DO I HAVE A DISABILITY CLAIM?

A guide to determining if you have a long-term disability claim or other financial or social assistance claims

MULQUEEN
DISABILITY LAW

To assist you.

This guide was prepared with you in mind. We know you might not be familiar with disability insurance just like most of our clients. We prepared this guide to address common questions regarding our clients' eligibility for long-term disability benefits and other public and private income replacement or social assistance benefits and in determining whether our help might be necessary. There is also a handy glossary of terms at the end of this guide, which you might find helpful to refer to as you read through it.

Mulqueen Disability Law understands the unique issues clients face with respect to disputing the denial or termination of their LTD claims. **Courtney Mulqueen** has over 20 years of experience litigating long term disability benefit disputes, (including those for Teachers, other professionals and individual policyholders). Mulqueen Disability Law has the experience, insight, dedication and compassion to effectively represent clients in their LTD appeals and court actions.

If you could benefit from our assistance with your LTD denial/termination, please feel free to reach out to us directly.

Mulqueen Disability Law is dedicated *exclusively* to the practice of disability insurance litigation. We would be happy to provide you with a free consultation.

Disclaimer

This booklet is meant to be a guide only and not to replace independent legal advice or the services provided by an experienced disability insurance lawyer.

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Introduction

Our clients often have difficulty expressing what their legal issues are and how they need our assistance. They are aware that they have serious medical problems, as well as financial problems, as a result of their inability to work, but they may not know what questions to ask us or what information is relevant to getting the legal assistance they require. To complicate matters, often their cognitive functioning may be impaired by stress, pain or mental illness and they may find it difficult to recollect important facts, to focus or concentrate in our meeting and to follow through with our recommendations.

While identifying our client's legal issues can be extremely challenging, given their financial and medical vulnerability, we know that we have a unique opportunity to make an immediate and long-term difference in their lives. Therefore, it is critical we understand the potential issues that these clients typically encounter; the facts relevant to these issues; and the financial resources and legal claims that may be available to assist these clients.

Obtaining the Relevant Facts

You may come to us knowing only that you are not well and not able to work. You may have some documentation or you may have none. You may believe that you have an issue with you employer or you doctor, when in fact, the issue is with social services or an insurance company. Therefore, our objective is to gather as many details as possible to clarify the issues identified by you, identify other potential issues and determine your best course of action.

Below is a list of questions that may be helpful for us to ask you to obtain the relevant facts necessary to identify the real issues with which for you require our assistance.

- **Were you working? If so, at what job, for what employer and for how long? Were you unionized? Are you still employed?**
- **When was the last day you worked?**
- **What were all of the reasons you stopped working? (For example: employment terminated, resignation, workplace harassment, an injury, accident or illness, etc.)**
- **Have you received any income from any sources since going off work? What are the details of that income?**
- **If you stopped working due to a workplace issue or termination or resignation, what happened and did your disability play a role?**
- **If you stopped working due to a medical condition, what caused the condition? (For example, injury, accident, motor vehicle accident, illness, etc.)**
- **Can you list all the reasons, symptoms or conditions that prevent you from working. It may be helpful to make a list going from head to toe, listing the physical conditions and then list any mental or cognitive conditions.**
- **When did these conditions/symptoms start and how do they prevent you from working? Have you attempted to return to work at your job or at some other job?**
- **What sort of treatment are you receiving and how are you paying for that treatment?**
- **What do the doctors say about your prognosis for recovery or for returning to work?**
- **Financially, how are you managing? What financial resources do you have available to you? Have you declared bankruptcy?**
- **If any claims have been made for benefits, when were they denied? Did you appeal the denials? What is the current status of the claims?**

Identifying the Potential Issues

Based on the information disclosed by you regarding you employment, medical condition and financial circumstances, a number of potential legal issues/claims may be identified or eliminated. By narrowing the issues, we will be better able to advise and direct you.

The following is a list of the most common types of issues/claims that our disabled clients have:

- **Long-Term or Short-Term Disability Claim**
- **Creditor Disability Claim**
- **Wrongful Dismissal**
- **Human Rights Complaint**
- **Workplace Safety Insurance Board (WSIB) Claim**
- **Employment Insurance (EI) Sickness**
- **Canadian Pension Plan (CPP) Disability**
- **Ontario Disability Support Plan (ODSP)**
- **Personal Injury Claim**
- **Accident Benefits Claim**
- **Tort Claim**
- **Extended Health Care**
- **Critical Illness Claim**

If you have applied and been denied for any of these benefits, it is important to review all documentation explaining the basis for the denial and the your right to appeal. This information would normally be found in the denial letter. The denial letter may also set out the limitation period for appealing the decision and for commencing an action. It may be that you have limited time to appeal the denial, based on legislation or the insurance policy/program or based on the wording of the denial letter. It is also important that the you are aware of the limitation periods (contractual or statutory) for commencing an action or filing a grievance.

