said, “Here you are, Ms. Nee, making things up....” Apparently, Unum wasn’t familiar with the specific definition of the terms even though the terms “material and substantial duties” are written into nearly all of Unum’s group policies.

Unum, like many disability insurers, tends to lump the two terms together and consider “material and substantial” to mean ALL duties of an occupation. Technically, only those duties representing 20% or more of an 8-hour workday are considered material and substantial. Issues related to “material and substantial” duties can become a real snafu in IDI litigation.

What really makes this issue confusing is that on occasion even Plaintiff’s attorneys don’t want to push the technical definition of policy terms because they also WANT the judge to make an INTERPRETATION in favor of their arguments just like the insurance company does. In the end, neither party pays attention to the actual meaning of the words used in a policy contract. Words should mean what they say and should be interpreted that way. Great principle, in my opinion.



*Cx, Dx, Tx, Hx stand  
for Claimant,  
Diagnosis, Treatment  
and Medical History*

An insurance “Waiting Period” is the amount of time a new employee must wait in order to be eligible to participate in the employer’s STD/LTD disability plan. An “Elimination Period” is the amount of time for which benefits are not paid once you file a claim. Some insurers reverse these terms in their policies making it even more confusing. Some policies define “waiting period” as the number of days before becoming eligible for Residual Disability – even more confusing.

### ***Technically speaking.....***

During a recent conversation with a Unum Appeals Consultant it became increasingly obvious I really irritated him by saying the appeals department **denied** my client’s appeal. The gentleman became quite huffy and “corrected” me. “The appeals department does not DENY claims”, he retorted, “we either uphold or overturn the previous DENIAL decision.” Ok. Let’s think about this.

Technically, the appeals department has three options: 1) uphold the previous denial called “a denial uphold”; 2) overturn the previous denial called “an appeal overturn”; or 3) send the claim back down to the claims area for more work. Technically, it looks like the appeals department of any disability insurer does NOT in fact deny claims.

Is the appeals department responsible for the nonpayment of claim on appeal? Yes, it is, but technically since they just review the previous denial decision made in another department, they claim no responsibility for the original denial. Oh well, never accuse an appeal rep of denying a claim.

Another terminology issue having to do with claim appeals is the wording of letters requesting an appeal. Apparently, there is a big difference between “**intent to appeal**”, and “**requesting an appeal**.” If the insured writes a letter to the appeals department stating, “It is my intent to file an appeal”, Unum, for example will consider the request as a **non-appeal**. They will do nothing with the request, allow the 180 days to go by, and then send a “denial uphold” letter.

On the other hand if your letter states, “**I request an appeal**”, then Unum will immediately re-review the information they have already without giving you an opportunity to submit additional information. It is possible for a “denial uphold” to take place before it even got started. There is a way of managing all this if you are aware of it. But, want to take a guess at how many claimants actually know what to do?

No wonder the process of filing a disability claim is so complicated for the average person.

Claims Speak.....Acronyms

A Very Useful Chart

ACM	Active Claims Management. Used to refer to claims once liability has been accepted.
ADL's	Activities of Daily Living such as toileting, transferring, dressing, preparing meals, and ability to manage finances.
APS	Attending Physician Statement. Primary Care Physician
BAS	Benefit Administration System—UNUM Provident's payment computer payment system.
BMB	Basic Monthly Benefit - BME x 60% or your contractual percentage. Gross Monthly Benefit
BME	Basic Monthly Earnings –Pre-disability salary or prior year W-2 earnings.
CCS	Customer Care Specialist
Clmt	Claimant
CMI	Current Monthly Income. Calculated generally by internal CPA's as it relates to IDI claims.
COFC	Continuity of Coverage provision in the policy.
Cx	Claimant
CXC	Current series of policies. Some are "Disability Solutions", which means they contain additional specific provisions on which your claim may be denied.
CPI	Consumer Price Index. Used to index your pre-disability earnings if you return to partial work.
DBS	Disability Benefit Specialist UNUM flip flops between CCS and DBS as titles for claims specialists
DOB	Date of Birth
DOD	Date of Disability
DOH	Date of Hire
DOI	Department of Insurance Usually the Insurance Commissioner's Office
Dx	Diagnosis
EDOC	Effective Date of Coverage. The first date the claimant is eligible for benefits.
EE	Employee
EMSI	Out Sourced Agency who collects medical information.
ER	Employer
ERD	Expected Resolution Dates. Each claim is given an expected resolution date when the claim is first received and reviewed for eligibility. It is the date the claim is expected to close, or, the date the claim no longer requires risk management. Senior claims handlers may change this date at will without validation, however, shortly after the merger, ERD's required manager sign-off to change. This hints that the ERD date, or, expected date of closure was somehow connected to the insurance reserve. This policy changed over time to allowing senior to change ERD's at will while new claims handlers ( Associate CCS, CCS) must get the ERD change validated by their Consultant. ERD's are performance managed.
ERISA	Employment Retirement Income Security Act of 1974
FCE	Functional Capacities Evaluation. A medical form UNUM may provide to you to fill out.
Genesis	Old Diary system on which the chronological record of your claim was kept.
GENEX	GENEX Services, Inc. A wholly owned medical and vocational subsidiary of UNUMProvident..
Hx	History, referring most often to medical history.
IA	Independent Assessment—up to date term for IME
IL	Initial Liability. Used to refer to a claim which is being reviewed. Payment decision is not yet made.
Image	All paper is now scanned onto an electronic optical system called Image. This is where the administrative record is now kept. UNUM is moving toward a "paperless" claim environment.
IME	Independent Medical Evaluation—old term, but used interchangeably with IA
Lab One	The new outsourced service used to obtain medical records.
LDW	Last day worked.
LTD	Long Term Disability
LWOP	Life Waiver of Premium. The first date you are eligible for a waiver of your life insurance premiums.
MARB	Mid Atlantic Regional Benefits. Old UNUM Life Regional Office Chicago
M&N	Mental and Nervous provision of the policy limiting benefits to 12 or 24 months. Of interest is that the 24 months need not be consecutive. Twenty four months refers to a TOTAL of 24 months of paid benefits for the duration of the claim.
MCR	Medical Claims Review
MDR	Multi Disciplinary Roundtables. Attempts by management to identify potential claim denials by requiring the claims handlers to "present" claims to the business and risk management interests of the company.
MUUP	Marked Up Unpaid Claim. This is an initial claim (IL) which has been input on "Agreement", the data base system used to keep track of policies and policyholders. A marked up and unpaid claim is one which has been marked up on he BAS payment system, therefore, the insurance reserve has been realized. MUUP claims are assigned to a claims payer and are expected to be reviewed within 35 days which is a very unrealistic benchmark.
NAVILINK	New Diary System on which the chronology of your claim is kept. Much less documentation than

