How Long Is The Long In Your Long-Term Disability Insurance?
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If your medical coverage is part of a group employee benefit plan, any claims made against the plan fall under the Employee Retirement Income Security Act of 1974 (ERISA). Participants in employee benefit plans have no bargaining power with regards to the coverage offered and must assume that their benefits coordinator has negotiated with the insurer for reasonable coverage at a reasonable premium. But what is reasonable coverage? The following case illuminates an all too common failing of most long-term disability policies. In February, 2002, a case was decided by the US District Ct. for the District of Columbia (Jane Fitts, v. Federal National Mortgage, Assn., et al) for the plaintiff.

In 1982, Ms. Fitts was hired as an attorney for Fannie Mae. Premiums were paid for the long-term disability policy as offered by the company through Unum Life Insurance Company of America. In 1995 she was diagnosed with bipolar disorder, an illness characterized by cycles of depressive and manic episodes and was unable to continue working.

Under the Unum policy, any employee who developed a disability was eligible for a certain package of benefits until age 65 with the exception of mental illness, which limited benefits to 24 months. Fitts claimed her disability was improperly classified as mental illness, which therefore subjected her to the two-year benefit limit. Bipolar disorder (also known as manic depressive illness) is a brain disorder that can cause dramatic mood swings, bouts of depression and hyperactivity, unusual shifts in energy levels and an inability to function. This particular policy defined mental illness as “a mental, nervous or emotional disease or disorder of any type”. The question the court needed to resolve was: whether bipolar disorder was a mental illness?

ERISA requires that terms in benefits plans be written in a manner to be understood by a participant of average intelligence and experience. In writing the Act, Congress reasoned that insurance companies have greater expertise and experience — this is their business — and beneficiaries have no opportunity to negotiate the terms of the plan so insurers must spell out any limitations on coverage in a way clearly understood by a lay person.

In the Fitts case, the court found that the definition of mental illness contained in the defendants’ disability plan was ambiguous. (A contract provision is ambiguous if it is susceptible to two or more reasonable interpretations.) The definition of mental illness in this policy also failed to specify whether a disability is considered a mental illness based on its...
causes, symptoms, or methods of treatment which, historically, courts have addressed to determine whether ailments such as bipolar disorder fall within the definition of mental illness.

Advocates of the **symptom-based approach**, usually conclude that laypeople are more likely to recognize the symptoms of an illness than to understand its causes. Courts finding under the **cause-based approach**, generally find ambiguous language in the policy or they believe diseases such as bipolar disorder are physical illnesses. In support of this opinion, they contend that lay people would commonly consider abnormal behavior caused by a head injury, brain cancer, Alzheimer’s disease or delirium resulting from a high fever as a physical illness. Still other courts consider the **method of treatment** in determining whether an illness is mental or physical. Thus illnesses treated by psychiatrists employing psychotherapy and psychotropic medication have, for the most part, been considered to be mental illnesses.

The court in this case said that “while lay people may not know the root causes of a particular disease, undoubtedly they recognize that diseases have causes in the same way that they recognize that diseases have symptoms.”

After hearing “expert witness” testimony from physicians and psychologists representing both Fitts and Unum Insurance, the court upheld Fitt’s position that her disorder does not fall within the plan’s definition of mental illness and she is entitled to judgment on her ERISA claim. They found that doctors for both sides were in general agreement on the possible causes and manifestations of the illness and each side acknowledged that bipolar disorder is characterized by a combination of physical, psychological and social factors. The court, therefore, looked beyond a strict “cause” or “symptom” rationale only, ruling that classifying certain illnesses such as bipolar disorder as physical that a layperson would consider mental, or vice-versa, suggests that neither definition is more reasonable than the other.

So where does this leave you with regards long-term disability protection? As an employer or an employee, while there may not be any bargaining power in a group policy, it is important that you ask questions of the Administrator, Human Resources person or whoever is charged with purchasing and negotiating your benefits. **WHAT ARE THE EXCLUSIONS/LIMITATIONS IN THE POLICY ON WHICH YOU ARE RELYING?** At Rothman Gordon, attorneys familiar with disabilities (both physical and mental) can review proposed insurance policies for you and provide guidance and the negotiating skills to protect the livelihood of you and your employees.

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