

HOW TO DEAL WITH DISABILITY BENEFIT DENIALS

By Scott B. Elkind, Esq., Elkind & Shea - The Disability Benefits Law Firm

Most disability claims are denied initially. The common reaction by most claimants is a mixture of anger and frustration. Your disability seems perfectly obvious to you. You live with it everyday. How can this situation not be equally as obvious to the Social Security Administration or a disability insurer?

I have a standard response to this situation. Do not take it personally. I understand it affects your life directly, but the initial decision is typically made by lower level personnel who must operate under very strict guidelines. My opinion remains that initial denials are rendered in order to dissuade many otherwise eligible claimants from pursuing their disability claims. Many of these claimants will simply give up on their claim whether they return to work or not. This results in a huge savings to the disability insurer, both governmental and private.

Disability denials are far more frequent in several circumstances. The younger you are, the greater chance there is that you will be denied benefits. Again, I have a standard explanation for this conduct. The decision was not based on what was written in black and white, but what is written on green. In other words, the younger you are, the more money it will cost over the course of years to pay for your benefits. Therefore, the harder it becomes for you to wind your disability claim. This phenomenon is directly reflected in the Social Security Administration guidelines which do not allow more favorable treatment of disability claims until the claimant is over the age of 50 years.

Disability denials are more common where conditions involve subjective complaints. For example, any condition for which pain is the main symptom will be looked up on with suspicion. Pain is subjective by definition. WE all understand the concept of pain and are usually quite capable of explaining how the pain affects us. Unfortunately there is no objective test which measures how much pain a person feels. The lack of precise measurement of pain is often used as a basis for a claim denial. Similarly, conditions causing fatigue (i.e. fibromyalgia, multiple sclerosis, hepatitis C, HIV, etc.) or mental affects (i.e. head trauma, depression, anxiety, etc.) are similarly scrutinized since these symptoms are also incapable of objective verification. Unusual medical conditions are almost guaranteed to result in a denial of benefits as the review personnel receive only limited medical training.

The truth is that an initial claim denial is not the end of your case, but only the beginning. The first thing you should do, if you have not done so already, is contact an experienced disability attorney. The Social Security Administration's own statistics show that claimants represented by counsel have a much greater chance of being successful in their benefits appeal. The Social Security law is very complex. It involves a complicated statutory scheme combined with an extensive series of internal rulings and voluminous case law. Most private insurance claims arise under group plans governed by ERISA (Employee Retirement Income Security Act of 1974). The statutory law under this Act is more unfavorable to claimants. As you will find out, very few attorneys practice in this complicated area of Social Security and very few undertake private disability claims on a regular basis.

Once you have retained knowledgeable counsel, your case can be better presented by gathering the necessary medical evidence required to educate the insurer as to the exact nature and extent of your disability. This evidence will include how your condition limits your ability to engage in work activity. Simply put, the keys to successful prosecution of a disability case are knowledge and preparation. To this end, no one can prepare your case better than a knowledgeable disability attorney.

Scott B. Elkind is a principal at Elkind & Shea, The Disability Benefits Law Firm located in Silver Spring, MD. He has handled thousands of disability cases successfully as part of his focused practice in this area of law. If you wish to ask any questions concerning Social Security or Long Term Disability claims, please call Elkind & Shea at 866-633-3583 (866-NEED-LTD).

To Co-Mingle or Not to Co-Mingle – that is the Question: Whether ‘tis Better to Open an Account at ABC Bank and Forever Have Peace of Mind is the Option

By Mary Baker

We are finding that most creditors who obtain a judgment after a lawsuit has been filed prefer to seize bank accounts because it is the least costly method of enforcement available to them. As you know, if your only source of income is from exempt sources such as social security, pension, disability, etc., a creditor is not entitled to take those funds. However, in reality, they seize bank accounts and ask questions later. You will definitely get your money back. However, by the time the bank charges you for returned checks and legal fees for garnishment of the account, there will not be anything left of your pension or social security check.

As a result, for those people who do not chose to avail themselves of the ABC Bank services, we prepare a letter to the creditors when they file suit. In that letter we reiterate that your source of income is exempt from garnishment. We follow that up with approximately six months worth of bank statements and a copy of the benefits' letter(s). This puts your creditor on notice that to freeze this account would be considered a violation of federal law.

However, we are noticing that when our clients provide their bank statements, there are other funds deposited in the accounts into which their exempt sources are also deposited. This is considered co-mingling and the creditors could legitimately seize the account and take the funds that are **not** exempt. Again, this would cause all of the checks you wrote for your bills to be returned NSF and bank fees would be incurred, among others.

Our advice, if you do not choose to bank with ABC Bank, is to be very careful to ensure that only those funds that are exempt are deposited into your accounts. Do not transfer funds from another account into your checking to cover monthly bills. The money from the account you are transferring (i.e. savings) might not be considered exempt. If your family members give you money to help you pay your bills or as a birthday or holiday present, ask them to give it to you in cash. Do not put the cash in your account as that will show up as a non-exempt deposit. Merely, live off the cash gift or buy money orders with them with which to pay your bills. The rule is: **NEVER CO-MINGLE MONIES WITH YOUR EXEMPT FUNDS**. If you have any questions regarding this, please feel free to call us at 800 992 3275 x 1007.

Has Your Car Been Repossessed? You Have Important Legal Rights

To DCSD clients and their friends and families:

Roddy Klein & Ryan is interested in talking to consumer who have had a car repossessed. If your car has been repossessed by a creditor in the past year, we would like to speak with you to discuss your legal rights and review the repossession notice your creditor sent you. Our firm has collected substantial damages for borrowers whos cars were repossessed without proper notice. Please contact us today:

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