Disability Insurance Claims

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Background

- What are STD and LTD benefits?
- STD plans generally provide benefits for 3-6 months after the date of disability
- LTD plans generally kick in 3-6 months after the date of disability and pay to the later of the claimant's 65th birthday or their social security normal retirement age (SSNRA)
  - BUT some benefits are subject to limited pay periods
- STD/LTD benefits are not unemployment benefits, ADD policies, or SSDI

What are the Payable benefits?

- Policies pay out a percentage of Base Monthly Earnings (BME)
- Benefit percentages range from 40% to 80% of BME
- This figure is called the Gross Monthly Benefit
- The Gross Monthly Benefit can be offset by “Other Income Benefits” or “Deductible Sources of Income”

ERISA versus Non-ERISA?

- What is ERISA? The Employee Retirement Income Security Act, codified at 29 U.S. Code § 1001 *et seq*
  - Regulatory scheme that imposes:
    - Reporting deadlines;
    - Fiduciary responsibilities;
    - Administrative remedy requirements
  - Applies to Employer Sponsored benefits if the employer is in the private sector
    - Exception from ERISA for gov't entities, religious organization plans, payroll practice exemption

- Non-Erisa plans include individually purchased policies and the exceptions noted above.

Why does ERISA versus Non-ERISA matter?

- Insurance policies are governed by their own terms and augmented by applicable law.

- ERISA provides a number of advantages to the plan administrators
  - Preemption of state laws that do not regulate insurance
  - Limited remedies
  - Administrative procedures
  - Limited discovery
  - Discretionary authority

Eligibility

- Individual must be insured
- Group/ Employer Sponsored versus individual policies
- Definition of Disability must be met
- Durational requirements
- Pre-existing condition language to combat adverse selection

Definition of Disability

- After satisfying eligibility requirements such as working a minimum number of hours or being covered under a policy for a certain period of time, the next major hurdle for claimants is satisfaction of the controlling definition of disability. These definitions of disability fall into 3 broad categories.
  - Disabled from performing their Own Occupation or Own Job
  - Disabled from performing Any Occupation or Any Job
  - A hybrid of the two, bifurcated into one period of being Disabled from their Own Occupation for a set period of time followed by a period of being Disabled from Any Occupation
- The claimant has the burden of establishing they satisfy the relevant definition of disability.

Own Occupation and Own Job policies

- Most commonly found in short-term disability plans, requiring the employee establish they cannot perform the material and substantial duties of their own job or occupation.
- Recognize Difference between Job and Occupation. Many Short-Term Disability policies require an individual to be disabled from their own Job while many Long-Term Disability policies require the claimant establish they are disabled from an Occupation. The Goalkeeper example:
    - Imagine goalkeeper in soccer. Is that individual's Occupation as a Goalkeeper or is it as a soccer player? If they were to suffer a horrific injury and lose both of their hands, it is at least arguable that they could still play soccer but they certainly could not continue working as a goalkeeper.

Hybrid Policies

- By far the most common long-term disability definition of disability. These utilize both the Own Occupation and Any Occupation definitions of disability but split into two different periods of time.
  - Often, it will require a claimant to prove to the insurer's satisfaction during the first 24 months of long-term disability that they cannot perform the material and substantial duties of their Own Occupation.
  - Thereafter, the claimant must establish they are unable to perform the material and substantial duties of Any Occupation in the national economy.
- Frequently contain an earnings requirement or threshold for both or just the Any Occupation phase, meaning the employee is Disabled if they cannot perform the material and substantial duties of Any Occupation earning at least 60% or more of their pre-disability earnings.
- It is common for insurers to deny/ discontinue benefits during the transition from Own Occupation to Any Occupation.

Claims Process Overview

- Initiation of the claim begins with an application and a lot of paperwork
  - STD - decisions are usually made relatively quickly
  - LTD - decisions take more time
  - Resources used to evaluate STD and LTD claims differ greatly

Claims Process Overview Continued

- Administration of the claim
    - Policies generally require individuals to furnish periodic proof of continued disability
    - Non-cooperation is grounds for denial
    - Policies usually grant the insurer right to refer a claimant to an “independent” medical examination as often as reasonable or as often as necessary to properly evaluate the claim
    - Insurers have internal coding to determine the frequency of updates. Different conditions have different codes.

Claims Process Overview Continued

- Adverse benefit determinations aka denials
    - At some point, a claim will get denied.
    - Denials generally fall into several camps
        - Medical/ Vocational denials
            - Most common at initial application and transition to Any Occupation
        - Coverage denials - usually at application stage
        - Policy Denials
            - Proof of loss denials - usually happen during ongoing claims administration
            - Pre-existing condition denials
            - Limited duration denials
            - Condition specific - self-inflicted, war, etc.

Claims Process Overview Continued

- Appeal
  - If a claim is subject to an adverse benefit determination, the insured gets an opportunity to respond within 180 days of the determination
  - Some insurers allow multiple appeals, others only allow one
  - The appeal is the single most important phase of a claim due to the far reaching impact it can have on a potential lawsuit
  - 2018 Department of Labor regulations require claimants are allowed an opportunity to respond to medical and vocational evidence generated during the appeal review. This only Applies to claims that are initiated on or after April 1, 2018.

