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In Review:

- “Nasty” claim denials top list for 2010.
- Lindanee’s Blog transitioned to private electronic submissions. If you want on the list please send Linda an email.
- A new brochure on managing a field rep visit written by Linda will soon be available.
- No insurance company is entitled to information, financial or otherwise, about a spouse who is not a party to the disability contract.
- Surveillance can be costly.
- If an insurance field rep shows up at your door unannounced, don’t invite him in! This is a private trespass; you do not have to speak with anyone who shows up without warning.
- There is no such thing as a negative COLA. There can be an increase in monthly benefit but not a decrease!
- Discuss the Survivor Benefit Provision with your family and future survivors. This benefit may be of help to your family in case of unexpected death while receiving disability benefits.
- Work Incentive Benefit program not a bad deal if returning to work part-time is possible. Check it out in your policy.

DCS Welcomes 2010 with New Strategies— Editorial by Linda Nee

It’s not surprising how much the disability claims review environment changed over the last five years sending messages to insureds and claimants they “better watch out.”

Economic recession and the loss of insurance portfolio interest and dividend income sent disability insurers in frantic searches for claim denials. As a result many ERISA and DI insureds received unforeseen and unpredictable denial letters, especially around the Christmas holiday in expectation of end-of-the year profits.

While no one in the industry disputes the rights of disability insurers to fully investigate claims submitted for payment, nearly everyone (attorneys as well as non-attorneys) now disagree with the manner in which the review process ignores the rights of insureds who pay premiums expecting fi-

nancial protection in times of hardship. In reality, most US insurers turned nasty.

Use of the word “nasty” might appear to be misplaced by some, but in reality, it is the only word that appropriately describes claims review strategies designed specifically to “set-up” or “stack the deck” against insureds in such a way that an uninformed insured would likely have little defense.

In the past insurers often crossed the line of staying within the law, but today these same insurers are engaging in activities which can only be described as “nasty.”

Surveillance and field representative visits appear to have re-emerged as loopholes to misinterpretation which on the surface appear to be credible. In the end, US disability insurers are conducting business in questionable

ways resulting in more and more denials.

Interestingly, attorneys remain reluctant to take ERISA claims and aren’t filing as many lawsuits as they once did. Why?

However, in this new environment insureds are not unprotected and there ARE actions and strategies available to proactively document Plans and claim files with information in support of a disability claim.

Insureds do have defenses it’s just a matter of knowing what they are. In 2010, DCS, Inc. will be sharing these strategies with insureds and clients. But, we won’t be giving away the store to insurers who read the Blog. It’s a new ballgame in 2010 and everyone needs to stay tuned in.

Lindanee’s Blog Transitions Back to Newsletter

I am extremely thankful to the 45,000 viewers who read articles on Lindanee’s Blog over the last 5 months. The amount of information I was able to communicate was phenomenal.

However, a large portion of the readership consisted of attorneys and insurance moles looking for information about DCS and what our strategies are. And while insureds and claimants gained a considerable amount of information the

Blog became a lonely place without the support of those who, with a voice, might have been able to assist us in keeping insurers honest. Insureds are just too scared to raise a public voice in their own defense and understandably so. I was the only one talking!

Therefore, a decision was made to transition our mode of communication back to private distribution of the newsletter. DCS can have more control over who is on the distribution list and who

is receiving information best communicated to insureds only.

Insureds often told us how much they enjoyed reading the Newsletter anyway. We will be updating the distribution list, and of course will continue to distribute the newsletter directly to those who request it.

DCS, Inc. will be keeping all of our readers informed with the same type of information previously contained on Lindanee’s Blog. If you wish to be included on our distribution list, please let us know and we’ll put you on.



Field Reps Getting Huffy and Blowing Your House Down?

Field reps can get very assertive and demanding. However, if the insured stays in control over what information he/she is willing to give, field reps can quickly pack it up and head for home. Surveillance can take place, even in a busy McDonald's, so stay alert and observant. Just "huff and puff" and send them packing. You have rights too!

Disability policies are contracts between the insured (or the claimant's employer) and the insurer. Parties named in the contract do not include the insured's spouse or dependents. Therefore, disability insurers do not have a right to obtain financial information about an insured's spouse other than what might be indicated on the filing of a joint tax return. There is a limit to the amount of information an insurer needs to fairly and objectively investigate claims. The privacy of the insured's spouse can and should be protected since she/he is not a party to the contract.

