

CJ HENRY LAW FIRM, PLLC



GETTING AND KEEPING YOUR LONG TERM

DISABILITY BENEFITS

A CONSUMER'S GUIDE TO WINNING YOUR
DISABILITY INSURANCE CLAIM AND APPEAL

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A Consumer's Guide to Winning Your Long Term Disability Insurance Claim and Appeal

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Table of Contents

Preface	5
Introduction	7
1 - Common Reasons Most Claims Are Initially Denied	10
2 - Myths You May Have Heard About Disability Insurance Claims	13
3 - Reviewing Your Disability Policy And Plan	16
4 - Filing Your Claim	18
What Happens Once You File Your Claim?	19
Waiting For A Decision On Your Claim	20
5 - Appealing A Denied Claim	22
Reviewing An Appeal	23
If Your Appeal Is Denied	24
Claim & Appeal– Summary	24
6 - Tips For A Successful Claim	26
Common Mistakes To Avoid	28
7 - Answers To Frequently Asked Questions	30
8 - How We Handle Long Term Disability Claims	33
Conclusion	39
About The Author	40
Appendices	41
Index	46

Preface

As a child, my parents both worked two and three jobs at a time to care for six children and meet our family's needs without governmental assistance.

However, their hard work did not go without a price. While I was in High School, my mother suffered a serious back injury at work. Although encouraged to apply for disability by her many physicians, she refused to go on disability. After suffering several other injuries, including her neck, low back, shoulder, and arm, she finally relented. I know what it is like to live with someone you love suffering from a disability. I also know the financial burden it places on the family.

After watching my mother suffer, I decided to become a Registered Nurse, graduating from the University of Florida College Of Nursing with High Honors. As a nurse, I came to know many competent, caring, compassionate physicians. However, I also met some who were cold, calloused, uncaring and some who were downright frightening. Some refer to this attitude as "burn out." In those situations, I found myself driven to become a strong advocate for my patients. This passion for advocacy led me to the practice of law.

As a prosecutor, I helped many victims of violence who were not able or unwilling to help themselves. As a disability and workers' compensation attorney, I helped thousands of injured employees obtain their benefits, and as an ERISA disability lawyer, I enjoy helping disabled employees obtain the long-term disability benefits they deserve. I do not know what it is like to be hurt and disabled myself, but I do know what it is like to have a parent who is. It is frustrating and frightening.

We are passionate about helping people obtain the disability benefits to which they are entitled. We have written this book

to inform, empower, and guide you through the disability claim process. This book seeks to assist Claimants who are filing or appealing to their group disability insurance carrier. It addresses the basics of filing a claim or appealing a denied claim at the administrative level. This book, we hope, will facilitate their appeal and perhaps increase the chance of success.

DISCLAIMER

We provide the material in this guide for information purposes only and do not render legal advice or provide a substitute for legal counsel. The information found here may or may not reflect the most current legal development or rules. Accordingly, the reader must review current ERISA regulations, which may be found at <https://www.dol.gov/general/topic/retirement/erisa>, to identify any changes the court may have adopted and conduct independent research to ensure that they are relying on the most recent case law. Readers should not take any action, or refrain from taking actions, based on information in this guide, without first consulting their own attorney.

Introduction

As a former Registered Nurse and a disability lawyer, I know the devastating impact that the loss of income due to disability can have on, not only the individual, but their family, as well. I also realize that those afflicted with a disability are often the least able to fight for themselves and will sometimes give up out of sheer frustration. I am here to offer you hope and encouragement not to give up.

If you, a friend, or loved one are disabled and you purchased a disability policy, either through a group plan or an individual policy, you should know that you are not on a level playing field with the insurance company. Insurance companies exist for one reason, and one reason only: to make a profit for its shareholders. If you are asking them to pay you benefits, then you are affecting those profits. They understand that if they never pay benefits, no one would purchase their policies. Therefore, from time to time they will pay some benefits. However, make no mistake, if they have a basis for denial of benefits, they will.

We have seen the extremes that some of these insurance companies will go to in order to avoid paying benefits to which you are entitled so that they can keep their profits. You have paid premiums - often for many years for these benefits.

Some examples we have seen include:

- They send your file to an “in house” doctor who never evaluates you, much less analyzes all your records.
- They send your file to a doctor who rarely finds anyone

disabled, regardless of his/her condition.

- They send your file to doctors who may makes millions of dollars per year from such referrals. These doctors know that the insurance companies paying their fees WANT to deny your claim!

We do not trust many of these captive insurance doctors, and neither should you. An experienced ERISA attorney can help you level the playing field to increase your chances of getting your benefits approved.

This book focuses on group long-term disability insurance, also known as ERISA disability – the type obtained as part of a benefit through employment. The steps outlined in this book describe some of your plan’s obligations; briefly explain the procedures and timelines for filing an ERISA disability benefits claim; and share some anecdotes from my experience in representing individuals in ERISA disability claims.

Before you file, however, be aware of the Employee Retirement Income Security Act of 1974 (ERISA), a federal law that governs your group disability benefits and sets standards for those who administer your plan. Among other things, the law and rules issued by the U.S. Department of Labor include requirements for the processing of benefit claims, the timeline for a decision when you file a claim, and your right to file a suit in federal court if your insurance company denies your claim for disability benefits.

