

SanDouglas Health Care & Associates

Free E-Book to help you reclaim your Money!

Every case is reviewed on its own merits. While there are similarities, no two cases are the same. In most cases there are standard approaches such as trying to obtain objective medical documentation and having at least one specialist and one family physician for each case.

There are several different general definitions for disability and the criteria are different such as:

1. WCB cases- need to be disabled from doing one's own job. The worker needs to be rehabilitated to the extent that he/she can be returned to work at the pre-injury status prior to leaving work.
2. Private insurance companies have two general definitions of disability if work related - short term or long term- and usually is considered wage loss replacement.
3. Canada Pension Plan or Quebec Pension Plan relate specifically to long term disability and require the worker to be medically disabled from any kind of a job such that one is prevented from performing "substantially gainful employment."

Each of the three different definitions do relate to each other. If you are receiving permanent partial disability and the injury is deemed to be greater than 25% (WCB), it is possible that the person is a candidate for long term disability or CPP or both. If a person is on WCB maintenance, it is likely a person could receive disability benefits from CPP and a private insurance carrier. For persons receiving WCB benefits, regardless of what your personnel officer says, it is important to advise the private insurance carrier in writing that you have applied for or are receiving benefits at the beginning of the claim. There is a clause in the private insurance policy that if it has not been advised of the injury claim within the first year, the private insurance carrier does not have pay benefits two or three years later when WCB benefits are reduced.

To collect WCB and private insurance, the person needs to have the WCB benefits reduced by 50% at least before he/she can also receive private insurance disability benefits at the same time. To reiterate, it is possible to receive CPP, WCB, and private insurance disability benefits at the same time.

Anyone can obtain all documents on a CPP disability file by just writing to Human Resources Development, Income Security Programs, c/o the privacy coordinator, 355 River Road, 20th floor, Tower B, Ottawa, Ontario K1A 0L1. Include your social insurance number.

For anyone receiving private insurance disability benefits, it is important to know whether the benefits are taxable or non-taxable. It could come as a shock to be told by Revenue Canada that you owe money on your disability benefits. If a person has received in excess of \$8000.00 in one year, then it is likely the person will owe Revenue Canada.

It is wise to take at least \$50.00 per disability cheque and place it in a savings account specifically designated for Revenue Canada.

Should a person receive a lump sum of money from CPP as payment for benefits back to the date of application, it is suggested that the person take the money and either put it in a savings account or small investment and wait until the insurance carrier or Revenue Canada do its' calculations so as to avoid a situation of overpayment. Owing Revenue Canada or an insurance carrier \$3000.00 to \$10,000.00 can be very difficult.

Some insurance companies have an agreement with CPP to deduct what is owing to the insurance prior to the person receiving the first disability benefit cheque from CPP. This could seem unfair but there is an insurance law that says one cannot receive income from two insurance companies at the same time and thus profit from being disabled. Consequently, whichever company is the first payer is required to do calculation to maintain the status quo. For example, if one is receiving \$2000.00 per month from a private insurance company and \$600.00 from CPP, the \$600.00 would be deducted from the \$2000.00 and the insurance company would only be required to pay the \$1400.00. In the same way, if WCB or another source of income such as superannuation or government medical retirement fund were being received, the amounts would be deducted from the original \$2000.00. In some instances, the insurance carrier may end up paying only \$200.00 per month in disability benefits.

When an insurance company requests the person to see an independent physician, usually the report is considered private property and thus is very difficult to obtain a copy of the report. The general physician usually can request the report on the basis that the information obtained by the independent physician would be medically beneficial to the claimant.

For CPP claims, contributions to the CPP plan are necessary prior to being able to collect any CPP disability benefits. Prior to January 1998, a person needed to work at least two of the last three years or five of the last ten. Effective January 1998, the new legislation has been changed to four of the last six years.

The CPP applicant is usually given the benefit to prove he/she is disabled and if four of the last six, or two of the last three, or five of the last ten, does not show there were enough contributions, then Bill C-57 can be invoked.

To have medical specialists working with you on your case add credence to a disability case. To have a specialist state on a form that the person is "unable to do any kind of work," carries weight. However having too many specialists can cause doubt as to whether there is a disability.

For private insurance, after the two year initial claim, and for CPP, the criteria for long term disability requires a need to prove that a person cannot do "any kind of a job." Being able to do any kind of a job is very different from being able to work at a person's own job. If a person can work 12 to 15 hours per week, a grey area, then usually that person is

considered to be able to work part time. If that person can work part-time, than the person is considered not to be disabled. If a person is able to attend rehabilitation for more than three hours a day, it is considered equivalent to part time work and thus the person would be considered not to be disabled. Usually, if the person has obtained CPP disability benefits, the private insurance carrier will provide disability benefits beyond the two year point.

Persons with chronic diseases should keep a separate 3 inch binder devoted to correspondence and an updated list of doctors' appointments.

In order to qualify for disability benefits, one needs to show objective medical evidence (tests, lab reports, x-rays) and be able to demonstrate that one has been seeing both the family physician and specialist(s) on a regular basis (every three months). It is believed that if one is not seeing a doctor regularly, than the person is not severely disabled.

When speaking with WCB, CPP, or private insurance carrier, it is important not to say one needs the money. Disability is based on medical reasons and not because one does not have a job. It does not matter on the availability of a job.

For persons 60 years and older, it is important to consider whether one really needs to take early retirement or CPP. If one can avoid taking early CPP pension, it is to your benefit. There is a six month clause in the legislation which says that if one is in receipt of CPP regular pension and becomes disabled within six months of the date one receives regular CPP pension, one can receive CPP disability benefits (provided he/she qualifies) rather than CPP regular pension. However, if one becomes disabled after the six months, than one cannot apply for CPP disability benefits. An example would be someone who is healthy, decides to retire at age 60 and receive regular CPP pension. Seven months or up to four years later, the person has a severe heart attack or develops some other chronic condition after the date of first receipt of regular CPP pension, up to age 65, the person is excluded from receiving CPP disability benefits. The possible loophole is if the person was advised of this six month timeframe at the time he/she applied for regular CPP pension. If one applies in person for CPP regular benefits, an Income Security employee is required to advise the applicant of the six month option. If that person was not advised of such legislative clause regarding the six month timeframe, then the person can appeal the denial of CPP disability benefits. Otherwise, the chances are almost non-existent for receiving CPP disability benefits when one is receiving CPP regular pension.

Unless the private insurance policy is old, most disability benefits are indexed to cost of living. CPP disability benefits are indexed. The indexation can mean anywhere from \$8.00 to \$30.00 increase per month each year.

When applying for CPP disability benefits the first time, be very careful when answering the one particular page with the blocks asking you to describe how your physical abilities have been affected by your condition. It would be wise to ask for help to complete this one page.

According to a CPP employee last week, adjudication of claims is now taking anywhere from six months to one year. The date of application is crucial to one's claim and anywhere up to fifteen months prior to date of application is the legislated timeframe to be eligible to receive CPP disability benefits.

If someone applied in 1995 and a decision has not been made on the file, it is possible to receive payment for disability benefits back to 1995. At date of application (DOA), one cannot be working or not working greater than 10 hours a week due to a medical disability.

If one is successful in applying for disability benefits, or appealing disability benefits, and one hires a consultant, the costs for the consultant are tax deductible in the year you receive the disability benefits. Revenue Canada has a special form T2201 that is required for all disability claims filed in any taxation year.

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