

# Delayed and Denied

## Delayed and Denied Claims: When the Unexpected Happens

Here's what you need to know to file a claim for disability insurance benefits.

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Throughout your career, you will likely spend thousands of hours leaning over patients, executing precise repetitive motions in a very small physical space, with little to no margin for error. While your patients' toes and feet will be kept in excellent condition as a result, your own body mechanics are likely to suffer considerably. Holding a balanced position for extended periods of time, balancing the weight of your head and arms to get at just the right angle, and/or getting up and down from a seated or bent-over position repeatedly are just a few of the repetitive actions that take a toll on the practicing podiatrist.

Podiatrists tend to have back, shoulder, arm, wrist, hand, head, and neck problems, no matter how up-to-date and ergonomically correct their office equipment may be. Over time, what starts as a minor discomfort can become a significant obstacle to practice. Podiatrists and other professionals often wisely protect their ability to earn a living by purchasing private long-term disability insurance policies. But unlike home or auto insurance, disability insurance is a field where the claims process is deliberately complex and there are intentionally designed pitfalls in the claims process created by the insurance companies.

Addressing the potential pitfalls in a disability claim beforehand could

make the difference between a successful claim where benefits are paid and a series of delays and denials that can wreak financial and emotional havoc on your professional and personal lives. The following fundamentals are key components to a successful disability insurance claim.

### The Policy

The original copy of your disability policy is a legal contract between

term disability benefits, how long the benefits may be paid, etc.

### Your Medical Records

At the very least, the insurance company will require a complete set of all medical records concerning the treatment for your disability. They will be searching for physician notes and test results that can be interpreted to mean that you are not disabled. We have worked with clients whose

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you and the insurance company. If you cannot locate the original policy, contact the agent who sold you the policy and ask for the exact policy that was issued. If the broker tells you they are all the same, you already have a serious problem. Disability insurance policies vary widely. A policy sold in the 1980s is far from the one sold in the 1990s, and are totally different than one sold today. The language and clauses in the policy will determine everything, from the time that you need to notify the disability insurance company that you intend to file a claim to the type of medical and financial records you are required to provide, the dates that you become eligible for long-

charts clearly indicate serious and debilitating chronic diseases that preclude them from their occupation only to be told by an insurance company's reviewing doctor or third-party reviewing company that they are not disabled and are capable of working.

The treating physician is a key part of the success of a disability insurance claim. It is very important that your treating physician understand that his/her notes must support not only the symptoms of your disability, but must clearly outline the restrictions and limitations which have resulted from the illness or injury. A clear definition of the podiatrist's professional tasks and the physical

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limitations of the disability must be incorporated into the medical records. Standing for extended periods of time, leaning at awkward angles, or remaining in a static position for long periods, all must be clearly described with as much detail as possible in the physician's narrative.

### **Practice and Financial Records**

The language of the policy must be closely examined to determine what records the insurance company is entitled to review. Everything from basic bookkeeping records to complex 401(k) statements, appointment books and scheduling may be requested, as well as production records of the procedures performed, typically broken up monthly.

The insurance company is evaluating not just income and assets, but the contribution the podiatrist makes to the practice and the value of the practice. It is unsettling to be asked for this level of documentation, especially for private practice professionals who are not accustomed to having their internal documents examined. Providing this information correctly requires a cautious and methodical approach. The first step is to review the policy and ensure that you are only providing documents that the insurance company is entitled to, as specified in the language of the contract. In our experience, often insurers are digging for information to utilize to support a denial of a claim.

### **Own Occupation or Any Occupation Disability Policies**

Own occupation disability is usually defined as the inability to perform the material and substantial duties of your own occupation, and being under the regular care of a physician. Insurance companies may also seek to define an individual's own occupation as how the job is performed in the national economy as opposed to how you actually perform your own job. An own occupation policy is of great value, as it ensures your ability to be a podiatrist, and perform all of the tasks associated with being a podiatrist, without restrictions or limitations that cause

an impairment in functionality.