A number of these claims can quickly be eliminated based on the facts provided by you For example, if your medical condition did not arise out of a workplace injury/illness, there would be no claim for WSIB. If your employer did not terminate your employment and you do not have any concerns regarding how your employer treated you, you can eliminate Wrongful Dismissal or Human Rights claims. If your disability or injury did not result from a motor vehicle accident, a tort, or a critical illness, claims for accident benefits, critical illness insurance benefits, and personal injury would not be at issue.

If however, you were working and were forced to stop working due to an illness or injury, you may have disability insurance coverage through a number of sources, including: group disability insurance through their employer, individual disability insurance, creditor disability insurance tied to their mortgage or credit cards, EI Sickness, ODSP and/or CPP Disability. It is important that you are aware of these potential sources of income and apply for these benefits as soon as possible, in order to maximize your entitlement and minimize your financial stress.

What are Long-Term Disability Benefits?

The two most common types of disability insurance coverage are individual and group. **Individual insurance** is purchased by you, usually from an insurance agent, and you pay the premiums for a specified level of coverage. To be eligible for the insurance you will usually need to answer a medical questionnaire and undergo a paramedical examination, in order for the insurer to underwrite the policy and agree to provide the coverage. Usually, professionals, such as lawyers, dentists, doctors, and veterinarians, as well as self-employed people, will self-insure against loss of income due to disability using this type of policy. In addition to denials based on you not satisfying the definition of disability in the policy, individual disability insurance claims may also be denied based on a pre-existing condition exclusion or on the basis of a material misrepresentation on the initial application for coverage.

The more common form of disability coverage is group. **Group disability insurance** is typically offered to employees by an employer or by a professional/trade organization. Members of the group qualify for the coverage by virtue of being a member of the group (without any medical disclosure) and premiums may be paid by the employee, the employer or by a combination of both. Most employers offer group disability insurance coverage to their permanent employees. Claims under these policies are typically denied based on the insurer's opinion that the person is not disabled according to the definition of disability in the policy or that they have not satisfied other policy requirements.

With respect to group disability policies, you may be entitled to short-term and long-term disability benefits. Usually, these benefits are insured by the insurance company, meaning that the insurance company assesses and pays the claims. However, sometimes and more often with respect to short-term disability benefits, the benefit is assessed by an insurance company or a benefit administration company but paid out by the employer. This arrangement is referred to as an **Administrative Services Only (ASO)** arrangement and may require the employee to sue the employer for payment of benefits, in addition to the insurance company who assessed and denied your claim. If you are unionized, the Collective Agreement will give some clue as to whether the benefit is paid by your employer or an insurance company and whether you must pursue a dispute over benefits by way of grievance or if you have the option to commence a court action.

Generally, the definition of disability in a short-term benefit plan requires you to provide medical evidence to demonstrate that you are **not able to perform the duties of your own job**. After the short-term period, which is usually 180 days, you may apply for long-term disability benefits. Usually, the definition of disability in a long-term disability policy requires you to be **disabled from performing the essential duties of you own occupation for the first 24 months and thereafter, to be disabled from performing the essential duties of any gainful occupation**

for which you have the requisite education, training and work experience. Benefits are typically payable to age 65 and are generally 66.6% of your pre-disability income. While these are common terms in group policies, it is important to review your policy or, at least, your benefit booklet (a document which would have been given to your by your employer and that summarizes the Policy) to determine the exact wording that applies. If you are a member of a union, the Collective Agreement may be the governing document, which sets out the terms of the disability benefit.

If you have not yet made a claim for disability benefits, it is important you do so, as soon as reasonably possible, as most policies provide for a limitation period, within which to submit a claim and most Collective Agreements set out deadlines for filing a grievance, if that is the mandatory process for disputing disability claims. Claims forms (which typically consist of the **Claimant's Statement, Attending Physician's Statement and Employer's Statement**) may be obtained from either the insurer or from you employer and are usually submitted directly to the insurer. Even if the claim is submitted late, the insurance company has the discretion to assess the claim, if it would not be prejudiced by the lateness of the claim. Therefore, you should still submit a late claim for consideration and in the event that litigation is required, your lawyer can make arguments as to the reason the claim was late and that there was no prejudice to the insurer.

What types of disputes arise in Long-Term Disability cases?

During the course of a disability insurance claim and in litigation, disputes may arise concerning various terms and conditions in the disability policy, as well as with respect to your entitlement to extra-contractual damages, such as punitive and aggravated damages. The issues that most often arise in disability insurance cases, include:

- **Interpretation of the definition of disability**
- **Calculation of the benefit amount**
- **Applicability and calculation of offset provisions**
- **The client's own job or own occupation**
- **The essential duties of the job/occupation**
- **Severity of symptoms (particularly, subjective symptoms such as pain)**
- **Compliance with treatment**
- **Compliance with rehabilitation**
- **Appropriate treatment**
- **Negligent adjudication of the claim**
- **Aggravated damages such as mental and financial distress claims**
- **Credibility based on presentation at discovery, medical records and/or surveillance**
- **Transferable skills to perform any occupation**
- **Efforts to mitigate (attempts to return to work, retrain, exhaust treatment options, etc.)**
- **Coverage issues regarding pre-existing conditions, waiting period or premiums**
- **Waiver of premiums for life insurance**
- **Workplace issues**
- **Limitation period for submitting a claim or for commencing a court action**

Some of these issues may be identified from the denial letter or from other information you provided to us. However, in order to appreciate all of the potential issues in a claim, it is necessary for us to request and thoroughly review the insurance claims file. The claims file provides valuable insight into the basis for the denial as well as any errors or omissions or bad faith in the adjudication of the claim.

