

Expanded Claims Procedures for Disability Benefits

April 20, 2018

Final regulations, issued by the U.S. Department of Labor, governing the procedural benefit claims requirements with respect to ERISA-covered retirement and welfare plans that provide disability-based benefits have now become effective for benefit claims filed after April 1, 2018 (the “Final Rules”). The Final Rules are intended to broaden and enhance the disability benefit claims procedures available to plan participants. These new Final Rules apply to ERISA-covered plans (such as pension, 401(k), long-term disability, medical, and nonqualified deferred compensation (“top-hat”) plans where a participant’s disability status for benefits eligibility purposes is determined by a plan administrator with discretion under the plan to make such determination (e.g., employer or company officer). Below are some of the key provisions of the Final Rules.

Adverse Benefit Determination (“ABD”)

An ABD must include an explanation of the basis for disagreeing with (i) the medical or vocational experts who advised the plan (without regard to whether the plan relied on such advice); (ii) the views of the claimant’s medical or vocational experts, and (iii) a disability determination concerning the claimant made by the Social Security Administration. In addition, the ABD must disclose:

1. Where the denial is based on a medical necessity or experimental treatment (or similar exclusion), an explanation of the scientific or clinical judgment supporting the determination or a statement that such explanation will be available upon request;
2. The specific internal rules, guidelines, standards, etc. that the plan used in making its adverse decision or a statement that such rules, etc. do not exist;
3. A statement that the claimant is entitled to receive, upon request, all documents, records, etc. relevant to the benefit claim;
4. A statement of the claimant’s right to appeal an initial benefit claim denial and of the right to file a lawsuit under ERISA after an adverse benefit decision on appeal; and
5. The statement of a claimant’s right to file a lawsuit shall include a description of any applicable contractual limitations period and the last day of such contractual limitations period.

Independence and Impartiality

To help ensure the independence and impartiality of the person(s) involved in making the benefit claim decision, the Final Rules require that decisions regarding hiring, compensation, termination, promotion, or other similar matters concerning such decision-making person(s) (such as a claims adjudicator or vocational expert) must not be made based upon the likelihood that the individual will support the denial of benefits.

New Evidence/Rationale

In order to provide the claimant with a reasonable opportunity for a full and fair review of an initial claim and on appeal following an initial claim denial, the Final Rules require that the plan administrator disclose to the claimant any new or additional evidence or rationale that was considered or relied upon in making such benefit claim determination. Such new evidence or rationale must be provided to the claimant as soon as possible and sufficiently in advance of the last date by which a notice of adverse determination is required in order to give the claimant a reasonable opportunity to respond prior to such notice determination deadline.

Foreign Language Assistance

Under the Final Rules, any ABD with respect to a claim for disability-based benefits must be written in a culturally and linguistically appropriate manner. Accordingly, the plan must provide verbal customer assistance in any “applicable non-English language” and assistance in filing initial benefit claims and appeals in such non-English language. Further, in any English language notices under the plan, a prominently displayed statement must be provided that states that applicable non-English language services are available. For purposes of the Final Rules, an “applicable non-English language” is, with respect to an address in any county in the United States to which a benefits claim-related notice is sent, a non-English language if 10% or more of the people residing in such county are literate only in the same non-English language.

Consequences of Failing to Comply

In the case of a claim for disability-based benefits, if the plan fails to strictly adhere to the benefit claims regulations, including the Final Rules, the claimant will be deemed to have exhausted his or her administrative claims review remedies, and thus will generally be permitted to immediately file a lawsuit in federal court regarding the benefit claim. In such event, it may be expected that the court would make a determination concerning the benefit claim on a more participant-friendly de novo review basis. However, a claimant will not be deemed to have exhausted their administrative claims review remedies, and therefore, may not proceed to then file a lawsuit if the violation of the claims review rules is de minimis and certain additional conditions are met.

If you have questions about the final rules or if we can assist you in any way, please reach out to your Brach Eichler attorney.