From: Bob June
Sent: Monday, December 11, 2017 1:55 PM
To: EBSA, E-ORI - EBSA
Subject: RIN 1210-AB39

Comments Regarding RIN 1210-AB39,"Claims Procedure: Plans Providing Disability Benefits"

I am an attorney representing claimants in ERISA disability cases, and I have been doing so for most of my 23 years of practicing law. The Final Rule issued on December 19, 2016 is quite clearly designed to improve the clarity and transparency of the administrative claim process, which will undoubtedly reduce unnecessary litigation rather than increasing it. In addition to assuring that meritorious claims are more likely to be approved during the administrative phase, increased clarity of the process will likely persuade claimants to forego litigation over claims that were denied properly. From a litigator's point of view, it is obvious that these regulations will reduce litigation. These procedures are already followed by reputable insurers, and only those insurers that wish to hide information during the administrative process will be affected. There is no real basis for arguing that "the Final Rule will drive up disability benefit plan costs, cause an increase in litigation, and thus impair workers' access to disability insurance protections." Indeed, a failure to implement the Final Rule will itself promote increased litigation and "impair workers' access to disability insurance benefits."

The "stakeholders" referenced in the notice seem to be opposed to providing "a full and fair review" in ERISA claims, not merely making the process cost-effective. For example, the most reputable insurers already provide claimants with an opportunity to review and respond to new information used in denying an administrative appeal. This permits the insurer to correct mistakes identified by the responding claimant, rather than forcing the claimant to file suit in federal court simply to correct factual errors. It also increases the likelihood that a claimant will accept the decision of the insurer rather than pursuing litigation. A transparent process is truly cost-effective. However, the claimant is very likely to sue in cases where the insurer refuses to permit responses to new information, and such lawsuits often result in remands to the insurer to re-start the administrative process. This places unnecessary and costly burdens on the federal court system as well as insurers and claimants.

Similarly, the requirement in the Final Rule that benefit denials include a discussion of the basis for disagreeing with a Social Security decision is pure commonsense. In many cases, the insurer encourages the claimant to apply for Social Security Disability benefits, and some insurers provide services to help with the Social Security claim. Once successful, the insurer realizes a substantial savings as a result of subtracting the Social Security benefits from the amount owed by the insurer. It is quite perplexing in these circumstances when an insurer simply ignores the favorable SSD ruling that it pushed the claimant to pursue, and requiring a cogent explanation of the reason for disregarding the SSD decision simply makes sense. We should not require claimants to file lawsuits in order to learn why the insurer differed from the SSA in this regard.

The Final Rule's treatment of "deemed exhaustion" also promotes a more complete administrative process that will result in less federal court litigation. This provision only comes into play when insurers "side-step established procedures," not when claimants do so. By

encouraging insurers to adhere to the claim regulations in this manner, the Final Rule will result in more complete claim processing at the administrative level, thereby resulting in less federal litigation. There is no reason to believe that proper claim processing will somehow "clog the courts," and there is no basis for authorizing insurers to deviate from the claim regulations established by this agency. Moreover, this provision will not alter the default standard of review established by the Supreme Court in *Firestone Tire & Rubber Co. v. Bruch*, 489 U.S. 101 (1989). The Final Rule does not impose "new steps and evidentiary burdens in the adjudication of claims," but simply defaults to the standard established by the Supreme Court nearly three decades ago.

There is also no support for the notion that implementation of the Final Rule "will delay any final decision for the claimant and will significantly increase the administrative burdens on employers and disability insurance carriers, hurting the very employee the rule was purporting to help." This argument could only be made on behalf of those insurers that do not already follow standard claim procedures, and watering down the regulatory claim process would likely put more reputable insurers at a competitive disadvantage. Moreover, it clearly does not help employees if we encourage baseless denials of benefits that ignore claim regulations. We should demand that all insurers follow prudent claim procedures.

Based on my experience handling ERISA claims, it is evident that all of the provisions of the Final Rule will encourage proper claim processing at the administrative level, reducing the need for federal litigation. This will be beneficial to our already overburdened court system as well as claimants and insurers. The Final Rule is a prudent step toward better processing of ERISA claims, and we really should embrace it. Thank you.

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