How are disability benefit disputes resolved?

Disability benefit claims are identified and disputes over benefits are resolved based on contractual interpretation, medical documentation, assessments of credibility, the quality of the claims adjudication, statute, and case law. In terms of resolution, a benefit denial may be overturned on appeal (in-statement or reinstatement) or if the dispute is litigated, the case will likely resolve by way of negotiation. Very few disability insurance cases go to trial.

If your claim has been denied, you may either **appeal** the decision or commence **litigation** (or arbitration, if required by a collective agreement). There is no requirement for you to exhaust all avenues of appeal before commencing a court action. In fact, it may be necessary to commence litigation, rather than continue to appeal, if the limitation period (for starting a court action) is fast approaching or if you have been worn down (financially and emotionally) by the insurer and it is unlikely the insurer will change its decision.

If you choose to **appeal** to the insurance company, it is important that you provide the insurer with new medical information to support your claim. This would include clinical notes and records, reports from treating doctors and specialists, test results, and any new and relevant medical documentation. If the information provided is persuasive, the insurer will approve the claim, pay arrears and then pay benefits going forward, on a monthly basis. You will need to continue to provide medical updates, as requested by the insurer and the insurer may terminate your benefits, at any point, if it determines that you are no longer disabled. The insurer may also work aggressively with you to rehabilitate you and implement a gradual return to work plan.

If you decide to **litigate** the denial of your disability claim (either by grievance or court action), you will need experienced legal representation. Disability benefit cases are very different from motor vehicle personal injury and employment cases and often lawyers practicing in those areas may not understand the contractual and common law nuances of disability insurance law. You should be encouraged to meet with two or three law firms/lawyers to ensure a good “fit”, not only with respect to knowledge and experience but also, with respect to service. Disabled clients require counsel who appreciate that the client is suffering emotionally, physically and financially and are able to tailor services to accommodate your physical, cognitive and emotional limitations and restrictions.

One of the most common misconceptions and perceived deterrents clients have with respect to commencing a lawsuit is the belief that they cannot afford a lawyer. Most lawyers practicing in this area will provide you with a complimentary consultation and a **contingency fee based retainer agreement**, that will allow you to access legal representation without having to pay legal fees until your case is resolved. This arrangement allows the you to speak with your lawyer without concern for the cost associated with the lawyer’s time and also, encourages the lawyer to obtain the best possible settlement for the client, within a reasonable timeframe.

A second misconception is that litigation will be too stressful and therefore, you would rather “walk away” from the dispute than fight it. While this is a normal **“flight or fight”** response, particularly with clients who are under a significant amount of stress, it is important to

emphasize that your financial and emotional distress will only worsen if you do not take steps to recover the benefits to which you are entitled. Assuming you are able to retain experienced counsel, you stress and financial situation will improve as a result of litigation. The lawyer will take over the dispute with the insurance company, easing your stress and allowing you to focus your energies and efforts on treatment and recovery and financially, a settlement will assist you with your, treatment costs, and living expenses.

Generally, your participation in a disability lawsuit is limited to communicating and updating the lawyer; attending your examination for discovery; attending mediation; and, possibly, attending an independent medical assessment and/or a defense medical. With respect to discovery and mediation, the lawyer should spend as much time as needed preparing you for these attendances, in an effort to lessen your stress and anxiety. Lastly, you will be required to make a decision with respect to how to resolve your case (how much to settle for, terms of the release, whether to go to trial, etc.). However, with experienced and patient counsel, you will be well-prepared and well-informed in order to feel confident in making decisions concerning the resolution of your case.

What you need to know if you have a disability claim

There is some important information that you should be aware of, as early as possible, ideally at the initial consultation with your lawyer. This information can help ensure that do not prejudice your claims, inadvertently. The following is a list of **seven important recommendations** that may be helpful to you.

1. **Continue with treatment.** You should make every effort to attend all medical appointments, fill prescriptions, follow up and attend specialist appointments, and pursue any and all treatment recommendations. It is important that you be candid with all healthcare providers about symptoms, functioning, activities, and effectiveness of treatment. Often clients, for a variety of reasons, may not wish to admit the severity of their condition and decline medication or other treatments. This could have an adverse impact on your disability claim/lawsuit. You might also not want to admit to the emotional toll your disability or related financial issues has taken on your mental health and may be suffering from untreated depression, anxiety, and panic. Left untreated, these conditions may exacerbate your existing disability or become a new disabling condition. You should speak with your family physician or any treating doctor about your mental health.

