

# **Winning Your Long-Term Disability Claim**



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Disclaimer: Every reasonable effort has been made to ensure that the information presented here is accurate. It is impossible to address every conceivable factual situation. Laws change and specific factual situations may require the application of different laws. For this reason, you should consult an attorney to address your questions and confirm your chosen course of action is correct.

## **Who Should Read This Booklet?**

If you are covered under a long-term or short-term disability insurance policy and have filed, or are thinking of filing a claim, this booklet is for you. In this booklet, we give you a general overview of the disability insurance claims process, as well as a few good practice tips if you decide to handle your claim yourself. As a word of caution, however, even if you decide to handle your claim on your own, it is always best at least to talk with a lawyer who is experienced in handling short-term and long-term disability claims.

## **Long-Term and Short-Term Disability Insurance**

Because every worker faces the possibility of developing a disabling condition or injury, it's important not to leave the threat of disability to chance. According to the Council for Disability Awareness, the average worker has a 30% chance of becoming disabled for at least some period of time. Additionally, one out of every eight workers will be disabled for at least five years during their working years.

Many employers offer long-term and/or short-term disability to their workers as part of their benefits package to help in the instance that their workers become one of these statistics. However, many employees don't even know they have this coverage. If they know about it, most workers see this coverage as a benefit that "might come in handy someday." But, when that "someday" comes and employees find

they can no longer work, they are often surprised when their claims are denied by the insurance companies.

These workers never expected to be in a situation to have to file a disability claim. And, they certainly never expected that their claims would be denied, especially since the coverage was part of their benefits package.

### **Purpose of Disability Insurance**

The disability insurance system is supposed to protect America's workers. The whole point of disability insurance is to give a worker something to fall back on if he or she gets sick or injured and can't work. Unfortunately, what we often find is that disability insurance companies do their best to avoid covering disabled workers. The disability insurance company sees its job as saving the company as much money as possible, instead of paying disability claims to deserving workers. When this happens, hardworking people don't get the benefits they're entitled to receive.

If you received a denial letter from your disability insurance company, you were probably shocked, scared, or mad. Maybe you felt all of those emotions at the same time! Just know you are **NOT** alone. Unfortunately, disability insurance companies deny benefits to their policyholders all the time. If you've been denied short-term or long-term disability benefits, you might have an illness that's unusual or hard to diagnose. Or, you might have worked longer than your doctors wanted

you to because of a strong work ethic or financial concerns. You may even have a mental health or a cognitive condition that makes it difficult for you to work. It is not unusual for disability insurance companies to deny claims in these situations.

## **Playing the Insurance Company's Game**

Many workers decide to battle the insurance company on their own. They try to provide all of the doctors' reports and other medical evidence the insurance company says it needs. But, in these instances, it often seems that the disability insurance company always asks for more information and always fights to deny the claim.

Over the years, the Ritchie Law Firm has seen hardworking people having to battle insurance companies for payment for the time they've missed from work because of a legitimate sickness or injury. We've seen this time and time again. This is **WRONG!**

If your doctor has recommended that you be out of work due to an illness or injury and you have disability insurance coverage, you shouldn't have to worry about whether the company is actually going to pay you what you deserve. If you've been denied short-term and/or long-term disability benefits, you probably feel stuck, wondering what to do next. We help hardworking people like you every day.

## Getting Started With Your Disability Insurance Claim

Even though **we strongly suggest that you talk with a lawyer who is experienced in handling disability insurance cases before filing an appeal**, we've put together this short booklet to help you understand the disability insurance appeals process. Because the insurance disability appeals process takes effort and knowledge to ensure that it's done properly, we don't recommend that you file your appeal on your own without the advice of a lawyer. The strength of the case file that is built before the appeal, in addition to how the evidence is argued, often plays a large role in whether a disability insurance claim is won or lost. Most times, there is only one opportunity to win an appeal. You have to give it your very **BEST SHOT** at the time of the appeal!

It is very important that you understand if you handle the claim on your own and lose the appeal, it will probably be too late for a lawyer to make a difference in your case. By that point, all of the evidence will be gathered, the claims file will have been built, and the arguments will have been made. If you are able to find an attorney willing to take your case after a denial on appeal, he or she will not have any option but to proceed with arguments that you made during the appeal process. Basically, your lawyer will be stuck with the case you put together while you were handling the claim on your own.

