



BEFORE EVEN CLAIMING DISABILITY, MAKE SURE YOUR BASES ARE COVERED

By Kirk Wagar

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Q: *I am a cardio-thoracic surgeon who has developed herniated discs in my cervical spine region at C4-C5 and C5-C6, and am experiencing numbness in my fingers as well as difficulty in holding my head down for the time required to do open procedures. I would like to maintain my office practice and perhaps do some endo-vascular procedures — should I file for partial/ residual or total disability benefits?*

A: The biggest mistake clients make when filing a disability claim either on their own or with the assistance of a disability attorney is minimizing job duties on the first interaction with the insurance company. Many simply put “medical doctor” and maybe add the specialty they practice. If this happens, you will be playing from behind the rest of the game. It is crucial when filing initial claims and in any discussions with the representative of the insurance company that you highlight the different things you do on a daily, weekly or monthly basis. Furthermore, you need to identify those job duties that are primary, and those which are more secondary in nature. For example, if the bulk of your office practice currently stems from either pre-op or post-op consultations and the make-up of your patient base will change, you may have been rendered [or may be considered or may meet the definition of] totally disabled from your occupation. If, however, you have always had a mixed practice and you will be cutting out a portion of that practice, then you are more likely to fall in the residual or partial disability definition.

It is important to file a claim for total disability benefits if it is applicable for numerous reasons. Often insurance companies attempt to persuade you from filing a total disability claim because the economic calculations allow you to receive the

exact same monthly amount in benefits. What they may not tell you is that most residual claims end at age 65, even if you have a policy that pays life-time benefits for total disability — cutting a huge financial obligation from their books and leaving you without benefits when you need them the most.

There may be other ramifications for residual claim versus a total claim, such as cost of living increases occurring at different rates, and requirements to provide the insurance company with numerous financial documents that they would not otherwise be entitled to, such as tax returns.

Another common mistake is not fully documenting the early stages of your medical problems. Prior to any mention of disability claims, it is important that doctors you have consulted with, even in corridor consults, have some record to give an adequate timeline, if possible. Disability insurance policies all require that in addition to suffering a disability, you must be treated by a doctor other than yourself.

Also, watch out for the many policies that pay life-time benefits for medical conditions that are caused by accidents, but limit those caused by illness to age 65. Finally, remember that filing an insurance claim is at its essence a commercial matter. The paperwork must be treated with extreme care and the insurance company’s requests for information must be placed in the context of what they are entitled to receive — and how that may benefit them should your claim be forced into litigation.

Too often claimants rush through the initial paperwork and interviews, believing their medical condition is clear regardless of its documentation. There are many land mines in a claim for disability, from an insurance company wanting all of your accountant’s records for fishing expeditions to payment of claims under a reservation of rights. It’s important to get proper consultation before embarking on this road.

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