2. **Keep your employer updated, but only to the extent required.** If you are still employed (which you would be if they have not explicitly terminated your employment), but your claim for disability benefits has been denied, your employee status will change to “unapproved leave of absence”. Your employer may want to know whether or not you will be returning to work and when. Your employer may also want to know whether it can accommodate your medical restrictions and limitations. Your employer may ask for you to complete a functional abilities form or to provide a doctor’s note, periodically. You should understand that the employer is not entitled to details of your medical condition, but that the employer is entitled to know whether you continue to be medically unable to work, whether you can be accommodated and whether you will be returning to work in the foreseeable future.

   Ignoring these requests may result in your employer terminating your employment, claiming you have abandoned your job. In such instances, no termination pay would be owing and extended health care benefits would also terminate. If your employer is not able to accommodate you, or if you are not able to work into the foreseeable future, your employer may choose to terminate your employment based on frustration and pay what is required by law. Alternatively, your employer may continue to keep you on “unapproved leave” indefinitely, such that you may still be entitled to extended health benefits and a job to return to once you are able to work. You should not only keep your employer updated as required but also to seek legal advice immediately if your employer terminates your employment.

3. **You should not return to work without medical clearance.** Often a denial of a disability claim will prompt clients to return to work before they are medically able. you may feel as though they have no other choice but to return to work. You may be willing to risk aggravating your medical condition, in exchange for the financial security of employment. However, if you are not medically ready to return to work, there is a real and substantial risk that your condition will be aggravated and any progress that you have made in your recovery will be lost. Returning to work before you are ready may also strain your relationship with your employer if your employer’s expectations exceed your capabilities. You should be aware that there are other disability benefits that may provide you with financial assistance while you are in litigation and before your case settles.

4. **Be aware of limitation periods.** You should be aware of any contractual and/or statutory limitation period with respect to commencing an action for long-term disability benefits. Generally, the statutory two-year limitation period applies. However, the date from which the limitation period begins to run may be difficult to ascertain, particularly if you appealed the denial or if you never submitted the initial claim. There may also be a contractual limitation period in the policy or the denial letter. Irrespective, you should be aware that a lawsuit should be commenced as soon as reasonably possible. If the limitation period appears to have passed, you should still be advised to pursue the matter. There are several persuasive arguments that lawyers can make to counter a limitation period defense, depending on the facts and evidence of each case.

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5. **The possibility of surveillance.** Clients are often concerned about surveillance. Understanding surveillance may ease some of your anxiety. It may be helpful for you to know that investigators are limited to observing you from public property or online searches. They may not look over a fence into your yard or look in a window or communicate with you. They may only take photos and video of you if the you can be viewed from a public location. They may follow you on the bus or by car and into stores or in parking lots or coffee shops, etc. However, if you have been recently denied, no appeal has been submitted and a court action has not commenced, the insurer has no reason to conduct surveillance.

   We typically encourage our clients to engage in their regular activities and advise their doctors and the insurance company (if asked) of these activities. So long as you present in public (and online) as you do to you doctors and to the insurance company, surveillance will not be a problem. You should live your life and allow your lawyer to address any arguments the insurance company makes based on surveillance.

6. **Apply for all other potential sources of income.** You may feel discouraged after going through the claims process and being denied. You may not be aware of the various other benefits available to you or your condition may restrict your ability or motivation to apply for other benefits. However, it is important that you understand that just because your disability claim has been denied, claims for other sources of income will not necessarily be denied. The definitions of disability and the requirements for other types of benefits vary greatly, as do approval rates. You consider applying for EI Sickness, ODSP/Ontario Works, and CPP Disability. You should also apply for any disability insurance on your mortgage or credit cards. If you do not have extended health coverage, you should be made aware of the Trillium Prescription Drug Program. Litigation loans are also a possibility, however only as a last resort, as interest rates on these types of loans are extremely high.

7. **Do not lose hope.** We know you are struggling financially and medically. You may feel discouraged and hopeless. Therefore, the information and encouragement an experienced disability lawyer provides at an initial consultation can make a world of difference with respect to the your outlook. If the you feel that you have options and feel supported and empowered, you will find the strength to pursue your entitlement to disability benefits, which is the first step in improving the your financial circumstances and all other issues that stem from there.

Other Income or Social Assistance Benefits

In addition to long-term disability benefits, disabled you may be entitled to income from other sources, including the social assistance programs described below. You should consider applying for all of the benefits to which you could possibly be entitled, and to do so as soon as reasonably possible to ensure that you do not miss deadlines for submitting claims and so that you are able to maximize your potential entitlement. However, it is important for you to understand that some benefits will offset others and there may be obligations (assignments) to repay some/all of certain benefits if others are later approved.