Insurance Field Representatives are often odd-ball appearing characters who arrive on the scene and expect the insured to chat and share intimate details about their life and medical condition to a complete stranger.

Wrong! Over the years insureds have become much smarter about the process and as a result field reps are having to resort to being "pushy" and more assertive.

Insurance field reps always arrive at the interview with a management approved template of questions and a clear

agenda designed to get the insured to "crack" under pressure and admit to work capacity of some kind.

Faced with a "smarter" and more prepared insured, field reps have literally met their match on the battlefield of soliciting adverse information. It's harder work than it used to be when insureds were scared to talk back and often burst into tears under pressure. Unum reps, for example, often get overconfident during the interviews and resort to intimidation in order to get the information he/she needs. Some can come across as arrogant and pretty pushy.

I often attend field visits as a witness for Maine clients. This year an occasion comes to mind when Unum conducted surveillance of the interview and thought itself very "cocky" in catching me on video.

Actually, my client and I both identified the surveillance team on the way in and knew about it from the beginning of the interview. No big surprise—Unum surveillance teams can be easy.

Although we could have surveilled the surveillor so to speak Unum's rep conducted the interview assuming we "weren't smart." Guess again!

Unum's Latest Spousal Abuse Strategies

One of the more interesting cases I was asked by an attorney to review this year is a claim for a chiropractor, who with his wife (also a chiropractor), found himself to be disabled and filed a DI claim with Unum Group.

Unum paid the claim for several years based on the medical review of an IME which clearly stated the insured was unable to perform his regular duties.

Faced with payment of a considerable benefit to age 65, Unum came up with what I think is a very clever strategy to deny claims when both husband and wife are employed (or own) the same business.

Since the husband was not paid from the business and the wife was, Unum alleged the insured was filtering income to his wife in order to remain totally disabled under the terms of the policy.

Unum's financial CPA's referred the claim to vocational resources who were able to construct a fictitious story consisting of how income from the business "should" have been distributed; what duties "should" have been

allocated between the husband and wife; what per hour salary "should" have been earned by each party; and earnings that "should" have been reported to Unum.

Unum then calculated "residual" earnings for the insured even though he never really worked and came up with an overpayment due back to Unum in the amount of \$207,000.

Unum then denied the claim alleging the insured earned over 80% of his pre-disability income and was not entitled to future benefits, then demanded back the overpayment.

The truly amazing part about Unum's claim file review is that there was no "truth or accuracy" about the made-up scenario at all. The insured actually NEVER WORKED, and therefore had no income to report. His spouse DID WORK, however, and was legitimately paid a reasonable salary.

The important point for insureds to know is that a spouse is not a party to a disability contract and therefore the insurance company is not entitled to financial or occupational information about a

spouse. In fact, any request for spousal information actually used in the adjudication of a disability policy is an "out of contract" request.

In this case, the fact that Unum actually demanded the repayment of a non-existent overpayment is in our opinion insurance fraud and an attempt to recover money that is not actually owed, or that which cannot be backed up specifically with earnings records.

Although Unum may be entitled to receive a copy of the insured's tax return, spousal information is not essential to the liability decision. If an insurance company requests earnings information about a spouse it should not be provided for privacy reasons.

Remember, a spouse is not a party to the disability contract and therefore financial information about a spouse should not be provided.

This is a good example of how important it is to stay on top of information provided to any disability insurer. Never give information about a spouse.

Pre-existing Condition Investigations Should Never Happen—ERISA Group

Pre-existing condition investigations deprive many insureds of benefits, but do not need to happen except under catastrophic circumstances. Although there are several different pre-x definitions written into group policies, by far the most common is the 3/12 definition.

Most group policies contain provisions which basically say that if the claimant goes out on disability within 12 months of his/her effective date of coverage (EDOC) a three month look-back will take place for “medical treatment, consultation, care or services including diagnostic measures, or had taken prescribed drugs or medicines in the 3 months prior to the

effective date of coverage.”

If the insured waits 12 months before going out on disability, pre-existing conditions are never an issue and the claim can't be denied on that basis.

This last year DCS, Inc. saw claimants deprived of benefits because he/she went out on disability 11 months after the effective date of coverage instead of 12. Unfortunately, what this tells us is that employees don't read their policies, or if they do, the policies are not understood.

All employees should obtain a copy of their certificate booklet and become familiar with the provisions.

Whenever possible employees should remain on the job for at least the 12 months before claiming disability.