Unfortunately, unlike almost any other legal situation, under ERISA, the disability insurance company will have an advantage in court, where your employer delegated discretion to your disability insurance carrier to determine who is entitled to benefits. In addition, in ERISA cases there is no “real” trial. You will not have the chance to call witnesses to testify on your behalf. You will not have a trial by a jury of your peers. A Judge often decides the case

based on the record prepared by your insurance carrier.

You should also know that ERISA does not cover some employee benefit plans (such as those sponsored by government entities and most churches). If, however, you are one of the millions of participants and beneficiaries who depend on disability benefits from a private-sector employment-based plan, take a few minutes and read on to learn more.

By ordering this written material, you have taken a step in the right direction toward getting your long-term disability benefits. I guarantee that your time will not be wasted reading this book.

Chapter 1

Common Reasons Most Claims Are Initially Denied

1 Some applicants do not understand the criteria for **eligibility**. This is understandable, given that most individuals covered by a group insurance policy have never seen, much less read, their disability policy. That is because group insurance policies are often issued to the insured (your employer). The result is that some individuals apply for benefits without knowing what is required to become eligible for benefits. A simple and reliable rule that you can follow in deciding when to apply for benefits: get a copy of the policy and read it.

2. Not knowing what is in your doctor's records before making your claim. Disability insurance companies will only pay disability benefits if they are convinced that your medical records contain sufficient **objective proof** that you are disabled. To avoid the mistake of not knowing what is in your doctor's record before you make your claim, obtain your medical records from your doctor before you file your claim and review them yourself! Are they accurate? Are they complete? Has your doctor recorded all your complaints? Is there an objective basis for your doctor's diagnosis and his opinion that you are disabled? Has the doctor documented the proper date of disability?

3. Not understanding your policy before filing your claim.

A simple and reliable rule that you can follow in deciding when to apply for benefits: get a copy of the policy and read it.

Disability insurance policies are hard to understand. You need to understand when to file for benefits, how to file for them, the standard of disability you must

prove, whether there are any limitations on the coverage provided by the policy, and important policy terms.

It is the insurance company, not your employer that determines if you meet the legal definition of disability under the terms of your policy.

To avoid making mistakes because you did not understand your policy before you file your claim, we recommend you obtain and review your policy immediately! If your policy is an employer-sponsored policy, you should obtain both the Summary Plan Description (SPD) and the insurance policy itself, before you ever file your claim.

Both of these documents should be available from your employer. ERISA requires that these documents be available to you upon written request to the Plan Administrator, who could be charged late fees of up to \$125.00 per day for failing to provide you with these written documents within 30 days of your written request.

If you have a private disability policy and cannot locate it, you should call your agent immediately. You can obtain a replacement policy (usually for a small fee) from your insurance company.

Whether you have an employer-sponsored plan or a private policy, make sure you obtain and read all amendments and endorsements to the policy before filing your claim for benefits.

4. Assuming that since your employer said you are too sick to work, the insurance company will agree. Whether you or your employer purchased your insurance policy, in almost all cases, the disability benefits you may be paid come from the insurance company. They also decide if you meet the definition of disability as defined in the policy. We have seen cases where the employer refused to allow the employee to return to work without approval from the doctor, and even agreed with the doctor that the employee was unable to return to work, but the insurance company would still not pay any disability benefits!

How can this be? The answer is that most insurance policies insure your occupation, not the job you hold. In other words, while you may not be able to perform all of your *own job's* requirements which your employer expects you to perform, you may still be able to perform the *material and substantial duties of your occupation*.

Chapter 2

Myths You May Have Heard About Disability Insurance Claims

Before we delve into filing your claim or appeal, I would like to dispel some of the myths you may have heard about disability insurance benefits.

MYTH: If your employer says you are too sick or injured to work, the insurance company will automatically pay.

TRUTH: Your employer’s opinion of whether or not you can work carries little weight. Many employers are very surprised to learn that the policy they purchased for their employees and themselves is not paying disability benefits. Remember, it is the insurance company, not your employer, that determines if you meet the legal definition of disability under the terms of your policy.

How can this be? The answer is that most insurance policies insure your occupation, not the job you hold. In other words, while you may not be able to perform all of your *own job’s* requirements which your employer expects you to perform, you may still be able to perform the *substantial and material duties of your occupation*.

MYTH: If your doctor writes that you are “disabled”, or “permanently and totally disabled”, you will win your case.

TRUTH: Just because your doctor writes that you are “disabled” does not mean

We have seen cases where the employer refused to allow the employee to return to work without approval from the doctor, and even agreed with the doctor that the employee was unable to return to work, but the insurance company would still not pay any disability benefits!

Just because your doctor writes that you are “disabled” does not mean that you will be paid disability benefits.

that you will be paid disability benefits. Insurance companies want not just “objective proof” of your disability, but also “objective proof” of your inability to function, before they will pay your benefits.

MYTH: If you have been awarded Social Security disability benefits, you will have no problem getting your long-term disability benefits.

TRUTH: Insurance companies are not bound by the finding of the Social Security Administration on disability, but they will gladly offset the amount of money you receive from your Social Security Award.

MYTH: If the insurance company sends you an “activity log,” it is because they are sincerely interested in what you do on a daily basis.

TRUTH: More often than not, when your disability insurance company sends you an activity log to fill out, they already have you under secret video surveillance.

MYTH: If you write the insurance company a letter, and are reasonable, you will get a reasonable settlement proposal.

TRUTH: Insurance companies exist for one reason: To make a profit for their shareholders. Writing letters and “being reasonable” will get you NOTHING!