Employment Insurance (EI) Sickness Benefits provide eligible workers with up to a maximum of 15 weeks of benefits if they cannot work because of sickness, injury or quarantine, but would otherwise be available to work. To receive these benefits, you must submit their Record of Employment (ROE) and a medical certificate from your doctor. You will be eligible if your employer deducted premiums for EI; your normal weekly earnings have been reduced by more than 40%, and you have accumulated at least 600 hours of insurable employment in the 52 weeks prior to your last day working. You can apply online at Service Canada or at a Service Canada office. EI may require repayment if you are later approved for long-term disability benefits.

Ontario Disability Support Plan (ODSP) offers financial assistance to help you and your family with essential living expenses; benefits, for you and your family, including prescription drugs and vision care; and help finding and keeping a job, and advancing your career. ODSP offers two types of support. The first is income support which is financial assistance provided each month to help with the costs of basic needs, like food, clothing, and shelter. Income support also includes benefits, like drug coverage and vision care, for you and your eligible family members. The second is employment support which are services and supports to help you find and keep a job, and advance your careers. ODSP may require repayment if you are later approved for long-term disability benefits. If you require immediate financial assistance, you should contact you local Service Ontario office (and also still apply for ODSP).

Ontario Works offers two types of assistance. The first is financial assistance, including income support to help with the costs of basic needs, like food, clothing and shelter and health benefits for you and your family. The second is employment assistance to help you find, prepare for and keep a job. This assistance may include: workshops on resume writing and interviewing, job counseling, job-specific training, access to basic education, so clients can finish high school or improve their language skills. In most cases, you must agree to participate in employment assistance activities in order to receive financial assistance. **Emergency assistance** is also available to people who are in a crisis or an emergency situation (e.g. if you have lost your home, are leaving an abusive relationship and/or are worried about your safety). To be eligible

for Ontario Works you must be in financial need (their household does not have sufficient financial resources to meet basic living expenses) and be willing to make reasonable efforts to find, prepare for and keep a job, unless you have specific circumstances that temporarily prevent you from doing so, such as an illness or caregiving responsibilities.

Canada Pension Plan Disability (CPP-D) is a federal government-sponsored plan. Eligibility is determined by contributions from employment in Canada. You must demonstrate that you disability is “severe and prolonged”. While some clients may assume that they will not qualify because they have been denied other benefits, it is important that you still apply, as you may be approved and any payment for arrears will be based on the date of the initial application. The benefit amount is based on contributions and prior income and increases annually based on the cost of living index. A dependent benefit is also available to help you fund the expenses of your dependants. Once approved, the claims assessment is less onerous than that of private insurers you may work, earning an income annually (the maximum is adjusted every year by Service Canada), without termination or reduction of their benefit. CPP-D reduces any entitlement to long-term disability benefits. (For more information about CPP-D, please find our **“CPP Disability Benefit Guide”** on our website here too.

Workplace Safety and Insurance Board (WSIB) Benefits may provide financial assistance if you are injured or became ill because of your job. WSIB provides income replacement benefits, as well as other support, such as return to work assistance. To be eligible for WSIB insurance benefits, you must have a worker-employer relationship with an employer covered by the WSIB; have an injury or illness directly related to your work; promptly file a claim with the WSIB; provide all relevant information requested by the WSIB to help you determine entitlement to benefits; and consent to the release of functional abilities information to you employer by the health care professional treating you. WSIB claims regarding mental illness due to workplace harassment or claims regarding repetitive strain injuries are very difficult to prove. You may wish to find a lawyer/paralegal to assist you with your WSIB if you are faced with a complicated and difficult to prove claim. WSIB income benefits often offset long-term disability benefits, entirely. However, even if you are receiving WSIB, you should still pursue long-term disability for a declaration of disability, in the event that WSIB terminates at some time in the future.

Related Claims

In addition to social assistance and long-term disability benefits, you may have other claims related to your disability. It is important when speaking with your lawyer to keep these other potential claims in mind to ensure that you do not miss a limitation period and to ensure that you pursue all possible sources of income. You should be aware that you will likely require legal representation to pursue these other claims but be assured that many lawyers will agree to payment of legal fees out of a settlement, allowing you access to representation despite your limited financial resources. It is also important to note that some of these settlements can be used to reduce other settlements and that evidence from one claim may be used to argue/defend another. Whenever there is potential for multiple claims arising from some of the same facts, you should seek the guidance of experienced legal counsel.

a) Claims Against your Employer

You may have been treated poorly by your employer and/or have been terminated from your employment. Therefore, you could have a wrongful or constructive dismissal claim or a human rights complaint. Sometimes the facts/evidence supporting these claims overlap with those in a long-term disability claim. For example, you may have been harassed at work, resulting in anxiety, panic, and depression, which conditions form the basis of the client's long-term disability claim. Similarly, if there was some form of discrimination, that too may have contributed to your mental health condition. The risk, however, is that if there is a wrongful/constructive dismissal or human rights complaint, arguments supporting those claims may contradict arguments in the long-term disability action. For example, if you argue that your employer failed to accommodate you, this argument is evidence that you were not not "totally disabled" as you must prove to be in the long-term disability action. Other issues also arise with respect to offsetting settlements and release wording that precludes an action against the long-term disability insurer. Therefore, you will need to ensure you retain counsel for your disability-related claims who is able to coordinate strategies with you or your other lawyer, to maximize your entitlements.

