

# Short-Term Disability

## Introduction

Short-term disability is discussed in two parts:

- Benefits Payable
- Periods of Disability.

## Benefits Payable

### In General

The Schedule of Benefits sets forth the following five variables with the plan's disability benefits:

- The Weekly Benefit (\$200 per week, e.g.)
- The Waiting Period (1<sup>st</sup> day accident, 8<sup>th</sup> day sickness, e.g.)
- The Benefit Period (twenty-six weeks, e.g.)
- Whether or not uncomplicated pregnancies are deemed to be a disability
- Whether or not such disability benefits are elective or mandatory.

Total Disability. Total disability means disability to the extent the participant is not able to perform any of the usual and customary duties of such participant's occupation. Term is synonymous with total, entire or complete disability. Inability to work because of physical or mental conditions resulting from either injury or disease, is a measure of degree of disability. The participant who is unable to perform duties of any occupation for which such participant is reasonably fitted by age, training, education, experience and physical and mental capabilities, is considered wholly disabled. It is not reasonable to expect a person to work if to do so would, in the opinion of competent medical authority, seriously increase health impairment or imperil life. Analysis of claim requires evaluation of the following for such participant.

- |                                      |                             |
|--------------------------------------|-----------------------------|
| • Degree of incapacity               | • Activities                |
| • Character of former occupation     | • Training                  |
| • Possibility of occupational change | • Earnings                  |
| • Education and experience           | • Rehabilitation potential. |

Ability to work in a different occupation following onset of injury or disease will not, of *itself*, defeat recovery under plan of benefits. Ability to work in another

occupation may be evidence of ability to perform duties of the occupation at onset of disability. Each claim requires evaluation of facts.

The burden of proof of disability rests with the participant. The participant has the responsibility for furnishing positive evidence of disability and physician's treatment in the form of an attending physician's statement to substantiate payment of disability benefits.

No benefits are payable for partial disability.

## **FICA Withholding Tax**

Disability benefits are subject to withholding for FICA. Benefits attributable to non-contributory contributions are taxable. For example, if a plan is 100% non-contributory the entire benefit is taxable. If the plan is 50% contributory, then 50% of the benefit is taxable. If fully contributory, the benefit is not taxable.

Participants may claim a refund of excess FICA taxes paid when filing their income tax at the end of the year.

It is strongly recommended that every effort be made to have such disability non-contributory so as to avoid the IRS Form 941 filing. Where the disability benefits are part of the medical plan for which the participants contribute, such contributions should be applied first to the cost of the short term disability which is usually minor in amount.

## **Disability Income Benefit**

The cash income, usually, expressed as cash per week is the benefit. Benefits can be processed in any of two ways:

- Make a benefit worksheet for each payment.
- Approve the benefit as an ongoing one and pay the benefits as an *annuity* with period checks to be certain benefit status is valid.

While the medical worksheet, or the equivalent, may be used to process disability claims, it is recommended that a special disability claims worksheet be used.

## **Assessing the Benefit**

Some of the factors increasing the likely benefit payout are as follows:

- Attained age and sex
- Specialized occupation (surgeon, e.g.)
- Degenerative type condition
- Attitude of participant (a malingerer with a mild ailment is more costly than a non-malingerer with a more serious ailment).

## **Processing the Benefit**

The usual payment process is followed for disability benefits as for medical benefits, except:

- Disability is a cash payment to repay lost income and not a reimbursement of a medial expenses.
- Benefits may be paid by setting the file up as an annuity for *future* payments. This would be done were the condition to be deemed of long duration.

A checklist for processing disability benefits should be used. Often settlement of disability benefits are compromised.

## **Investigating the Benefit**

The investigation deals with the cause, extent, onset, severity and prognosis of the disability. Facts are generally obtained using these sources:

- Participant
- Physicians and hospitals
- Employer
- Independent medical examination
- Claims investigating company.

Special problems with disability occur when the participant is self-employed or when the disability is partial.

## **Care of Physician**

No benefits are payable for any part of a period of disability, whether disability is caused by injury and/or disease, during which insured is not under treatment by a physician.

It is the participant's responsibility to prove the existence of disability prior to date first treated and during the waiting period. The longer the period of time between disability date and date first treated, the greater the question as to existence of true disability. This is important in benefits involving a disease. Benefits commence on the date first treated or termination of applicable benefit waiting period, whichever occurs first.

## **Rehabilitation**

Rehabilitating disabled workers, as a benefit control device, came into vogue with workers' compensation claims. It has applicability with long term disability benefits in health care plans. Rehabilitation administration is simply this:

- The likely participant for rehabilitation must be identified. Younger is better than older; accident cause is better than illness cause; educated is better than uneducated; married is better than single, no outside income is better than outside income; closeness to rehab facilities is better than being far away; loose labor market is better than tight labor market.
- There are groups which assist in rehabilitation. These range from counselors to public rehabilitation services to rehabilitation hospitals.

