LEANNE GOLDSTEIN LAW

Why was my Long Term Disability Claim Denied?

Top 10 reasons why Long Term Disability claims are denied or terminated

Although each long term disability claim is different, it is common for insurers to have certain standard reasons for denying or terminating long term disability claims. Here are some of the top 10 reasons why long term disability benefits claims are denied:

1 Late Filing

Long Term disability insurance policies often have "Proof of Claim" or "Notice" clauses that provide a timeline or time frame within which a claim for long term disability benefits should be submitted to the insurance company which starts to run from the date of disability.

A claim that is filed late can be denied by the insurer on the basis of these clauses.

HOW

Insurance companies incorporate these clauses into the long term disability policies as they wish to be notified of a claim as soon as possible.

WHY

Insurers often argue that it is prejudicial to them to receive a claim after a long delay as it prejudices their ability to properly manage the claim.

WHAT YOU CAN DO

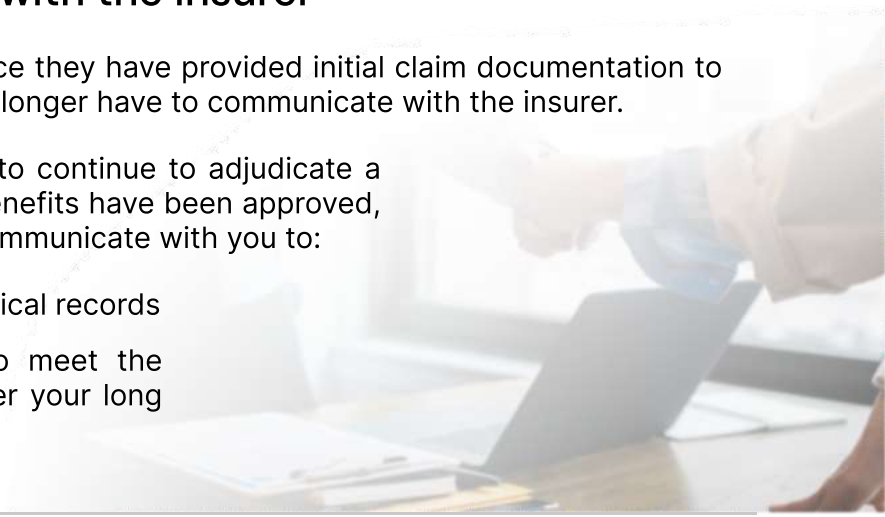
Depending on the extent of the delay and reasons for the delay, there are often legal arguments that can successfully overturn decisions of this nature.

2 Failure to Communicate with the Insurer

MYTH Many claimants believe that once they have provided initial claim documentation to the insurance company they no longer have to communicate with the insurer.

Insurance companies have an obligation to continue to adjudicate a claim on an ongoing basis. Even if your benefits have been approved, the insurance company will continue to communicate with you to:

- Obtain updated information and medical records
- Ascertain whether you continue to meet the tests for disability as specified under your long term disability policy



LEANNE GOLDSTEIN LAW
The courage to fight.
The compassion to care.

info@leannegoldsteinlaw.ca
1-416-628-3360 (T) | 416-749-4672 (F)
leannegoldsteinlaw.ca
400 Applewood Cres, Suite 100, Vaughan, Ontario L4K 0C3

The insurance company may wish to:

- Interview you over the telephone
- Have you assessed medically
- Have you participate in a rehabilitation program

It is not uncommon for insurance companies to attempt to communicate with claimants on multiple occasions. If they have attempted to communicate on multiple occasions and there has been no response, they may deny or terminate benefits due to failure to communicate.

3 Contractual Reasons

An insurance company might deny benefits on the basis of a contractual exclusion. One of the most common reasons for denying claims based on a contractual exclusion is based on the "pre-existing condition exclusion clause".

THE PRE-EXISTING CONDITION EXCLUSION

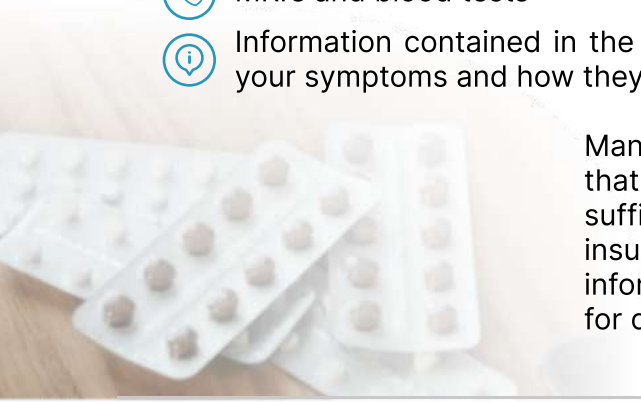
- Will usually apply if an individual makes a claim for disability benefits within the first year after their insurance coverage took effect (this time period could vary)
- May apply if the insurance company determines that you saw a doctor or had any treatment related to your disabling condition prior to when your insurance took effect

This is a very technical area and much turns on the interpretation of the specific clause in the long term disability policy.