b) Motor Vehicle Tort Claims

Often a client becomes disabled as a result of a motor vehicle accident. If another party was at fault for the accident, you are able to commence an action against the at-fault party (within the 2 year limitation period). Claims against the at-fault party are in addition to Accident Benefits and other benefits, such as long-term disability. You could be entitled to damages for pain and suffering, loss of income and the inability to earn income, housekeeping and home maintenance, and health care expenses.

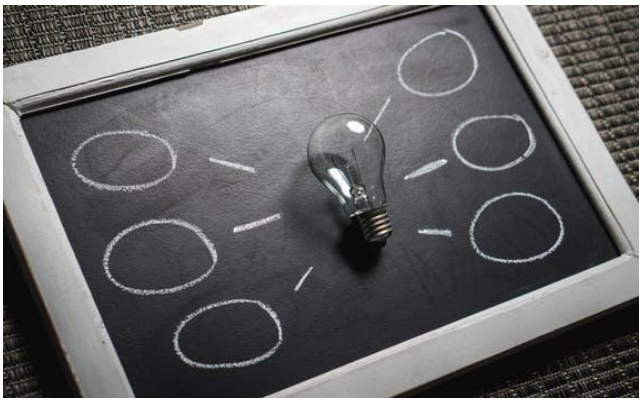
With respect to a claim for pain and suffering, you must suffer a permanent serious impairment of an important and physical, mental or psychological function or permanent serious disfigurement ("threshold test") and the entitlement is subject to a monetary deductible. In terms of loss of income/inability to earn income, you are entitled to claim 70% of gross income loss up to trial and future loss claimed based on 100% of gross income. However, you must first seek compensation from any disability insurance and accident benefits insurer. Any additional amounts can be claimed from the tort action. To qualify for housekeeping and home

maintenance, you must be unable to maintain your home as you did before the accident and claim reimbursement for expenses incurred or will incur in the future. However, you must first claim this expense from the accident benefits insurer. Lastly, health care expenses may be payable for all past, present, and future healthcare expenses not covered by OHIP, extended health coverage, or Accident Benefits.

c) Accident Benefit Claims

There are two types of possible claims flowing from a motor vehicle accident: No-Fault Accident Benefits (SABS) claims and tort claims (which is a lawsuit against an at-fault party). Accident Benefits claims are made to your car insurer, payable regardless of fault and include Medical and Rehabilitation benefits, Attendant Care benefits, Income Replacement benefits, Non-earner benefits, Housekeeping and Home maintenance, and Caregiver benefits. You should be aware that if you were a passenger or a pedestrian, you may be able to apply through yours or your family's insurance policy if you live at the same address, or through the driver's insurance company.

Medical and rehabilitation benefits are for "reasonable and necessary" medical and rehabilitation expenses not covered by OHIP or an extended health care plan. In addition to various therapies, this benefit can cover medications, assistive devices, transportation to and from treatment, etc. With respect to the attendant care benefit, it is for the reasonable and necessary expenses for a caregiver or attendant for personal care and can be paid up to $65,000 for non-catastrophic injuries and up to $1 million for catastrophic injuries. For minor injuries, the benefit is fixed at $3,500. Income Replacement benefits (IRB) are for people who were employed or self-employed prior to the motor vehicle accident. This benefit is 70% of gross income, minus income from other sources (such as long-term disability). The maximum amount for IRB is $400/week and the definition of disability is similar to that contained in most long-term disability policies. In terms of the non-earner benefit, you may qualify if you are not eligible for IRB or caregiver benefits or if you were a full-time student. To be eligible, you must suffer from a complete inability to carry on you normal activities and if you meet the test, the benefit is $185 per week (in some circumstances $320/week) and payable after 26 weeks. The caregiver benefit for catastrophic injuries is payable if the client is substantially unable to engage in the caregiving activities you was previously engaged in. Finally, the housekeeping benefit for catastrophic injuries pays up to $100 per week. clients should be advised to keep good records regarding payment for any expenses related to any of the above claims. ******This information may not have been dated and it is best to confirm this with your insurance company or your injury lawyer.***



d) Personal Injury Claims

If your disability arose from a personal injury (unrelated to a motor vehicle accident or a workplace injury, wherein your employer was WSIB insured), then you may commence a lawsuit for damages. For example, if you were injured as a result of a trip and fall at a coffee shop or a slip and fall at a grocery store or as a result of a dog bite, you may commence litigation against the at-fault party. These are generally subrogated actions, in the sense that the insurance company for the store or the homeowner's policy of the dog-owner, will defend the action and pay the settlement up to the policy limits, beyond which the at-fault company/person will be responsible for damages. You should be advised to maintain good records of any expenses incurred as a result of the incident and also any evidence that can be used to prove your claim.

e) Appeal to Social Security Tribunal for CPP Disability Benefits

If your CPP Disability Benefit appeal has been denied, you may take the matter before the Social Security Tribunal for a final determination (prior to judicial review). There are strict documentary requirements and time limitations governing Tribunal hearings. While you may be able to complete the initial application and first appeal on your own, it is recommended that you seek legal assistance once you are at the Tribunal stage. If you are successful, the Tribunal will award arrears and benefits will be paid to you on a monthly basis, going forward.

