EMPLOYEE BENEFITS CLAIMS & APPEALS

AIDS Legal Referral Panel
March 14, 2019 MCLE Training

Kirsten Scott
Renaker Hasselman Scott LLP
235 Montgomery Street, Suite 944
San Francisco, CA 94104
415-653-1733
www.renakerhasselman.com
kirsten@renakerhasselman.com

What Kind of Benefits Are We Talking About?

- **Employee benefits under a benefit plan or statute, such as:**
- **Pension benefits**
  - Normal, early, disability pension benefits
- **Short term and long term disability benefits**
- **Health insurance claims**
- **Life insurance claims**

What law governs?

- **Is this an ERISA or non-ERISA plan?**

- The Employee Retirement Income Security Act of 1974 (ERISA) is the federal law that governs most employee benefits provided by private employers or employee organizations (unions).

What law governs?

- **What benefits are NOT governed by ERISA?**
-
- Individual insurance policies (not sponsored by employer)
- Governmental plans
  - Public employer pension or health & welfare plans, such as:
    - California Public Employees' Retirement System (CalPERS)
    - County Employees Retirement Law (CERL)
    - California State Teachers' Retirement System (CalSTRS)
  - *BUT*: if "established or maintained" by an employee organization (e.g. a union), *might* be ERISA governed. *See* ERISA §§ 3(1) and 3(2)(A), 29 U.S.C. §§ 1002(1) and 1002(2)(A).
- Church plans
- Employer payroll practices (e.g. short-term disability benefits paid out of employer's general assets)

What law governs?

- **If it is an ERISA Plan:**
  - There must be a Plan document – get it!
  - The claims and appeals procedure must be set forth in the Plan document and summary plan description.
  - The claims and appeals procedure must follow ERISA and Department of Labor regulations.
  - A participant MUST utilize the Plan claims & appeal procedures before going to court (i.e. must "exhaust administrative remedies")

- **If it is not an ERISA Plan:**
  - Is there a Plan document?
  - Are there eligibility criteria and claims & appeal procedures set forth in a statute?
  - Is there a requirement (in the plan or statute) that the participant undergo the claims & appeal procedures before going to court?

ERISA Claims Review Procedure

STATUTORY PROVISION

ERISA Section 503:

In accordance with regulations of the Secretary, every employee benefit plan shall—

(1)provide adequate notice in writing to any participant or beneficiary whose claim for benefits under the plan has been denied, setting forth the specific reasons for such denial, written in a manner calculated to be understood by the participant, and

(2)afford a reasonable opportunity to any participant whose claim for benefits has been denied for a full and fair review by the appropriate named fiduciary of the decision denying the claim.

WHAT IS FULL AND FAIR REVIEW?

The minimum requirements for a full and fair review are set forth in the Department of Labor regulations promulgated under ERISA, specifically in 29 C.F.R. § 2560.503-1.

* New amended regulations for disability claims took effect April 2018.

ERISA Claims Review Procedure

What does a reasonable claims procedure include?

- Decision on Initial Review
- Notification of Determination
- Internal Appeal Procedures
- Decision on Appeal

What deadlines apply?

- Depends on the type of claim, and whether it's a claim or appeal.
- Look at Plan provisions, but cannot be shorter than timeframes in DOL regulations, e.g.:
    - appeal of disability benefit denial = 180 days
    - appeal of pension denial = 60 days
    - appeal of health claim denial = depends on type of claim, see regs.
- CA notice-prejudice rule: prevents an insurer from avoiding liability on the basis of untimely notice/submission of claim unless the insurer can prove actual and substantial prejudice by the delay. *Shell Oil Co. v. Winterthur Swiss Ins. Co.*, 12 Cal. App. 4th 715, 760-62 (1993).

ERISA Claims Review Procedure

TIPS FOR PUTTING TOGETHER A BENEFIT CLAIM OR APPEAL

- Request Plan document and claim file. Claimant entitled to both pursuant to 29 C.F.R. § 2560.503-1 (which sub-sections depends on claim/appeal and type)
  - Send in writing, with signed authorization from client.
  - May need to separately request Plan document – see Plan administrator contact info in SPD.