4 Insufficient Evidence to Support Disability

Medical evidence is required to substantiate a claim for long term disability benefits. Medical evidence could consist of:

- Diagnostic imaging such as x-rays
- MRI's and blood tests
- Information contained in the medical records of your doctors and specialists, related to your symptoms and how they impact your ability to function on a day to day basis



Many claimants (and even their treatment providers) believe that providing an insurance company with a diagnosis is sufficient to establish disability. Often a diagnosis alone is insufficient to provide the insurance company with enough information to determine whether the claimant meets the test for disability under the long term disability policy.

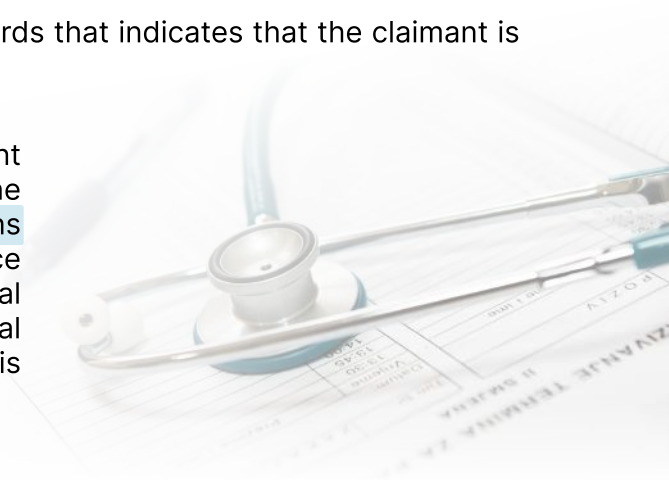
info@leannegoldsteinlaw.ca
1-416-628-3360 (T) | 416-749-4672 (F)
leannegoldsteinlaw.ca
400 Applewood Cres, Suite 100, Vaughan, Ontario L4K 0C3

Information as to the severity, intensity, frequency and duration of symptoms and their impact on functional abilities is often what the insurance company is looking for.

This can be provided through:

- A report prepared by a treatment provider
- By highlighting information in clinical notes and records that indicates that the claimant is suffering from a debilitating medical condition.

It is important to note that sometimes "Insufficient Evidence to Support Disability" might mean that the insurance company disagrees with your doctors' opinions as to whether you are in fact disabled. The insurance company may have requested an internal medical consultant to review your claim and that internal medical consultant does not feel that your medical condition is severe enough to meet the test for disability.



5 No Objective Evidence of Disability

Some examples of conditions where there may not be "objective evidence" of disability are:

- Chronic pain
- Chronic fatigue
- Fibromyalgia
- IBS
- Mental Illness

In other words, these conditions cannot be verified through diagnostic imaging or "objective" tests of any kind such as x-rays, MRI's, blood tests and so on.

Insurers may therefore argue that symptoms are self-reported and cannot be assessed and therefore do not equate to disability and may deny the claim as a result.

There are many different ways to contest denials of this nature. Many times the insurance company artificially inserts a requirement for "objective medical evidence" when a policy does not actually require that or a condition cannot possibly be assessed using "objective evidence".

6 Refusal to Attend an Independent Medical Assessment

Most long term disability insurance policies allow the insurance company to have you assessed by a medical practitioner of their choosing. The insurance company often has the right under the policy/plan to send a claimant to a doctor of their choosing for a medical or psychiatric evaluation. This is commonly referred to as an independent medical examination or "IME".

info@leannegoldsteinlaw.ca
1-416-628-3360 (T) | 416-749-4672 (F)
leannegoldsteinlaw.ca
400 Applewood Cres, Suite 100, Vaughan, Ontario L4K 0C3

WHAT IS AN INDEPENDENT MEDICAL EXAM (IME)?

- The IME doctor will not provide treatment
- His or her role is to provide an opinion to the insurance company on symptoms, restrictions and limitations, whether the condition is disabling, treatment recommendations, diagnosis and prognosis
- Not all IME assessors are created equal and some may be used more frequently by insurers because their opinions are often more favourable to the insurer
- They may frequently determine that there is an absence of disability or acknowledge disability but indicated that an accelerated recovery has occurred

Refusal to attend an IME arranged by the insurance company will often be accompanied by a termination or denial of benefits. It is therefore better to attend an IME and later contest the outcome than to refuse to attend an IME which will likely result in an automatic denial or termination of benefits.

7 Treatment Non-Compliance

Some long term disability insurance policies may specifically require that an insured submit to medical treatment as a condition of receiving benefits.

→ If the claimant refuses to submit to reasonable medical treatment, the claimant may find that his/her benefits are denied or terminated.

The extent to which an insurance company is permitted to direct treatment of a claimant is the subject of debate. It is, however, generally a question of what is reasonable in the circumstances. If an insured completely rejects any form of traditional medical treatment in favour of alternative therapies, he or she may experience difficulty when trying to justify the reasonableness of this decision.

FREQUENCY OF TREATMENT

Determined by the nature of the condition being treated but insurers often equate severity of condition with frequency of treatment. Whether or not the treatment is likely to have a successful outcome is also a consideration in determining the reasonableness of pursuing any form of treatment.