Conclusion

At **Mulqueen Disability Law** we find representing disabled clients challenging and extremely rewarding. By providing our clients with information, guidance, and encouragement throughout our engagement, we able to make immediate and long-lasting differences in their lives.

We understand that clients who feel supported and confident in the information they receive from their lawyers are more likely to feel empowered and motivated to pursue the benefits to which they are entitled. With proper representation, clients are able to focus on improving their health, while we fight to obtain benefits and other compensation to which they are entitled. As a result, not only do our clients' financial circumstances improve but so too does their stress; allowing them to move on with their lives and focus on their health and returning to work, one day.

Glossary

Aggravated Damages - damages resulting from emotional and financial distress caused by how the insurance company assessed the claim and by the denial/termination of the claim; includes a deterioration or aggravation of medical condition due insurer's conduct.

Any Occupation - definition of disability usually after 24 months; a person must show they are not medically able to do any type of work that they are qualified to do, earning a commensurate income (which is about what their disability benefit amount would be).

Appeal - offered by the insurer when the claim is denied or terminated; ask for a list of new information to support the claim; often appeal is reviewed by the same case manager who made initial decision and difficult to overturn decision on appeal; appeals do not necessarily extend the limitation period for commencing an action.

Appropriate Treatment - whatever the insurance company deems appropriate; sometimes require that the client have treatment from a medical doctor; internal medical consultants may find that treatment is not appropriate (i.e. not proper medication or dosage or physiotherapy would help); may deny claim on this basis.

APS (Attending Physician's Statement) - one of three forms used by the insurer in the initial assessment of a disability claim; clients can get this form from employer or online or insurer and should have a doctor who has most information about disabling conditions to complete it.

ASO (Administrative Services Only) - when an insurance company is contracted by the employer to assess claims; the insurer does not pay the benefits; the employer collects premiums and pays benefits based on the insurer's opinion on disability; in these cases the insurer is sued for negligent adjudication and the employer is sued for payment of benefits.

Booklet - not the actual contract/policy; usually prepared by the employer based on a summary or interpretation of the policy; client's will usually have a copy of this; wording may differ between booklet and policy and policy is the governing document and must be used in litigation.

CPP-D (Canada Pension Plan Disability) - federally sponsored plan for eligible employees who have a severe and prolonged disability; paid on a monthly basis, going back 12 months from initial application; increases on an annual basis; may be offset from LTD benefits.

Claimant's Statement - one of three forms used by the insurer in the initial assessment of a disability claim; clients can obtain this form from the employer or the insurer or online; the client should include as much detail as possible about all disabling conditions.

COLA (Cost of Living Adjustment) - some disability policies have this provision that serves to increase the benefit on an annual basis; increase is usually tied to the consumer price index; with individual disability policies, this provision may be purchased for additional premiums.

Creditor LTD - benefits that are tied to lines of credit, credit cards and mortgages; if a client qualifies, the insurer will pay off the balance or make monthly payments or make interest payments, depending on the policy.

Denial - when the insurance company will not pay benefits for some specified reason; should be done in writing; the date of denial is important to calculating the limitation period for commencing an action; denials can be appealed.

Employer's Statement - one of three forms used by the insurer in the initial assessment of a disability claim; client can obtain this form from the employer or the insurer or online; the client might not see this form completed, as the employer will send it directly to insure; details job description and benefit amount and any workplace issues and work history.

Employee's Statement - same as Claimant's Statement; one of three forms used by the insurer in the initial assessment of a disability claim; client can obtain this form from the employer or the insurer or online; the client should include as much detail as possible about all disabling conditions.

EI (Employment Insurance) Sickness - 15 weeks of disability benefits; can apply for this when a client is not receiving disability benefits; will need to be paid back if disability benefits are later approved.

Gainful Employment - work that allows a client to earn enough money to meet basic living expenses; calculation of gainful income is usually around 60% to 70% of the person's pre-disability gross earnings; if person is medically able to work at any job earning this amount, then not disabled.

Group LTD Benefits - benefits provided by an employer or organization; usually insured by an insurance company or paid by an employer; premiums may be paid by employee or employer or combination; policy usually pays about 66.6% of gross pre-disability earnings, if client is disabled

Individual LTD Benefits - client purchases your own insurance policy and pays the premiums; usually the benefit is a higher amount and may take the person's business income into account; often these policies will provide for residual and partial disability coverage in addition to total disability.

