

Tidbits:

- Lindanee's Blog is up and running and is available for posting comments.
- CIGNA overturned ERISA denial and benefits were restored to our DCS client. Yea!
- Chat with Mr. John Metz to see if your claim situation can benefit others.
- Be very careful of having oral conversations with any disability insurance company.
- Disability insurers have no regard for medical disability, just financial reserves.
- Most internal insurance documentation is just "full of it."

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June 2009 Volume I



National Coalition of Disability Insureds (NCDI) and Lindanee's Blog

Recently DCS, Inc. reported to you the formation of a non-profit organization called The National Coalition of Disability Insureds. I want to thank all of those individuals who volunteered their time to work on its formal Mission Statement. Input from the insured membership is always greatly appreciated.

DCS, Inc. and the fee-based advocacy services offered to insured continues as usual with many successes. However, NCDI was created for the purpose of giving a lobby voice to insureds with private disability insurance, and those who depend on federal and state laws to protect their rights to fair, and respectful treatment by the disability insurers.



As of today, we have the beginnings of a national data base of physicians who have successfully managed disability claims. This and other data bases will be available to clients, members and their attorneys free of charge once the organization gets going.

Lindanee's Blog was also created to open the door of communication to all insureds who wish to document claims procedures and practices which need to be addressed by NCDI. It is also an excellent place to keep everyone up-to-date on what's going on that may affect the payment of disability claims.

Anyone who wishes to participate on the Action Committee, please let me know. Lindanee's Blog is located at:

<http://lindanee.wordpress.com>

Please feel free to visit and post your comments (the link is at the very bottom of each article page.) To get things going I've posted a few articles of interest to insureds and I'm looking forward to reading your posts.

Posting can, of course, be anonymous. It is hoped everyone can stay connected either through the DCS, Inc. website, or Lindanee's Blog.

It is also hoped NCDI will eventually become a true "coalition" of advocacy organizations and insureds dedicated to helping those with disability claims.

Just Health—John Metz “Working for Health Care Justice—Now!” California News

Mr. John Metz has been advocating the rights of disability insureds for over 30 years, and is instrumental in working with the State of California's legislature to enact insurance consumer protection laws. Mr. Metz describes the mission of his organization as:

“Our goal is to take actions to protect insureds from improper conduct by disability

insurers and those who work for/with them.” He also explains, “One step in accomplishing this is to find appropriate claimants to be plaintiffs in lawsuits to halt various forms of improper conduct by specific insurers to which large numbers of claimants have been subjected.”

Currently, John is looking for potential claimants to par-

ticipate in various actions. Claimants are not limited to residents in California, therefore, if you feel your claim was administered in “bad faith” or, improperly, please feel free to give John a call.

He can be reached by phone at 1-800-878-7843, or by email gethelp@justhealthnow.org.

Please call and chat with John if you if you think you can help.

When Is the Insurance Company Right?



Of all the possible reasons why a disability claim can be denied, failure to provide proof of loss shouldn't be one of them. The insured has a contractual duty to remain in appropriate and regular care and provide proof of that care to the insurance company on a regular basis, or when asked to do so.

No medical proof of claim—no benefit.

Claimants have contractual duties to the insurer the same way the insurer must fulfill certain duties to the insured. One might even say the insurance company has rights too.

When is the insurance company right? The insurance company has a right to deny claims (eventually) if it has requested medical or financial information, and it has not been forthcoming. (Failure to provide proof of loss.)

Disability insurers may also deny claims when any claimant physician agrees the insured can return to work in their own or any other occupation.

The insurance company may deny claims when it is clear the insured does not meet eligibility requirements such as Elimination Period, Pre-existing Condition, Exclusions, Minimum Hours Worked, not in a Covered Class etc. Eligibility reviews are first in the hierarchy of the claims review process.

Disability insurers may also deny claims when there is evidentiary proof (medical, occupational and financial) the claimant does NOT meet the definition of disability in the policy.

Claims may also be denied because the insured's work earning exceed 80% of pre-disability earnings, or for IDI claims when the insured does not have at least a 20% loss in earnings.

Proven fraudulent claims are also not payable.

What Do Insurers Know About Medical Disability Anyway? Do They Care?

DCS, Inc. currently manages several clients diagnosed with Chronic Fatigue Syndrome. Last week I received a 6 page "Activity Questionnaire" from Unum with a request to have our client keep tract of his/her daily activities every few hours.

Sun Life's application for STD and LTD group benefits exceeds 20 pages of questions, most not relevant to the claim. Standard and Mass Mutual also have a several page "daily activity log" which the insured is expected to fill out.

If a claimant is sick, but attempts to remain on the job before applying for disability, Unum, for example denies claims based on the "what changed defense" claiming that since the insured worked sick, they really weren't disabled at all.

A CFS patient most likely would not have the physical

or mental stamina to fill out an activity log every three hours, nor would a disabled person be able to complete 20 pages of an application for benefits.

Likewise it is also very typical of a person who is sick to attempt to remain on the job as long as possible before stopping due to financial reasons. Sometimes it is very difficult for an impaired person to accept the fact they may not be able to work, or that an illness will have such a dramatic impact on their lives.

Disability insurers just don't get it, and they don't WANT to get it either.

Is sending a claimant a request for and APS and Supp Statement really a good idea the day after he/she had a heart attack and a CABG x 5? (Coronary artery by-pass of five arteries.) The claimant wasn't even out of the hospital yet!