Some policies contain a 6/12/24 pre-existing provision which is horrible. This means if the insured goes out on disability within 24 months of the EDOC, then there is a 6 month look-back period, except if the claimant is found to be treatment free within the 12 months just prior to the effective date of coverage. Twenty-four months is a long time to stay at work when ill.

Except for catastrophic illness claim denials for pre-existing conditions should not happen. The lesson here is to read the group Plan carefully and understand it.

The “To Do” About Surveillance by Linda Nee

In 2009 insurance surveillance topped IMEs as the number one “risk management” activity used by disability insurers to deny claims. Faced with having to bolster profits by year-end companies like Unum, Hartford, and Lincoln conducted surveillance on the majority of insureds particularly for impairments such as fibromyalgia, chronic fatigue, Lyme disease, chronic back pain and MS.

While insurance companies have always depended on surveillance as a ways and means to increase claim denials, what made 2009 unique is the misstatement of facts and total misinterpretation on activities actually recorded on the DVD.

For example, a male California claimant was seen sitting in a car with a female and his claim was denied by Unum in part because of a suspicion of “dating.”

Those who are disabled do not have to stay in bed with the covers up to the nose. It 's actually OK for “the disabled” to have a social life and even have sex. Still disability insurers seem to assume benefit checks should only go to those who are housebound and ADL deficient. Lack of activity becomes the disability base line.

Unum, for example, conducted surveillance on insureds diagnosed with “depression” and claimed because they were active the insureds weren't disabled.

Although most medical treatment plans for depression include activity and socialization, Unum denied the claims alleging insureds “couldn't possibly be depressed given the amount of activity observed on the DVD.”

In addition, insurers have also gotten very aggressive in sending surveillance DVDs to treating physicians and following up with phone calls. “What do you think of your patient now, Doc?”, was the obvious agenda and at least in some cases, after viewing the surveillance footage, physicians agreed with the insurance company.

Over the last fifteen years I've observed when dealing with disability insurers, there's “what should be” and then again, there's “what is” - no one obeys the rules.

While surveillance cannot observe depression, fatigue, physical pain, disease, infection, memory deficits, cognition problems, and many other disabling symptoms, it CAN attempt to “connect” reported restrictions and limitations with observed activity. If there is an inconsistency between the R&Ls reported and what has been observed, insurers can say there is an

“inconsistency of report” and deny the claim.

Technically, a disability claim cannot be denied solely on the basis of surveillance, but the insurance company will say the insured “no longer meets the definition of disability” as a result of its own interpretation of the insured's observed activity.

While we don't recommend insureds look for surveillance teams hiding in every bush, we do suggest insureds keep their eyes open for potential peepers. It is no longer a matter of what you are actually observed doing, but how the insurance company interprets what it sees and draws unfounded and dishonest conclusions from in order to deny disability claims. In other words, insurance companies lie.

If you haven't read my detailed writings on insurance surveillance you really need to. It is anticipated this year will continue the trend of insurers to conduct surveillance on nearly everyone with an open claim.

Surveillance is one of those awful privacy invasions insureds need to deal with when receiving disability benefits. Unfortunately, it is a reality that can be devastating if not managed well by the insured.

Unum Claims Specialists Know Very Little About Policy Language—Be Careful!

DCS, Inc. has the opportunity to read many, many letters to insureds from disability companies including Unum, Prudential, The Standard, Northwestern Mutual, Berkshire Guardian etc. As a result certain trends, or patterns of practice emerge as typical of certain claims handlers and companies.

One of the “trends” we’ve been able to identify lately is the complete ignorance of Unum claim specialists when it comes to interpreting disability policy contracts.

One has to wonder whether anyone in the company has the training and experience to cite policy provisions and actually know what they mean. Certainly, some of Unum’s recent letters and requests are getting extremely odd and not well written.

For example, if a “Residual Disability” Provision states the insured need only have an earnings loss in his own or another occupation, then updating CPT codes is not relevant to the provision. (CPT codes are physician procedural billing codes.)

The policy no longer requires the insured to be unable to perform “material and substantial” duties, so it isn’t necessary to identify all of the medical procedures the physician is doing. All the insured need do is show an earnings loss and treatment with a qualified physician in order to receive benefits.

In fact, to anyone with claims experience a request from Unum for CPT codes under the above policy provision is ridiculous. Frankly, such requests would show any experienced person in claims how untrained and unqualified Unum’s specialists really are.

In addition, Unum’s most recent request to one of our clients as described here was made by a “Lead Disability Specialist” which means the handler should know better. The fact that she didn’t tell me Unum is probably promoting employees upward without a great deal of experience in claims.

