

Potholes and Roadblocks: Don't Give Up! **CPP/LTD Workshop**

[script]

Introduction

- *Welcome to this presentation by the Insurance Working Group of the Manitoba Division Social Action Committee. The presenters are committee chair Sandy Popham, committee members Dave Cress and Dorothy Korsunsky, & staff social action coordinator Sharon Segal.*
- *We will present and discuss a variety of Canada Pension Plan (CPP) disability benefit and long-term disability (LTD) insurance scenarios, based both on our own actual experiences and others (some real, others based on compilation of several) in order to cover as many experiences and issues as possible.*

Scenario 1

Debbie was diagnosed with MS when she was 17 years old. She is now 27 and a single mother of two young children. Between health problems and looking after her children she could not complete her education and has not been able to work. Because of her diagnosis she has not been able to purchase private disability insurance.

- What income support options are available for someone in Debbie's situation?
- Why can't she get CPP Disability? Isn't it a social benefit available to all Canadians?

Discussion:

Possible income support options:

- *provincial social assistance*
- *subsidized housing*
- *family benefit for her children*
- *child support/spousal support*
- *assistance from family, friends etc.*
- *possibly some special federal or provincial government programs for people with disabilities; different community-based organizations might know about programs*
- ***NOT*** CPP or EI.

Why not CPP?

- *it's not a social benefit; like any insurance plan it's only available if you've paid into it; even then you have to meet strict eligibility requirements;*
- *CPP is "a contributory, earnings-related social insurance program";*

Scenario 2

Sharon has had MS for over 25 years. Given the variability and uncertainty of the disease, she opted for self-employed contract work which allows her to work from home and set her own hours. She pays CPP contributions every year when she files her income tax return. However, because she has a pre-existing medical condition purchase of long-term disability insurance has been out of the question. Initially relapsing-remitting, her MS has progressed in recent years leaving her with some permanent symptoms. Divorced, with grown children and now in her late forties, she is becoming concerned about how she will manage if she has to reduce the amount she works or becomes unable to work at all.

- What are the income support options for someone who has been self-employed?
- Does a pre-existing diagnosis automatically eliminate the possibility of purchasing private disability insurance?

Discussion:

Income support options for self-employed:

- *as above (Scenario 1) plus CPP;*
- *since she's been paying into CPP Sharon can apply for CPP Disability. But there are strict eligibility requirements*
 - *the disability must be deemed to be "severe" (incapable of pursuing any substantially gainful employment) and "prolonged" (long continued and of indefinite duration). These criteria often exclude people in early stages of MS where symptoms often come and go and are variable and unpredictable; they also generally prevent you from doing any work at all;*
 - *there is a need for change in the definition of disability used by CPP to ensure coverage for people with recurrent, cyclical conditions like MS;*
 - *MS Society and other organizations actively lobbying for changes to the restrictive CPP definition of disability.*

- if you qualify for CPP Disability, you will receive a monthly payment
 - comprised of a flat rate component (\$345.24 in 2000) and an earnings-related component (75% of what retirement pension would be, based on contributions);
 - payment begins from the 4th month after being considered disabled by CPP;
 - if accepted for CPP Disability and have dependent children, will also receive an amount for each dependent child.

Private disability insurance:

- because they want to minimize their payouts, most insurance companies won't provide disability insurance at all to a person with a pre-existing medical condition, or the premiums will be so high as not to be affordable for most people;
- in general, if you have a pre-existing medical condition the only way to get disability insurance is as part of a workplace group plan, which doesn't require individual medical information; however, be aware that even some group plans may not cover you for a pre-existing condition.

Scenario 3

Wendy worked as an airline stewardess for 14 years. Diagnosed with MS six years ago, she had to stop working a year ago and go on short-term disability. After a three-and-a-half month wait, payment was finally approved by her employer's insurance company for one year. During that time she had to provide a medical certificate (at her own expense) every month. Her time on short-term disability is almost finished and she is being told that she has to return to work. The terms of the long-term disability plan at her workplace only allow for payment if she is unable to do any work. Wendy is confused about the details of her employee benefits plan. She is unclear about why she must return to work and how to get onto long-term disability.

- What should you do if you are confused about the details of your employee benefits plan? Where can you get accurate information?
- Can insurance companies request independent medical tests and reports? Does Wendy have any choice about having to pay for medical certificates or doctor's reports?