COST OF TREATMENT

Many claimants believe that if they are unable to afford treatment this provides them with sufficient justification for refusing to attend treatment. Our courts have not found this to be sufficient justification and it is therefore important, when pursuing treatment, to determine if there is an affordable option. For instance, rather than seeing a psychologist, if medical benefits coverage has been terminated, it may be more affordable to seek treatment from a publicly funded social worker, doctor providing psychotherapy or attend a group hospital program.

info@leannegoldsteinlaw.ca
1-416-628-3360 (T) | 416-749-4672 (F)
leannegoldsteinlaw.ca
400 Applewood Cres, Suite 100, Vaughan, Ontario L4K 0C3

8 Failure to participate in rehabilitation or return to work

A determination by the insurer that an insured is "totally disabled" from his or her "own occupation" or from "any occupation" and therefore entitled to benefits, does not mean that an insured is automatically entitled to continue receiving benefits indefinitely. There is an obligation on the insured to make reasonable efforts to rehabilitate.

If benefits have been approved, your case manager may request the services of a rehabilitation consultant (who can be an employee of the insurance company or an outside party) to formulate a rehabilitation program.

The purpose of a rehabilitation program is to ultimately get you back into the workforce, whether it is in your previous job or in an alternate occupation. Rehabilitation consultants may arrange for treatment, work hardening programs or a graduated return to work plan.

If you are unable to participate in a rehabilitation or return to work program, it is very important to consult with a lawyer as failure to attend can result in termination of benefits.

9 Change of Definition

Disability:
(in the first 24 months)

Usually, and particularly in group insurance policies, the initial definition of disability in a long-term disability policy requires a person to be disabled from performing the essential duties of his/her own occupation for the first 24 months.

Disability:
(after 24 months)

After 24 months, the test changes to whether the person is able to perform the essential duties of any gainful occupation for which he/she has the requisite education, training and work experience.

There may be some variations in wording depending on the plan or policy and variations on the length of time for the own occupation period.

It is common for insurance companies to terminate claims at the change of definition. In other words, the insurance company might accept that you are medically unable to do your own occupation but they feel that you are able to work in a different occupation based on your transferable skills and functional abilities.

In our experience, insurers often conduct an inadequate assessment at the change of definition resulting in many claims being improperly denied.

info@leannegoldsteinlaw.ca
1-416-628-3360 (T) | 416-749-4672 (F)
leannegoldsteinlaw.ca
400 Applewood Cres, Suite 100, Vaughan, Ontario L4K 0C3

10 Credibility Issues

It is not illegal for an insurance company to conduct surveillance. In fact, it is a common tool used during the adjudication process. Insurers believe that surveillance provides more accurate unbiased information of functional abilities as the insured is unaware that they are being observed.

Insurers can only conduct surveillance from outside your home.

- ✓ Investigators hired by the insurance company can follow you during the course of your day
- ✗ They cannot enter a home or plant recording devices or tracking devices
- ✓ They can take photographs and video footage of you, as long as it is not in your home

The best way to deal with surveillance is to be honest and consistent with your doctors and the insurance company. Where there are inconsistencies between what the insurance company sees on surveillance and what the claimant is telling the insurance company and his/her doctors, claims may be terminated on the basis of credibility.

SOCIAL MEDIA & SURVEILLANCE

"Surveillance" is not only limited to following you physically, the insurer may also follow what you post on social media and on the internet to look for inconsistencies and credibility issues. They may look for websites that have you listed or they may be checking to see if you are operating a small business from home.

We have heard the argument from insurers many times that if our clients are out and about, as seen on surveillance or active on social media, then they are able to function in the workplace and earn a gainful income. There are a multitude of reasons why this may simply not be true.

If you feel that you have not been treated fairly by your long term disability insurer and would like to discuss your Long-Term Disability claim with an experienced lawyer, Leanne Goldstein Law is dedicated exclusively to the practice of disability insurance litigation. We would be happy to provide you with a free consultation. Please contact us online or by calling us at 1-416-628-3360.

The preceding is not intended to be legal advice. This blog is made available for educational purposes only as well as to give you general information and a general understanding of the law, not to provide specific legal advice. By using this blog, you understand that there is no solicitor-client relationship between you and the blog publisher. The blog should not be used as a substitute for competent legal advice from a licensed lawyer in your jurisdiction. If your disability claim has been denied and you require legal advice, contact a lawyer specializing in disability law.

NOTE: The *Limitations Act,* in most provinces, provides for **a two-year limitation period** from the date of denial in which you are able to sue for disability benefits. Please confirm the date of the end of your limitation period with us. It is vital that you retain legal representation in advance to ensure your matter is dealt with in a timely fashion.

LEANNE GOLDSTEIN LAW
The courage to fight.
The compassion to care.

info@leannegoldsteinlaw.ca
1-416-628-3360 (T) | 416-749-4672 (F)
leannegoldsteinlaw.ca
400 Applewood Cres, Suite 100, Vaughan, Ontario L4K 0C3