It's also important that you know that while many lawyers say they practice Social Security Disability law, most of them don't know anything

about handling short-term and long-term disability claims. ERISA long-term and short-term disability cases are very different than Social Security disability cases. Before you hire any lawyer to handle your long-term or short-term disability claim, you should ask if he or she has been trained in handling, or has handled, ERISA claims before. If that attorney can't answer yes to that question, he or she is probably not the right lawyer for you.

That's what makes us different. At the Ritchie Law Firm, we have a team of lawyers who have experience in handling the complexities of long-term and short-term disability cases. If you want your insurance disability case handled by a team of lawyers experienced in winning in this complicated area of the law that few lawyers know the even the first thing about, your search is over. Whatever stage of applying for benefits you are in, whether you haven't yet applied or you've been denied, we are happy to help. We can even help if you live in states other than Virginia or West Virginia by associating with local counsel, if needed, in the jurisdiction where you live.

### **Short-term versus long-term disability: What You Need To Know**

Disability insurance, sometimes called short-term (STD) or long-term disability (LTD), is a benefit some employers provide to their employees. This type of insurance is used to replace an employee's income for a period of 3 to 6 months (short-term) or for longer periods (long-term). Some employers offer both short and long-term disability policies.

Often a short-term disability policy will pay benefits until the long-term policy kicks in. So, if you have a disabling condition and win your disability insurance claim, you may be entitled to receive benefits until you reach retirement age. Depending on your disability insurance policy, your disability benefits can range from 60% to 80% of the amount of money you made before you became disabled.

It's important to know, however, if you lose your short-term disability claim, this obviously means that your long-term claim is in jeopardy. To ensure you make the best case possible for your long-term disability claim, you need a lawyer who is experienced in handling these complex claims to help you prepare your case.

### **What does ERISA mean and why does it matter?**

The short answer is that ERISA is a federal government law that determines how disability insurance claims are handled and decided. It matters because if your disability insurance is an ERISA plan, there is a certain set of procedures and rules that insurance companies follow when deciding whether to award benefits.

Many long-term and short-term disability policies are governed by ERISA, the Employee Retirement Income Security Act. This law was enacted in 1974 to protect workers who have private health and pension plans. In addition to these health and pension plans, ERISA also regulates long-term and short-term disability plans. Specifically, ERISA



governs how disability claims are processed, the timeline for processing a claim, and the rights of those who have been denied.

Who provides the disability insurance coverage, whether it is a private employer, governmental agency, or whether it is obtained by an individual himself, may determine whether the policy is controlled by ERISA. Most short-term or long-term disability insurance policies offered by private companies to their employees will be governed by ERISA. Also, if a group disability plan is employer sponsored, usually that plan will be regulated by ERISA. On the other hand, a plan may not be controlled by ERISA if the employer makes no contributions to the disability insurance policy and participation is completely voluntary through payroll deductions or other means of payment. Employees of federal, state, and local governments have disability plans that are usually not covered by ERISA.

Originally, the idea was that ERISA was designed to protect the money in employees' pension accounts. But, before the law was passed, its scope changed to cover all employee benefits, and this change poses problems for people with long-term or short-term disability claims. In the early days of ERISA insurance claims, there were very few lawyers who were knowledgeable enough about the ERISA laws to adequately represent clients who were seeking benefits. Because of this, the ERISA process was designed to favor the insurance companies, which makes it very difficult for disabled people with disability insurance coverage to get the benefits they deserve.

## **How does the ERISA process favor insurance companies?**

Good question! If your disability insurance claim is denied, that denial is used as evidence in any appeal that you take into court. The denial, as well as the whole claims file itself, is basically the starting point for a local federal court appeal. So, if your disability insurance claim is denied, you then have an uphill battle to build the claims file to give you the most support possible.

In your federal court appeal, you not only have to prove that the insurance company was wrong in its denial, you actually have to prove that it was unreasonable for the insurance company to deny your claim. That's a much tougher hurdle than just proving that the denial was wrong. In most other areas of law, you only have to prove a "preponderance of the evidence," which means by a slightly greater weight (at least 51%) of the evidence, that you deserved to win. With ERISA cases though, the standard is much higher. For ERISA, you have to prove by "clear and convincing evidence" that you deserve to win.

So, if the disability insurance company has been careful to build a claims file against you and spells out the process and reason for the denial, the denial can be considered reasonable. That's why it's so important that you (or your lawyer) build a strong claims file even before getting to federal court. If you have a strong claims file in your favor, it

will be much easier to show by clear and convincing evidence that you are disabled.

