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Long Term Disability Application Denied > “Totally and Permanently Disabled”

Long term disability insurance applications are reviewed and assessed by the long term disability carrier based on the wording of the policy, along with the medical evidence of impairment presented, to determine whether the insured applicant qualifies for long term disability benefits.

Usually the medical evidence considered includes the insured’s historical medical file, medical specialist or expert opinion presented by the insured and medical specialist or expert opinion commissioned by the long term disability carrier.

Although long term disability insurance policies in Canada are generally similar, it is necessary to review the specific insurance policy for each insured applicant’s claim.

In the recent decision of **Tabor v. Hospitals of Ontario Pension Plan** (2009 Ontario Court of Appeal), the issue was a review of how the long term disability insurer conducted their assessment of the insured’s application. The specific wording for entitlement for LTD benefits was, “whether the Member is ... Totally and Permanently Disabled”.

For this specific plan, an independent medical referee was given certain powers to resolve disputes between the insured’s medical expert and the insurer’s medical expert concerning “whether the Member is ... Totally and Permanently Disabled”.

In this case, the insured’s medical expert found the insured to be totally and permanently disabled whereas the LTD carrier’s medical expert found the insured to be totally disabled but not permanently disabled.

An independent medical referee was asked to assess the file and resolve the dispute. The referee found that the insured’s condition was not one of total disability, although the insured’s condition was permanent. On this basis, the insured’s application for long term disability benefits was denied.

The insured commenced an action. The insurer brought a summary judgment motion and won.

The Ontario Court of Appeal overturned the summary judgment decision, finding that there was a genuine issue for trial. As a result, the lawsuit is allowed to continue in the usual course.

Readers may find our recent **June 25 blog** to be interesting, whereby an insured brought an application to determine her eligibility for long term disability benefits and was found to be entitled – the entire application being heard and decided on the same day.

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