

Curbside Consult

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Q: *If I file a claim for disability income benefits under my private or individual disability policy, what type of documents must I provide the insurance carrier in order to complete my claim for disability income benefits?*

A: It is common for insurance companies to unreasonably delay the processing of your claim for benefits and even ultimately deny a legitimate claim. Insurance carriers are notorious for requesting additional information, even if you have already provided them with a completed Application for Benefits, including all of the forms they provided to you.

It is important to know your rights and responsibilities under the terms of the policy and the law as well as how to protect your rights.

A typical investigation of a claim for benefits includes, but is not limited to:

- A completed Application for Benefits, including an Occupational Duties form, an Attending Physician's Statement, and an Authorization to Obtain Medical Information
- A live or telephonic interview, which entails requests for additional documentation (often duplicative)
- Request for medical records
- Request for tax returns
- Request for an independent medical examination or functional capacity examination

Be aware of what you are signing. Some carriers will send you an Authorization To Obtain Information instead of an Authorization To Obtain Medical Information, which would allow them access to confidential information, including financial information. Review all documents and requests carefully before responding. You

have a right to know what information the carrier is seeking to obtain and specifically why such information is relevant to your claim. Be proactive and call the carrier before simply signing any authorization.

Your disability policy contains a provision addressing how to perfect your claim, which is typically vague and general and fails to provide you with a list of all of the information and documentation needed to be approved. Disability policies typically do not identify a requirement to provide copies of individual and corporate tax returns in order to be eligible for disability benefits, but the carrier will typically request copies of individual and corporate tax returns (many times going back five or more years, depending on the definition of earnings or pre-disability earnings in your policy).

Your policy provides a definition of disability or total disability, possibly even partial or residual disability, earnings, and pre-disability earnings, which may make your income and/or losses relevant to whether you are entitled to benefits. Disability or total disability is generally defined in an own occupation policy as: The inability to perform the material and substantial or important duties of your own occupation.

Assuming that you have a set monthly benefit dollar amount as opposed to a percentage of earnings, you may be reasonable in refusing to provide tax returns and at the very least, reasonable in questioning the carrier's request. If the definition of disability does not contain an earnings qualifier, it is unreasonable for the carrier to delay processing your claim based on your refusal or failure to provide such financial information, especially if there are other documents proving that you have not been performing the material and substantial duties of your occupation.

In some cases, the policy will define disability or total disability with an earnings qualifier. Thus, you will need to prove that you meet the percentage of loss or earnings to qualify for benefits. Similarly, some policies provide for a monthly benefit based on a percentage of your income or pre-disability income, whether a total or partial disability. As such, your pre-disability and post-disability earnings

or income becomes relevant to whether you meet the definition of partial disability. A 1099 or W-2 may suffice, but the carrier will still attempt to obtain your tax returns. The carrier will explain that this information is necessary to determine whether you qualify for monthly benefits and to calculate such benefits.

While Florida law recognizes an accountant-client privilege, it does not afford the same protection to federal income tax returns. Assuming you wind up in litigation and your tax returns are the subject of discovery (i.e. the carrier is pursuing disclosure of such records), then it is the carrier's burden to prove that such information is relevant to your claim and its determination of same.

The carrier will be relentless in its effort to obtain your tax returns; will accuse you of being uncooperative; and will advise that you failed to provide them with all of the information needed to render a decision on your claim.

In addition to financial records, the insurance company will request your medical records. While the medical records for the condition you are claiming prevents you from working are relevant, any clinical mental health records are confidential pursuant to Florida Statutes §394.4615. Therefore, these records may not be obtained without your express and informed consent.

Other fishing expedition tactics of the carrier may include requesting an in-person meeting with a "field interviewer," whose goal is to provide information to the insurance carrier that is damaging to your claim and which the carrier will manipulate in an attempt to mischaracterize the information. Likewise, surveillance is typically conducted on the day of your interview or the carrier's medical evaluation. The carrier will compare the surveillance to your written and verbal information in an effort to discredit your claim and even mischaracterize the information.

Thus, know your rights and responsibilities under the policy and the law, and protect your interests.

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