



# Mind the Gap: Legal Hurdles to Securing Long-Term Disability Benefits for Mental Health Claims

**Mental health and substance use disorders affect millions of Americans and are especially prevalent among lawyers. There is a disconnect between the legal strides toward mental health parity and the outdated restrictions and claims-handling processes within the disability insurance world. By understanding the barriers to comprehensive coverage of mental health disorders, lawyers can safeguard their own financial security and help clients who seek disability benefits for such disorders.**

BY JESSA L. VICTOR

In recent decades, stigma around mental health and mental illness has significantly declined, ushering in meaningful progress in the insurance industry's legal landscape. Mental health medical conditions are increasingly treated with the same seriousness and legitimacy as physical health medical conditions, a change reflected in healthcare policies and regulations that ensure parity in benefits. For instance, laws like the Mental Health Parity and Addiction Equity Act<sup>1</sup> prohibit disparities in the scope of health insurance coverage between mental and physical health.

Yet, despite this progress, disability insurance policies often lag. These policies frequently impose restrictive limitations on benefits for mental health disabilities, creating a stark and troubling contrast with the more comprehensive coverage afforded to physical disabilities. Moreover, due to their subjective nature, mental health-related impairments are inherently difficult to prove, creating an uphill battle for claimants disabled by mental health conditions, of which insurance companies are all too eager to take advantage. The result is that individuals who are already dealing with the overwhelming burden of a disabling medical condition also face significant barriers to getting the financial support they deserve.

This article delves into the disconnect between the legal strides toward mental health

parity and the outdated restrictions and claims-handling processes within the disability insurance world and explores the resulting implications for claimants and the legal profession.

## Long-Term Disability Benefits Offer Workers Important Financial Security

Studies show that there is a 25% likelihood that the average 20-year-old worker will become



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disabled before normal retirement age. To protect against financial hardship in the event of disability, more than one-third of all U.S. employers offer long-term disability (LTD) coverage as a key part of employee benefit packages. This insurance works by providing a cash benefit to an employee who becomes unable to work because of medical issues. Thus, *in theory*, LTD insurance promises financial stability during some of life's most difficult moments. However, in practice, many claimants find their insurance falls short of this promise.

Insurance companies often serve as both the adjudicator of benefits eligibility and the payer of the benefits, which creates an inherent conflict of interest that can influence the insurer's benefits determinations and lead to claim denials to maximize corporate profits. As a result, the safety net meant to provide peace of mind often becomes a source of frustration and injustice.

### Mental Health LTD Claims Are Harder to Prove and Easier to Discount

Like physical illnesses and injuries, mental health disorders – for example, depression, anxiety, posttraumatic stress disorder, and bipolar disorder – are medical conditions that can significantly affect an individual's functional and vocational capacity and can therefore serve as a viable basis for an LTD claim. Nonetheless, securing LTD benefits for a mental health condition is notoriously challenging. There are a few reasons why.

First, insurers will hire an “independent physician” to review a claimant's medical records and assess the disability claim. These physicians, however, are often independent in name only: they are compensated by the insurance company and may have an implicit bias toward supporting the denial of claims. Without meeting or evaluating the claimant in person, these hired physicians can

conclude that the medical evidence does not substantiate a finding of disability.<sup>2</sup> They might argue, for instance, that a claimant's medical records lack sufficient detail to prove that the condition is disabling, even when the claimant's own treating physician has certified that the claimant is unable to work.

Second, insurers often require claimants to provide “objective medical evidence” (OME) of the disability as a condition for approving or continuing benefits. Traditionally, OME refers to quantifiable data such as diagnostic imaging, laboratory results, surgical reports, or physical examination findings. However, unlike most physical disabilities, mental health conditions are diagnosed based on the individual's self-reported subjective symptoms, making them harder to objectively document. For example, depression cannot be confirmed with an X-ray or blood work and this lack of concrete evidence leaves room for doubt, which insurance companies often exploit to deny claims.

While insurers may consider certain factors – such as frequency of treatment, referrals to higher levels of care, direct clinical observations, or formal psychological evaluations – as forms of OME of a mental health disability, these criteria are often applied rigidly or interpreted narrowly. As a result, the OME requirement frequently creates an unreasonable burden of proof that disproportionately disadvantages those seeking LTD benefits for mental health conditions.

### LTD Plans Provide Disparate Benefits for Claimants with Mental Health Concerns

Beyond being deprived a fair shake during the claim-determination process, claimants are negatively affected by insurance companies imposing seemingly arbitrary caps on LTD benefits for mental health conditions. Generally, LTD plans pay benefits until the claimant reaches age 65 – or their normal Social Security retirement age – if the claimant remains disabled, but a

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markedly different standard applies to mental health disabilities.

Nearly all LTD plans contain a “mental illness limitation,” which restricts benefits for disabilities caused by or contributed to by a mental health condition to only 24 months *over a claimant’s entire lifetime*. This blanket limitation fails to account for the chronic and often lifelong nature of many psychiatric conditions, effectively penalizing individuals for the type of disability they have.

