

Disability Law Ledger

July 2008

DB Disability Updates from DeHaanBusse LLP

Other Income: Two Not-So-Simple Words

As is usually the case, most of our clients run into complications with their long-term disability (Employer-Sponsored) plans because they have not fully read nor fully understand the terms and conditions of their policies. One of the biggest stumbling blocks is the term *Other Income*. Here is an example of how these two simple words can affect not only your benefits, but also your entire financial future.

One of our clients, we'll call him, Dave, experienced an on-the-job injury that left him permanently disabled. Dave held a job as head of maintenance in a small apartment complex. He had a wife and two young children.



Immediately after it was determined that Dave was permanently disabled, he applied for Social Security Disability in addition to putting in a claim with his Long-Term Disability carrier (his Employer-Sponsored plan). While his Social Security Disability benefits would take up to 18 months to receive, the plan he had through his employer began paying benefits much sooner; almost immediately after the conclusion of his Short-Term Disability. Dave's benefits were 60% of his total monthly income, or \$2,500.

Dave had estimated that his Social Security Disability check would amount to \$1,500. He assumed that eventually he could add Social Security benefits to his monthly income, and that he and his family, although they'd be forced to *tighten their belts*, could meet most of their expenses with about \$4,000 per month.

After Dave had been getting his Social Security Disability benefits for about a year, he was contacted by his Long-Term carrier and informed that he now owed them an *overpayment*. The insurance carrier considered Social Security Benefits as *other income*. And, all *other income* reduced the amount of Long-Term Disability benefits Dave was entitled to receive through his Employer-Sponsored plan. At that point, Dave was informed that he now owed the insurance carrier \$12,000.

Here's how they arrived at that figure: Dave's Social Security benefits amounted to \$1,500. His Long-Term Disability benefits amounted to \$2,500. The insurance carrier subtracted \$1,500 from \$2,500, and concluded that Dave owed them the difference of \$1,000 per month over a period of 12 months.

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Once you've achieved your American Dream, we fight to make sure you keep it.



Are Your Disability Benefits Really There For You?

About three years ago, Vicki began to experience blinding headaches, dizziness and vision problems. After endless medical testing, her doctors concluded she had a rare genetic disease that would ultimately get worse. It would render her not only unable to continue in her career as a software engineer, but in any profession. After the devastating diagnosis, Vicki did what most of us would do; she continued working until she could work no more.

Her one comfort was the knowledge that she had an Employer-Sponsored Long-Term Disability (ERISA) policy. Although Vicki never had occasion to read the fine-print, she was under the impression that the coverage was comprehensive.

So after applying for Social Security, she applied for her Long-Term Disability plan benefits. She had met all criteria and did not anticipate any complications. That all changed with the first denial notice.

After sending Vicki to one of their own treating physicians, the insurance carrier determined that Vicki's genetically-based illness was not severe enough to keep her from working in a different capacity within the same field. They denied her claim on the basis that she could, in fact, perform other work where she would not experience migraine headaches, blurred vision, dizziness and eventual depression.

The insurance carrier's doctor's opinion apparently outweighed the opinions of Vicki's four other personal physicians, all specialists in her rare disease.

Some insurance companies count on claimants who do not pursue their claims after denial. In many cases, claimants are preoccupied dealing with their debilitating illness or injury and simply accept their insurance carrier's decision. However, this is inadvisable. When you are legitimately disabled, you should seek the advice of an attorney experienced in Long-Term Disability Insurance.

Vicki's attorneys challenged the decision of the insurance

Other Income . . . Continued from P. 1

Even with his wife working, there was no way that Dave could pay that debt. The family was barely making ends meet. Unfortunately, this is usually the point where disabled clients seek the advice of an attorney.

In our practice, we see Dave's kind of problem on a regular basis. In fact, Dave's is not the worst case scenario. In Dave's case, he owed the insurance carrier *overpayment* based only on the Social Security Benefits he received. However, in some cases, Long-Term Disability plans consider *other income* to mean Workers' Compensation, 401k's, and any other money coming into the home. That can mean the carrier may demand payback from those sources as well, no matter how meager.

Best Advice . . .

- 1. Make sure you read and understand your Long-Term Disability (Employer-Sponsored) Plan. Every term has a specific meaning and a specific effect on your monthly benefits.*
- 2. Although Long-Term Disability (Employer-Sponsored) Plans differ, most have stringent restrictions. For added security, you might consider investing in a private, Individual Long-Term Disability Plan.*
- 3. Consult an attorney when you first become disabled to avoid misconceptions about the benefits you will receive.*



Legislative News . . .



Press Release From NYS Office Of Temporary & Disability Assistance

The State Office of Temporary and Disability Assistance (OTDA) has awarded \$174,500 to the Workforce Investment Board of Herkimer, Madison and Oneida Counties for the *Wheels for Work* program, to help low-income families secure reliable transportation to get to work and stay employed.

