

## Question Period with Hugh Scher, James Ludwar and John Wodak

### **Is it beneficial to apply for both AISH and CPP?**

Yes, because AISH provides medical benefits and other supports which CPP-D does not provide. If accepted to AISH, they will ask you to apply for CPP-D if you are eligible because CPP-D is the first payer – so in most cases you need to apply for both.

### **Does being on CPP-D affect the probability of a successful suit against an insurer?**

Yes, both James and Hugh agree that being on CPP-D should assist with a legal case for wrongful termination of benefits. The definition of disability under CPP-D is more stringent (must be able to work at any job).

### **What are the chances of getting punitive damages against a IME assessor who provides a biased opinion?**

Hugh argued the Keyes vs Honda case in which one of the most significant punitive damages in the past 25 years was awarded to a worker with ME/CFS. This case and an earlier one called Fiddler from BC changed how aggravated damages are awarded.

Aggravated damages are compensation.

Punitive damages are a punitive fine for egregious misconduct by the insurer.

Aggravated damages are easier to get. But it is not likely to be a large amount.

Punitive damages are harder to get.

It is more important is to be able to refute the IME report with the totality of the medical evidence.

### **What if you did not claim disability while working and you are subsequently laid off?**

If you got laid off due to a standard lay off but can still do the job you are not eligible for disability.

But if you got laid off due to not being able to do the job due to disability but didn't apply until after being laid off you may have a chance as long as you can show the time line.

### **What about people being threatened with layoff while on disability?**

It depends if there is a reasonable business reason for the lay off eg. the employer is going out of business or restructuring. Otherwise if the disability occurs while working or during the notice period of termination, it is generally expected that an employer will keep a position open for a disabled worker and provide benefits as under the employment agreement. Each province has a different timeline for bringing a claim – in Ontario it is 2 years.

### **After approval for any occupation LTD how often can the insurer ask for updates?**

James explains that while on disability, the insurer is the employer and they have a right to manage the claim and send beneficiaries for assessments and rehabilitation as they see fit. James says that return to work plans should be signed off by the family physician. Can it be considered harassment? It can but this is rarely pursued. Sometimes reassessment occurs when a new adjudicator is on the case. If the patient is being negatively impacted by the frequent IME's the physician can advise the insurance company of this impact.

**What options are there for someone denied AISH and the CRA tax credit who is not eligible for CPP-D or private insurance due to lack of work history?**

Maybe get some help and try again.

**What about someone continuing to work with accommodation who is scared of being terminated and left with no support?**

Hugh says that it is generally in an employee's interest to return to work if possible.

- It enables them to earn more money than they would on disability.
- If terminated due to disability there may be grounds for a wrongful dismissal case.
- Being terminated due to inability to do the job would strengthen an application to CPP-D and/or private insurer.

If there is a return to work plan it is important for a doctor to be monitoring progress and giving feedback to the insurer regarding needed modifications or restrictions. Attempting to return to work should strengthen a disability case if the attempt is unsuccessful.

James agrees it is better to try and fail rather than not to try at all.

Thanks to all the participants for asking such interesting questions which brought out more knowledge from our speakers.

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