

## DISABILITY CLAIMS UNDER INSURANCE POLICIES

This article by our legal contributor and Information & Referral Associate is to assist persons living with Parkinson's in making claims for disability benefits under insurance policies.

*You can make your own claim for disability benefits yourself, without hiring and paying a lawyer. Most claims are so made, and paid by insurance companies. The following guide tells you how. If denied previously, now, or later, you should seek out a lawyer experienced in disability claims; preferably with some knowledge of Parkinson's and its treatments.*

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### CLAIM PRIORITIES

Two of the above forms should be started immediately, as they make the foundation for the rest: 1) Notice of Claim and 2) iii) Employer's Proof of Claim Statement. The Notice of Claim has a 30 day time limit. The Employer's Proof Claim gives you the job of obtaining your employer's periodic job reviews on your own performance. You will be searching out all statements recorded in your job reviews both before your illness and after your diagnosis. You are looking for anything which refers to you having a medical condition, and your declining output (productivity) until your last day at work.

### DISABILITY BENEFITS

Benefits are defined in your insurance contract and invariably include payments for lost income calculated as a percentage of your salary, which may include bonus, or other remuneration. The exact calculation is determined by the wording of the insurance contract. Individual policies are delivered to you or copies available from your insurance agent or insurer. Group policies between your employer and the insurance company are rarely available.

Income tax is deductible if any premiums were paid by your employer, but not deducted if you paid all premiums. Disability payments available under CPP prior to age 65, and similar benefits may be deductible by your disability insurer.<sup>1</sup>

## DISABILITY DEFINITIONS

There are two definitions of disability used in disability insurance policies:

- 1) you are not able to perform the duties of your own regular occupation because of your sickness or injury; or
- 2) you are not able to perform the duties of any gainful occupation for which you are reasonably suited by education, training or experience because of your sickness or injury.

Insurance policies that use the first definition of your *own* job often revert to the second definition of *any* job after two or so years.

The policy wording is the source of the definition used. As noted, policies are delivered to you or available from your insurance agent or insurer, but group policies between your employer and insurer are not generally so readily available. They generally include clauses designed to limit disability benefits that the insurer will contend reduces what it has to pay disabled employees. These may or may not apply or be enforceable.

Employee handbooks and similar documents from your employer can be information sources but generally are not part of your policy; your contract of insurance.

## NOTICE OF CLAIM & PROOFS OF CLAIM

Disability insurance policies invariably require that you communicate your claim in three ways;

- 1) an initial notice that you have a claim;
- 2) a proof of claim; one from you, another from your doctor, and a third from your employer, and
- 3) continuing proofs of disability, from you and usually your doctor — periodically for the duration of your disability, until the insurance terminates usually at age 65.

### 1) Notice of Claim

Written notice of the claim should be provided no later than 30 days from the date the claim arises;

- 1) to the insurer's head office;
- 2) by registered mail;
- 3) stating;
  - i) the policy number,
  - ii) the insured's name,
  - iii) the nature of the injury or identity of the illness causing disability and
  - iv) the date of first knowledge of the disability.

It is prudent to send the notice as soon as possible<sup>2</sup>, saving a copy of the notice, the envelope and the registered mail receipt, and to send notice even where the 30 day time limit is missed – see section [FAILURE TO GIVE NOTICE](#)... page 5.

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<sup>1</sup> Information on applying for and entitlement to CPP disability benefits is available on a number of web sites.

<sup>2</sup> Some policies may stipulate time limits for filing less than 30 days from the date the claim arises

## 2) Proof of Claim

The insurer, immediately upon receipt of a request, and not later than 15 days after receipt of Notice of Loss, should provide you with its proof of loss form to make your disability claim.

As noted, your initial proof of claim will really be three separate written statements; one from you, another from your doctor and a third from your employer.

Your doctor's proof of claim form is usually attached as the second part of yours, the insured's. It is wise to review your form with your doctor for accuracy and completeness, before finalizing it. Ask your doctor to complete his part and forward it to the insurer, but also provide you with a photocopy and note when it was mailed, for your records.

Your employer's statement is usually done independently and sent to the insurer.