Discussion:

Getting accurate information about your plan:

- *be aware that plans vary, and are often open to interpretation; in addition, things are sometimes not written down in black and white;*
 - *go to as many sources as possible to get information and clarification about your plan;*
 - *look at the written policy;*
 - *talk to your employer and insurer;*
 - *talk to other people from your workplace who are on LTD;*
 - *talk to the employee assistance counsellor, and a union rep. at your workplace if you have them;*
 - *talk to someone at the MS Society;*
- *be cautious about just taking the word of your employer or insurer as they may have a vested interest in getting you off disability;*
- *keep notes of your discussions and, if possible, take someone else with you to any meetings you have.*

Independent medical tests and exams:

- *yes, the insurance companies can request medical tests and reports and you will be responsible for the cost;*
- *there will be no charge if the reports are from a time when you were treated in hospital (either as an inpatient or outpatient); otherwise physicians and others may or may not charge you; if they do charge, you are responsible for payment. If you're applying for or on CPP Disability and they request medical tests and information, CPP will cover the cost.*

Scenario 4

Dorothy had worked over 18 years for the same employer before she was diagnosed with MS. After the diagnosis her employer encouraged her to switch to working part-time. However, realizing that this would have made her ineligible for benefits under her employer's insurance plan, she resisted the pressure. When she finally found working too difficult she was advised to start using her accumulated sick time. Doing this, she was off work completely for seven months. Continuing to use her sick time to make up the extra hours, she then returned to work on a reduced workweek for several months. When she was again unable to continue working at all she went onto Employment Insurance for three months, until her disability insurance claim was approved.

After six months on long-term disability (LTD) the insurance company threatened to discontinue coverage unless she went for a Functional Capacity Evaluation (FCE). Her husband was discouraged from staying with her during the test which lasted one and a half days and was physically exhausting. Four days later she began to experience severe back pain, and was diagnosed with shingles. Both her neurologist and family physician agreed that the physical stress of the testing had brought on the shingles. The insurance company left her alone for another six months (she was later told that the only reason her benefits were extended past one year was because the FCE test had caused shingles), but then began pressuring her to return to work despite the recommendation of both her family physician and neurologist that she not work. She is still on LTD, but remains under constant pressure to return to work or be cut off. She suspects that she is having so much difficulty because her symptoms are invisible, she looks well and the insurer suspects she is "faking it". Unfortunately she has got this message from some of her co-workers as well.

- Is it a good idea to use up your accumulated sick time before applying for disability insurance?
- What should you do if you can and would like to work only part-time?
- Why do insurers (and others) have such difficulty accepting claims by people with MS?

Discussion:

Use of sick time:

- *although there may be pressure to do so, you don't have to use up your sick time first;*
- *however, be aware that you may get conflicting/ambiguous information and advice about this.*

Switching to part-time work:

- *there are pros and cons of doing this;*
 - *it will help convince the insurer that you are unable to continue working;*
 - *but, depending on the details of your plan, it may also affect your eligibility for disability benefits;*
- *look into the details of your benefits plan carefully, and understand clearly the implications on future disability benefits of switching to part-time work;*
- *get any advice you are given by your employer, insurer or union put in writing.*

Acceptance of MS claims:

- *"but you look so well"!; issues around invisible symptoms;*
 - *need to "look well" for your own self-esteem etc.;*
 - *but downplay this for any meetings with insurer, employer, CPP, etc.;*
- *consider advantages and disadvantages of "going public; will be different issues with employers/insurers and with co-workers.*
- *this is a reality we have to deal with; need to decide if it's worth it to you to keep diagnosis private;*

Scenario 5

Sandy worked as a public health nurse for over 10 years. During that time she was diagnosed with MS. She continued working, but was able to switch to a desk job when she began to find her work too physically demanding. Eventually she decided she needed to reduce her hours and work part-time. Fortunately, her employer's insurance plan allowed for payment of partial disability benefit while working part-time. However, the stumbling block she faced came from her supervisors who did not want anyone in their department working part-time. Recognizing that Manitoba human rights legislation requires that employers have a duty to accommodate persons with disabilities, with the help of a disability rights organization she threatened to file a human rights complaint. The supervisors backed down, and she was able to switch to part-time work and collect partial LTD benefits.

