

## The Interplay of Long-Term Disability and Social Security Disability Insurances

By Shelley W. Elovitz, Esq.

Many employers provide health insurance, life insurance, and Long-Term Disability (LTD) insurance to their employees. When LTD insurance is provided through an employer, it supplements Social Security Disability Insurance (SSDI). LTD benefits are typically paid as a percentage of a person's pre-disability earnings. However, LTD policies are usually reduced by the Social Security Disability Benefits. Most of these plans contain terms that allow the disability insurance company or plan administrator to recover benefits that have been "overpaid."

If the disabled person is first paid LTD benefits and then later wins Social Security benefits, Employee Retirement Income Security Act (ERISA) policies allow the disability insurance company or self funded ERISA plan to recover the "overpayment." An overpayment may result when the full amount of LTD benefits is given upfront but a later award of social security disability means that a lower amount of LTD should have been paid. Some policies give the employee the option of taking the reduced payment (when calculating the theoretical social security monthly award) or taking the full monthly disability amount which could result in a larger "overpayment".

Offsets are typically calculated as follows: the amount of the LTD benefit is a percentage of the disabled persons' pre-disability wage (this percentage varies from policy to policy but it is often approximately 60%). The LTD benefit is then further reduced by Social Security benefits and any other income, such as workers' compensation.

For example, if the disabled person earned \$24,000 per year before becoming disabled, his or her pre-disability income was \$2,000 a month. If his or her LTD pays 60%, the gross monthly LTD benefit would be \$1,200. If the disabled employee won his or her Social Security benefits and the primary insured amount (what would be received on a monthly basis) is \$900 per month, the net LTD benefits would be reduced to \$300 per month.

Consequently if the disabled employee is paid \$12,000 per month for 24 months and then *later* wins the Social Security benefits of \$900 per month, the disability insurance carrier will seek to recover the \$21,600 (24 x \$900) that the person was overpaid.

It is Rothman Gordon's opinion that most people fortunate enough to have employer sponsored LTD benefits should opt for the lesser

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monthly amount so as to not be in the unenviable position of paying back the larger overpayment. (Please also see this writer's previous article entitled *How Long is the Long in Your Long-Term Disability Benefits*).

***Is a Favorable Finding of Disability by the Social Security Administration Binding on the LTD Carrier who has Required the Disabled Worker to File for SSD?***

There are instances where after a favorable Social Security Disability decision, the LTD carrier will decide to stop benefit payments, essentially thumbing its nose at the favorable determination. While the lay person would logically think that if the LTD carrier or ERISA plan is going to reap the benefit of Social Security's favorable decision by then claiming an offset, then it should also be bound by that decision to continue the person's LTD benefits, albeit at a lesser rate. Unfortunately, the case law in the various Federal Circuit Courts differ and the general rule is that the LTD carrier or ERISA plan administrator is not bound by a Social Security Administrations' favorable disability determination when reviewing a claim for benefits under an ERISA LTD plan.

While an ERISA decision maker is not automatically bound by the favorable findings of the Social Security Administration that a person is disabled, the ERISA decision maker is not free to ignore the decision of the Social Security Administration. The fact that a person has been found disabled by the Social Security Administration is a factor that courts will consider when reviewing the denial of LTD benefits.

When a court is determining just how much weight should be given to a Social Security decision, the court generally looks at the decision and the context of the record as a whole. A court should apply increasing amounts of skepticism to the LTD carriers decision making, taking into account such factors as: whether the plan required the disabled employee to apply for Social Security Disability Benefits; and whether the LTD carrier benefited financially from the favorable decision from the Social Security Administration.

In this writer's opinion, both the purchasing employer and the employee should scrutinize the terms and conditions of any LTD policy and determine if it is worth the premium that the employer is paying or that the employee is sharing with the employer.

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