

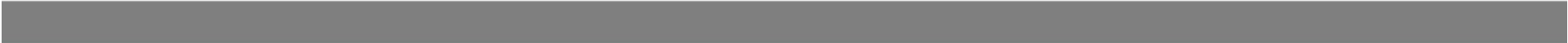


Disability Income Hot Topics

Legislative and Litigation Update

AICP – New England Chapter Meeting

May 14, 2010



Disability Income Hot Topics

Mark Murphy, Compliance Director
Custom Disability Solutions
South Portland, Maine

www.customdisability.com

<http://cdscompliance.blogspot.com/>

Disability Income Hot Topics

State Activity

- Discretionary Authority Provisions
 - Critical to courts in deciding standard of review used to uphold or reverse claim decisions in ERISA litigation
 - Lists of states with outright prohibitions vary
 - For DI, recent CDS filing experience shows CO, IL, KY, MI, MT, NH, SD, UT, and WA as states prohibiting it

Disability Income Hot Topics

State Activity

- Discretionary Authority Provisions
 - Some states require special wording, but don't prohibit it
 - Recent regulatory stirrings in CA, NY and TX
 - CA: AB 1868
 - NY: Proposed Regulation 184 (comment period ended May 5)
 - TX: Bulletin B-0003-10 in January
 - KY: Advisory Opinion 2010-01 in March

Disability Income Hot Topics

State Activity

- CT: Prohibition on Social Security Offsets
- CA: Repeal of August 2008 Offset Regulation
- MD: Prompt Delivery of Policies and Certificates

Disability Income Hot Topics

State Activity

Filing Updates

- MI: Group filings required effective August 2010 (Bulletin 2010-02)
- NE: SERFF/EFT required effective 5/1/10
- IL: Interstate Compact bill on governor's desk
- NJ, OR: "Quasi IC" activity

Disability Income Hot Topics

State Activity

Filing Updates

- CA: Activity with “certificate of compliance” filing (not for DI)
- CT: Individual DI rate filing requirements (SB 194)
- NH: Disability rate filings required by Rule 4100?

Disability Income Hot Topics

State Activity

Other Topics

- “Carve-out” efforts to distinguish DI from health in state statutes
- DOI communications regarding prohibited rebates
 - MO Bulletin 10-01
 - ID, TX releases last year
- Gender-based rating

Disability Income Hot Topics

State Activity

Other Topics

- Continued state issues with variability in filings
- Readability: NAIC hearings in March, impact of financial services reform

Disability Income Hot Topics

Federal Level

- Health Care Reform – Impacts to Disability Insurance?
 - CLASS Act
- Financial Services Reform
 - Optional Federal Charter, Office of Insurance
 - State vs. federal regulation

Disability Income Hot Topics

Federal Level

- Social Security Update
 - Expansion of “Compassionate Allowances” program
 - Slow movement toward claim process modernization
 - Glass half full: recent study by SS representation firm showed 10% drop in processing times for hearing decisions
 - Glass half empty: furlough programs in about 12 states

Disability Income Hot Topics

Litigation

Conkright v. Frommert

- U.S. Supreme Court, April 2010
- Impact of “single honest mistake” (Justice Roberts’ term) by claims administrator on standard of review to be applied
- Court holding the ERISA line on the importance of “deference” for employee benefit plans in general

Disability Income Hot Topics

Litigation

Jobe v. Medical Life Insurance Company

- 8th Circuit Court of Appeals, March 2010
- Impact of discretionary authority language on standard of review to be applied by the court
- Policy vs. SPD/ERISA “wrap” provisions

Disability Income Hot Topics

Litigation

Hall v. Liberty Life

- 6th Circuit Court of Appeals, February 2010
- Plan seeking to recoup overpayment that resulted from SS approval after claim terminated
- District court placed lien on future SS benefits
- Appeals Court supported plan's right to recovery of OP, but rejected use of lien on SS benefits not yet in plaintiff's possession to do so
- Equitable lien limited to “specifically identifiable fund (the overpayments themselves) within [plaintiff] general assets”

Disability Income Hot Topics

Litigation

Darvell v. Life Insurance Company of North America

- 8th Circuit Court of Appeals, March 2010
- How to adjudicate “material duties [of claimant’s] regular occupation,” absent relevant policy language
- Use of Dictionary of Occupational Titles (DOT) information vs. duties in person’s actual job description
- Appeals Court ruled use of DOT was “reasonable interpretation” by claim administrator

Disability Income Hot Topics

Litigation

Doroshow v. Hartford Life

- 3rd Circuit Court of Appeals, July 2009
- Plaintiff's doctor had ruled out ALS in visits during pre-existing conditions (PEC) "look-back" period
- A year later, plaintiff was definitively diagnosed with ALS
- Was the misdiagnosis "advice" as used in PEC provision?
- Appeals court took broader view of "advice", at least with this fact set, upheld insurer's handling of PEC provision

Disability Income Hot Topics

Mark Murphy, Compliance Director
Custom Disability Solutions
South Portland, Maine

mmurphy@customdisability.com

860-751-7160