

**WHAT DO YOU MEAN I'M NOT DISABLED!
THE LONG AND SHORT OF HANDLING SHORT AND LONG
TERM DISABILITY CLAIMS**

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OVERVIEW OF MATERIALS

- **Key Terms and Definitions**
- **Who can take actions**
- **What is the first step**
- **What to expect**
- **Litigation**

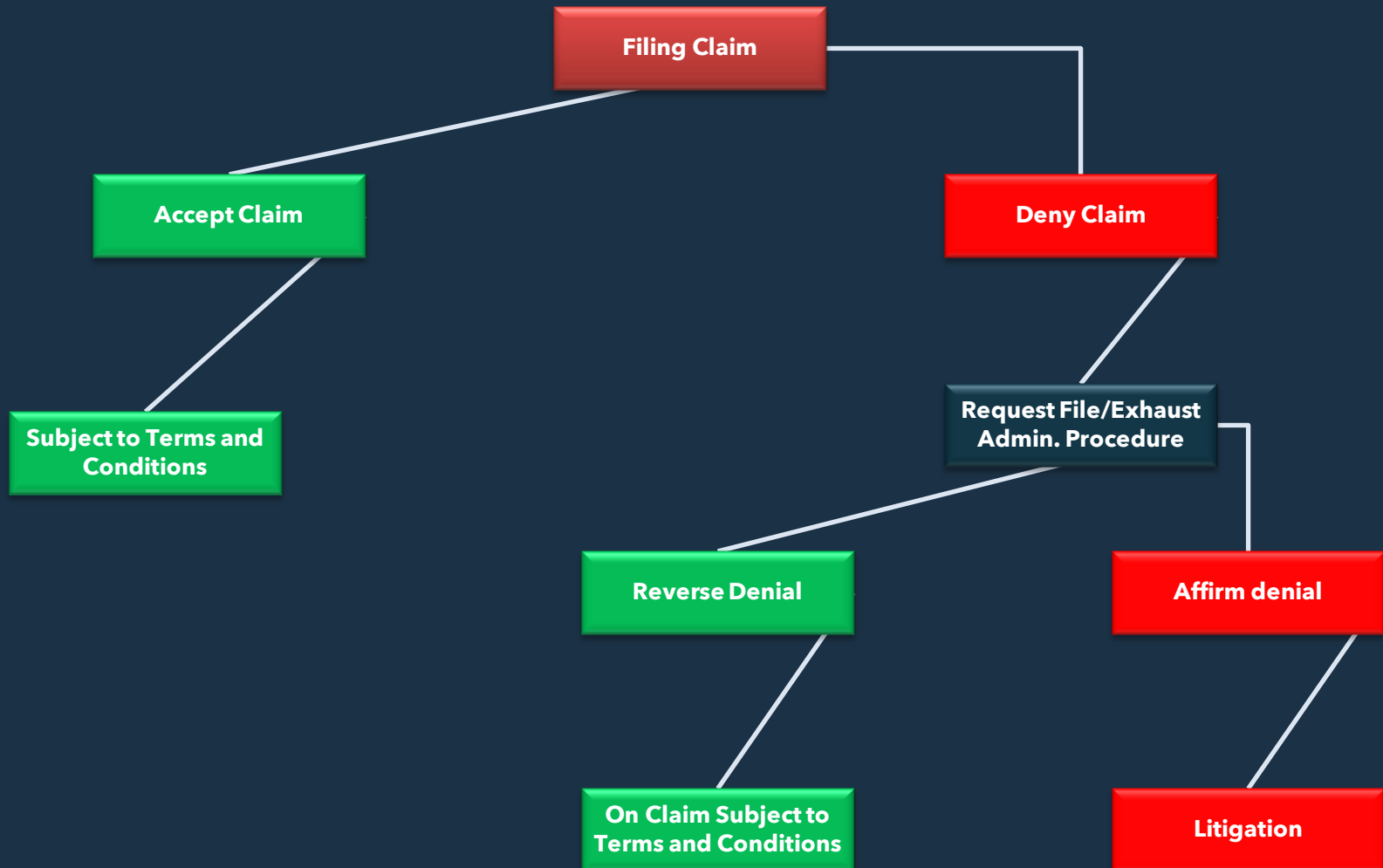
KEY TERMS AND DEFINITIONS

- **Welfare Benefit Plan/Welfare Plan**
- **Coverage**
- **Employer**
- **Summary Plan Description**
- **Own Occ/Any Occ**

WHO CAN TAKE ACTION

- **Participant or Beneficiary**
 - **For what?**
 - **Benefits due them.**

OVERVIEW OF THE PROCESS



WHAT ACTION SHOULD BE TAKEN FIRST

- **Filing the Claim**
 - SPD or Plan Documents
- ***PRACTICE POINTER:***
 - File while still employed!
 - Use the policy or SPD language

WHAT TO EXPECT AFTER FILING

- **Claims Process**
 - **Adverse determination within 45 days**
 - **Usually requested extensions**
 - **45 days to respond**
 - **Must spell out reasons, provisions relied upon, any additional information needed to perfect claim, why such things are needed, and ERISA rights**

WHAT TO EXPECT AFTER FILING (CONT.)

