

How to Meet the Challenge of Proving your Disability Insurance Claim

These are notes from a presentation given March 19th, 1998, at the Canadian Diabetes Association. It was part of the *Creating a Balance* program, co-sponsored by the MS Society. The presenter for this session was Lesley C. Tough, B.A. LLB. (ph: 338-9364 -- she is willing to provide free consultations) Ms. Tough is a board member of the Chronic Fatigue Association, a group that also has great difficulty with insurance claims.

The focus of the presentation was on how to prepare your application, pitfalls, and cautions. Various sources of benefits were reviewed, such as Employment Insurance, private short-term disability insurance, private long term disability insurance, and Canada Pension Plan Disability Benefits.

Things to Consider:

- Make sure you have accurate and complete information from your insurance/government agency re: what they require; often the medical questionnaire provided is not enough to prove disability.
- Need to be very clear with doctors about what s/he needs to say. (MS Society has a "Fatigue Impact Scale" which may be helpful if this is a key symptom for you).
- Include information on all medical conditions, not just MS symptoms.
- For CPP need to prove "total disability" -- must indicate it is severe and prolonged.
- CPP needs you to prove that you can't do ANY work, not just present or last job, as is the case with private or employment insurance claims.
- Need specialist consultation reports; MRI reports; CT scan reports -- you have a right to copies of these reports. **You are also entitled to copies of your medical records.**
- More appropriate to have the specialist fill out the forms, but have them do it while you are there, **don't just leave the form with the doctor.**
- Clinical notes can be useful; functional capacity assessments via an OT/PT; may also want to consider a neuropsychological assessment to indicate how fatigue affects functioning; will be some costs involved in attaining these assessments.
- Journaling is a good idea, but **make sure everything you say is totally accurate** -- if insurance agency gets evidence of you doing something you say you can't do, they will claim you're exaggerating your situation.

If claim is allowed:

- Keep insurance company and CPP informed about what you are doing; volunteer work should not be a problem, but check it out to be sure.
- CPP -- you are not likely to be cut off once you receive full coverage.
- Private Insurance -- your never fully "safe".

If claim is denied:

- Ask for copies of reports.
- **find out about limitation periods!** If you miss the deadlines it is very difficult to sue insurance companies.
- ask them what specific information they need.
- union may provide assistance.
- if CPP feels there is a job you can do, find out what it is. It has to be a job that is suitable for you, appropriate to your background and salary you made previously. (see Campbell vs. Canada Life case)

Surveillance, Independent Medical Examinations and Rehab Programs:

- Surveillance must be reasonable -- no wire tapping, cannot go through mail.
- requests for independent medical examinations must be reasonable ie. can't send you to a psychiatrist for a physical disability unless you bring mental state into your claim.
- Know what is in your policy -- does the insurance agency require you to go to a Rehab. program? If so, find out all about it, talk to your doctor and find out if s/he thinks it is appropriate for you.

There are three levels to a CPP appeal:

1) Internal Review -- write letter of appeal asking for copies of everything in your file and report indicating why you were denied. Say "I may be providing you with more medical information once I see my file."

2) Tribunal -- 3 people -- a lawyer, a medically trained person, and a layperson. -- all political appointees.

- oral hearing, fairly informal.

- you can bring witnesses, such as family, employers, etc.

- fresh doctors reports

- Ms. Tough suggests you send documents to Ottawa if you have time before the appeal tribunal -- although KEEP COPIES OF EVERYTHING - and bring it all to the tribunal.

3) Hearing with the Pension Appeals Board -- 3 judges, quite formal

- must apply for leave to appeal to this level.

- only come to Winnipeg once a year, therefore can be a long delay.

- best to try to resolve issue before it gets to this stage.