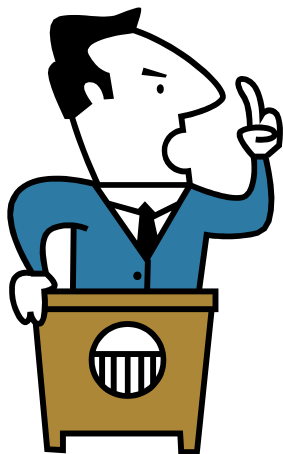
"I am pleased we were able to award these funds to the Workforce Development Board for the first time to assist residents of Oneida and Herkimer counties," said OTDA Commissioner David A. Hansell. "Getting to work on time, dropping your kids off at day care and being at all the other places a parent needs to be requires some way to get there. The *Wheels for Work* program provides used vehicles and other related services to working New Yorkers, helping them obtain employment or keep a job, giving them and their families a brighter future."

Commissioner Hansell awarded a check for the funding to local officials during an event today at the Workforce Investment Board's Working Solutions One Stop Center in Utica.

In addition to providing cars, the *Wheels for Work* program offers assistance with car repairs, auto insurance, registration and licensing fees, financial counseling, driver's education, defensive driving courses and car maintenance training. Over the next year, 75 individuals will be served with this funding and 15 will receive vehicles through this program. For more information: visit their web site at: www.otda.state.ny.us.

Legal Levity (little known, funny facts about Law)

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Did you know that . . .

In New York, it is illegal for a blind person to drive a car. In Kentucky, a person **must** bathe at least once a year. In Singapore, it is illegal to chew gum. In Providence, RI, it is illegal to jump off a bridge. In Utah, daylight must be visible between dancing couples. In a 1925

California law, it is illegal to wiggle while dancing. In Kansas, it is illegal to drive a buffalo through the streets.

carrier; they challenged the credentials of the insurance carrier's physician. They presented overwhelming evidence of Vicki's complete disability. They were well-prepared to argue on Vicki's behalf in court. Fortunately for Vicki, the insurance carrier acquiesced. They knew they had to pay Vicki what she had the right to receive by law.

Lessons to be learned: Review your policy thoroughly. Remember that insurance companies do not exist to make your life easier. Should you become disabled, seek medical care immediately. Keep all your documents in order. And, finally, seek the advise of an attorney experienced in handling ERISA cases before filing your claim.



About DeHaanBusse LLP . . .

DeHaanBusse LLP is a leader in disability law including Employee Benefit Claims (ERISA), Private Insurance Policy Claims, Federal Employee Retirement System Claims (FERS), VA Disability Claims, New York City Retirement Systems (NYCERS), and New York State & Local Retirement Systems (NYSERS). Our practice is based upon one simple premise: *that individuals have the right to receive what they have paid for and what they have been promised according to the law.*

We focus on and believe that the safety net most Americans have worked long and hard to provide for themselves and their families should be there when they need it. Unfortunately, more and more that is not the case. Insurers often arbitrarily deny legitimate disability claims, despite the costly premiums paid out through the years. Their decisions have resulted in the near financial collapse of many individuals and their families.

Why Our Firm?

Knowledge - Our attorneys have an in-depth knowledge of the process and the law as it specifically applies to disability, and will provide you with a realistic opinion of your case.

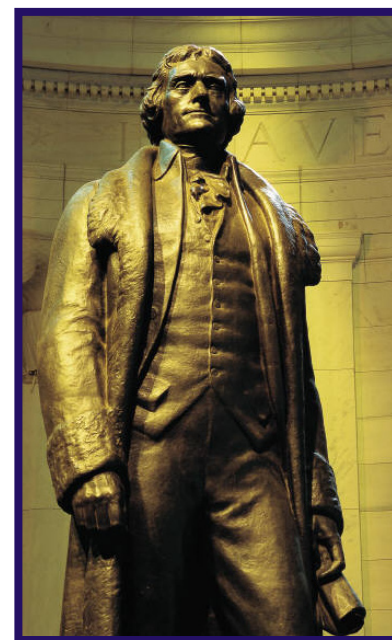
Experience - We know which details are fundamentally important to achieving a favorable decision in your case. Our partners collectively have over 55 years of experience in disability law.

Personal Attention - We know our clients come to us at extremely difficult times in their lives. That is why our attorneys and our entire staff are uniquely responsive to their needs. We believe in and practice total transparency, and take the time required to explain the details as well as all legal fees relating to your your case. **We are here to help. . .** and are available to you for a free consultation. Call us today.

Did You Know? Take The History Quiz . . .

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| 1.) Who was the first in Massachusetts to be executed for Witchcraft? | 6.) Who wrote the Pledge of Allegiance? |
| 2. When was the first meeting of the U.S. Supreme Court? | 7.) Where was the first national capital? |
| 3. Who was the longest sitting Supreme Court Justice? | 8.) Who said, "Give me liberty or give me death?" |
| 4. Who won the first battle in the War for Independence? | 9. How many men died in the Civil War? |
| 5.) How many grievances against King George III were stated in the Declaration of Independence? | 10.) Who was the only Jewish member of the Confederate Cabinet? |

ANSWERS: 1.) Margaret Jones in 1648 2.) 1790 in NYC 3.) William D. Douglas (1930-1975) 4.) Massachusetts 5.) 22 6.) Francis Bellamy 7.) New York 8.) Patrick Henry 9.) 627,000 10.) Judah P. Benjamin, Secretary of War



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