## **What Conditions Are Covered By Disability Insurance?**

Except for injuries that happen on the job or self-inflicted injuries, most conditions are usually covered under many disability insurance policies. For short-term disability, medical conditions that prevent an employee from working for several weeks to months, such as pregnancy, surgery rehabilitation, or severe illness can qualify as disabling conditions.

Some of the most common long-term disability claims involve:

- Musculoskeletal and connective tissue disorders like back pain, osteoarthritis, neck pain, and other muscular pain and disorders
- Cancer
- Cardiovascular and circulatory disorders such as heart attacks, coronary artery disease, etc.
- Mental disorders

Even though many of the conditions listed above are commonly covered by disability insurance policies, it is important that you understand your own, specific policy coverage. Some disability

insurance companies provide coverage for accidents but not for illnesses, even though illnesses are the leading cause of long-term disability. It is also important to know if your policy has a waiting period, which may affect your eligibility to receive benefits.

### **Why were my benefits denied?**

After you receive the denial letter and your anger and shock wear off, you will likely begin to question why your benefits were denied. There are many complicated, policy-related answers to that question. But, there is also an easy answer that reflects the real reason that disability insurance companies deny most claims – **BECAUSE THEY CAN!!** There is no penalty for an insurance company that denies disability insurance claims, even though that denial will likely be wrong and not based on the evidence. If you win your disability insurance appeal in federal court, the only thing the insurance company has to do is pay you your money. While this includes back benefits if they are awarded, there is really no downside for an insurance company to deny your claim.

Many insurance disability policies are written with language that allows the insurance company to use its discretion to determine whether you are entitled to benefits. Such language gives the insurance company a **HUGE** advantage, as it gets to make its own rules for approving or denying disability insurance benefits. You can imagine that if insurance companies are allowed to make up the rules for paying or not paying a disability claim, they are definitely going to skew the rules in

their own favor. With the insurance company controlling the rules of the game, it obviously makes it much easier for them to deny your claim!

To give you an example, if your long-term disability policy includes the terms “own occupation,” you may be entitled to receive disability benefits if you are unable to work at your own occupation. An “own occupation” policy will frequently cover workers whose disability makes them unable to perform the majority of the occupational duties they have been trained specifically to perform. Own occupation language often looks something like this:

**“The insured is considered disabled if unable to perform the material and substantial duties of the occupation, even if gainfully employed in another occupation.”**

For many policies, the “own occupation” period lasts 24 months from the date you first receive benefits. After that first 24 month period, policies frequently switch to a broader “any occupation” definition of disability.

If an employee was not working at the time they became disabled, they will not be able to win a claim for benefits under a conventional own occupation policy. But, if the worker happens to have a modified own occupation policy, they may still be covered even if they were not “working when their disability occurred.

The “any occupation” provision of disability policies offers a much broader definition of disability and generally gives insurance companies more opportunities to deny your claim. Some policies may have an “any occupation” provision which starts after the first 24 months of the “own

occupation” benefits. Still other policies may only offer benefits as a result of disability from “any occupation.”

Essentially, under the “any occupation” definition, you will usually only receive disability benefits if you are unable to perform any work that you are reasonably trained and qualified to do. “Any occupation” language in a disability policy will often look something like this:

**“The insured is considered totally disabled if unable to perform all of the substantial and material duties of any occupation, for which you are suited according to education, training, and experience.”**

Because disability insurance companies frequently use complex policy language, these cases often end up in court for interpretation of the policy language.

An example of such a policy language pitfall is when a disability insurance company requires that you are not be able to perform “each and every duty of your occupation” in order to receive disability insurance benefits. In these situations, it is nearly impossible for you to be disabled to the point that you can’t perform every, single part of your job. For instance, if you are a construction worker, your job duties might include carrying materials, using tools and equipment, and measuring wood and other materials. If you injure your back and can’t perform your construction job, you might be denied insurance disability benefits because you can still do at least one part of your job – measure materials. If measuring materials only requires you to use a tape measure and pencil, you will probably still be able to perform that aspect of your job.

Some disability insurance policies have language that is so narrow that hardly anyone, ever would qualify. And, although the courts understand and are aware of the policy language difficulties that people who have disability insurance face, there is often little judges can do to make the system fair for insureds. Still other policies have unusual language limiting the length of time that someone can receive benefits for a mental disability.

The important take away here is that the language in disability insurance policies is complex. As always, it is important to READ YOUR POLICY to determine which provisions apply to your specific situation. Also remember that, on most occasions, the disability insurance company IS NOT YOUR FRIEND! The insurance company's primary goal is to make money. They will do whatever is necessary, even if that means denying your claim, to make sure they achieve their goal. Lastly, it is important to note that every policy is different. Each policy will have a different definition and use different terms, when referring to a person who can't work.