- The process of rehabilitation consists of (1) retraining for same job, (2) modifying existing job or working conditions (3) training for a new job or (4) becoming self-employed.

## **Pregnancy and Disability**

### **In General**

Maximum benefits payable for a pregnancy-related condition are subject to the same policy provisions as any disease condition. Under applicable disability provisions, complications directly related to pregnancies, medical conditions indirectly related to pregnancy and concurrent causes of disability require additional consideration.

*Complications Directly Related to Pregnancy.* A normal uneventful pregnancy involves multiple natural physical changes and processes leading from conception to expulsion of the fetus at term and recovery from the pregnancy. Abnormality of one or more of the natural physical changes or processes of pregnancy is a complication directly related to pregnancy. These direct complications are all considered to be a single medical condition of obstetrical management.

- *Extrauterine pregnancy.* Extrauterine or ectopic pregnancy is the development of the ovum outside of the uterine cavity, as in the fallopian tubes or ovary. This condition commonly terminates the pregnancy by rupture of the sac, profuse internal hemorrhage, and death, if not relieved promptly by a surgical procedure.
- *Pregnancy resulting in surgery.* Caesarean section is the term used to describe delivery of a baby by means of an intra-abdominal surgical procedure. Benefits as a medical condition are payable for caesarean sections undergone because of pregnancy complications or without medical indications, i.e., at election of patient or family.

### **Medical Conditions Indirectly Related To Pregnancy**

Certain conditions occurring during delivery or after termination of pregnancy are essentially separate medical conditions, even though indirectly related to pregnancy. In general, these medical conditions represent traumas occurring during delivery, hemorrhage occurring after termination of pregnancy (by death or delivery of fetus), and arising from retained pregnancy remnants. Each of these indirect complications is considered a medical condition entirely separate from obstetrical management.

### **Concurrent Causes of Disability**

Pregnancy is frequently accompanied by such medical conditions as anemia, infections of the genital tract, nephritis, phlebitis, pyelitis, pyelonephritis and varicose veins. These medical conditions are recognized separately from these complications directly and indirectly related to pregnancy.

## Periods of Disability

Maximum benefits as provided by the plan may be paid only once during a period of disability. To create a separate period of disability and thereby establish new benefit maximums, one of the following conditions must occur:

- Latest confinement must be for a disease or injury not related to the condition which required the previous confinement.
- Participant is no longer wholly disabled from the injury or disease requiring the previous confinement.

The determination of whether to continue a period of disability or to establish a new period of disability requires analysis of the following information:

- Complete medical diagnosis of disease(s) and/or injuries involved
- Precise period of time insured employee worked in the period between the alleged disabilities, i.e., date returned to work and date last worked.

If a second period of disability is due to same cause and return to full-time work was for less than two full weeks in employee's usual work schedule, no further investigation is required and benefits are payable as a continuation of the existing claim.

If amount of work performed or number of hours worked each day or other facts make a decision difficult, obtain the following information:

- Job at time of first disability
- Job assigned on return to work. If different, obtain pertinent data
- Nature and frequency of medical treatment between alleged disabilities
- Physical or mental handicaps which affect ability to perform regular job full time
- Extent of normal activities
- If attending physician released employee for work on a trial or permanent basis
- Employer's understanding of reason for participant's return to work
- If employer has medical clinic or plant physician, what do those records indicate?

### Disability Benefits of Doubtful Merit

- The evidence indicates some doubt about the extent or period of disability.
- The injury is a result of an altercation.
- Participant is a parent (not house-confined) with small children, where the condition is diagnosed as anemia, menopausal syndrome, hypotension, etc.
- Diagnosis is based on subjective symptoms, such as nervous exhaustion, rundown condition, migraine headaches, fatigue, etc.
- The diagnosis is hypotension or hypertension and the participant's blood pressure is within normal systolic and diastolic limits.

- The diagnosis is anemia and the participant's blood count is normal.
- Disability begins shortly before a major layoff or strike at the employer's location and diagnosis is based on subjective symptoms or describes a chronic rather than acute condition.

## **Attending Physician Statement**

There are many instances when a physician's statement is in order.

