



## Long Term Disability Client Awarded Lifetime Benefits Worth \$347,000

Jeffrey Freedman Attorneys, PLLC and the law firm of Dell & Schaefer recently won a long term disability ERISA (Employee Retirement Income Security Act) appeal on behalf of a Brockport, NY client for the maximum insured benefits which will reach approximately \$347,000 over the client's lifetime. The insurer, Lincoln National, a leading group disability insurer had denied the client's claim on initial application for long term disability benefits 18 months after previously, stating that he was able to work at his former place of employment.

"This client came to us after having seven back surgeries. He had stenosis, degenerative disc disease, and neurological problems," said Jeffrey Freedman, managing attorney, Jeffrey Freedman Attorneys, PLLC. "He had been employed as an engineer and is a highly educated, bright

individual. However, the job required him to sit for long periods of time. It was obvious to our attorneys that he could no



longer do that. In addition to the residual effects of his surgeries, the client is in constant pain and on pain medication. This interferes with his ability to focus clearly and meet the demands of his job." Freedman said the client was also awarded Social Security Disability benefits. This award was confirmation that he could no longer work.

The Freedman firm collaborated with the Dell & Schaefer Law Firm, combining the two firms' expertise in Long Term Disability (LTD) and Social Security Disability (SSD) claims. An administrative ERISA appeal was filed April 2012, challenging the denial that the client received in October of 2011. When this was denied, a second appeal was filed in July of 2012.

"The Federal ERISA statutes require that an insured client who is denied long term disability benefits must appeal the disability denial to a different employee at the same company that initially denied the claim," said Alex Palamara, disability attorney for Dell & Schaefer. "If our second appeal had been denied, we would have had to take this case to federal court -- but the medical documentation of this case was clear -- this man could not work, and Lincoln National finally saw that."

"As experts in disability law, we know what is needed to establish the right to collect benefits, we confer with the claimants' medical providers and obtain the proof needed to be successful," Freedman said. "But the truth is, the client paid into both of these programs over his work career under the assumption that if he really needed the benefits they would be there for him.

It is very satisfying for us to be able to ensure someone who can't work will have an income that is sufficient to sustain them for their remaining years."

After an initial LTD lump sum award of \$80,000 for backdated payments, the client will receive approximately \$5,000 a month in LTD benefits (with some adjustment for Social Security Disability benefits) until age 67.

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# What is Long Term Disability Insurance, and Why Do I Need It?

## What is a long term disability?

A long term disability is one where a physician determines that you are unable to perform the essential tasks of your job due to illness or injury.

## Don't Social Security Disability (SSD) and Workers Compensation cover long term disability?

The government Social Security Website ([ssa.gov](http://ssa.gov)) provides the following information:

*Although Social Security disability benefits and workers' compensation are the nation's two largest disability benefit programs, the two programs are quite different. Workers are eligible for workers' compensation benefits from their first day of employment, but Social Security disability benefits are paid only to workers who have a substantial work history. Workers' compensation provides benefits for both short-term and long-term disabilities and for partial as well as total disabilities. These benefits cover only disabilities arising out of and in the course of employment. In contrast, Social Security disability benefits are paid only to workers who have long-term impairments that preclude any gainful work, regardless of whether the disability arose on or off the job. By law, the benefits are paid only to workers who are unable to engage in any substantial gainful activity by reason of a medically determinable physical or mental impairment that is expected to last at least a year or result in death. The impairment has to be of such severity that the worker is not only unable to do his or her previous work but is also unable to do any other type of substantial gainful work. Social Security disability benefits begin after a 5-month waiting period.*

Workers' compensation provides benefits to workers who are injured on the job or have a work-related illness. Benefits include medical treatment for work-related conditions and cash payments that partially replace lost wages. Temporary total disability benefits are paid while the worker recuperates away

from work. If the condition has lasting consequences after the worker heals, permanent disability benefits may be paid. (<http://www.ssa.gov/policy/docs/ssb/v65n4/v65n4p3.html>)

## What if I cannot work, but SSD or Workers' Compensation does not provide enough income to provide for my family and myself?