MYTH: The best way to convince the insurance company that you can’t work at your job is to write a detailed letter describing your medical condition, and how it interferes with your ability to live your life.

TRUTH: More often than not, writing a long detailed letter will

be used against you, especially if your claim is based on a cognitive impairment. The insurance carrier will look at the organizational structure of your letter, your ability to recall information that is presented in your letter, and your presentation to debunk your claims of cognitive impairment.

MYTH: You should hold back your best evidence for trial.

TRUTH: You should *not* hold back your best evidence for trial, because there are no trials. Most Long Term Disability claims are decided based on the “administrative record”, that is, the claim file put together by the insurance carrier.

A Judge may completely disagree with the insurance company's denial of your claim and still say you lose.

MYTH: If the insurance company denies your claim and you file suit, a Judge or Jury will award you benefits.

TRUTH: You don't win your lawsuit just because a Judge disagrees with your insurance carrier. A Judge may completely disagree with the insurance company's denial of your claim and still say you lose.

MYTH: Any lawyer can help you with your ERISA long-term disability claim.

TRUTH: Although many lawyers claim to be well versed in the differing types of Long Term Disability Claims, many attorneys simply do not have much experience in this specialized area of the law. Be sure to ask about their experience in handling ERISA disability insurance claims.

Chapter 3

Reviewing Your Disability Policy And Plan

A key document related to your plan is the summary plan description (SPD). The SPD is the brochure you receive when you first are covered by your employer's benefit plan. It provides a detailed overview of the plan – how it works, what benefits it provides, and how to file a claim for benefits. It also describes your rights as well as your responsibilities under ERISA and your plan.

Another key document is your disability insurance policy. The policy is the insurance contract between your employer and the insurance company to provide insurance and pay your benefits. It provides the terms of your benefits as well as your responsibilities to obtain benefits. Disability insurance policies are sometimes difficult to understand. You need to understand not only when to file for benefits or how to file for them, but also the standard of disability you must prove, whether there are any limitations on the coverage provided by the policy, and other important policy terms, such as the definition of disability.

To avoid making mistakes because you did not understand what is covered or excluded by your policy before you file your claim, we recommend you obtain and review your policy immediately! Applying for benefits without understanding these documents is like playing sports where only one team knows the rules. You would be at a disadvantage.

Before you apply for disability benefits, review the SPD to make sure you meet the plan's requirements and understand the

Applying for benefits without understanding these documents is like playing sports where only one team knows the rules.

procedures for filing a claim. Also review your disability insurance policy. Be alert for the following language in your disability policy:

- The insurance company has the “discretion” to determine your benefits.
- You only get paid benefits if you can’t perform “each and every” important duty of your job.
- The duties of your job are determined by the insurance companies’ use of the Dictionary of Occupational Titles, and not based on how you have performed your job for your employer.
- Your benefits are limited to 24 months if your disability is caused, or contributed to in any fashion, by mental illness, depression, or anxiety.
- Your benefits are not payable, or can be limited, if your illness is fibromyalgia, chronic fatigue, chronic pain, or an illness in which the symptoms are “self-reported” and not verifiable by any diagnostic study.
- Your benefits will be terminated if the insurance company says you can work part-time in any job, regardless of your ability to find such a job.

If you are disabled, or have applied for and been denied benefits, any of the clauses mentioned above will greatly increase your difficulty in getting the benefits you are rightfully owed. If you do not have a copy of your plan’s SPD, claims procedures, or insurance policy, make a written request for them to your plan’s administrator NOW. Your plan administrator is required to provide you with a copy.

Chapter 4

Filing Your Claim

As a daughter who watched a parent struggle with a disability and the need to keep working, I know firsthand how difficult the decision to stop working can be. My parent was not fortunate enough to have a disability insurance policy. Since you have this benefit, you need to do everything to make sure your claim is approved.

An important first step is to check your SPD and insurance policy to make sure you meet the requirements to receive benefits. Your plan might, for example, exclude coverage for preexisting conditions, or limit payment for certain conditions. Read your insurance policy carefully. Make sure you understand the policy, and especially how it defines “disability” so that you and your doctor can discuss whether or how you might qualify. Make sure you understand any deadlines. Also, be aware of what your plan requires to file a claim. Most policies require you file within 30 days of the date you stop working or have a deadline for when you must provide proof of loss. Eventually, your employer and doctor will have to fill out their own portion of the application, to complete your application for benefits.

Next, schedule an appointment with your doctor to discuss your decision to apply for disability benefits. You should be aware that you have the burden of proving that you meet the requirements for disability as outlined in your insurance policy. Having your doctor’s support is vital to winning. You

Make sure you understand the policy, and especially how it defines “disability” so that you and your doctor can discuss whether or how you might qualify.

need to make sure that your doctor understands the definition of disability in your policy. Some physicians believe that as long as you can perform some menial job, you are not disabled. However, if your policy defines disability as the inability to perform your *own* occupation, it is up to you to educate your physician on that. You also need to make sure that you and your doctor are in complete agreement about how you are going to present your claim.

Finally, make a list of all the physical and cognitive demands of your job and how your symptoms interfere with your ability to perform those functions. Use your job description as a guide. Once you have a detailed listing of your symptoms and impact on your job functioning, make an appointment with your doctor and review them together. Ask your doctor if there are any tests he/she recommends you have to help support your claim.