- All nervous and mental disorders, not including psychoses, which are predominantly emotional in nature require a physician's statement. It is not necessary to employ a psychiatrist to conduct these exams. If the participant is currently being treated by a psychiatrist, an internist should be able to evaluate the degree of impairment satisfactorily.
  1. Anxiety neurosis
  2. Depression
  3. Exhaustion, nervousness
  4. Fatigue, nervousness
  5. Gastric neurosis
  6. Hysteria
  7. Neurasthenia
  8. Neurocirculatory
  9. Neuroses
  10. Phobic reaction (mild)
  11. Personality disorder (mild).
  12. Adjustment reaction.
- Angina pectoris
- Sprains of spinal ligaments and muscles, including myofascitis, fibromyositis, fibrositis, myositis, whiplash.
- Anemia or secondary anemia when cause is not identified
- Allergic disorders, e.g., hay fever, allergic rhinitis
- Hypertension, hypotension, primary or secondary
- Menopausal disorders
- Any physical disorder which does not appear to be supported by objective medical findings such as results of x-ray examinations, laboratory studies, electrocardiograms, etc.
- Frequency of treatment appears incompatible with nature of physical or mental disorders
- Attending physician is unable to furnish an opinion as to when patient will recover sufficiently to return to work.

## **Independent Physician Statement**

Frequently, longer than usual periods of disability are due to complications or extraordinary circumstances. Normally, these are mentioned in the medical reports, or can be determined from physician's answers to the examiner's questions. When medical information is incomplete or otherwise unsatisfactory and additional information is unobtainable from attending physician, arrange for an independent medical examiner. Ordering an examination must be timely to produce most efficient claim handling. Under no circumstances should participant be examined while receiving hospital inpatient care, or after such participant has returned to work.

However, disability claimed during a period of layoff, strike or other work stoppage may require special attention because of increased potential liability.

### **Selecting an Independent Physician**

Type. When a specialist is indicated, type of specialist preferable depends on established physical or mental impairment. When diagnostic problem appears to exist or physical or mental impairment is now well-established, a specialist in Internal Medicine is usually the best choice.

Particular Physicians. Name and address of appropriate physician may be obtained from *AMA Physician's Reference Listing*. Additional source of independent medical examiners are:

- County Medical Societies, where established, usually maintain lists of newly-licensed physicians or semi-retired physicians. Physicians with limited practices may be more willing than other physicians to accommodate scheduling and fee requirements.
- Yellow Pages of the telephone directory usually contain separate listings for Medical Clinics and Industrial Medical Groups. Industrial Medical Groups (or Clinics) have proven to be highly effective, particularly on short-term (26 weeks or less) accident or sickness claims. Suitable groups in the TPA's territory should be contacted to establish a working relationship. Industrial Medical Groups are not available in some areas.
- Medical Groups; hospitals, especially the Medical Department of teaching hospitals; and physicians who decline to perform examinations can often provide the name of the physician who will. Where Industrial Medical Groups have not been established, a specialist in Industrial or Occupational Medicine can often be located in a regular Medical Group. Specialists of this type are generally oriented to questions of ability to work and can be excellent independent medical examiners.

Arranging Examination. The steps to be followed in arranging for an examination are these:

- Call to arrange time and place.
- Settle on fees.
- Give physician brief background.
- Send physician all of the relevant papers, etc.
- Inform participant of time, place and purpose of the examination in writing.
- Suspend payments until examination is done; do not pay any benefits if participant is a *no-show* for the examination.

Follow-up. Once the examination has been done several steps of a follow – nature should be taken.

- Review and interpret the results.
- Deny benefits by an ERISA denial if appropriate.
- Treat information as confidential.
- Reimburse examiner for fee of examination.

## **Plant Physician**

After evaluating the participant's condition and the particular requirements of the participant's job, the plant physician of the employer may refuse, on occasion, to allow a participant to return to work, even though the participant is otherwise able to return to work according to the evidence in the file. It is the preferred practice in such cases to request a written statement outlining the plant physician's decision and including the prognosis for expected return to work. The TPA then asks the participant to report to work again in 4 weeks or on plant physician's estimated return to work date, whichever is earlier. The same procedure is followed on each subsequent occasion that plant physician refuses to permit the participant to work. This practice provides support in the claim for continued payment of disability benefits beyond that date other evidence in the file indicates the participant could return to work.. It also prevents any possible later misunderstanding by the employer concerning continued benefits.

## **Spotting Fraudulent Disability Claims**

These are some of the factors to look for:

- Excess demands on the part of the claimant
- Soft tissue injury combined with prolong disability
- Leads from co-workers, neighbors, or competitors
- Known history of malingering
- No present organic basis for complaints
- Subject looking for early retirement
- Disability occurred just before period of layoffs or at slow time for seasonal worker
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- Subject never home to receive phone calls
- Checks sent to a P.O Box
- Dueling doctors: one saying a claimant is 100% disables, the other saying nothing is wrong
- Rehabilitation nurse or company doctor reporting claimant has good muscle-tone and callouses
- When the dollar amount is large enough that a surveillance would be a small percentage of the overall claim payment expense
- Alleged disability for more than six months after an operation.