

How does the ISO deal with Disability Complaints?

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ISO's Approach to Complaints

- **Investigative/ inquisitorial.**
- **Can lead to consideration of new issues and/ or further enquiries.**

ISO's Approach to Disability Complaints

- Legal approach.
- ISO looks at whether the decision was reasonable and made in good faith.
- Reasonableness is not about the claim decision, but about the decision making process.
- Focus on reasonable process leading to a consistent decision.

Common grounds decision making process unreasonable

- **The decision is not supported by the evidence.**
- **The decision is not made with reference to the provisions of the policy.**
- **If the decision is unreasonable then the ISO will reconsider the claim.**

Scenario

- C was a very successful Office Manager.
- November 1993, C took out policy.
- July 1994, C was diagnosed with depression.
- C made claim for total disablement. Claim accepted.

- March 2003, C started new business.

- C reassessed by P's psychiatrist who stated C's depression was in remission.
- P's psychiatrist stated *"It is my opinion that she is fit for work in a part-time capacity up to 15 hours per week and I would recommend that this be increased on an incremental basis over the next three months when she could then be cleared for full-time work [April 2003]"*.

- P advised it would cease payment of Total Disablement benefit and pay proportionate benefit until July 2003.
- C argued she still suffered from symptoms of depression and only able to work productively 10-15 hours a week.
- C's psychiatrist confirmed that C still suffering from symptoms of depression and unable to go back to job as Office Manager.

Policy wording

Total Disablement Benefit

If, the insured is **totally unable due to illness or accident to perform his/her usual occupation** from which he/she derived income then a total disablement benefit will be paid

Scenario Discussion

- **What was your initial reaction?**
- **What are the issues you identify?**
- **What is the process you would take when considering this claim?**

ISO's Process

- **We do not determine whether the claimant has a medical illness or condition.**
- **Companies often focus on the medical condition rather than the the policy definition of “disability”.**

- **The policy should be the starting point for consideration of the claim.**
- **The decision should be made on the basis of the definition or provisions in the policy.**

Policy

Evidence

Policy



Elements



Questions



Medical opinion (answers)

Decision



Questions to Consider

- Did the insurer follow the process in the policy ?
- Did the insurer ask the right questions?
- What information did the insurer rely on?

- Is there sufficient information for the insurer to answer the questions?
- How was the medical information interpreted with regard to the policy definition?
- Are the conclusions justified on the medical information?

If decision is unreasonable

- **The decision will be replaced by the ISO.**
- **New decision based on available evidence.**
- **If insufficient evidence, then further medical opinions will be obtained.**

Policy

Policy



Elements



Questions

- * **Totally unable**
- * **Due to illness**
- * **To perform usual occupation**

- 1) **Totally unable to perform usual occupation?**
- 2) **Due to illness?**

Evidence - Medical opinions

1) Totally unable to perform usual occupation?

P's Psychiatrist - C can work part time, moving to full time.

C's Psychiatrist - Unable to go back to former job.

Evidence - Medical opinions

2) Due to illness?

P's Psychiatrist - Depression in remission.

C's Psychiatrist - Still suffering symptoms of depression.

New medical opinion

- **Ascertain ability to perform usual occupation.**
- **Occupational specialist best to comment on ability to work.**
- **Opinion to match job description with ability, not clinical opinion about medical condition.**

Letter of instruction

Ms C has made a claim for a Total Disablement” (“TD”) Benefit under her insurance policy. Under the policy definition for TD, the ISO must consider whether Ms C “...*is totally unable to due to illness ... to perform ... her usual occupation from which ... she derived income.*”

- 1) Do you consider Ms C totally unable to perform her previous occupation as Office Manager? (refer to attached job description).
- 2) If the answer to 1) is yes, is this due to her illness?
- 3) Is Ms C able to perform the duties of her previous occupation in a reduced capacity?
- 4) If the answer to 3) is yes, please specify the limitations Ms C would face.

- **We require a definitive answer to all the above questions.**
- **This Office applies the civil standard of proof “on the balance of probabilities”.**
- **Please do not consider whether a position is available for Ms C or whether Ms C wants to return to the position.**

Policy

Evidence

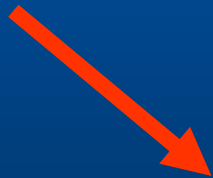
Policy



Elements



Questions



Medical opinion (answers)



Decision



The Decision

- **Not totally unable to perform usual occupation.**
- **Therefore, does not meet policy definition for Total Disablement.**

Conclusion

- **Focus on process.**
- **Important to clearly explain why the client does not meet the policy definition of “disabled”.**

Proportionate Disability Benefit

If, following a period of Total Disablement, the **Insured returns to work** but, **solely due** to the continuation of the disability, is **not capable of performing work** which provides an income equivalent to **75% of his/her pre-disability income** then the Company will pay a proportionate benefit.