NAVILINK	New Diary System on which the chronology of your claim is kept. Much less documentation than Genesis.
NERB	Northeast Regional Benefits No longer exists. Old UNUM Life Regional Office. Portland ME
NYRB	New York Regional Benefits. Tarrytown. No longer exists. Old UNUM Life Regional Office.
OOW	Out of Work
OSP	Office Staff Physician. Old acronym for UNUM Physician. Now, Provident calls the in-house physicians, Physician Consultants.
PACE	Benefit payment system used for IDI claims.
PC or TPC	Phone communication with the claimant. TPC refers to the initial phone interview with the claimant at the start of the claim, while PC is used for any other phone conversation with the insured.
PMI	Prior Monthly Income. Acronym used primarily with IDI claims and is calculated by an internal CPA
PMSI	Out sourced service retained by UNUM to obtain all of your medical records.
Pre-x	Pre-existing condition. Refers to policy provisions which relate to conditions of pre-existing conditions.

RIMARE	Risk Management Resources. The old UNUM Life training manual thought by many to be a claims manual.
R&L's	Restrictions and Limitations. Medical information received from treating physicians should list or describe restrictions and limitations which would preclude work capacity. Restrictions are those activities the claimant may never do while limitations are those activities the claimant may do, but only as described by the physician. i.e. No driving, no exposure to stressful situations are examples of restrictions. No lifting > 10 lbs, no walking more than 10 minutes, alternate sitting and standing are examples of limitations. The purpose of UNUM's medical review is generally to determine whether the R&L's provide o UNUM are reasonable and preclude work capacity for the functional capacity given.
RTR	Roundtables referring to either Team or MDR Roundtable presentations.
RTW	Return to Work.
SHU	Shoo! Special Handling Unit in Chattanooga. Extended Duration Unit in other UNUM locations.
SRB	Southern Regional Benefits Old UNUM Life Regional Office. Atlanta
SS	Social Security
SSDI	Social Security Disability Income—a reduction from benefits
SSI	Social Security Supplemental Income—for lower income claimants
SSR	Social Security Retirement
STD	Short Term Disability
Supp	Supplemental Form. Medical form sent to the claimant for the physician to complete.
Sx	Symptom
TD	Totally Disabled. Used in the context of TD own occ or TD any occ. This means the claimant is totally disabled from performing the material and substantial duties of his/her own or any occupation.
TDOO	Totally disabled from own occupation.
Team RTR	Team Roundtable. Another presentation to Consultants, Medical, Vocational personnel to attempt to identify "quick hits" claim denials.
TSA	Transferable Skills Analysis. 2,3,and 5 year partial or residual claims change from an own occupation definition to an any occupation definition after the mentioned time period. In order to prove the claimant is not TD any occupation, the claims handler will refer the claim to Vocational Specialists who in turn request GENEX to identify occupations the claimant could perform given their current R&L's. Although the process appears rather elaborate on paper, the result is a best guess at what the claimant could do. Specific jobs are identified by the TSA. These occupations are then determined to be "gainful" or "not gainful" as identified by the provisions of the policy. A LMS may also be performed to further investigate whether the occupations identified by the TSA are available in the same geographical area as the claimant. The TSA and LMS process is totally "out of contract" and is defined by UNUM as the process used to investigate any occupation.
Tx	Treatment
WC	Worker's Compensation—a reduction from benefits
XL or XLL	UNUM Life Insurance Series Policies

I hope everyone has a wonderful holiday and the opportunity to enjoy family and friends. I look forward to a very successful 2008 for all of our clients. Best Wishes and Merry Christmas. Linda