The SPD or disability insurance policy must include information on where to file, what to file, and who to contact if you have questions about your plan. If, for any reason, that information is not in the SPD or policy, write your plan administrator, your employer's benefits department (or the office that normally handles claims), or your employer to notify them that you have a claim. Keep a copy of the letter for your records. You may also want to send the letter by certified mail, return receipt requested, so you will have a record that the letter was received and by whom. When a claim is filed, be sure to keep a copy for your records.

What Happens Once You File Your Claim?

Your insurer will acknowledge receipt of your claim, either in writing, or with a phone call. Be careful of anything you say to them over the phone. Use your list of symptoms and job functions to answer their questions accurately and thoroughly. They may provide some information in writing on the process

and timeframe for evaluating your claim. They will also describe the types of documents they want from your doctor.

Waiting For A Decision On Your Claim

As noted, ERISA sets specific periods of time for plans to evaluate your claim and inform you of the decision. The time limits are counted in calendar days, so weekends and holidays are included. These limits do not govern when the benefits must be paid or provided. If you are entitled to benefits, check your SPD for how and when benefits are paid. Plans are required to pay or provide benefits within a reasonable time after a claim is approved.

Disability claims must be decided within a reasonable period of time, but not later than **45 days** after the claim administrator has received the claim, although they may notify you that they need additional information (and therefore more time) to complete the review. If so, you can demonstrate your willingness to help by asking if they are having any difficulty obtaining information they have requested from your doctors.

Be aware that your insurance carrier will ask your employer questions related to your claim and your employment, including any issues with performance or disciplinary actions. Your insurance carrier may also use a variety of sources and methods to gain information about you, including private investigator, computer searches, Facebook and more.

If your claim is denied, the claims administrator must send you a notice, in writing with a detailed explanation of why your claim

Your insurance carrier may also use a variety of sources and methods to gain information about you, including private investigator, computer searches, Facebook and more.

was denied and a description of the appeal process. In addition, the claims administrator must include the plan rules or guidelines, used in the decision or provide you with instructions on how you can request a copy of these

documents from the plan. The notice may also include a request for you to provide additional information in case you wish to appeal your denial.

Chapter 5

Appealing A Denied Claim

Claims are denied for various reasons. It is important to know that adjusters and doctors are human and, therefore, occasionally make mistakes as they move through the disability claims process. Also, many times disabled individuals do not understand their policy and what is required to prove their claim before filing. Some people do not get the help of an experienced disability insurance attorney until after their claim has been denied. Whatever the reason, you have at least 180 days to file an appeal (check your SPD or claims procedure to see if your plan provides a different period). Do not lose hope. With the help of an attorney specializing in ERISA disability claims, file an appeal. We encourage anyone whose initial claim for disability benefits is denied to consult an attorney with expertise in ERISA disability law BEFORE filing an appeal.

Your administrative appeal may be the most important part of your claim! You should know that your record closes at the conclusion of your appeal, with the final denial and notification of your right to sue. Depending on the standard of review, once your record closes, you will not be able to submit additional evidence at trial. The Judge will make their decision based on the evidence in your claim file which was put together by your insurance carrier. Also, if you miss the deadline to appeal, you will *not* be able to bring suit against the insurance company, and their denial will be final. Again, you may have specific deadlines to meet, so don't delay. But don't panic either. Most attorneys who specialize in ERISA disability law offer one free consultation. You

should interview several attorneys and find one who is a good fit for your needs. Feel free to ask the attorney about their experience in working with disability claims such as yours, their track record of winning disability on appeal, and their fee schedule.

Reviewing An Appeal

On appeal, your claim must be reviewed by someone new who looks at all of the information submitted and consults with qualified medical professionals if a medical judgment is involved. This reviewer cannot be the same person or a subordinate of the person who made the initial decision and the reviewer must give no consideration to that decision.

Plans have specific periods of time within which to review your appeal, depending on the type of claim.

Disability claims must be reviewed within a reasonable period of time, but not later than **45 days** after the insurance carrier receives your request to review a denied claim. If the insurance carrier determines special circumstances exist and an extension is needed, the insurance carrier may take up to two 30 day extensions to decide the appeal. However, before taking the extension, the insurance carrier must notify you in writing during the first 45 day period explaining the special circumstances, and the date by which the insurance carrier expects to make the decision.

Insurance carriers can require you to go through two levels of review of a denied disability claim to finish the insurance carrier's claims process. If two levels of review are required, the maximum time for each review generally is half of the time limit permitted for one review. If your claim on appeal is still denied after the first review, the insurance carrier has to allow you a reasonable period of time (but not a full 180 days) to file for the second review.

Once the final decision on your claim is made, the insurance carrier must send you a written explanation of the decision. The notice must be in plain language that can be understood by participants in the plan.

If Your Appeal Is Denied

If the insurance carrier's final decision denies your claim, you will want to seek legal advice regarding your rights to bring an action in Federal court to challenge the denial. The denial must include all the specific reasons for the denial of your claim on appeal, refer you to the policy provisions on which the decision is based, tell you if the insurance carrier has any additional voluntary levels of appeal, explain your right to receive documents that are relevant to your benefit claim free of charge, and describe your rights to seek judicial review of the insurance carrier's decision.

Normally, you must complete your plan's claim and appeal process before filing an action in court to challenge the denial of a claim for benefits. Be aware of the Statute of Limitations that may apply to your claim.

Claim & Appeal- Summary

- Check your plan's benefits and claims procedure before filing a claim. Read your policy.
- Once your claim is filed, the maximum allowable waiting period for a decision varies by the type of claim. However,

Normally, you must complete your plan's claim and appeal process before filing an action in court to challenge the denial of a claim for benefits.

your plan can extend certain time periods but must notify you before doing so. Usually, you will receive a decision within this timeframe.