Claims Process Overview Continued

- Lawsuits
  - ERISA requires that administrative remedies are exhausted prior to filing a suit. Policies govern when administrative remedies are exhausted
  - ERISA cases must be filed in federal court
  - Discovery is unavailable absent court order or agreement of the parties
  - No jury trials.
  - Cross motions for summary judgement under abuse of discretion review.
  - If the court finds for the claimant → case remanded to insurer for further administration.

Dispute Resolution

- Arbitration
    - Extremely rare. Older policies, union plans, and self insured plans sometime require this.
- Federal Lawsuit in case of ERISA plans state contract Lawsuit for Non-ERISA
    - Generally very difficult to resolve without instances of clear abuse of discretion.
    - Cross motions for summary judgment
- Court Ordered Settlement Conference or Voluntary Mediation

Get the Policy!!!

- While there is extensive case, statutory, and regulatory law governing ERISA disability claims, at its core the specific policy language of the specific disability policy at issue is going to govern any dispute and help guide the parties in resolution.
    - Policies vary significantly even with the same insurer, where that insurer is issuing policies to different employers
    - Policies are often amended and updated periodically, substantially altering the rights of claimants.

Other Income and Offsets

- Both Short and Long-term disability plans provide definitions regarding what other income, earnings, or benefits serve as offsets reducing the carrier's liability to pay benefits under that specific policy.

- The general rule is that the insurer may offset benefits to the extent the specific policy language permits the offset. Courts routinely apply a plain text reading of the policy in determining to what extent the disability carrier may reduce or clawback disability benefits.

Other Income Cont.

- Common types of “other income” and issues:
  - Work comp benefits/ settlements, SSDI benefits, No-Fault benefits, unemployment benefits, third party settlements or awards, employment law settlements/ awards pension payments, business transactions, and some other employer sponsored retirement benefits
  - Reductions for attorney fees are common for SSDI, work comp, and third party awards/ settlements
  - Other income can be applied retroactively, particularly for awards on stipulation
  - Other income can be imputed on claimants if they do not pursue that income (SSDI)

Other Income and Offsets continued

- Generally, the disability policy permits dollar for dollar reduction in disability benefits for any payment received by an identified third party source
- It is very common for long-term disability carriers to hire large partner corporations or push certain vendors on claimants in an attempt to secure SSDI benefits thereby reducing the disability carrier's liability. These vendors often discharge the claimant if the disability carrier has denied or discontinued disability benefits.
- Drastically different outcomes may result from slight differences in policy language. Policy Language examples with different results:
    - "Other income includes any amount You receive as a result of your disability." This policy then provided various sources for said other income including SSDI, work comp, personal injury etc. Arguably with this policy if the claimant receives SSDI for a separate claim or theory than the LTD disability her SSDI would not be an offset.
    - "Other Income benefits are: all benefits, including any settlements made in place of such benefits, whether or not liability is admitted, that the Insured is eligible to receive."

Proration

- The policy should typically provide the specific language governing how the disability carrier may or must prorate Other Income benefits paid in a lump sum.
    - Frequently, the policy will give the insurer significant latitude in determining how to prorate these benefits. Further, the carrier will often provide claimants with their determination regarding amounts it deems owed from past benefits or its calculation for proration of on going benefits with little to no analysis as to how the carrier came to this conclusion.
- Close examination of this policy language and any other related provisions such as minimum monthly benefits, consideration of cost of living adjustments, and which benefits can be included is critical.

Proration continued

- Policy language examples:
  - If Other Income Benefits are paid in a lump sum, the sum will be prorated over the period of time to which the Other Income benefits apply. If no period of time is given, the sum will be prorated over sixty (60) months.
  - Upon receipt of Other Income Benefits awarded by a Court or paid in a lump sum generating an applicable offset, We shall prorate the lump sum benefit over the period of time to which the Other Income benefits apply. If no period of time is given, the sum will be prorated over a reasonable period of time.
- Key takeaway: the specific policy language combined with the specific language used in a settlement agreement will significantly impact the coordination of benefits, potentially from multiple sources and could cause significant swings in benefits for employees.

Proration dispute hypo

- Hypothetical case: Betty v.Very Good Insurance Company
    - Betty has a gross benefit of approximately $3,500. However, due to SSDI primary and dependent benefits, her net benefit is approximately $2250 per month. She settles her work comp claim, from which she nets $127,500.
    - Stipulation for Settlement states as follows: “It is stipulated and agreed that this settlement is allocated at $263.32 per week for workers compensation purposes.”
    - The policy provided a provision as follows: LUMP SUM PAYMENTS: If Other Income Benefits are paid in a lump sum, the sum will be prorated over the period of time to which the Other Income benefits apply. If no period of time is given, the sum will be prorated over sixty (60) months
    - The insurer opted to prorate the settlement over 60 months. On appeal, it maintained that it made the proper decision because the workers compensation stipulation did not explicitly state the comp proceeds were prorated over a period of time for the purposes of calculating the long term disability benefit
    - This resulted in the claimant getting $125 per month instead of $1,100. It resulted in about a $50,000 swing in the value of the claim over its remaining life

Conclusion, Closing Thoughts, and Questions

- Get the policy! Is it ERISA?
    - Key policy provisions to look for:
        - Benefit term
        - Other income benefit definitions
        - Proration language/How the policy deals with lump sum payments
- Ensure STD/LTD carrier is involved in lien resolution
- Appeals are the most important phase of a STD/LTD claim!