

A Smorgasbord of Interesting Disability Cases: Abuse of Discretion / Objective Evidence of Disability

November 30, 2011 by [Martin Rosen](#)

Hagerty v. American Airlines Long Term Disability Plan, 2010 U.S. Dist. LEXIS 91995 (N.D. Cal. 2010)

Facts and holding: On November 15, 2004, Brian Hagerty (“Hagerty”), a flight attendant, filed a claim for long term disability benefits with his employer’s ERISA-governed long term disability plan (the “Plan”) due to HIV, Hepatitis C, fatigue and various other conditions.

Hagerty’s claim was approved and he received disability benefits under the Plan for three years. On April 14, 2008, the administrator of the Plan terminated Hagerty’s benefits on the grounds that Hagerty did not provide sufficient evidence that he was disabled, in part because he had provided no objective medical evidence of his fatigue claims. Further, the administrator determined that based on the medical information reviewed, Hagerty would be able to work as a sales attendant, appointment clerk or cashier. Following Hagerty’s appeal and the final denial of his claim, Hagerty filed a lawsuit against the Plan. The Plan moved for summary judgment.

Applying an abuse of discretion standard of review, the Court denied the Plan’s motion on the following grounds:

1. The Plan required Hagerty to provide it with objective medical evidence of fatigue when the Plan itself did not expressly require such proof; this suggested that the Plan abused its discretion;
2. The Plan failed to inform Hagerty that he had not attached relevant medical information to his claim submission and instead decided his claim based on an incomplete file; this also suggested abuse of discretion;
3. The Plan never considered whether Hagerty’s HIV status affected his ability to perform any occupation and did not contest the importance of doing so; and
4. The Plan never obtained Hagerty’s Social Security file and never addressed the fact that although the Plan determined that Hagerty was not disabled, the Social Security Administration determined that Hagerty was disabled.

Therefore, the Court could not conclude as a matter of law that the Plan did not abuse its discretion in denying Hagerty’s claim for continued long term disability benefits. As a result, the Plan’s motion for summary judgment was denied.

Lessons Learned: Although this is a lesson most LTD insurers have at one time or another already learned, the conclusion is perhaps simply that the application of an

“abuse of discretion” standard does not mean that courts will “rubber stamp” the insurer’s decision.

The question of whether an insurer can demand “objective” evidence of a disability is one that many cases have addressed. The above opinion was an LTD case that was ERISA-governed. However, certainly in the DI field, the issue provides a trap for the unwary. In the author’s opinion, while DI carriers may *consider* the lack of objective evidence of impairment or disability in making a claims decision, they cannot *insist* upon such evidence when the policy does not require it. The trap is set when the DI carrier denies a claim, but is “loose” with its language in the denial letter as to the role that a lack of objective evidence played in the decision. Given how often an insured claims that the insistence by the insurer of objective medical evidence constitutes bad faith, the author has long been an advocate in making the DI insurer’s position clear. As but one example:

We also note that you failed to provide any objective evidence of your impairment. While objective evidence is *not* required in providing adequate proof of loss, and while we do not require that disability claims be established solely by objective evidence, your claim of [condition or impairment] is one for which we would typically expect to see such evidence. Thus, the lack of such evidence in the circumstances present here was one factor in our assessment.”¹

1. Lawyer’s exculpatory fine print: The author is not suggesting that the above language is appropriate for any particular claims decision, or that use of such language will exculpate a disability insurer from a claim of bad faith or abuse of discretion. It is provided simply to demonstrate that if an insurer is relying upon the lack of objective evidence in support of a claim, it should make clear the distinction between *considering* the lack of objective evidence (for whatever weight it is worth) and *requiring* such evidence to establish a valid claim.