

Denial of Long-Term and Short-Term Disability Benefits

Hengst & Henderson handles claims throughout Texas of individuals for non-payment and termination of payment for short-term and long-term disability (STD and LTD) benefits. We represent claimants in denials of benefits under short-term and long-term disability plans.

How Can I be denied if I have a Disability?

Most of the time, our clients have been working for an employer and the employer has purchased a disability plan through a private insurance company. The Employer often takes a deduction out of each paycheck of the employee and contributes money to the Plan for coverage of STD and/or LTD. The Plan is administered by the Insurance Company. When an employee becomes disabled and makes a claim, the insurance company evaluates the claim.

Insurance Companies are in business to make a profit. The more premiums the Insurance Company collects and the less money in benefits the Insurance Company pays, the more money the Insurance Company makes. Therefore, the Insurance Company has incentive to deny claims. That is not to say all Insurance Companies are bad, but the incentive to deny claims is always present.

Both the Insurance Company and the Employer are bound by the terms of the Plan and have a fiduciary duty to the Employee in administering the Plan under ERISA. They are not supposed to arbitrarily deny claims. However, many claims are in the gray area: claims that could reasonably be denied or granted. If you have been denied a claim, chances are you fit into this category.

What is ERISA?

ERISA stands for the Employee Retirement Income Security Act of 1974. ERISA was enacted by Congress in 1974 to address corruption in pension plans. Although Congress did not intend ERISA to control medical or disability insurance plans when it enacted ERISA, the bill that was signed into law contained the phrase "employee welfare benefit plan." As the result of federal courts' interpretations of that phrase, today ERISA controls almost every private employee benefit, including health, disability, life and pension plans. ERISA includes the federal statute, 29 U S C § 1001, et seq., regulations, which appear in Chapter 29 of the Code of Federal Regulations, and decisional law of the Federal Courts.

The Administrative Appeal

If you have been denied STD or LTD benefits, you need to protect your rights. There are important time limits that you must adhere to. For example, the federal ERISA statute requires that the insurance company provide a "full and fair" review of the denial. Ordinarily, you will have 60 days after the insurance company's denial of your claim to appeal the decision (this is an appeal to the policy administrator). The federal courts have required that ordinarily, the decision must be appealed internally before filing a lawsuit.

The administrative appeal is a critical time in the process and a trap for the unwary. In the appeal, you may submit additional documents and arguments to support your claim. Supportive chart notes, reports from your doctors, written statements by co-workers and others describing their observations of your physical condition, and medical literature describing your condition all can be helpful. It is critical that you get documents supporting your claim into the record BEFORE the insurance company makes its final decision. If you intend to hire a lawyer to represent you, you should do so as early in the process as possible.

If you lose on appeal and your policy falls under ERISA, your only recourse will be to file a lawsuit in federal court. You will not be entitled to a trial by jury. Instead, a federal judge will review only the administrative record that was developed in the claims and appeal process by the insurance company. Thus, for ERISA policies, it is often too late if you wait until after the insurance company has made its final decision to retain a lawyer.

When do I need a lawyer?

If you have applied for disability benefits under a plan and have been denied, it is time to get a lawyer and fight the denial. You need a seasoned lawyer who understands the complex laws and will fight for your rights. Hengst & Henderson initially reviews your file and determines if we can help you. We review the language of the Plan, your medical records and the nature of your disability.

If you hire us, we usually send a demand letter first assuming there is enough time before the filing deadline. The demand letter contains the appropriate language from the Plan, an extensive detail of your disability, and the legal basis for your claim. If the demand letter is not successful, we file suit on your behalf. We usually file suit against the Insurance Company and your Employer under ERISA and Breach of Contract.

How do you charge for legal services?

We know that one of the most difficult problems that many people face is dealing with mounting legal and medical bills at a time when household income has dropped due to disability. We approach each case individually and try to work out a fee arrangement that allows us to handle these important cases without putting insurmountable financial pressure on our clients. Depending on the facts of your case and your ability to pay, we handle disability cases on a contingent fee basis (where our fee is a percentage of back (retroactive) benefits, or, in some cases, back benefits plus some future benefits), hourly fee basis, or a mixed reduced hourly/reduced contingent fee basis. In both ERISA and non-ERISA cases, the court ordinarily will award attorney fees to a litigant who wins his or her STD or LTD case. We do not charge for an initial consultation.

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