- If your claim is denied, you must

receive a written notice, including specific information about why your claim was denied and how to file an appeal.

- You have at least 180 days to file an appeal of your denied claim. Use the services of an experienced ERISA lawyer to prepare and file your appeal.
- Reviewing your appeal can take up to 45 days. The law allows a disability insurance carrier additional time if they notify you beforehand of the need for an extension. The plan must send you a written notice, telling you whether the appeal was granted or denied.
- If the appeal is denied, the written notice must tell you the reason it was denied, describe any additional appeal levels or voluntary appeal procedures offered by the plan, and contain a statement regarding your rights to seek judicial review of the plan's decision.
- You may decide to seek legal advice if your appeal is denied or if the plan failed to establish or follow reasonable claims procedures.

Chapter 6

Tips for A Successful Claim

1 See a medical specialist. If you are not already seeing a specialist for your condition, ask your physician to refer you to one. A specialist will have more expertise than a primary care physician; thus, a specialist's opinion will carry more weight than a generalist's. Specialists for some common disabilities are: cardiologist (heart), endocrinologist (diabetes), neurologist (brain and nerves), oncologist (cancer), orthopedist (bones), podiatrist (feet), psychiatrist (mental health), pulmonologist (lungs), rheumatologist (arthritis, fibromyalgia, complex regional pain syndrome), and urologist (kidneys).

2. Get your doctor on your side. Because your treating doctor is in the best position to render an opinion about your medical condition, it is important that you obtain his or her cooperation with your disability claim. This means telling your doctor that you have applied for disability, establishing a good relationship with a member of the doctor's staff who can help, being on the alert for any anti-benefit sentiment from your doctor, and obtaining fully completed residual capacity forms from your doctor.

3. Obtain a medical opinion that the decision-maker can use. It is important for your treating doctor to give his or her opinion on your residual functional capacity (RFC)—what you can do in a work setting given your functional limitations and environmental restrictions imposed by your medical condition. The insurance carrier wants to know your physical ability to sit, stand, walk, and lift, and your mental ability to understand, remember, concentrate,

persist, interact with others, and adapt to change. Letters from doctors saying you are disabled or that you deserve your disability benefits are useless.

Letters from doctors saying you are disabled or that you deserve your disability benefits are useless.

4. Get a thorough medical evaluation.

Ensure your doctor has the documents to prepare a complete and detailed residual functional capacity report by providing him or her details of any impairments you have. Specify how each condition limits your productive activities. Your disability insurance carrier does not require that an injury occur at work, so include all medical conditions, however or whenever they occurred. The insurance company is required to consider the cumulative limitation caused by all of your impairments combined.

5. Continue your medical care. You might feel that your treatment is not helping. Or maybe you have difficulty affording treatment. But if you stop treatment, your insurance carrier may logically assume that you have recovered or no longer need medical help. Additionally, most policies require you to be under the continuing care and treatment of a physician for benefits to continue. For both your health and your claim, it is important that you follow your doctor's treatment recommendations.

6. Document your limitations. Keep a diary of your good and bad days, what you accomplished each day, how you felt, and what limitations you suffered. This is especially useful in conditions such as migraine, but can be used in other conditions such as fibromyalgia, chronic fatigue syndrome, etc. This diary, periodically updated, will help you accurately and persuasively convey to your doctor, lawyer, and insurance carrier the effect your impairment has on your ability to work.

Common Mistakes To Avoid

1. Inaccurately describing your limitations. Exaggerating the impact of your impairment will damage your credibility and your claim. It is not unusual for insurance carriers to conduct surveillance of your activities. What is important is that your description of your limitations be consistent over time and with your medical records. Being candid and providing accurate details are the best ways for that consistency to occur.

2. Waiting too long to file your claim. In a long-term disability claim, there are deadlines for (1) providing your notice of claim; (2) providing your proof of loss; (3) filing your administrative appeal when your claim is denied; and (4) filing a lawsuit when your administrative appeal is denied. These time limits are found in your policy and in jurisdictional law. These deadlines are often very short. With limited exceptions, your failure to timely file your claim or provide the required proof of loss will result in a denial of your claim.

3. Focusing only on your worst impairment. List all of your medical conditions, whether you are communicating with your insurance company, your doctor, or your lawyer. Your disability insurance company is required to look at the combined effect of all your medical conditions; not just the worst one or the one that caused you to finally stop working. A condition you omit because you did not think it was important might affect your claim in a way that you did not consider.

4. Hiring an attorney who is inexperienced in ERISA. ERISA

(Employee Retirement Income Security Act) has special rules for just about every step of the disability insurance claims process. Not only does it set out the time frames within which insurance companies must decide whether or not to pay claims, it sets time

With limited exceptions, your failure to timely file your claim or provide the required proof of loss will result in a denial of your claim.

frames by which a disabled person must request documents and make important decisions regarding appeals. More importantly, the laws of ERISA control the evidence you are allowed to present to a Judge, and sets the standard of review the Judge will use when evaluating your case.

Avoid attorneys who are not experienced in ERISA. Ask any attorney you may hire about his/her experience! Make sure the attorney you hire understands both the laws of disability insurance and the ERISA laws.

