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Disability Claims Solutions Client Newsletter

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Getting Started

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

The purpose of our newsletter is to provide specialized information to clients of Disability Claims Solutions, attorneys, and others who have an interest in obtaining information about our services and successes. Clients of DCS include those requesting disability claim assistance and case management, disability claim settlement/negotiation services, professional family and medication services, litigation assistance, file review and disability report writing services.

To those of you who are new to DCS, welcome. As always we encourage you to obtain and read a copy of your disability policy as soon as you can. If you have an ERISA employer-sponsored claim and have not received a copy of our "Group LTD Manual 101", please let me know and I will be happy to send you a copy.

DCS Successes

In the last several weeks DCS is happy to announce the following successful outcomes:

4 UNUM Reassessment Approvals Paid with Interest

2 UNUM ERISA Appeal Overturns

1 Met Life Disability and Life, Health Over turn

1 DMS Successful Settlement Negotiation

1 UNUM initial application paid

50 clients with disability claims currently being paid successfully with continued and on-going management.

Changes in Operations

This year has been very successful as indicated in the numbers of disability claimants we were able to help. Although all of the disability insurers have maintained their aggressive investigations, DCS continues its success in many different areas of claim litigation, and case management.

New this year is the addition of family and small business professional mediation services currently helping many families and small Maine businesses resolve indeterminable issues in their lives.

In order to continue to provide the best possible disability claims management to our clients, we'd like to offer several changes in our operations.

Of course, we will make ourselves available to you at anytime, however, in most instances it is not necessary for disability clients to telephone us everyday. We understand how difficult it is to depend on an insurance company for financial support and will do everything in our power to help you understand the process and work toward a successful resolution. Although there are no guarantees, we're here if you need us.

Staring August 1, 2007 our new suggested office hours and weekly operations will be:

M-W 9 a.m. – 5 p.m. EST. California clients please take note. If these hours are inconvenient, please let us know and we will make ourselves available to you.

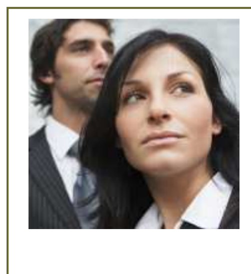
Thursdays and Fridays will be dedicated to consultant report and appeal writing, and appeal processing, settlement negotiations, legal depositions calls to disability insurers, and mediation.

The content of your appeal or application is crucial to the final claims decision. This is a responsibility we take very seriously and want to spend as much time writing your appeal or preparing your application as much as possible.

Unless there is an emergency we ask that you communicate with us by email at: lindanee@metrocast.net

If you have received communications from your disability insurer and need to send it along to us, you may fax it to us anytime at (207) 793-2006.

Unless there is an emergency, disability clients generally do not need to call us everyday. If we receive a communication from your disability insurer we will notify you right away and keep you informed of the status of your claim.



Knowledge is power when filing a disability claim. Always obtain a copy of your policy, read it, and understand what you are entitled to and what the insurance company is entitled to.

We will do all that we can to help you feel comfortable with the management of your disability claim.

In order to continue to receive disability benefits you must remain in appropriate and regular care. You must provide proof that you are being seen by a qualified physician on a regular basis. Without such proof, the insurance company may decide to deny your claim. Always keep medical appointments and be prepared to obtain office treatment notes from your physicians.

An Article for Individual Disability Income Clients

By Linda Nee, BA, ALHC, HIA, DIA, DHP (This article does not apply to clients with ERISA policies.

The laws in most states imply a duty of good faith and fair dealing on behalf of the insurance company. This duty expects the disability insurer to act reasonably in the handling of claims submitted to them by the insureds. Even though disability polices do not contain specific language in the insurance policy concerning the duty of good faith and fair dealing, it will be enforced by the courts as if it were.

In general, in order to prove an insurance company has violated their duty with respect to good faith and fair dealing, the insured (plaintiff) must show: 1) the disability insurer acted intentionally; 2) the disability insurer either denied the claim, failed to pay the claim, or delayed payment on the claim without a reasonable basis; and 3) the insurance company was aware it had no reasonable basis to act, or it failed to conduct a fair and objective investigation to determine if its' actions were in fact reasonable.

Basically, disability insurers may not ignore the duty to investigate fully all of the facts of a claim before making a liability determination. If a claim is not fully and objectively investigated, the disability insurer may later be prevented from saying it had a good reason to act in 'good faith'. Additionally, a disability insurer may not conduct an investigation favoring its' own interests above those of the insured. Instead, the disability insurer is required to consider the interests of the insured at least equal to its own.

In order to prove an insurer has committed "bad faith" the insured must prove: 1) the insurer is guilty of violating the duty of "good faith", and therefore has committed "bad faith"; and 2) and the insurer's acts of "bad faith" were the cause of any damages suffered by the insured. When the insured is successful in winning a "bad faith" lawsuit, he/she is generally entitled to recover: 1) actual damages; 2) general compensatory damages; and 3) punitive damages.

In order to win compensatory damages, the insured must prove to a jury that the facts of the claim are more probably true than not. This is very different from beyond a reasonable doubt, which is a much higher standard used in criminal cases. The concept of "more probably true" means that the insured's facts and evidence need only "outweigh" the defendant's evidence by even the slightest margin.

In contrast, in order to win punitive damages, the insured must provide proof of clear and convincing evidence, which is more than "mere probability", but less than "reasonable doubt." The insured is required to show the insurance company acted with an "evil state of mind" which is defined as: an intent to cause harm; or conduct motivated by intentional ill will; or willfully ignoring the substantial risk of harming the insured or others.

Awarding punitive damages is left entirely to the jury. Members of the jury may choose to consider: the character and motive of the disability insurer's motives, the degree of harm it caused, and the standard of reported wealth of the company.

