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Disability insurance giant UnumProvident Corp. is coming under fire in California for allegedly taking advantage of a federal law to deny benefits to its policyholders.

At issue are cases such as that of Laurie Hindiyeh, who was forced to quite her job as controller of a real estate company because of an inner-ear ailment. For two years, the long-term disability coverage she had from Unum helped to offset her lost income.

But then the checks stopped. Unum declared her fit for work, based in part on surveillance videotapes. It cut off her benefits about a year ago, she said.

Hindiyeh, 41, said the insurer's finding contradicts the opinions of four physicians she sees for bilateral Meniere's disease, a condition she believes stems from severe allergies to mold, trees, and weeds, among other things. The Fremont resident is taking regular shots for the allergies and hopes to be well enough to return to work in some capacity one day.

In the meantime she has good days when she can drive her children to school. But she said she never knows when she will be too dizzy to get out to bed or when a bout of vertigo will make even lying down feel like a "carnival ride." There are times, Hindiyeh added, when she vomits uncontrollably for hours. She takes sedatives to control such symptoms which leaves her extremely tired.

Hindiyeh said Unum's decision to terminate her benefits came as a shock. "There was not one doctor from Unum that reviewed my case that was an ear, nose and throat doctor or a specialist in Meniere's disease. Not one" she said. "I have two of the top specialists in the country on my case."

Though Hindiyeh is convinced that Unum made the wrong call, she has little recourse. Because she obtained coverage through her employer, her ability to contest Unum's decision is sharply limited by the Employee Retirement Income Security Act. The 1974 federal law, according to subsequent Supreme Court rulings, exempts employee benefits, such as disability insurance, from state regulation.

As a result, Hindiyeh and thousands of similarly insured Americans are not covered by state consumer protection laws and are not entitled to take most claim disputes before a jury.

Unum Accused of Hiding Behind Federal Shield

In fact, the insurance companies often are the only arbitrators of such disputes. Only after the insurer has denied an appeal are policyholders permitted to go to court, where they may receive a hearing before a judge.

At that point, policyholders who fall under ERISA are still not entitled to compensatory or punitive damages, even if they prove the insurer knowingly cheated them out of benefits. All they may recover is the amount of the benefits in dispute, and the burden of proof is high. For a policyholder to win, a judge must conclude not only that the insurance company made the wrong decision but that it also acted in an arbitrary and capricious way.

"As a practical matter, you have lost all of your rights," said Ray Bourhis, a San Francisco lawyer who represents Hindiyeh. "You can't even call the California Insurance department and ask them to investigate because they have no jurisdiction. You have nothing, and, as a result, you have no leverage."

Bourhis and other insurance lawyers say they believe Unum has exploited the ERISA shield in its handling of employer-provided long-term disability coverage. Bourhis cited the insurer's own internal memos, which he obtained in previous lawsuits, describing the company's plans to use the federal rules to reduce its payouts to policyholders.

Last week, Bourhis filed a petition that demands Unum to be held in contempt. It alleges that termination of Hindiyeh's benefits violates an injunction issued last year. In it, U.S. Magistrate James Larson ruled that Unum used biased medical examiners, destroyed medical reports and withheld information about benefits from consumers, and he ordered the company to stop using such tactics to deny claims.

"We are in the process of reviewing the petition, and we do not believe we are in violation of any court order," Sabourin, the Unum spokesman, said.

Legal Recourse

Several California insurance lawyers, whose affidavits were filed with Hindiyeh's contempt request, contend that Unum routinely cuts off benefits to ERISA-covered policyholders with heart disease, Meniere's disease, Crohn's disease, AIDS and other disabilities. The petition asks the judge to reopen all such disability claims rejected by Unum in California since the injunction was issued Nov. 12, 2002.

Meanwhile, policyholders in New York have filed a class-action suit against Unum, also alleging that the company has a pattern of improper denials in ERISA disability disputes. A federal judge recently allowed the suit to move forward against Unum's objections. Such efforts are unusual. Few lawyers accept ERISA-related disability matters because even if they win, the awards usually are so small that they do not cover the cost of preparing the case.

What's more, ERISA prevents State Insurance Commissioner John Garamendi from investigating disputes that involve claims for benefits obtained through employers, noted spokesman Norman Williams, adding that Garamendi wants the rules changed. All Californians "need to enjoy the same protections that are provided under state statutes, which go much further than ERISA," Williams said.

Before he took office, Garamendi pledged to investigate Unum's claims-handling practices in light of Larson's injunction. The order stemmed from a suit filed by Joan Hangarter, a self-employed chiropractor who purchased disability insurance on her own. Because her coverage was not obtained through an employer, Hangarter was entitled to a jury trial, in which she won a \$7.67 million judgment.

If Larson grants Hindiye's request for a hearing on her contempt allegation against Unum, Bourhis said he is armed with evidence obtained in other suits against the company, including corporate memos that indicate Unum subsidiaries have saved money by aggressively targeting ERISA claims for years.

ERISA Advantage

One Oct. 2, 1995 memo, written by then-UnumProvident executive Jeff McCall says: "The advantages of ERISA coverage in litigious situations are enormous. ...(There) are no jury trials, there are no compensatory or punitive damages, relief is usually limited to the amount of benefit in question...The economic impact on Provident from having policies covered by ERISA could be significant."

The memo cites as an example a group of 12 claims that the company settled for \$7.8 million. "If these 12 cases had been covered by ERISA, our liability would have been between zero and \$0.5 million," the memo says.

The memo encourages employees to be "diligent and thorough" and review all claims to determine if they fall under the federal law. The memo also says that the company's goal is to pay valid claims and deny invalid claims, but it notes that "there are gray areas, and ERISA applicability may influence our course of action."

Unum's Sabourin said he could not comment on the memos.