A long term disability policy can help make up the difference in income. No long term disability policy will replace 100% of your income (this might remove an incentive to return to work), but LTD can supplement any government benefits.

## How much of my income can a LTD policy replace?

Many policies from employers replace up to 60% of lost income (after SSD or Workers' Comp benefits). Individual policies can cover up to 70 or 80% of your income. Policies from employers may have a benefit cap. So, even if you are covered at work, you may wish to supplement your work policy with individual coverage to protect yourself and your family. If you are self-employed, you should definitely have LTD coverage in case you are permanently unable to work.

## How can I find out how much LTD coverage I need?

SmartMoney.com has an online calculator that can help you determine how much coverage you need and what it might cost. (<http://www.smartmoney.com/Personal-Finance/Insurance/How-Much-Disability-Insurance-Do-You-Need-9711>)

## What do I do if I need to file a claim?

It is always to your benefit to have a professional legal team on your side to help you negotiate the complexities of LTD claims.



## Questions?

As a client, you can be assured that your case will receive special care and consideration. That means providing you with the most up-to-date legal advice. It also means taking time to fully explain the legal procedures we recommend, including all the options available to you.

**Schedule your Free Consultation today. Contact us toll-free at: 1-855-847-8969**

# Why Do Workers Need Professional Legal Help with Long Term Disability Claims?

Most workers have Long Term Disability (LTD) insurance through a group policy where they work. People who are self-employed often have individual policies. The following cases illustrate the importance of having a legal team on your side when dealing with LTD claims.

As you read the following stories, keep in mind that LTD insurance coverage is for your entire working life (up to age 65). What if you become permanently disabled at age 37, 40 or 51? That is a lot of time to live only on Social Security Disability. LTD will supplement your SSD and enable you to have or maintain a higher standard of living. Filing a complete and timely claim with the help of an experienced legal team can make the difference in terms of your benefits and peace of mind.

(The names have been changed to protect the privacy of the individuals.)

## Sheila – Age 51

A software developer by profession, Sheila was diagnosed with depression, type-1 diabetes, and tinnitus (ringing, buzzing, chirping noises in the ears). She received benefits from her LTD company from December 2009 until October 2011. Then the company denied a continuation of her claim. The denial was based on normal twenty-four month coverage for mental health disabilities (depression in Sheila's case).

Sheila contacted an attorney about this denial. Her diabetes and tinnitus made it impossible for her to work at her career. A claim was filed based on Sheila's physical limitations, which were ignored in the insurance company's denial of continuation of benefits.

A sixteen-page ERISA administrative appeal and over 800 pages of medical records were sent to the insurance company on Sheila's behalf. The insurance

company agreed that Sheila couldn't work in any occupation due to her physical condition.

Sheila will receive \$5,491 a month until she turns 65.

## Mark – Age 37

Mark worked as a safety trainer for a company in upstate New York.

He was diagnosed with Polymyositis (an autoimmune disease that causes weakened muscles, fatigue, sleeplessness) and rheumatoid arthritis.

His LTD company paid him for five years. Then they denied his claim!

The company told Mark that he had to see a physical therapist for a functional capacity exam (a test to determine his ability to work at his job full-time). This exam was supportive of Mark's disability claim.

The company then put Mark under surveillance. On the day they followed and videotaped him, he was seen carrying an object from his car to his house, using a spreader to put fertilizer on his lawn, and using a rake and hose. The videotape was nine minutes long. What they did not see was that Mark went into the house and spent the rest of the day in bed. Mark can do some work around his house, but he is not capable of working eight hour days, five days a week as a safety trainer.

However, based on this nine-minute video, Mark's claim was denied. The insurance company sent the video to the physical therapist, and the therapist changed the supportive diagnosis to unfavorable based on this short video.