### i) Insured's and ii) Your Physician's Proof of Claim Statements

#### a) Parkinson's Disability Claim;

You can live well with Parkinson's for years. Parkinson's will progress at a different rate for each person. Accordingly, your type of work may not be affected for some years after your diagnosis. Your initial disability claim is made only if you become not able to perform the duties of your regular occupation because of Parkinson's.<sup>3</sup>

Your own first proof of claim should include:

- the Parkinson's symptoms you have and their interference with your employment duties
- the progression of your Parkinson's experienced up to this point, noting the increased severity of symptoms
- any new symptoms as they have appeared that have led to your inability to continue your job duties
- the positive effect on your symptoms of medication & physiotherapy
- the negative effects, or side-effects of medication and therapy, e.g. dyskinesia

It is wise to review your list of symptoms and their interference with what you do at work with your doctor, to assure accuracy and prepare him or her to complete the physician's statement proving disability. It is important to find a doctor who is knowledgeable about Parkinson's, ideally a neurologist specializing in Parkinson's.

Patients can suffer one or more symptoms. Some of the most common are:

- Tremor
- Slowness
- Impaired balance
- Rigidity (stiffness) of the muscles
- Sleep disturbances
- Fatigue
- Soft speech; and/or slurred or garbled speech – over time
- Problems with handwriting; reduction in handwriting size
- Stooped posture
- Cognitive Impairment; problem solving, task initiation, processing visual information, and memory
- Dyskinesia – involuntary movements brought on by medication over the years

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<sup>3</sup> The same of course applies to any other disabling illness or injury.

It is important to note not just the impact of your symptoms on your job duties, but to also describe any impact that treatment and rehabilitative efforts (e.g. physiotherapy, speech therapy, group therapy, and prescribed exercise regimes) has on your work life. Specialist and therapist appointments are often difficult to schedule conveniently around working hours, and may in some instances require that a person book off a day off work, as it is not uncommon for specialists to be running well-behind scheduled appointments.

Reduced working hours may be helpful in the sense of being able to accommodate certain needed treatment options; however, reduced working hours can harm an insured disability claim. Cutting back from 40 to 25 hours per week, for example, will lead many group insurers to assert that the base salary on which your disability income is calculated as a percentage is an annualized 25 hour per week wage; i.e. only 62.5% of your normal 40 hour per week wage. Accordingly, an express written amendment to your disability insurance is needed whereby the insurer agrees that your benefit is calculated on your 40 hour per week wage – including inflation and any other adjustment already in the policy.

### **b) Parkinson caused Psychological disorder Disability Claim;**

Psychological disorders brought on by Parkinson's can be causes of disability.

Around 40% of Parkinson's patients experience anxiety disorder, clinical depression or related disorders. Worrying about Parkinson's progressive incurable symptoms and what it will mean for the rest of your life, job performance, and finances can also lead to anxiety or panic attacks.

Your own first proof of claim should list not only the Parkinson's symptoms you have but also any additional symptoms of the Parkinson's induced psychological disorder. Interference with your employment duties caused by these symptoms individually or collectively should be described, as well as any positive treatment effect of medication, counseling, and psychotherapy.

Some common anxiety and panic disorder symptoms are:

- Difficulty concentrating; progressing over time to periods of inability to comprehend written words repeatedly read
- Feeling restless; progressing over months and years to a need to flee confined spaces; offices, theatres, plane seating and so on
- Shortness of breath or smothering sensations
- Dizziness, unsteady feelings, or faintness
- Fear of dying
- Trembling, shaking, sweating or choking
- Palpitations or accelerated heart rate: many are taken to hospital emergency departments with symptoms of heart attack, followed by cardiac tests and examinations for heart disease.

It is important to find a doctor who is knowledgeable about anxiety, and panic disorders, depression and related psychological disorders caused by Parkinson's; ideally a psychologist or psychiatrist.

It is wise to review your list of symptoms and their interference with what you did at work with your doctor, to assure accuracy and prepare him or her to complete the physician's statement proving disability.

### **iii) Employer's Proof of Claim Statement**

Study your employment performance reviews. Find and include in your own Proof of loss Statement every accurate statement referring to you having a medical condition in these reviews of your job performance, and its deterioration until your last day at work.

This will be doing the employer's job for your claim, but it is unlikely that the personnel department worker doing the employer's proof of loss will have the time to do this work – indispensable to getting valid disability claims accepted and paid. Your performance reviews may be scattered through years of files. No one has the incentive you do – nor has the knowledge of your Parkinson's – to find what is in your employer's performance reviews showing the effect on your job performance.

