

Long Term Disability Insurance (LTD) and Social Security Disability (SSD) benefits

Free advice from a Lawyer with lots of experience in both types of cases

By Barbara B. Comerford

I have written and presented papers on the topic of long term disability insurance and Social Security Disability Insurance benefits to Judges, lawyers and disability organizations throughout the country for decades. And while I will certainly continue to do so, I wanted to provide some basic and free advice for those of you who took the time to visit my website. So here goes:

- ***You are not lazy if you are too ill to continue working***

If you are reading this, you are almost certainly considering filing for these benefits. And as I explain to my colleagues in the law: this area of practice is the legal equivalent of going to the dentist, meaning, most people, in a capitalist society, contrary to the propaganda spread by insurance companies and the government, hate the idea of not working because they believe they will be judged by society as lazy and looking for an excuse to stop working. In almost 30 years of practice, I can tell you that the opposite is true for virtually all of my clients (and I have represented several thousand during that period of time). Whether young or old, rich or poor, educated or not, we live in a capitalist society where being able to support oneself is a badge of honor to strive for, not to be discarded. Most of my clients work well past the time they should. Why? Because they do not want to be viewed as vulnerable, or worse, a fraud because that is what our society has told them they are if they file for these benefits.

I find myself explaining to people that long term disability insurance, like social security disability benefits, is funded by them either directly through payroll deductions (such as SSD and some LTD benefits provided by employers) or with direct payment in the form of premiums to the insurance company. I share with them memories of my childhood where those of us who celebrated Christmas trekked to the bank with our birthday money or other meager savings to make deposits into our Christmas Club bank accounts. And before Christmas each year, we would remove those funds to purchase our Christmas presents. Friends and colleagues from other religious backgrounds have shared similar stories, all of which revolved around saving for contingencies. We all took pride that we saved, and were not made to feel like thieves when we removed funds in the event of need.

LTD and SSD contributions are the same: there to be used when the situation calls for it. We contribute to those disability funds with hard earned income and when we need it, we should be allowed to use it. Only those in Congress, or Insurance Company executives would have the audacity to argue that these funds are only to flow one way, and that is to them. And trust me, neither the government nor insurance companies give these benefits away. If they did there would be no need for attorneys like me. We often have to fight years, armed with reports and records from physicians, vocational experts and others to finally obtain the benefits which my clients worked years to fund, and for which they are rightfully entitled.

I would love to call members of Congress to the media spotlight for declaring themselves farmers of some sort (my fav is the Christmas tree farmer) to obtain federal subsidies when they haven't even stepped on a field except for a photo op. And those members of Congress are usually the loudest voices declaring our disability system is corrupt because a few bad apples (a very small percentage of recipients) have committed crimes (are we to judge members of Congress by the same "fraud" percentage standards? Percentage wise I think members of Congress caught with either their pants down or their fundraising coffers too open beat disability claimants hands down.

- **Talk to your doctors about how your illness is affecting you**

I have often found that my clients are actually embarrassed to tell their physicians how sick and functionally limited they are. I often hear that since they feel rushed when visiting their doctor they feel they don't want to burden their already limited time so when asked how they are feeling, they often said "fine" or "better" when in fact they don't. Again this goes to the issue of not wanting to appear sick, even to a doctor, since they may be judged as a complainer, or someone looking to go out on disability. Indeed, the insurance industry makes sure to enlist the media in sensationalizing the small fraction of alleged disability fraud (I am not denying it occurs but the "fraud" I usually see is on the part of the insurance industry in taking billions of dollars in premiums only to deny legitimate claims as part of its cost of doing business. While insurance executives are given huge bonuses for denying them.) Indeed, contrary to those headlines, most attorneys I know who practice in this field carefully vet cases because they are decent and honorable human beings who believe enough in the system to maintain the integrity of the process. So my advice is: Tell the truth to your doctor about how and what you are feeling, even if it takes a bit more time in the office. Also, if you feel too pressured once in that office, come prepared for the visit with a written list of symptoms and limitations, side effects of medications and all aspects of how your illnesses (all your illnesses) impact you in your daily life and in your ability to work. And if you hire a disability attorney, make sure you let them know you have done this so they know to request that information when they obtain medical records.

- **Before filing for SSD or LTD benefits make a list of your past work for the last 15 years and why you can no longer do those jobs**

Often when filing for SSD and/or LTD, a claimant must document why they can no longer do their most recent job, and why they cannot perform work they have done over the last 15 years. I receive calls every day, often from professionals, asking whether they can work part time when applying for disability benefits. The answer is: it depends. After satisfying the 12 month durational requirement (meaning after not having worked for 12 continuous months as a result of a medically documented severe impairment) SSA allows individuals to try work attempts, as long as it is disclosed to SSA immediately, and does not exceed time parameters

(while the application is pending, roughly 6 months, unless it is sheltered work). SSA also allows individuals to attempt work after they have been found eligible for Social Security disability and SSI benefits, again, as long as those work efforts are immediately reported to SSA (always in writing, please) and in general do not exceed 9 months (again unless it is sheltered work or not considered substantial gainful activity.)

And some long term disability insurance policies provide for payment of LTD benefits to individuals who are unable to perform the material and substantial duties of their own occupation, but can do some other type of work that does not involve the same skill sets or functional abilities (for example, an orthopedic surgeon with an “own occupation” disability policy, may not be able to perform surgery anymore as a result of severe arthritis in his hands, or withstand the stress of an “on call” requirement as a result of a severe cardiac impairment, but can serve as a consultant in a medical practice in a non-surgical capacity.) And others with LTD coverage may not be able to work at all. It depends, and so an attorney should review your policy.

Please call if you have any other questions.