5. Doing things your doctor says you should not do. You should safeguard against inadvertently engaging in activities your doctor has told you to avoid. Clearly, you should not try to cheat the disability insurance company. Complete the Daily Activity Log the insurance company will likely ask you to complete, as accurately as possible. Summarize your disability throughout a 24-hour period, making note of your functionality - what you can and cannot do. If you have good days, bad days, side effects of medication, or other issues of importance, make a note of them on the forms. However, NEVER say you NEVER engage in any specific activity. You never know what the future may hold, and the last thing you want is to be in a compromised position, no matter how innocently it may have occurred!

Chapter 7

Answers To Frequently Asked Questions

I was hurt on the job and I am receiving workers' compensation. Must I wait until workers' compensation stops before applying for long term disability? No. You may apply immediately after injury. Your failure to timely notify the carrier of your disability and provide the necessary proof of loss could result in denial of your claim should you later apply. However, you will not be able to receive full benefits from each source simultaneously. One will offset the other.

Do I have to use the lawyers hired by the insurance company to help me with my Social Security claim? DO NOT use them! These lawyers do not have your best interests at heart. These lawyers (paid by the disability insurance company, not by you) have every incentive to manipulate your situation to where the disability insurance company is paying you as little as possible. Avoid using disability insurance company lawyers to file for Social Security by hiring your own experienced Social Security lawyer.

When will my disability benefits start? This will depend on the elimination period specified in your policy. Most short term-disability policies begin payments within a week after disability onset. The elimination period for long-term disability benefits varies from 90-180 days, depending on your policy. However, your insurance carrier may take 45 days to decide if you are entitled to benefits and up to two 30-day extensions to obtain additional information.

Should I hire an attorney for my claim?

This may sound self-serving, but the answer is yes. You may be thinking, you are an attorney, so, of course, you are going to say that I need one. Actually, I hope you do not. I hope you are healthy, and wealthy, but I definitely hope you are wise, in which case you will realize the value of consulting with an experienced attorney before filing your disability claim. It does not have to be me. Just do the smart thing and consult with an attorney before taking on any disability insurance company on your own. ERISA laws and regulations are highly complex and filled with intricate rules and deadlines that can be deadly for a claim. Having expert legal guidance before and during the claims process will affect its outcome.

Your insurance carrier may take 45 days to decide if you are entitled to benefits and up to two 30-day extensions to obtain additional information.

What questions should I ask any attorney I am thinking about retaining?

- Will you be personally handling my case and attending my hearing?
- How many years have you been representing ERISA disability claimants?
- What percent of your law practice is devoted to disability insurance cases?
- Who else will be working on my case? What tasks will they handle? What are their qualifications?
- What fees and expenses will I be charged?

What questions will I be asked by a disability law office?

When calling a lawyer, begin by providing the status of your claim (applied with no answer yet, application denied on ___ date,

GETTING & KEEPING YOUR DISABILITY BENEFITS

appealed with no answer yet, appealed and denied on ___ date, etc.). Be prepared to summarize your prior work experience, material duties of your occupation, impairment, and medical treatment. You will also be asked your age, highest grade completed, the date you last worked, and the reason given for any denial.

Chapter 8

How We Handle A Long Term Disability Claim

Many ask “why should we hire you?”

Let us put it simply. We are “different.”

Fewer cases = More Time for You

We do not rely on a high volume of cases. We do not claim to handle every type of law, because we do not want to. Each year we accept a limited number of long-term disability and Social Security Disability cases from the hundreds of people who ask us to represent them. Fewer cases mean more of our time spent focusing on your needs, which we believe produces better results overall.

Who are we, anyway?

Prior to forming CJ Henry Law Firm, PLLC, Claudeth Henry was a partner at another law firm handling similar matters. Ms. Henry not only has a law degree but has a Bachelors Degree in Nursing and practiced as a Registered Nurse in excess of 10 years prior to practicing law. She maintained an active nursing license until 2005. This medical background has proven to be invaluable in analyzing our clients’ medical records and understanding their medical condition(s).

We regularly attend seminars and workshops to keep up to date on the law so that we can best serve you.

We utilize unique tools to assist you in your claim.

We subscribe to medical sites so we can determine the

synergistic effects of your medication(s), which can often be more disabling than the condition itself. We also have access to powerful medical search engines which give us up to the minute changes in diagnosis and treatment of medical conditions. We get alerts to update us daily on conditions we are investigating. We are not just getting current, up to date information; we are getting current, late breaking up to the second information. For our clients, information available in articles published last year is not good enough. We demand information up to 10 seconds ago...and we get it.

Our best advice will come before you file your claim so that you may fully understand the benefits to which you may be entitled, how to successfully prepare your claim, and what you can expect in the claim and litigation process. We will tell you if your claim can be won. We will also tell you if we believe you are better off handling your claim yourself – without an attorney. But, if your case passes our standards and we accept you as our client, you can be assured that you will receive personal attention. We will aggressively represent you, keep you up-to-date on what is happening in your case, and give you advice at each stage of the proceedings.

How we handle a long term disability case

The following is a list of tasks which we may be called upon to help you complete in your case. Remember that each case is different, in that not all of these tasks will be required in every case. As part of our initial case evaluation, we will:

- Obtain and review the claims file from your disability insurance company.

But, if your case passes our standards and we accept you as our client, you can be assured that you will receive personal attention.

- Obtain and review the insurance policy, plan, and summary plan description from your disability insurance company and/or your

employer.