The definition of disability requires that you are not able to perform the duties of your regular occupation because of your Parkinson's or related psychological disorder. Your output (productivity) should have been in decline from after your symptoms became serious, until it fell to an unacceptably low level prior to the loss of your job.

The goal is to establish a) your output before Parkinson's and to compare it to b) your output when you were terminated or had to quit because of disability.

Your job performance reviews will likely have been given to you. If not, or if misplaced, ask your employer for copies, advising you need them for your disability claim. Aim to get them all. Return for missing ones politely until you have all the quarterly, bi-yearly or annual reviews. Review them from well before your Parkinson's diagnosis which will have started within your body well before you noticed symptoms.

Study them thoroughly for your employer's first knowledge that you had a medical condition, and for all comments and numbers on your performance before and after – from first to last.

Deterioration in your job performance may have been minimized or omitted from your job performance reviews because of your long and faithful employment, prior good job performance, and sympathy for your problem.

You are searching for just a few words or lines in dozens, maybe over a hundred pages.

As noted above, include what you find in your own Proof of loss Statement, for your employer, and doctor, as well as the insurance company to see the claim you are making.

No one else will do this for you.

Your employer's files for you and your department, often voluminous, likely contain other observations or data relevant to your deteriorating performance as your disability progressed, but these are rarely available without denial of your claim and litigation. You want your claim acknowledged and paid without going to court.

### **FAILURE TO GIVE NOTICE OR PROOF OF CLAIM**

There are short limitation periods after which it may be too late to start a lawsuit for a disability claim. Failure to give notice of claim within 30 days, or to furnish proof of claim within 90 days are said to invalidate the claim. Nonetheless such failures may be excused, if the notice or proof is given as soon as reasonably possible within one year from the date the claim arose, provided that it was not reasonably possible to give notice or furnish proof within the 30 and 90 day time limits.

However, a disability claim that seems clearly too late for past wages can nonetheless still be valid to recover future earnings.

Disabilities like Parkinson's continue all our lives; until science provides a cure. This means that each and every day, a new day's claim is added to the prior day's claim. If, for example, you failed to make a claim after being diagnosed 5 years ago, and today is the 30th of this month, counting back from today's date, there are 30 days of disability for which a Notice of claim may still be in time, even though claims older than 30 days may be barred. The same applies for Claims within the above 90 day or 1 year periods.

Moreover, an insurance company's statement denying a disability claim on grounds that are wrong, which are relied on by a person with a valid claim, who then lets the time limits expire, may still have a live claim. The reason is that the insurance company wrongly misled a person with a valid claim.

## **PROOF OF CONTINUING DISABILITY**

With each benefit cheque, most insurers send a new proof of claim form and require new updated claimant's and physician's statements before sending the next cheque. Usually the insurer will inform the insured that the physician's charges for the forms are your responsibility. This is to continually reevaluate the disability and treatments before approving payment of the next benefit cheque.

Moreover, insurers may periodically require more detailed statements and reports from specialists seen by the insured, and, as a prerequisite of paying claims may require periodic examinations by medical specialists the insurer appoints.

Failure to comply can be used by an insurer as grounds for terminating payments.

Finally an Insurer may suspect a false claim or exaggerated symptoms and hire an investigator to monitor the claimant's activities and interview neighbours. The investigator may follow the claimant surreptitiously, taking notes as to his or her movements and recording her physical activities and capabilities by photograph and videotape.

An investigators report can be used as grounds for terminating payments.

Easily, these rights by accident or design can aggravate the pain and suffering of a person living with Parkinson's, particularly one suffering depression, anxiety, or panic attacks about his or her health or financial security.

Insurers, employers and insureds invariably believe that insurance companies have a right to require any or all of the above and like terms reducing or stopping disability payments because of wording in a voluminous group policy document never seen or agreed to by the insured.

This is not necessarily so. Apart from some terms and conditions made part of disability insurance policies by Ontario's Insurance Act, parties are otherwise not bound by contract terms which they have never seen and agreed to.

Termination or reduction of disability payments by an insurer usually requires legal advice from a lawyer experienced in disability insurance, and Parkinson's symptoms and treatment.