Disability insurers may also be sued for breach of contract, which arises when the administering insurer does not abide by the express written provisions of the policy issued. On occasion, one can prove a breach of contract where there is no express written provision, but when the insured has a reasonable expectation of coverage based on information communicated at the time of sale, or produced in marketing brochures or advertisements. In addition, some practices may also be considered consumer fraud in some states.

The UNUM Reassessment process is planned to end by December 31, 2007. Recent communications, however, have indicated UNUM is trying to end the Reassessment process by September. Therefore, we need to supply any and all additional information to UNUM before that time even though we haven't been notified of any official deadline.

Staying in control of your disability claim is essential for success. All communications from your disability insurer will be responded to in a timely manner. You have rights under the terms of your policy and it is important to keep your claim file or Administrative Record documented with your point of view.

Disability Claimant's Bill of Rights

As a direct or indirect party to a legal contract involving insurance coverage for disability or income replacement, you are entitled to legal and contractual rights of expectation that the provisions agreed to are adjudicated in a fair, unbiased and equitable manner by the disability insurer.

You have the right of full disclosure. As the insured party to a disability contract you have the right to receive and examine all collected data, both paper and electronic, collected by the disability insurer in the process of reviewing your claim for benefits. This includes all administrative and chronological records, conversations, meetings, data base checks, field surveillance, and any other data affecting your privacy as an individual. This information must have been used by the insurance company to deny your claim for benefits. Under ERISA regulations you have the right to receive a copy of your policy and claim file within 30 days of requesting it. If it has not been provided to you within the designated time frame, the insurance company may be fined $110 per day.

You have the right to privacy and respect. You have the right to expect medical records and any other private information which reflects upon your credibility, integrity or reputation, to be kept private and treated with respect. You have the right to know what type of information is requested over and above that which is needed in making a fair decision on your claim. You have the right to know when your claim is being reviewed in a public forum and by whom. (Such a roundtables.) You also have the right to know the name and title of the person who will actually be making the decisions on your claim. Quite often, it is not the claims specialists who do this.

You have the right to a timely claim decision. You have the right to expect your disability insurer will make every effort to render a claims decision within 30 days (ERISA claims) or that period of time indicated in the policy provisions. You have the right to be notified in writing every 30 days as to the reason why your claim decision is delayed. ERISA regulations require the insurance company to keep you informed by sending "tolling letters" if the claim decision is not make within the 30 day period.

You have the right to a fair and objective claim review. You have the fiduciary right to expect your disability insurer will make every effort to consider ALL recommendations and opinions given to the insurer by your primary care physicians, consultants, counselors, and any other specialist who is qualified to render an opinion concerning your ability to work. (ERISA claims or industry standards if an Individual Disability policy) You have the right to expect the disability insurer will consider the experience and qualifications of your doctor as equal to those of its own in-house physicians, and to make fair and honest attempts to reconcile professional differences of opinion.

You have the right to fair representation of facts. As the insured you have the right to a clear understanding as to the party or parties responsible for making the liability decision for your claim. You have the right to know who is authoring communications to you from your insurer, and the names of all employees, consultants, directors, and others who are offering medical or administrative opinions concerning the facts of your claim.

You have the right to withhold authorization of release of information which is overly broad. Any individual has the right to retain privacy rights to information without fear of loss of benefits. It is your right not to sign Authorizations of Release which are overly broad, or, which allows the disability insurer to obtain information outside of what is required for a fair and objective review of your claim within the provisions of your policy. Many of the newer ERISA disability policies contain provisions which require you to sign an Authorization and cooperate with the insurance company or risk loss of benefits.

You have the right to ask questions. As an individual outside of the specialty of the insurance industry, or understanding of that industry, you have the right to knowledge, explanation, definition, instruction and full understanding of the provisions of your policy without fear of loss of benefits. You have the right to ask questions concerning your claim as often as is necessary for your understanding of the facts without fear of retaliation, suspicion, or unfair investigation tactics.

You have the right to ethical conduct. As an insured you have the right to expect your disability insurer, and its representative employees act in "good faith." You have the right as an employee or policyholder to expect your insurance company creates and maintains a clearly defined disability claims review process which lends toward the fair, objective and timely, review of all claims submitted as part of its product business. You have the right to expect your insurance company have in place a process which routinely and consistently corrects flaws within the review process; recruits, trains and retains individuals qualified to review disability claims; and provides a forum for independent appeal processes.

You have the right of non-discrimination. All insured have the right to expect their insurance company not discriminate on the basis of indemnity amount, self-reported or physical impairment, education, training or experience, occupation, age, sex, mental and nervous disorder. Policyholder, geographical region, claim location, event, physician, claim duration, months of paid benefits, or any other target objective identified by management. You have the right of expectation that your claim will not be targeted by management for denial as a "block of business" due to any of the above.

You have the right of appeal. As an insured covered under the Employment Retirement Security Act of 1974 (ERISA) you have the legal right to a timely independent appeal review of your claim. For non-ERISA individual disability claims, you have the right to report discrepancies to your state authorities and to retain legal counsel, and request "reconsideration" of the denial decision.

This "Bill of Rights" was written by Linda Nee, a Disability Claims Consultant. Although there is no law or regulation upholding these rights as an official document, the rights described therein are reasonable and should be expected from any disability insurer with a duty to uphold generally accepted industry standards to review claims objectively, and without bias or financial prejudice.

Thank you for reviewing this first issue of the DCS Newsletter. If you have any questions, please do not hesitate to e-mail me. If you have any suggestions for topics you would like to see addressed, please let me know and I will be happy to include your topic in our next newsletter.