Any occupation, known as "any occ," presents a whole different set of challenges. An any occupation policy considers whether the podiatrist can perform any occupation for which they are reasonably qualified by education, training, and experience. A podiatrist may be told that even though no longer capable of practicing podiatry, s/he could do other things, such as teach at a podiatry school, or become the administrator of a podiatric practice. Whether or not there are jobs available, and regardless of the difference in

forced by a recent court decision that originated from a case with our law firm, Courts are taking a closer look at inherent conflicts in the structure of disability insurance claims. How can the insurance company be completely objective and fair about evaluating a claim when it has to reach into its own pockets to pay disability benefits, and how can a doctor be completely objective about evaluating a patient for a disability claim when the entity paying the doctor and sending the doctor many such referral patients is the insurance company? This legal battle will not likely be resolved any

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compensation, the any occupation policy language may be used by the insurance company to limit or deny benefits through the identification of alternative occupations.

Claim paperwork must be completed with a keen eye to preventing problems with the claim. If the professional responsibilities and job duties listed on the claim form include references to managing the practice and/or conducting administrative tasks, the disability insurance company will attempt to use this information to argue that the podiatrist is only partially disabled, rather than totally disabled if the podiatrist retains the capacity to perform administrative functions. Whether we like it or not, a claimant and the attending physician must be extremely mindful of strategy when responding to the request for work information.

### **Medical Examinations—IME and FCE**

Two of the predominant methods used to evaluate claims are IMEs (independent medical examinations) and FCEs (functional capacity evaluations). Most policies permit an insurer to require the claimants to undergo an IME.

As a result of a United States Supreme Court decision, and as rein-

time soon, and these inherent conflicts must be kept in mind during the entire disability claim process.

For the most part, policyholders are required to undergo an IME, and it is hoped to be a reasonably fair process. It is not, however, acceptable for an insurer to require the claimant to undergo any invasive testing, travel a significant distance to have an examination performed, or undergo tests that may be dangerous. The FCE is often such a test. Considered controversial even in the physical therapy community, the FCE seeks to measure the client's maximal effort. Data is then extrapolated to determine whether the individual can work full-time on a sustained basis. But an individual with injuries severe enough to no longer perform the tasks of the job should not be exerting maximal effort. The risk of further injury is clearly apparent. There are numerous grounds upon which claimants are advised to refuse to attend or participate in an FCE, and claimants must be vigilant about protecting themselves from the potential danger of this test.

### **Investigations and Surveillance**

The moment a claim is filed, insurance companies begin gathering information, all of which can and usu-

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ally is used to benefit the insurance company. It is prudent to consider every form to be filled out and every contact with the insurance company as part of an investigation. Conversations with insurance company representatives must always be handled with caution. We do not think that claimants should engage in telephonic discussions about their claim, since in our experience, we have seen too many instances where the true discussion is not reflected; instead, the file reflects an altered perspective authored by the claim representative.

Field investigations are common, where investigators stop by the claimant's office or home unannounced. These have inherent risks for a claim. Surveillance is commonly used with conditions that are considered subjective, particularly when high benefit claims are involved. Insurance companies are willing to make significant

investments in an effort to terminate or deny potentially expensive claims. Claimants must be mindful of their activities while in the claims process and while benefits are being paid. The expression of a picture being worth a thousand words is amplified in a disability insurance claim context, as observations of even minimal tasks can be determined to be "inconsistent" with what a claimant has advised are their capabilities, and can jeopardize a claim.

Podiatrists who purchase long-term disability insurance policies are doing the right thing to protect their families and themselves. However, the insurance company's ultimate goal is to minimize their exposure by making the claim process difficult and complex. A well-educated claimant who understands the process will be more likely to succeed than one who treats a disability claim like any other insurance claim. The stakes are too high to treat this lightly. **PM**



**Jason A. Newfield, Esq.** aggressively represents claimants in long term disability insurance and other insurance claims and litigation. He holds an AV<sup>®</sup> Preeminent Peer Review from Martindale-Hubbell and has

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**Justin C. Frankel, Esq.** has devoted most of his legal career to representing long-term disability insurance policyholders. Martindale-Hubbell<sup>®</sup> has rated Mr. Frankel an AV<sup>®</sup> Preeminent Peer Review Rated, the highest

possible designation from Martindale-Hubbell and Super Lawyers has named Mr. Frankel to its select list of attorneys for the 2011 and 2013–2015 New York Metro listings.