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By Email: e-ORI@dol.gov
Office of Regulations and Interpretations,
Employee Benefits Security Administration
Room M-5655
U.S. Dept. of Labor
200 Constitution Avenue NW
Washington D.C. 20210

Re: Claims Procedure Regulations for Plans Providing Disability Benefits
RIN No.: 1210-AB39
Regulation: 29 C.F.R. §2560.503-1

Dear Assistant Secretary Borzi:

I wish to offer comments on the proposed regulations for amending the claims procedure regulations applicable to disability benefit plans. I am an attorney who represents claimants in ERISA-governed disability claims. I can tell you that it is an unfair battle to represent claimants in these cases with the current regulations. The most important changes in your proposed regulations in my opinion are your changes to require claims administrators to disclose evidence they have acquired prior to making a claims decision on appeal and to ensure that all claims decisions and appeals decisions are impartial.

Right to Respond to New Evidence or Rationales.

The DOL's proposed regulations will help claimants respond to evidence generated by hired guns with new rationales or evidence during review on appeal. This change is needed since sandbagging has been a persistent problem in the ERISA appeals process. Often the appeal decision will be issued the same day that the new evidence is received. Without the proposed changes claimants do not get a fair and full review on appeal. In addition, while I think that the proposed change to the regulation is good, the regulation should include a time deadline for the claimant to respond to the new evidence and a time deadline for the claims administrator to make its final decision.

Impartiality

I believe that your proposed changes requiring impartiality in claims and appeal decisions is good but I think the change will be hard to enforce without additional changes to the

regulations. I think the regulation should include a provision that requires the claims administrator to disclose to a claimant how many times the decision maker found in favor of the claims administrator and how many times the decision maker ruled in favor of claimants. Similarly, I think that the proposed changes to the regulations should include a requirement that the claims administrator disclose how many times they have used the medical source for a peer review and how times the medical source found that a claimant was disabled and not disabled. To say that the medical sources that claims administrators use are "impartial" is a joke. I prevail in appeals of disability benefit determinations in only about 20% of the claims. Statistically, that should not be the case.

Social Security Awards.


The regulation requiring a discussion about the difference between the plan's decision and awards made by other systems, such as Social Security, should be expanded to set forth a deferential review requirement. For example, in the regulatory settlement agreement UNUM was required to follow, this language was used:

The Companies must give significant weight to evidence of an award of Social Security disability benefits as supporting a finding of disability, unless the Companies have compelling evidence that the decision of the Social Security Administration was (i) founded on an error of law or an abuse of discretion, (ii) inconsistent with the applicable medical evidence, or (iii) inconsistent with the definition of disability contained in the applicable insurance policy.

Claims administrators typically discount a Social Security disability award by claiming that the provisions in the plan are different than the law that the Social Security Administration applies. This explanation is nonsense. To prevail in an award of SSD, a claimant must prove that he is unable to perform substantial gainful employment. With that determination, it should be extremely difficult for a claims administrator to rule against an ERISA claimant. Thus, the SSD award should control unless the claims administrator can show one of the above.

Respectfully submitted,

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