

Elkind & Shea

The Disability Benefits Law Firm

Scott B. Elkind
(MD, DC, VA, WV)

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Stephen F. Shea
(MD, DC)

Department of Labor
Regulations Committee

Re: Proposed ERISA Administration Rules

Dear Committee Members:

I have been involved in the prosecution of similar ERISA-based matters throughout this for over 20 years. I devote the vast majority of my practice to the representation of persons wrongfully denied disability benefits and have represented thousands of clients.

I am a founding attorney of the Social Security Disability Law Section of the Association of Attorneys for Justice (AAJ formerly the Association of Trial Lawyers of America (ATLA)), and served as the Chair of the Section in 1999-2000. I continue to serve on the Executive Board of the Section. I have served as the Representative to the Social Security Administration Roundtable Discussions on behalf of AAJ for several years. I am the former Chair for the governing board of the AAJ Health Care and Disability Litigation Group (2009 - 10). Scott has also served as the Co-Chair for the Social Security Disability Section of the Virginia Trial Lawyers Association (2003 - 4).

I am a frequent lecturer on the topic of disability benefits before both large and small groups, as well as authoring many articles on related topics. I am called upon by practitioners and bar associations nationwide to lend advice concerning many topics in disability benefits law and related issues.

The practice of law concerning ERISA beneficiary rights is very difficult given the challenging nature of the medical and vocational issues involved in addition to the complexity of the ever-evolving case law. There are few practitioners who engage in this practice on a full-time basis given the enormity of the risk involved in litigating these cases. One of the most difficult aspects ERISA practitioners face is the manipulation of the administrative appeal process by plan administrators. The new proposed rules serve as a enormous clarification of how the administrative process should proceed and are very welcome by plan beneficiaries.

Unfortunately, the delays associated with the promulgation of these new rules are serving to prejudice beneficiaries. This Committee should know the old adage: "Delay favors the defense." The insurance industry is attempting to delay the enactment of the final rules by any means possible, whether credible or not.

It is hard not to remind this Committee that the largest population based, the "Baby Boomers," are now becoming disabled in record numbers and are not receiving the benefits of a more balanced and fair administrative appeal process under ERISA. It seems very clear that this

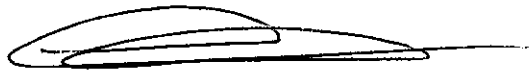
Committee is being hijacked by insurance industry defense interests in an effort to delay and or change these much needed regulatory amendments. By doing so, increasing number of beneficiaries are being affected in their most crucial time of need. As it stands, there has been no publicly stated reason for the continuing delays which is a terrible disservice to those of us who are stakeholders in the process, but have been functionally excluded by the lack of transparency in these proceedings.

The proposed "study" by insurance industry interests is no more than a delay tactic being employed while gathering political forces to reign in and amend the proposed regulations as administrators would prefer to do "business as usual" which has resulted in gross manipulation of the administrative appeal process and has done inordinate harm to plan beneficiaries.

At the very minimum, all stakeholders should be informed and made part of any such proposals in order to add their own findings and comments. Exclusion from this process is, again, unfair to those who are seeking their disability benefits and the people attempting to lend assistance to this unempowered population.

Thank you for taking the time to review my concerns.

Respectfully,

A handwritten signature in black ink, appearing to read "Scott B. Elkind", with a long horizontal line extending to the right.

Scott B. Elkind