
Preface

A Disability Tsunami

In 2002, 1.3 million Social Security applications for disability benefits were filed, with an approval rate of 47 percent. Just 10 years later, the number of applicants had risen to 2.9 million, up *123 percent*, while the approval rate had diminished to 36 percent. Based on the 2010 average payment to those who qualified for benefits, this data represents more than \$19.5 million of monthly benefits that will not be paid. When annualized, \$23 trillion per year represents an overwhelming amount of disappointment—1.7 million Americans in a single year who will not collect benefits they thought they were entitled to.

Many initial disability claims are denied for simple mistakes and omissions that have absolutely nothing to do with the claimant's disability status. Think about what it might be like for a client to wait over a year to find out that his or her disability application was filed as "incomplete" for failing to answer just one question. After correcting this omission, the filer might have to wait another year or longer. *There must be a better way.* Those facing claim denials are filing an unprecedented number of appeals, further burdening the damaged system. As it is, appellants spend an average of nearly 17 months waiting for a judge to hear their appeal.

In addition, the Social Security Administration (SSA) system has been operating on overload for many years. Can overload lead to breakdown? Perhaps. Because elected officials prefer to align themselves with solvable problems, addressing Social Security is often swept under the rug. Currently, some 750,000 Americans are stuck in the Social Security disability backlog. The inability to

pay bills causes Americans enormous mental anguish, which in turn stresses relationships, households, and mental health, potentially causing far-reaching repercussions such as burdening the nation's divorce courts and medical institutions.

According to data obtained through the Freedom of Information Act, more than 25 percent of veterans of the Iraq and Afghanistan wars seeking care at the Department of Veterans Affairs (VA) have posttraumatic stress disorder (PTSD). This statistic does not include vets who suffer mental illness but have not sought treatment due to the stigma associated with PTSD. Some PTSD claimants are diagnosed as having a preexisting "personality disorder" and therefore never receive benefits. As *USA Today* reported: "22,500 Veterans' PTSD Disability Claims Denied as Personality Disorder." How is it possible that a personality disorder, assuming it existed prior to military service, can be diagnosed when psychological evaluations are not done prior to military induction? In the meantime, for denied or undiagnosed suffering veterans and their families, life is hard—they may be forced to go on welfare and food stamps, their home may be foreclosed, drugs and alcohol frequently disrupt the home, and homelessness or even suicide may occur.

One often-insurmountable obstacle is the VA disability benefit application process. The VA has a long history of heavy bureaucracy. The VA disability claim form itself is more than 20 pages long, presenting a daunting task as the average citizen tries to complete it. The word *intimidation* comes to mind as a reason many veterans will never file a claim for benefits they are entitled to and may well be eligible for. In early 2018, outgoing VA secretary David Shulkin claimed to have improved the efficiency of disability claims and appeals processing, including a system that allows applicants to check their status online. Regrettably, long delays in disability claims processing still continue today, and promises for improvements in claims handling remain just that, with no relief in sight.

The U.S. Census Bureau recently projected a 75 percent increase in the age 65-plus population by the year 2030. This increase would bring the number of Americans 65 years of age and older to 69 million, or more than 20 percent of the entire

population of the United States. An aging population carries with it an automatic growth in the number of disabled people.

In 2011, a massive earthquake in Japan created a 33-foot tsunami wave that caused over 1,000 deaths and billions of dollars in property damage. Our nightly news was filled with international panic, and vivid reporting continued for almost two years. The word *tsunami* automatically makes most of us think “disaster,” and that is exactly what we face with increasing disability claims. When caused by Mother Nature, a tsunami is not preventable and comes with little warning. But we can see the “disability tsunami” on the horizon. With the Social Security disability trust fund scheduled to run dry in the not too distant future, this crisis is occurring at the worst imaginable time. Americans who experience disabilities need help collecting the benefits they are entitled to.

Attorneys, as this book argues, are critical allies in helping disabled claimants collect their rightful disability benefits. While we do not know exactly how many disabled claimants have filed claims directly with private insurers, the SSA, and the VA, we do know that if an attorney disability claim advisor had assisted in the process, many of these claimants would not have ended up having their claims denied.



A Lawyer’s Guide to Filing Long-Term Disability Claims and Appeals has been created for the legal advisors of individuals who are filing disability claims or appeals with their disability insurer, the SSA, or the VA. Different approaches to handling each disability claim are necessary because contractual provisions can vary dramatically, especially the definition of total or partial disability.

Your client may be filing a long-term disability (LTD) claim for the first time. Many others will be trying to understand why their claim was denied and how to appeal this denial. The primary objective in filing a disability claim is always to do it right the first time. You will encounter this reminder multiple times throughout this publication—especially in Chapter 4.

Filing a Social Security disability claim entails another claims-handling process. Many claimants file disability claims simultaneously with commercial disability insurers and the SSA. The

definition of disability with private insurers is almost always more liberal than Social Security's stringent definition, which amounts to being totally disabled from doing all jobs. As such, many claimants will be eligible to collect from their disability insurers but at the same time are not eligible for Social Security disability benefits.

Filing a service-connected disability claim with the VA is a unique process. Benefits are based on the "degree of disability," starting at 0 percent, unlike traditional disability insurance. Moreover, qualifying for a VA disability may also provide access to free medical care, as well as a multitude of other beneficial services for the veteran and his or her family.

This publication is likewise a valuable resource for lawyers who are counseling clients considering the purchase of group or individual disability coverage, or both, as it discusses all the many definitions of disability. I explain the types of coverage and the related terminology, as well as how to achieve full protection. Furthermore, I have included a brief history of disability claims (Chapter 2), along with the perspectives of the many players in the claims process.

My primary objective is to use my decades of on-the-job experience to help attorneys understand the LTD claims process and guide their clients through it successfully.

This unique resource will help attorneys learn about four types of long-term disability insurance: individual, group, Social Security, and Veterans Affairs. They will obtain detailed information about the claims process, including common reasons claims are denied, frequent filing mistakes, and how to guide clients through effective communication with claims examiners and physicians.

Attorneys, in gaining this knowledge, will be able to successfully negotiate claims even when a client suffers depression in addition to a primary physical disability, a common occurrence. With the help of this book, lawyers can improve outcomes for harder-to-prove claims, such as claims from those clients suffering from chronic pain, fibromyalgia, and chronic fatigue. The facts are clear: claimants who have these types of "self-reported" disabilities and work with an experienced attorney have a measurably greater chance of having their claim approved than those without an attorney. The specially annotated claim form in Chapter 4 will

serve as a particularly valuable tool. Chapter 11, which includes invaluable content on current law and regulations, will be updated as appropriate in future editions.

Finally, this publication will help attorneys give sound advice to their disabled clients about the possibility of returning to work, future insurance options, and employee rights. Should a disabled claimant recover to some extent and have the opportunity to work, they are eligible for returning to work under a transition program, having their work station adapted to their needs, and other rights granted to America's disabled population.