### **What should I do if my benefits are denied?**

If you have received a denial letter, the insurance company is going to want you to believe that you have to appeal the denial without the help of a lawyer. THIS IS ABSOLUTELY FALSE! The insurance company hopes you won't get a lawyer, so they can build a case to deny you again. Then, when your case is appealed to the federal courts, they will have already filled your file with information that is helpful to them. If

you don't have an attorney working with you early on in a disability insurance denial, you won't have the opportunity to build your case with records that support you.

Remember, the insurance companies are experts at denying claims. They know the laws and know what information they need to make sure they don't have to pay your claim.

Many times, if you get a denial from a disability insurance company, you will have certain timelines that you'll have to meet. **BE SURE TO READ YOUR DENIAL LETTER CAREFULLY TO DETERMINE YOUR OWN DEADLINES.** Every company has different requirements but, you will often see the following timelines:

- A specific number of days (often 180) to appeal from the date you received the denial letter. This appeal is made directly to the insurance company.
- After your appeal is received, the insurance company usually has 45 days to answer it.
- Many times, the disability insurance company will allow itself one or more extensions.

Again, **CHECK YOUR OWN POLICY** to make certain you know what specific timelines apply in your case.



## Can I handle my own long-term disability appeal?

Our intent in writing this booklet is definitely not to scare you into thinking that you need a lawyer just to file for short-term or long-term disability benefits. If you are reading this booklet because you are getting ready to go through the initial step of filing your disability insurance claim, you may not *need* a lawyer at this point in the process. Having said this though, if you have a very complex medical history, it may be helpful to have someone help you organize your thoughts to ensure that you include all of the pertinent information about your claim. Everyone must file an initial claim, and sometimes applicants find that they get assigned a sympathetic claims examiner. In that situation, you may be awarded benefits on your own.

BUT, if the disability insurance company denies your long-term or short-term disability benefits, you should hire a lawyer who knows how to handle ERISA claims to help you file your appeal. The appeal is the important trigger for getting an attorney's help. Like we've mentioned before, the reason you want the help of a lawyer at this stage is because this is where the preparation begins in case your claim has to be fought in court.

While many people may be able to file their own disability insurance claims without having help from a lawyer, if you have a complex medical history or other concerns, you will want to talk with a lawyer who is experienced in handling ERISA disability insurance claims to get some advice before proceeding.

## **What happens during a federal court appeal?**

If both your disability insurance claim and appeal are denied, the next step is appealing your claim to the United States district court where you live. It is important to know that, at this district court step, you will not have a trial in the sense that there will be witnesses, opening and closing arguments, etc. All of the information that the judge considers will be based on the claims file that has been built for you up until this point. This is why it is so important to have an attorney who is experienced with ERISA insurance disability to handle your claim after you've been denied.

To appeal your claim to federal court on your own will require you to file suit in federal court and then prepare to fight the defense attorneys that the insurance company has hired.

## **How can a lawyer help me win my disability case?**

An attorney who is experienced in handling ERISA insurance disability cases can be instrumental in helping you to get your short-term and/or long-term disability benefits. Having an experienced ERISA disability lawyer on your side can help you with the following important aspects of your case:

- Make sure the correct rules, due dates and timelines for your appeal are followed;
- Determine whether your employer or the insurance company is responsible for paying your claim;
- Evaluate your denial letter to make sure the insurance company is complying with ERISA regulations and that the insurance company hasn't made any procedural errors;
- Request your entire claim file from the insurance company as well as all ERISA documents from the employer;
- Look for weaknesses in the insurance company's denial of your claim;
- Carefully review your entire medical record to make certain that the denial letter accurately cites your medical records;
- Work with your doctors to obtain any additional medical testing that may help complete your claim file;
- Determine whether the insurance company has video surveillance of you and obtain a copy of it;
- Ensure that all of the duties of your job are accurately listed;
- Research other cases that have involved the doctors the insurance company will use in your case;
- Prepare your claim file knowing that this is your only shot at building your claim file before it is evaluated by a judge.

**Does the Ritchie Law Firm handle short-term disability cases?**

Our firm handles short-term disability cases that are reasonably likely to turn into long-term disability cases. If your short-term disability claim has been denied, give us a call. We would be happy to talk with you. If we can't help, we'll try to give you some guidelines for how to handle the claim on your own.