- Why don't all insurance plans allow for partial disability benefits and part-time work?
- What protections does human rights legislation provide?

Discussion:

Partial benefit/part-time work:

- *although most workplace benefits plans do not allow for this, some do;*
- *it is up to the employer what type of plan is in place; they may resist this type of plan because a) it may be more expensive for them; and b) it may be difficult/costly to accommodate part-time employees;*
- *while plans like this are the minority they can and do exist; so it is "doable"; if you're interested/concerned, you may decide that such a plan is worth fighting for.*

Human Rights protection:

- *under the Manitoba Human Rights Act (and federal legislation for federally-regulated industries) employers (and landlords, businesses and services) have a "duty to accommodate" employees with disabilities, unless the employer can show that such accommodation will cause "undue hardship" for the business;*

- *the employer must make every reasonable effort to accommodate or adjust the workplace to enable the person with a disability to do their job;*
- *according to the Manitoba Human Rights Commission, "the goal of reasonable accommodation is to foster equality of opportunity and treatment";*
- *the onus is on the employer to prove that reasonable efforts at accommodation have been made.*

Scenario 6

Robert worked at a variety of jobs, but was eventually forced to stop working altogether when his MS symptoms progressed. None of his workplaces had offered any kind of employee benefits package, so his only option was to apply for Canada Pension Plan (CPP) Disability. Two months after he applied, Robert received a letter rejecting his application. He immediately filed an appeal. Four months later he received a request for additional information, as did his neurologist. He and his doctor both forwarded the additional information right away. Several months later his claim was again rejected.

The letter informing Robert of the rejection indicated that based on his doctor's information CPP considered him able to work. Upon investigation Robert discovered that the doctor had simply stated "he cannot return to work". This was insufficient to meet the eligibility criteria. The doctor should have written "he cannot return to any work for the foreseeable future". Robert again appealed the rejection and this time instructed his doctor how to fill in the form, and mailed the forms himself. A year later his claim was finally accepted.

- Why do CPP applications take so long and why are so many rejected?
- At what stage should you apply for CPP disability?
- What does your doctor have to write in order to support and not jeopardize your claim?

Discussion:

Length of time:

- *frequently there is a backlog in processing initial CPP applications as well as lengthy delays in processing appeals; CPP representatives say that they are working on clearing the backlog and speeding up the process;*
- *according to CPP officials over 60% of first claims are routinely rejected; one of the reasons for this is that insurance companies frequently require people receiving LTD benefits to apply for CPP even though a large number do not meet the CPP eligibility criteria;*
- *the MS Society, nationally and locally, is lobbying to speed up the process.*

When to apply:

- *you cannot actually file an application if you are still working; so you'll have to rely on EI or an insurance plan until a decision is made on your application;*
- *payment of disability benefit begins four months from the date you stopped working because of your disability;*
 - *it is likely that the application process (especially if there are appeals) will take longer than this, but if you are eventually accepted you will receive retroactive payments to four months from when you stopped working;*
 - *if you've been receiving LTD during this time you will have to pay money back to the insurance company when you receive the retroactive payment;*
- *in addition to meeting the definition of disability as specified in CPP legislation (see Scenario #2 above), you also have to be between 18 and 65 years of age, and must have been contributing to CPP for a minimum qualifying period;*
 - *effective January 1998 eligibility was restricted to people who have contributed in four of the last six years (previously it was five of the last ten or two of the last three);*
 - *this has resulted in the exclusion of many people, including those who have interrupted work histories because of cyclical and progressive illnesses like MS;*
 - *because of this, it is best not to wait too long to apply for CPP;*

Doctor's letter:

- *CPP disability claims are dealt with on a case by case basis that takes into account each claimant's individual situation; as a result much is not written in black and white;*
- *ask the doctor most knowledgeable about you and your disability to complete the medical report for your claim; the medical report plays a big part in "proving" your eligibility;*