Does it make sense to call a by-pass patient a week after sur-

gery and suggest he/she could go back to work in two weeks? Most CABG patients still have staples in their chests and stitches on the inside of both legs.

Imagine what the insured must be thinking holding the phone and looking down at themselves wondering, "How in the world am I going to be able to go back to my job as a truck driver in two weeks? I haven't even been to rehab yet."

It seems incredible disability insurers know so little about the personal effects of medical disability to the point of treating claimants as though "physical or mental disability doesn't exist at all."

There is much more to a disability claim than a financial reserve and a payable claim. It's unfortunate, though, that insurers have no idea what that is.



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Significant 2nd US Circuit Court Ruling Against Unum Group May Help Other ERISA Folks

In a 2nd U.S. Circuit Court of Appeals ruling *McCauley vs. First Unum Life Insurance Company* the court found that “Unum deceptively indicated to McCauley a medical resource assigned to review his records was a medical doctor when the individual was in fact a nurse.” The company used the review to mischaracterize its rationale for continuing benefits. Although a summary judgment had been initially rendered in favor of Unum, on appeal the court determined

Unum’s actions were in fact “arbitrary and capricious.”

Mr. McCauley’s attorney, Eugene Anderson of Anderson Kill & Olick is reported as saying the decision sets an example for other cases nationwide by denouncing arbitrary and capricious claims-handling practices.

The court reviewed evidence Unum engaged in bad faith claims practices based on the *60 Minutes* and *NBC Dateline* exposes in 2002. Media reports also reported

Unum’s claims practices had been unscrupulous.

After the decision Unum said it regrets the New York court did not allow it to introduce new claims management improvements it made since its handling of Mr. McCauley’s claim 13 years ago.

In any case, what goes around comes around—eventually.

Payback can be real costly, and rightfully so.



Federal and state courts may now be operating in a much favorable environment since the election of a new President in the White House. It may be too early to tell, but there is all indication changes are on the horizon.

The Deliberate Art of Miscommunication

It doesn’t take very long for a claims specialist to learn how to sift through claimant dialog and document only what is favorable to the insurance company.

“Selective documentation” is a learned insurance skill developed by internally listening to other experienced claims specialists and managers who render critiques of documentation and suggest ways to “improve it.”

New claims specialists receive some training in writing insurance documentation, but the skill of “snatching” and “twisting” takes some time to develop.

“Snatching” is defined as the pulling of key phrases from medical patient notes at the expense of all else favorable to the insured.

“Twisting”, on the other hand is the skillful documenting of conversations and interviews with a deliberate misstatement of

fact of what is actually said. Twisted documentation is contained within the claim file and can be eventually used to support claim denials .

This is one of the reasons why insureds should take great care to request all phone interviews be submitted in writing, and field visits audio recorded.

As a former Lead Claims Specialist I was often told by Unum consultants not to document certain actions taken on a claim because the information could be “discoverable” in a lawsuit.

The deliberate omission of documentation potentially damaging to the insurance company is called “bad faith by omission.”

Even when copies of the claim file or Administrative Record are provided to attorneys, information in support of payment of claim is deliberately missing from the file. Companies such as Unum can no longer be accused of

“sanitizing” or removing documents from the file - the information simply isn’t added to the record in the first place.

Here’s an example. In a phone interview the insured says to the claims handler, “ I’m doing a little better lately and perhaps I may go back to work in a few months if my doctor lets me.”

Claims specialist writes this down, “Claimant says her doctor will release her back to work in a few months.”

Another example, claimant says, “My doctor started me on some new medication and I’m having severe complications when I take it.”

Handler writes down, “Claimant most likely not compliant with medication.”

Disability insurers make a lot of money pretending documentation is factual when it isn’t.

Insureds should be aware of this and exercise caution.

Most claims specialists learn to “listen selectively” and document only that which is favorable to the insurance company by “snatching” and “twisting.” Most internal insurance documentation is just “full of it!”



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Dedicated to writing appeals and other communications on behalf of insureds.

Disability Claims Solutions, Incl. works with insureds, physicians, employers and attorneys to provide information advocacy concerning the disability claims process.

This newsletter is the property of Linda Nee and Disability Claims Solutions, Inc. It is not intended to be a substitute for medical or legal advice and all issues relative to a person's health should be discussed in detail with a physician who is licensed to practice medicine. Likewise any issues of a legal nature concerning any disability claim should be obtained from an attorney licensed to practice law.

As always, please feel free to contact me with any questions you may have concerning this information.

CLIENT CORNER:

DCS, Inc. has had quite a few successes in the last few months overturning denials and keeping our clients paid. Although it's a tough environment we continue to work with our clients to make sure all contractual duties and responsibilities are met. Thanks for making the extra effort to obtain the requested medical information updates which are very important to the disability claim process.

Physicians have been contacting our office requesting the "Communicating with your Physician" brochure which is a very good thing. DCS, Inc. now has the opportunity to work with more physicians in communicating information to insurance companies. If your physician requests the brochure, please send me his/her email address and I will be happy to send electronically.

Just a reminder, disability checks can be up to several days late around a national holiday. July 4th will be here before you know it, so please plan accordingly.

I encourage everyone to keep abreast of what's going on with NCDI and Lindanee's Blog. I'm frequently posting other relevant information on the site and strongly encourage people to post their comments. Some have expressed to me how fearful they are about expressing opinions publicly. You can use a generic yahoo or Google email address. There ARE no disability claims police, or moles willing to spend time trying to find out who you are. Please stay tuned in and participate.

Take care.