- Obtain and review any updated medical records and those provided to the insurance company.
- Compare the definitions of long-term disability and any policy limitations to past court interpretations (there are about eight to 10 standard definitions of “disabled” that various insurance companies may have).
- Outline your insurance company’s claim notes, which often reveal the basis of the denial.
- Prepare a report for you, outlining the strengths and weaknesses of your case, and propose a course of action which will create a substantial record in support of your disability claim for the judge. This report will contain a systematic plan for creating a record in support of your claim, and a proposed litigation plan where litigation is appropriate.
- Obtain your agreement to this course of action, and recommend any necessary medical evaluations, meet with your treating physicians, obtain necessary medical reports, arrange a functional capacity evaluation and/or vocational evaluation, secure statements from friends or family, and perhaps prepare a video of your job, daily activities, or other relevant evidence.
- Timely file any necessary administrative appeal and monitor the long-term disability carrier’s response.
- Determine the correct amount of your benefits if your claim is reinstated.
- Prepare a post-acceptance report regarding future disability issues that may arise in your case with a proposed course of action.
- Prepare and file your Complaint with the appropriate Court, engage in all applicable discoveries, prepare for and attend all mediations with you, prepare Motions for Summary Judgment and, when appropriate, prepare

- for a jury trial (individual disability claims).
- Handle your Social Security case as appropriate and coordinate the development and filing of evidence for both cases.

What cases do we not accept?

We have found the only way to provide personal service is to decline those cases that fail to meet our strict criteria. Therefore, we generally do not accept the following types of cases:

1. Cases where your physician does not support your claim. We cannot be successful in pursuing your long-term disability claim if your physician does not support your claim for disability. While we can help your physician complete long-term disability forms and assist them in preparing reports to support your claim, if your physician is not willing to cooperate and support your claim, our time and yours will be wasted.

2. Cases where the client has received medical treatment during a time period prior being insured and later claims that he/she is disabled due to that pre-existing condition. Remember, most long-term disability policies have a clause which excludes coverage for pre-existing conditions. Treating physicians generally are unwilling to distinguish between a currently disabling condition and the same condition which was treated previously.

3. Cases with less than \$2,500.00 per month in gross (before tax) disability benefits before offsets are taken against such things as Social Security benefits. While we would like to represent everyone who needs a good attorney, we simply cannot. It is simply not cost-effective for you or our law firm to expend considerable time and expense when our attorney's fees may ultimately be greater than the amount of benefits we can secure for you. The last thing we would want

to do would be to put you in a worse position than you were when you started your fight against the insurance company.

4. Cases where the appeal period will end within 30 days.

We need at least four months (approximately 120 days) to adequately investigate and evaluate your claim. This length of time prevents prior delay from becoming an additional obstacle.

5. Most cases where the appeal has ended and you are seeking the services of an attorney to file suit.

We cannot fix other people's mistakes. If the appeal was not adequately prepared, we may not have the foundation to win your case.

So, are there any cases left?

Absolutely! The point is that we purposely accept only a limited number of cases each year. We concentrate our efforts on properly assisting our clients in the claims process, preparing the appeal, and maximizing the opportunity for success – we simply do not pursue frivolous cases.

When we devote our time and resources to representing legitimately disabled people with good claims, we are able to do our best work. Over time, we have found that being “bogged down” in lots of little small cases, each with a “special problem,” is not good for our legitimate clients' claims.

Our Cases

Here is a small sampling of just a few types of cases that we have handled.

- Long term disability benefits paid to an insurance underwriter who sustained brain injury because of a fall down a flight of stairs.

- Long term disability benefits paid to a dentist who developed bilateral carpal tunnel syndrome.
- Long term disability benefits paid to a radiologist with Meniere's Disease.
- Long term disability benefits paid to an insurance controller with herniated cervical and lumbar discs.
- Long term disability benefits paid to a principal consultant and engagement manager with chronic insomnia, hypo somnolence, memory lapses, and restless leg syndrome.
- Long term disability benefits paid to a mechanical engineer who is a T8 Paraplegic.
- Long term disability benefits paid to an insurance agent with retinitis pigmentosa, back problems, and knee replacements.
- Long term disability benefits paid to a general surgeon with carpal tunnel syndrome and triangular fibrocartilage complex tear of wrist.
- Long term disability benefits paid to a chiropractor with herniated cervical disc with radiculopathy.
- Long term disability benefits paid to a physical therapist with cardiac disease.
- Long term disability benefits paid to a registered nurse who developed rectus abdominus nerve entrapment following an exploratory laparoscopy.
- Long term disability benefits paid to a sales representative who sustained a head injury and nerve damage as a result of an automobile accident.
- Long term disability benefits paid to a customer service representative who developed seizures following a fall at a theme park.
- Long term disability benefits paid to a production worker

who developed failed back syndrome following lumbar surgery.

- Long term disability benefits paid to a credit manager who developed seizure disorder and migraine.
- Long term disability benefits paid to a nuclear medicine technologist who developed a stroke.
- Long term disability benefits paid to a deputy sheriff who sustained a back injury in an automobile accident.

While we cannot offer a magic solution to your problems, we can offer you guidance. We sincerely hope this book has helped you understand the claims process and your rights.

Conclusion

I hope you have found this guide and these suggestions helpful. More information may be found at my website <http://www.cjhenrylaw.com>. For a free 30 minute consultation, please call (352)304-5300.