- *the doctor should be able to present a clear picture about how MS affects your daily life and everyday activity, as well as your ability to work;*
- *If the doctor supports your claim, he/she should make clear that you are unable to do any work, as this is a key aspect of meeting CPP eligibility criteria;*
- *it's a good idea to meet with the doctor specifically to discuss completing the report and to be present while the form is being completed;*
- *you should keep a copy of all documentation filed as part of your claim.*
- *make sure everything you and your doctor say is totally accurate;*
 - *if CPP (or an insurance co.) gets evidence of you doing something you say you can't do, they will claim you are exaggerating your situation and may discontinue your benefits;*
 - *at the same time, given the variability of MS, it is perfectly reasonable and advisable to describe a "worst day" in your application.*

Scenario 7

Dave worked for many years at a manufacturing plant, where there was a strong union and good employee benefits plan. The plan allowed for 39 weeks on short-term disability, and indefinite long-term disability until age 65, without any waiting period. When Dave's MS symptoms, especially fatigue, forced him to stop working, he went onto short-term disability. However, he was cut off after three months and sent to the insurance company doctor. After he saw this doctor, for about three days he noticed that he was being followed. He was reinstated two weeks later and then began the process of applying for long-term disability benefits. While his application was being considered the insurance company again put him under surveillance. After his doctors again verified that he was unable to work, he was accepted for LTD.

At the insistence of the insurance company, Dave also had to apply for CPP Disability. He was turned down because his primary symptom was fatigue, something that made it difficult for him to meet CPP eligibility criteria. He requested that his application be reconsidered and was again turned down. At this point he decided to retain a lawyer and requested an appeal before the CPP Tribunal. He appeared before the Tribunal and was again rejected. He again appealed, this time to the Pension Appeals Board. Finally, after more than three years and \$10,000 in costs, he won his appeal and began to receive CPP disability. His LTD plan tops this up to what he is eligible for under his workplace benefits plan.

- Is it legal for insurance companies to put people under surveillance? Are there limits to what they can do?
- What are the stages of the CPP appeal process?
- Is it necessary to have a lawyer to appear before the CPP Tribunal and the Pension Appeal Board?
- Why do insurers and CPP have such trouble accepting fatigue and other invisible MS symptoms as valid reasons for not being able to work?

Discussion:

Insurance company surveillance:

- *insurance companies can engage in "reasonable" surveillance, but they cannot tap your phone, go through your mail, or harass you.*

Three stages of CPP appeal process:

- 1. Reconsideration - internal review: On receiving the rejection notification you have 90 days to request a reconsideration. You must do this in writing. This letter is just to notify CPP of your intention to appeal the decision.*
- 2. Appeal to the Commissioner of Review Tribunals – independent tribunal hearing: If rejected at the first “reconsideration” stage, again you have 90 days to apply in writing for a hearing before the Review Tribunal; additional information can be forwarded later. The independent tribunal consists of three members: a lawyer, a health professional and a layperson (all political appointees). This will be a fairly informal, in-person hearing where you can bring witnesses, fresh doctor’s reports etc.*
- 3. Pension Appeals Board (PAB) – independent body consisting of three judges. Quite formal. Again you have 90 days to request leave to appeal to the PAB in writing. The Board will decide if it will hear your appeal or not. This decision can take up to nine months to make. If the board won’t hear your appeal, the Review Tribunal decision is considered final. If the board agrees to hear your appeal it will schedule a hearing. The Board only comes to Winnipeg once a year, so there can be a long delay.*

Need for a lawyer:

- it is usually recommended that you have a lawyer (or advocate) for the Appeals Board stage;*
- at all stages (especially 2 and 3) it is helpful to have some kind of advocate who knows the process;*
- and it is always helpful to take someone else with you to meetings, to take notes and support you.*

Fatigue and invisible symptoms:

- subjective vs. objective symptoms; not easily “documentable”; ignorance about symptoms and variability of MS; etc.;*
- there are precedents where CPP has eventually accepted “fatigue” as a legitimate disabling condition; this is one; e.g. of another with Appeals Board ruling available in handouts.*

Conclusion

- *We realize we may not have touched on every situation, but we can draw some general conclusions.*
- *Bottom line is: Don't Give Up! You have rights – even if you have to fight for them.*
- *Ask questions. Investigate. Stand up for your rights.*
- *Recognize that there are many shortcomings in the way things are now.*
- *Need to speak up for change that will ensure people with MS (and other disabilities) a guaranteed livelihood so that they can participate fully in life.*
- *Invite you to join Social Action Committee.*

For more information contact Sharon Segal, Social Action Coordinator at 988-0904