It takes a new employee approximately 24 months after training to really “get” how to review a disability claim fairly. Promoting without experience is not a good idea for any disability insurer.

However, this might be consistent with reports of Unum’s recent downsizing and moving claims staff around the company. In the past, Unum promoted employees when they threatened to leave the company.

In any case, having unqualified and untrained staff on the floor isn’t smart not to mention how costly it is for the insurer when mistakes are made that lead to expensive litigation.

There have been occasions when Unum actually lost 80% of its experienced claims staff and NO ONE on the floor knew how to process an STD claim, for example. This happened after the 1999 merger with UnumProvident.

I also have a feeling Unum’s claims specialists do what they are told rather than applying common sense and actually reading the policy contract which management requires to be in the file. Claims staff generally accept what they are told if they want to keep their jobs.

Short-Shorts

NEGATIVE COLA?

I was recently talking to someone who told me their insurance company actually decreased the monthly benefit because the cost of living went down. This has got to be a real insurance first.

Most policies actually contain contractual language which prohibit decreasing benefits below the benefit amount resulting in a “negative COLA.” I have to admit I’ve never heard of an insurance company doing this, and to be honest it hints at something an unknowing claims handler would do.

There is another reason why decreasing a benefit might be illegal. Most DI policies are non-cancellable which means the insurance company may NOT change the scheduled benefit amount. It doesn’t make sense to me a disability policy that contains a COLA provision would allow for an increase to account for the cost of inflation, only to remove it later if the economy changes. Check your policy provisions carefully.

SURVIVOR BENEFITS

One of the least talked about benefits in nearly all disability policies is the Survivor Benefit provision. This is a very important topic to discuss with your spouse, guardian or children.

The most common Survivor Benefit Provision will pay to an eligible survivor 2-3 months of benefits when proof of death is received by the insurer.

The insureds must have been disabled for at least 180 days and while receiving a monthly benefit. Careful attention should be paid to this wording. If an insured dies during the elimination period, no survivor benefit is payable.

The 180 consecutive days while receiving a benefit starts on the 1st day the insured is eligible to receive a benefit. Usually if there are no survivors, the three months of benefits will be paid to your estate. If your survivors are unaware of the benefit and don’t contact the insurer the benefit won’t be paid. Please plan ahead just in case.

ERISA WORK INCENTIVE BENEFIT PROGRAM (WIB)

Most claims handlers won’t take the time to explain what WIB is. Nearly all ERISA group policies have this arrangement for insureds who are able to return to work part-time.

If the claimant is able to return to work part-time, he/she is able to keep both the monthly benefit AND the earnings if in combination these amounts are less than pre-disability earnings. This is called the Work Incentive Benefit program and is only good for the first 12 months of returning to work.

The 12 months do not have to be consecutive. If at any time earnings go over 80% of pre-disability earnings, then the claim is terminated. If the insured earns more than pre-disability earnings an offset is taken from the benefit. After the 12 months, the insurer will reimburse the claimant for the percentage of loss of income, called Proportionate Loss or PPL. A pretty good deal if work is ok.



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Dedicated to writing letters and appeals for my clients.

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DCS, Inc. is a Maine Corporation providing consulting services to insureds with private disability insurance both group ERISA and Disability Income. Linda has been providing these services since 2002 and recently passed the Maine State License test for "Maine Life and Health Consultant." As a result, Linda is now able provide consulting services in the areas of life and health insurance and long-term care claims. Yea!

CLIENT CORNER:

I wanted to take this opportunity to remind our clients it is very important to read our brochure "Communicating with your Physicians" and have the conversation recommended in the book with your doctor. Medical records appear to provide disability providers with a preponderance of proof of claim even though there is specific evidence to suggest disability insurers have found other ways to terminate benefits. Doc to doc calls have become the "deal breaker" for insureds so please make sure you've read our book and have discussed the necessary topics with your physician.

DCS, Inc. will be finishing up our new electronic books for insureds on the topics of Field Representative Visits, Surveillance, New Strategies and Managing an Appeal in 2010. I will keep you informed when the electronic books are ready for distribution to our clients. (These books will only be distributed to clients of DCS who have signed retainer agreement statements of confidentiality with us.)

I sincerely hope everyone enjoyed the re-distribution of the newsletter. I am open to topics you would like to see addressed and hope to publish at least once a month.

If anyone has any questions, please feel free to contact me.

Linda at DCS, Inc.