About The Author

Claudeth J. Henry is the founder of CJ Henry Law Firm, PLLC in Ocala, Florida. Ms. Henry's passion for people began with a career path in health care as a registered nurse working in critical care units. This passion has transcended nursing to her career in law. Since 1992, Ms. Henry has been practicing law in Ocala, Florida. The ardent commitment to champion the rights of those unjustly aggrieved continues to be at the heart of Ms. Henry's drive, focusing her legal practice in the area of Social Security and long-term disability claims, arising both under policies provided by employers, subject to ERISA laws, and policies purchased by an individual.

APPENDICES

DAILY ACTIVITY LOG

INSTRUCTIONS: Please note that it is important in your case to be able to show the judge exactly how your disability affects you on a daily basis. Therefore, it is **VITAL** that you keep a diary for a **MINIMUM** of 30 days. Enter information every single day for the 30-day period. Keeping the diary for a longer period of time could be very beneficial. Please only write in your actual symptoms. Please do not exaggerate, as that could be harmful to your case. If you are having a “good” day, please document that as well.

Below is an example of a diary format. It is **important** that we receive this information at the end of each 30-day period as there are deadlines we must follow in providing this material as evidence in your case. Feel free to have family members keep this diary as well, documenting what they observe and how it affects them.

SAMPLE DIARY: NOTE: This is a sample only.

Morning:

Could not sleep all night. Got out of bed at 3:00 am and sat in recliner as it was more comfortable. I had to use a cane to get from the bed to recliner. Fell in the bathroom.

Got out of bed at 8:00 am. Made coffee but right arm weak and dropped the coffee cup and broke it. Cried this morning for 10 minutes...not sure why.

Tried to balance my checkbook but got frustrated because I could not concentrate and had to stop. Took a nap at 10:00 a.m. for 2 hours and felt a little better. Took a pain pill.

Afternoon:

Pain pill made me tired and I took another nap for about an hour. Woke up and right arm was swollen and legs felt weak but decided to take a walk. I made it ½ a block and had to turn around and go home because I was too tired to go further.

Went to get the paper and got short of breath at the mail box, which was 20 feet from my door.

Tried to vacuum the living room (10 x 15 room), and was exhausted after 3 minutes and had to stop.

Evening:

Husband wanted to go to a friend's home. I didn't want to go because I just didn't have the energy and my arm hurt. He left me alone. Cried for 20 minutes and felt lonely and useless.

I felt like making dinner so I microwaved popcorn. My son, Tommy, asked for help with his homework. I told him I was too tired (in pain), and requested he ask his dad. I became irritable and went to my room.

Night:

I was in pain. Took a pain pill. I tried to sleep but couldn't get comfortable. Got up with difficulty and watched TV. Cried myself to sleep. Slept 25 minutes. Tried to go back to my bed, but couldn't stand. I tried to read but read the same page 3 times. I couldn't remember what I read. I tried to keep reading but the words were blurry.

NAME _____

DATE _____

MORNING: _____

NIGHT:

Index

Daily Activity Log	29, 42
Deadlines	18, 22, 28, 31, 42
Depression. <i>See Mental</i>	17, 26
Disclaimer and Warning	6
Discretionary	8, 17
Doctor's Record	7, 10, 28, 33, 35
ERISA	5, 6, 8, 9, 11, 15, 16, 20, 22, 25, 28, 29, 31, 40
Evidence	15, 22, 29, 35, 36, 42
Examples	5, 7, 18, 42
Federal Court	8, 25
Forms	26, 29, 36
Material & Substantial Duties	12, 13, 17, 32
Mental Condition	17, 26
Mistakes	11, 16, 22, 28, 37
Myths	13, 14, 15
Pain	17, 26, 42, 43
Plan Administrator	11, 17, 19
Policy Terms	11
Social Security	14, 30, 33, 36, 40
Standard of Disability	10, 16, 22, 29, 34, 35

GETTING & KEEPING YOUR DISABILITY BENEFITS

Substantial Duty	13, 17
Taxes	36
Work Part-Time	17
Wrong Date of Disability. <i>See Mistakes</i>	10, 11, 16, 22, 28, 37

WA

We have seen the extremes that some insurance company will go in order to avoid paying your benefits so that they can keep their profits. Some examples we have seen include:

- They send your file to an "in house" doctor who never evaluates you, much less analyzes all your records.
- They send your file to a doctor who rarely finds anyone disabled, regardless of his/her condition.
- They send your file to doctors who may make millions of dollars per year from such referrals.

These doctors know that the insurance company paying their fees WANTS to deny your claim! We are passionate about helping you obtain your disability benefits. We have written this book to inform, empower, and guide you through the disability claim process. By ordering this book, you have taken a step in the right direction toward getting your long term disability benefits. I guarantee that your time will not be wasted by reading this book. Take advantage of our free consultation by calling 352.304.5300.

Prior to becoming a lawyer, Claudeth cared for patients as a Registered Nurse in a critical care unit. As a Prosecutor she served her community with zealous prosecution of criminal cases gaining invaluable jury trial experience. She has served on the Ethics Committee of The Florida Bar, and on the Federal Court Practice Committee. She is a member of the National Organization of Social Security Claims Representative (NOSSCR), and the National Organization of Veteran's Advocates (NOVA). Claudeth frequently speaks at various medical support groups and she is committed to serving her clients with the same passion, zeal and legal tenacity she has exhibited all her life. Claudeth represents disabled clients thorough out Florida and ERISA cases throughout the United States. Claudeth is licensed to practice in all State and Federal District Courts of Florida and in the Court of Veterans Appeals Council (CVAC). For more information visit www.cjhenrylaw.com

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