

A Brief Guide to Disability Insurance

Various factors can work in a claimant's favor **by Mark D. DeBofsky, JD**

Introduction

Filling out forms for disability claims can be the bane of a doctor's existence. Besides being time-consuming to complete, doctors are requested to specify functional limitations that are often impossible to measure. Indeed, the entire concept of "disability" is elusive, since a disability determination involves a combination of legal, vocational and medical considerations. The following brief discussion is intended to help physicians better understand how disability insurance works.

Disability Insurance and Social Security Disability Benefits

Obtaining Social Security disability benefits can be the most difficult since the entitlement to benefits requires a complete inability to work. However, various factors can work in a claimant's favor. In addition to objective medical test results and clinical findings, Social Security evaluates the impact of pain and other symptoms, as well as the co-morbidity of multiple impairments. Vocational factors such as the claimant's age, education, and skill level are also taken into consideration.

Since it is difficult to qualify for Social Security disability benefits, and because benefits are capped at approximately \$2,500 per month for the highest wage earners, many professionals such as physicians purchase private disability insurance. The most desirable coverage is individual disability insurance that pays a fixed monthly benefit and insures against the inability to perform the key duties of one's occupation, or even a specialty within that occupation. Benefits may be also payable for partial disabilities or even a loss of income following a recovery from illness or injury. It is also possible to purchase insurance to cover fixed business overhead costs in the event of disability. When premiums for individual coverage are paid with after-tax dollars, the benefits are not subject to federal income taxation.

In contrast to individual disability insurance, many organizations purchase group disability insurance for their members and employees. Those benefits typically represent a percentage of salary and are more likely to be taxable. Group disability benefits are also generally subject to offsets, which include Social Security disability payments (both for the insured and their dependents) as well as other group coverage, which may include disability insurance purchased through a medical association. Thus, instead of a supplement, such coverage may prove worthless if those payments reduce the amount of group disability insurance benefits.

Group coverage is also not necessarily focused on the insured's occupation or specialty—most policies apply a more generalized definition of

disability after an initial benefit period. In addition, group coverage is more likely to include provisions that limit the duration of benefit payments for certain specified conditions such as psychiatric disorders or other illnesses deemed "self-reported" such as migraine headaches, fibromyalgia, and chronic fatigue syndrome. Finally, group coverage is usually subject to the Employee Retirement Income Security Act (ERISA). The applicability of ERISA limits both judicial remedies and court procedures, giving greater advantages to insurers in the event of a dispute over benefits.

Disability Determinations

The determination of disability involves three components—a contractual or statutory definition of disability, medical findings pertaining to diagnosis as well as physical and other restrictions and limitations, and a vocational analysis focused on whether the established limitations preclude employment either in a particular job or generally. Although the Social Security Administration gives limited deference to treating doctor opinions, neither the Social Security Administration nor any insurance company will accept a doctor's opinion that the "patient is disabled" without a description of specific physical, cognitive, or other restrictions and limitations supporting that conclusion. Nor do private insurers afford deference to treating doctor opinions; many also now eschew "independent medical examinations" in favor of record reviews, often without obtaining any input from the treating doctor.

Beware of the myth of the functional capacity evaluation (FCE) as an objective means of assessing disability since none of the test protocols have been validated by rigorous scientific study. While the results of FCE testing may be useful in corroborating treating doctor opinions, it is difficult to extrapolate someone's ability to work on a full-time basis from only a few hours of testing and observation.

Conclusion

More than eight million Americans receive Social Security disability benefits, and many more receive disability insurance. Protecting one's earnings by insuring against unforeseen illness or injury is critical. Those deserving of compensation need the support of their doctors along with experienced legal representation. Even those in good health and in the prime of their careers cannot ignore the risk of disability and should review the adequacy of their own disability protection.

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