- In court – very limited new evidence on the merits. *Mongeluzo v. Baxter Travenol Long Term Disability Ben. Plan*, 46 F.3d 938, 943 (9th Cir. 1995).

Think about including in appeal:

- Letter setting forth the applicable Plan rules, facts about your client, argument why entitled to the benefits, and why denial was in error.
- ALL relevant documents from client (medical records, pension-related docs, etc.)
- If based on disputed facts, declaration from my client, spouse, etc.
- Supportive letter from doctor(s)
- SSDI, VA, etc. records if available and helpful.
- Possible expert testing? (e.g. Functional Capacity Evaluation / Vocational Analysis, neuropsych testing, etc.).
- Other evidence, e.g. CVs/bios of doctors, articles re medical conditions (e.g. Mayo Clinic)

Other Things to Consider in ERISA Claims/Appeals

- What is the Plan's definition of disability?
  - Typically: own occupation for first two years, any occupation after that.
- Is there a preexisting condition provision that might affect the claim?
  - Typically: one year.
- Are there limitations that might affect benefits:
  - Typically: mental health 24 month limitation, exclusion for self-inflicted injuries, etc.
- Are there offset provisions?
  - Typically: SDI and SSDI. May also include disability pension benefits, etc.
- Are there other eligibility criteria that might be a problem?
  - E.g. became disabled after lost status as plan participant (went part-time, terminated).
- Is there an elimination period?
  - STD and LTD timeframes often work in conjunction.
- Does the Plan have a contractual limitations period? (Keep in mind for litigation SOL.)

Other Things to Know About ERISA Claims/Appeals and Litigation

- Mandatory Exhaustion of Administrative Claim Process.
  - If no decision from plan administrator by deadline, deemed denied and can go to court.
- Remedies in court for benefit claims: limited to the benefits under the terms of the Plan.
- Attorneys' fees for prevailing party – for litigation, but not for administrative process.
- Standard of review – de novo v. abuse of discretion.
- In court – no jury and no "trial"
- Court could make a decision on the merits – or could remand to plan administrator.

Recent Trends – ERISA Disability Claims

Self-reported v. Objective Evidence Requirement

Objective Evidence Requirement

Self-reported evidence

- Chronic fatigue syndrome
- Fibromyalgia
- Chronic regional pain syndrome

How do Claims Administrators evaluate functional limitation?

Medical file review (see *Montour v. Hartford Life & Acc. Ins. Co.*, 588 F.3d 623, 634 (9th Cir. 2009) (for "pure paper" review, finding "While the Plan does not require a physical exam by a non-treating physician, in this case that choice raises questions about the thoroughness and accuracy of the benefits determination.")

Independent Medical Examiner

Surveillance

Social Media

Functional Capacity Examination

Claims/Appeals in *Non-ERISA* Employee Benefit Matters

- **<u>Statutory Claims for Government Employee/Beneficiary Pension Benefits</u>:**
  - E.g. CalPERS, CalSTRS, CERL pension benefits (early, normal, disability retirement)
  - Review statute and caselaw for rules on applicable eligibility standard/rules
  - Review statute and any agency guidance re: claims/appeal administrative process
    - E.g. SFERS = efficient mini-hearing
    - E.g. ACERA = discovery, lengthy hearing
  - Remedies: benefits, interest, possibly attorneys' fees (depends on applicable statute)

- **<u>Insurance Benefits Pursuant to a Contract</u>:**
  - E.g. LTD claim for many government employees – insurance bad faith law
  - For bad faith claims, no exhaustion requirement per statute/regs. Check insurance contract re appeal rules. Can appeal/write demand letter, but don't have to pack the administrative record.
  - Litigation = discovery, trial, etc.
  - Remedies: benefits, interest, bad faith damages (consequential economic losses, emotional distress, attorneys' fees), punitive damages if fraud, oppression, malice.

- **<u>Payroll Practices:</u>**
  - E.g. some private-employer STD plans.
  - Check plan rules.
  - Contract claim.