Your Long Term Disability Claim is Denied. Can You Resolve the Dispute In a Day?

Assume that you have LTD (long term disability) insurance coverage available to you.

What happens when you become sick and cannot work anymore? What if you apply to your LTD policy for coverage and are denied? What if you must fight your insurance company in Court to seek payment and benefits under your insurance policy?

To fight your insurance company, are you required to start a lawsuit and follow through all the usual steps in litigation – including disclosure and exchange of your relevant documents; Examinations for Discovery of all parties; and attending at **defence medical assessments** requested by the insurance company?

Or can you simply present your LTD dispute to the Court by way of Application – meaning that the entire issue of your denial of LTD benefits could be decided at a single Court hearing?

In the case of **Garriock v. Manufacturers Life Insurance Company** (2009 Ontario Superior Court of Justice), it was held that the plaintiff was allowed to present her LTD dispute by way of an Application and the Court resolved the entire issue in a single hearing.

This decision is significant in that it allows an insured who is denied LTD benefits (in certain situations) to have access to a quick resolution by the Court, by presenting their case by way of an Application.

In *Garriock*, Mr. Justice Smith did not accept that this LTD dispute was too complex for a single Application hearing nor that it required the usual litigation steps in order to fully test the evidence presented.

The Court found that the evidence was uncontradicted (i.e. all experts agreed the plaintiff had fibromyalgia) but that the different experts drew different conclusions based on the same evidence. Therefore, with the facts apparently not in dispute, the Court was well-positioned to rule on the matter expeditiously at the Application hearing.

Case Overview. The 54 year old plaintiff applied for LTD benefits in May, 2007 and was denied initially. She was put on claim (retroactive to May, 2008) after a February, 2008 assessment by the LTD carrier's expert concurred that she had moderate to severe fibromyalgia (but the plaintiff had the ability to return to work at least part-time by the end of 2008).

In July, 2008, the LTD carrier advised that it was terminating benefits by December, 2008 in accordance with their expert's conclusion. The issue was whether the plaintiff was "totally disabled" in accordance with the terms of the long term disability policy. Ms Garriock appealed that denial.

In October, 2008, the LTD carrier conducted an Appeal review and stated that it required updated medical reports from the plaintiff's family doctor, as well as her physiotherapist.

In November, 2008, the plaintiff underwent a Functional Abilities Evaluation (FAE) which was interpreted differently by the two parties: the plaintiff said this FAE report held her unable to return to any occupation while the insurer concluded that this report indicated that the plaintiff was able to return to work at her sedentary position.

In December, 2008, the LTD carrier terminated benefits in accordance with their July, 2008 warning letter.

On the day of the denial, the plaintiff's family doctor wrote a report supporting the plaintiff and confirming her inability to work. Two weeks later, the plaintiff's physiotherapist (who had been treating the plaintiff for the previous 13 months) wrote a report which also supported the plaintiff and indicated her inability to return to any occupation.

The Court held that the plaintiff was "totally disabled" and therefore entitled to long term disability benefits from January, 2009 onwards, with interest.

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