The Disability Dis

Don’t let insurers cut you off if you still can’t work

September 1, 1999 By Arthur S. Leonard

These days the media like to present AIDS as a manageable disease, and no one could be happier about that than disability insurers—they’re taking a tougher line on who can qualify for benefits in the protease age. First the basics: People on disability typically get a portion—often about 60 percent—of their pre-disability income. Some policies require that to be eligible you must be incapable of any full-time employment; others, merely that you’re unable to continue performing your current job. Still other policies start out with the less demanding definition and then, after a time, switch to the more stringent one.

Lawyers specializing in AIDS issues are increasingly barraged with calls from HIVers whose disability benefits were terminated, even though they remain unable to work. There is a simple reason, says Bennett Klein, an attorney at Boston’s Gay and Lesbian Advocates and Defenders: “When insurers approved benefits before the availability of combination therapy, they anticipated that the recipients were not going to live very long. Now there is greater scrutiny of these claims because the new therapies mean longer lives.”

One of Klein’s clients, Robin Lambert, represents a typical case. Lambert, who was vice president for human resources at a photo-processing company, has two disability policies: an individual policy he bought from All-American Financial and a Metropolitan Life group policy purchased through his employer. All-American pays out if he is unable to continue in his current job; Met Life pays on the same basis for the first three years, but then benefits continue only if Lambert is so disabled that he can’t work full time.

In 1996, constant fatigue and other physical problems related to HIV forced him to go on disability, and he began drawing benefits under both policies. Trying to supplement his income, Lambert invested in a restaurant and now occasionally spends a few hours a day there, but fatigue makes it impossible for him to do more than that.

Earlier this year, both disability insurers informed Lambert that they were cutting off his benefits. In letters so suspiciously similar that Klein believes the companies are sharing files, which is illegal, the insurers claim that if Lambert is able to make it to the restaurant for a few hours a day, he can return to his full-time job as a human resources executive. The insurers base their decision on an official Department of Labor listing of physical job tasks, arguing that serving as an

executive isn't physically strenuous. But it does require, at least for Lambert's job, frequent travel, intense intellectual effort and concentration of a type that even healthy people might find difficult.

Klein, who is representing Lambert in appealing the initial denials, flags an important issue for doctors as well as for people with HIV: Don't skimp on filling out insurance and medical records. All too often, Klein has found, doctors complete insurance forms hastily and fail to give a complete account of a patient's symptoms. Then the insurer points to the incomplete medical report as evidence that the patient's condition is not disabling.

The same problem crops up with medical records. If at a checkup you tell your doctor you're fine, "patient OK" or "no complaints" goes on the chart. Of course, both you and your doctor know this means no *new* complications, but insurers pounce on these entries as evidence that you have no symptoms and are able to work. So people with HIV should prod their doctors into being more exact and thorough when filling out reports.

Lambert plans to file a court appeal if his internal appeal on the group policy is turned down. But the court will likely rule against him unless he can show that the insurer's justifications for cutting off his benefits were totally inadequate or medically unreasonable, and judges give benefit-plan administrators a lot of leeway in these cases. And under current law, Lambert will not be allowed to bring up any issue in court that he didn't raise in his first internal appeal to the insurer. This is crucial because most people don't consult an attorney before submitting their appeal and, being inexperienced, fail to raise important issues in their appeal letters.

Those lucky enough to have disability insurance have earned the right to this coverage. HIV positive folks, their caregivers, doctors and advocates have to match the new vigilance of the insurers so that those who truly cannot work get the benefits they deserve.

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