Mitigation - client's efforts to improve your medical condition and financial condition; such as seeking and participating in all appropriate treatment and applying for all possible sources of income.

Offset - a benefit or income from some other source that reduces the LTD benefit; sometimes insurers will deem offsets, meaning that they will reduce the benefit even if the client has not been approved for or received the other income source.

ODSP (Ontario Disability Support Plan) - offers financial assistance to help clients and their families with essential living expenses; benefits, for the client and your family, including prescription drugs and vision care; and help finding and keeping a job, and advancing your career.

OW (Ontario Works) - income support to help with the costs of basic needs, like food, clothing and shelter and health benefits for clients and their families; also available to people who are in a crisis or an emergency situation.

Own Occupation - definition of disability for the first 24 months of disability; client must not be able to do the material/essential duties of his or her own occupation; different from "own job" in that person might be able to do his own occupation for a different employer or do own occupation with lesser job duties.

Plan Sponsor Statement - same as employer's statement; one of three forms used by the insurer in the initial assessment of a disability claim; client can obtain this form from the employer or the insurer or online; the client might not see this form completed, as the employer will send it directly to insure; details job description and benefit amount and any workplace issues and work history.

Policy - the governing document or contract; in group policies, the employer and insurer are the parties to the contract and not the client; the policy wording is what the insurer should be using to assess claims and may differ from what the wording is in the Booklet.

Pre-Existing Medical Condition - term in policy if client becomes disabled within 12 months of being insured, disability can not be related to any condition the person had/investigated for in the three or more months before coverage took effect; wording may differ between policies and careful reading necessary.

Punitive Damages - awarded to the plaintiff in order to punish the insurer for bad faith conduct.

Termination - denial of benefits after they have been paid for a period of time.

Waiver of Premium - if approved for LTD, premiums for life insurance are waived.

WSIB (Workplace Safety and Insurance Board) - financial assistance if the client is injured or became ill because of your job. WSIB provides income replacement benefits, as well as other support, such as return to work assistance.

Resources

Mulqueen Disability Law
Law firm specializing in Long-Term Disability Litigation and authors of this Guide.
Website: www.MulqueenDisabilityLaw.com
Email: info@MulqueenDisabiltyLaw.com

CPP Disability
Federally funded disability benefit for eligible workers with severe and prolonged disability.
Website: https://www.canada.ca/en/services/benefits/publicpensions/cpp/cpp-disability-benefit.html
Phone: 1-800-277-9914

Service Canada - Application for CPPD Benefits
Federal service provider for applications for social assistance and disability benefits.
Website: http://www.servicecanada.gc.ca/fi-if/index.jsp?app=prfl&frm=isp1151

Service Canada - Find a Service Canada Office
Federal service provider for applications for social assistance and disability benefits.
Website: http://www.servicecanada.gc.ca/tbsc-fsco/sc-hme.jsp?lang=eng

Canada Benefits - Benefits Finder - to obtain a customized list of federal and provincial benefits for which you may be eligible
Resource for determining which benefits to apply for based on potential eligibility.
Website: http://www.canadabenefits.gc.ca/f.1.2c.6.3z.1rdq.5.2st.3.4ns@.jsp?lang=en

Canada Revenue Agency (Tax Credits and Deductions for Persons with Disabilities)
Information on tax deductions and savings plans for people not working due to disability.
Website: http://www.cra-arc.gc.ca/tx/ndvdls/sgmnts/dsblts/menu-eng.html

Legal Aid
List of neighbourhood legal aid clinics and specialty clinics providing legal support.
Website: http://www.justice.gc.ca/eng/fund-fina/gov-gouv/aid-aide.html

Contact Us

Mulqueen Disability Law is a boutique and experienced disability insurance law firm, specializing in long-term disability insurance litigation. **Courtney Mulqueen** has been litigating disability insurance claims from both sides of the table (representing insurance companies before moving to represent disabled people) since graduating law school in 2000. We also have extensive experience litigating individual LTD, life insurance and critical illness claims and we have represented our disabled clients at CPP Disability Tribunal hearings and we have consulted in actions against our clients' employers and in their motor vehicle and personal injury cases. We appreciate that our clients have serious physical and cognitive limitations and restrictions and strive to accommodate them throughout the litigation and in the service we provide. We are certified in **Trauma Informed Practice** and **Mental Health First Aid.**

As part of our commitment to assisting and empowering disabled individuals, we offer **webinars/seminars to lawyers, community groups and organizations** as well as a **free, confidential consultations** by telephone, in-person or by video conferencing. Although our practice is located in Markham**, we represent clients throughout the GTA, Ontario and beyond.** We encourage clients to contact us directly by email or telephone if you require our assistance or if you are a lawyer who has any questions about this area of law. We also appreciate that some clients may be anxious to call a lawyer, and as such, we are happy to reach out to initiate contact, if requested. We are here to help.

Please see our website for more information: www.MulqueenDisabilityLaw.com