Mark's legal team filed an appeal. His policy defined long term disability as the "inability to work at any reasonable occupation based on education, training and experience." Mark's work history and the supporting documentation filed on Mark's behalf showed that Mark was unable to

work full-time at his profession. The insurance company agreed that the video did not prove an ability to work full-time.

Mark's claim was reappraised.

## Sean- Age 40

Sean worked as a mechanic for the Transportation Workers of America. A work accident left him disabled; he received LTD benefits of \$846 starting in 1999. Sean's insurance company did not deny that he was disabled, but in August of 2011, they offered him a lump sum of \$86,000 to fully settle his claim.

Sean was entitled by his policy to receive \$846/month for the next twenty-five years (until he turned 65) or a total of \$253,800.

Sean needed the monthly payment to cover his bills. He could not take the lump sum and invest it hoping to earn a larger amount over time. Sean told the insurance company that he did not want the lump sum. Then in February of 2012, the company denied Sean's claim to any further benefits!

Sean's attorney filed an appeal challenging this decision. Sean had had three back surgeries. He was on narcotic painkillers. He had letters from physicians, and Social Security agreed that Sean was disabled and was paying him benefits.

The company's decision was overturned on appeal. Sean does not have to worry about how he will pay his monthly bills.

## The Conclusion

Insurance companies can sometimes make things difficult for policyholders to receive covered benefits. When Sheila, Mark, and Sean needed help dealing with the insurance companies, they all received excellent results by engaging professional legal services.

# How Can Jeffrey Freedman Attorneys At Law, PLLC, Help With Your Long Term Disability Claim?

## Filing the initial claim:

Filing a long term disability claim is complex. The insurance companies assume every claimant will eventually be able to return to work. The claims are scrutinized and investigated very carefully.

A claim requires coordination between your physicians, employer, accountant, and past co-workers. It is in your best interest to work with an attorney who has filed thousands of claims before you even notify the insurance company that you plan to make a claim.

## What if my initial claim is denied?

Initial claims are often denied.

Long Term Disability claims are governed by ERISA (The Employee Retirement Income Security Act) regulations. The regulations require the insurance company to have a procedure for appeal.

Your disability plan will state whether you need to file one or two appeals before you can file a lawsuit. ERISA has very strict

guidelines and deadlines for disabled claimants seeking disability insurance benefits under their group policies. If sufficient information is not submitted within these timelines, a claimant may be forever barred from introducing the documentation to prove their disability.

Given the complexity of the legal issues involved and the tendency of insurance companies to vigorously defend claim denials, evaluation of any potential legal claim on behalf of an insured should be handled by a law firm experienced in ERISA disability insurance claims.

## We are with you every step of the way.

If you are disabled, you have to deal with doctors, physical therapists, your family's welfare, and learning to live with your disability. Having knowledgeable and experienced attorneys on your side can make your life less stressful and ensure that you receive the benefits you deserve.

## Contact Us

*Providing excellence in legal services has been a top priority at Jeffrey Freedman Attorneys at Law since our firm was founded in 1980. Our commitment to the highest professional and ethical standards is the foundation for the services we provide.*



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## Facts about Long Term Disability

The Council on Disability Awareness "is a non-profit organization committed to informing and educating the American public about the widespread frequency of disability, and the financial impact it can have." (<http://www.disabilitycanhappen.org/>)

### What are the most common causes of disability?

- Injuries at work? Freak accidents? It's true, they happen. But the truth might surprise you.
- Illnesses like cancer, heart attack or diabetes cause the majority of long-term disabilities. Back pain, injuries, and arthritis are also significant causes.
- Most are not work-related and, therefore, not covered by workers' compensation.
- Musculoskeletal disorders are the #1 cause of disabilities. Examples include: arthritis; back pain; spine/joint disorders; fibromyitis; etc.

### Disability in America

- More than 30 million Americans between the ages of 21 and 64 are disabled, according to the most recent U.S. Census.
- 2.3 million people filed disability claims with Social Security in 2008.
- 25+ million American lives are restricted by the effects of disability, according to the Centers for Disease Control and Prevention.

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