- **Explain why treating providers views not followed.**
- **Views of medical/vocational experts obtained by the plan, regardless if followed.**
- **SSDI determination.**
- **Internal rules, etc. relied upo**
- **Copy of claim file.**

WHAT TO EXPECT AFTER FILING (CONT.)

- **Claims Process**
 - **Appealing an Adverse Determination**
 - **Immediately request claim file**
 - **Usually 180 days to appeal**
 - **Must exhaust appeals/administrative process**
 - **Exceptions to exhaustion requirement**
 - » **Futility**
 - **Full and fair review**

WHAT TO EXPECT AFTER FILING (CONT.)

- ***Practice Pointers:***
 - Appeal is critical area!
 - Review the record
 - Make sure everything you want in the record is there.
 - This is the information upon which the Court will base its review if litigation results.

AFTER EXHAUSTION--LITIGATION

- **Identifying Defendants**
 - **Plan Administrator**
 - **Usually Insurance Company**
 - **Could be employer**
 - **Employer**
- ***Practice Pointers:***
 - **When in doubt, name both**

AFTER EXHAUSTION—LITIGATION (CONT.)

- **Venue**
 - **ERISA related=Federal court**
 - ERISA preemption
 - Federal question
 - Diversity
 - **Private Policies**
 - State or Federal on breach of contract claims
 - Removal if diverse parties.

STATUTE OF LIMITATIONS

- **ERISA claims**
 - 2 years
- **Non-ERISA breach of contract**
 - 2 years, but...
 - Could be 3 year
 - Maybe 6 year?

STATUTE OF LIMITATIONS (CONT.)

- **Accrual when repudiation of claim made clear.**
 - When is that?
 - 8th Circuit: Conclusion of appeal
- ***Practice Pointers:***
 - Act within shortest timeframe.

STANDARD OF REVIEW

- **Not *De Novo***
- **Abuse of Discretion**
 - Look at plan language
- ***Practice Pointers:***
 - If discretion granting language not in plan then *de novo* review.
 - Look for where it appears.
- **However...**

MINN. STAT. §60A.42

- **As of Jan. 1, 2016**
 - **No disability policies may contain discretion granting language inconsistent with MN law.**
 - **Important to look at date of plan offering, issuance or renewal.**

STANDARD OF REVIEW (CONT.)

- **Abuse of Discretion=high threshold**
 - Arbitrary and capricious
 - Support with substantial evidence
 - Reasonable person **COULD** have made same decision, not would have.
- ***Practice Pointers:***
 - Claim file must show decision wrong, not just other decisions possible.

TEST OF REASONABLENESS

- **Consistent with Plan goals**
- **Render language meaningless**
- **Conflict with ERISA**
- **Similarly followed in past**
- **Contrary to clear policy language**

CONFLICTS OF INTEREST

- **Take into account to determine abuse of discretion**
 - **Exists when evaluate *and* pay claims**
 - **Higher likelihood of effect on decision, more weight in finding abuse of discretion**
 - **Tie breaker if all else equal**

“SLIDING SCALE” STANDARD OF REVIEW

- **When conflicts or procedural irregularities present.**
 - **Procedural irregularities could include:**
 - **Failure to follow claims handling process**
 - **Dishonest actions, improper motives**
 - **Failure to conduct medical evaluations, appropriate inquiries**
- **BUT...**

“SLIDING SCALE” (CONT.)

- **Procedural Irregularities trigger available after *Glenn*?**
 - **Maybe:**
 - *Wren*: May still apply
 - *Chronister*: Just a factor to determine abuse of discretion.

SLIDING SCALE (CONT.)

- ***Practice Pointers:***
 - Make both arguments—sliding scale/factor in abuse of discretion
 - Was plan issued, renewed, offered after Jan. 1, 2016—could provide *de novo* standard

DISCOVERY

- **Not allowed**
 - However, if good cause, the Court may allow additional evidence
 - Look at opportunity to present during administrative process.
- ***Practice Pointers:***
 - Use and exhaust administrative process
 - Review and know claim file
 - Limited discovery not a bad thing

SUMMARY JUDGMENT

- **Ripe for dispositive cross motions**

REMEDIES

- **Benefits due**
 - Back benefits
 - Back on claim
- **Lump sum**
 - SSDI impact.
- ***Practice Pointers:***
 - Know what your client wants
 - Let them know what a favorable outcome may mean—back on claim.

REMEDIES (CONT.)

- **Attorneys Fees:**
 - Court Discretion
 - Some degree of success on merits
 - Not necessarily “prevailing party”
 - ERISA is remedial legislation; liberally construed.
- ***Practice Pointers:***
 - Beware discretion to award fees to EITHER party.

SPECIAL CONSIDERATIONS

- **Interplay of LTD/ADA or MHRA/SSDI**
 - Disability definitions differ between LTD policies, ADA/MHRA and SSDI
- **“The Rub”**
 - Difficult to argue ADA/MHRA disability if applying for/receiving SSDI/LTD.
- ***Practice Pointers:***
 - Discuss interplay with client
 - Consider abandoning weaker claims, if needed.

SPECIAL CONSIDERATIONS (CONT.)

- **“The Financial Rub”**
 - Offset and overpayments triggered by SSDI payments.
- ***Practice Pointers:***
 - Advise your client accordingly!

FINAL THOUGHTS

- **Recognize ERISA claims**
- **Exhaust procedures**
- **Consider impact on related claims**