Unfortunately, current legal frameworks offer little protection against this disparity. While federal and Wisconsin laws mandate mental health parity in health insurance coverage, those protections do not extend to disability insurance.<sup>3</sup> As a result, courts routinely uphold these antiquated and discriminatory provisions, leaving individuals with mental health disabilities without the long-term financial support afforded to those with physical impairments. This systemic inequity reflects a legalized double standard that fails to recognize mental illness as equally disabling and deserving of sustained support.<sup>4</sup>

### Pursuing LTD Benefits Can Hinder Treatment and Delay Recovery

Beyond the systemic unfairness that LTD claims processes present for individuals with mental health

conditions, the act of pursuing benefits can negatively affect a claimant’s mental well-being. For example, therapy sessions, which are meant to be a space for healing and progress, often are consumed by paperwork, documentation requirements, and strategizing for insurance appeals. Instead of focusing on developing coping mechanisms or working through trauma, patients and therapists are forced to shift attention toward administrative hurdles – leaving less time for treatment and emotional growth.

Moreover, the claims process itself requires the claimant to fixate on their limitations. To “prove” their disability, individuals must continually describe and document what they cannot do, the ways they suffer, and how their condition prevents them from functioning. This repetitive focus on incapacity can feel disempowering and even demoralizing. It pushes people into a mindset of deficiency, counteracting therapeutic goals such as building resilience, recognizing progress, and fostering a sense of agency.

Perhaps most damaging is the emotional toll of having one’s credibility and experiences questioned by an insurance company. When claimants are asked to defend the validity of their symptoms – especially when those symptoms are already invisible or subjective in nature

– it can leave them feeling deeply invalidated. Being doubted by an institution that is supposed to provide support can reinforce feelings of shame, helplessness, and isolation, which further complicates a claimant’s path to recovery.

### Empowering Claimants and Advocates

Most legal professionals are acutely aware of the high prevalence of mental health and substance use disorders among lawyers. Given this reality, it is imperative for lawyers to proactively assess their own LTD coverage. They should review their policies to identify any limitations related to mental health conditions, and, if such restrictions exist, engage with the firm’s human resources department (if any) to explore alternative policies that offer equitable coverage for mental health conditions.

By taking these steps, lawyers not only can safeguard their financial security but also can contribute to the broader movement toward mental health parity in disability insurance. Advocating for comprehensive coverage reflects our commitment to a more inclusive and just professional environment. **WL**

### ENDNOTES

<sup>1</sup>See Ctrs. for Medicare & Medicaid Servs., *The Mental Health Parity and Addiction Equity Act (MHPAEA)*, <https://www.cms.gov/marketplace/private-health-insurance/mental-health-parity-addiction-equity> (last modified Sept. 10, 2024). The Mental Health Parity Act (MHPA), Pub. L. No. 104-204, was signed into law in September 1996. According to Wikipedia, “[t]he MHPA was largely superseded by the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act (MHPAEA),” which was “passed as rider legislation on the Troubled Asset Relief Program (TARP)” in Pub. L. No. 110-343, signed in October 2008.

<sup>2</sup>See *Leger v. Tribune Co. Term Dis. Benefit Plan*, 557 F.3d 823, 832 (7th Cir. 2009) (holding it is not inherently unreasonable for hired physician to render opinion that contradicts that of treating physician despite never having examined claimant).

<sup>3</sup>See 42 U.S.C. § 300gg-26(a); Wis. Stat. § 632.89. To date, only one state (Vermont) has enacted legislation prohibiting the imposition of restrictions on benefits for persons disabled because of a mental health medical condition that are more restrictive than those imposed on persons disabled because of a physical health medical condition. See 8 V.S.A. § 4062; Vt. Dep’t of Banking, Ins., Sec.

& Health Care Admin., Revised HCA Bulletin 127: Discrimination Against Disability Due to a Mental Health Condition Prohibited in Disability Income Replacement Insurance (Oct. 22, 2008), <https://dfr.vermont.gov/sites/finreg/files/regbul/dfr-bulletin-health-127.pdf>.

<sup>4</sup>Notably, in 2023, the U.S. Department of Labor’s ERISA Advisory Committee issued formal recommendations to the Acting Secretary of Labor for legislation to expand mental health parity to disability insurance. In the immediate wake of this announcement, Sun Life Financial, one of the largest LTD insurance providers in North America, endorsed the committee’s recommendations, stating “mental health is health, unequivocally...[and] should be covered by long term disability [insurance] in the same way that physical conditions are” and “encourage[ing] Congress to take up and pass appropriate legislation to make this happen.” Sun Life U.S., *Sun Life U.S. Calls for Mental Health Parity in Disability Insurance* (Dec. 12, 2023), <https://www.sunlife.com/en/newsroom/news-releases/announcement/sun-life-us-calls-for-mental-health-parity-in-disability-insurance/123816/>. **WL**