

Column: *Walkup Talks Disability*

Applying for Disability Benefits for MCS: Issues to Consider

- *Michael Walkup, Attorney at Law*



Michael Walkup is an experienced disability practitioner with over 25 years of experience in the disability law field. In 2001 he became disabled due to MCS, CFS, and FM. He is now providing a service to advise clients with potential disability claims who have MCS, CFS, and/or FM. As these programs and law are usually Federal, he is able to practice in all 50 states, so your location does not matter.

Michael is a long time Sustaining Member of the National Organization for Social Security Claimants' Representatives (NOSSCR), the only national body for disability representatives. He is also certified as a Federal Trial Lawyer and is admitted to the U.S. Court of Appeals for Veteran's Claims.

Michael would welcome the opportunity to try to help you with your legal claims. His web site may be found at www.MCSLegalHelp.com, or he may be contacted at MJWalkup@Amertech.net, or at 866-880-HURT (4878).

If you suffer with Multiple Chemical Sensitivities (MCS), fibromyalgia (FM), or chronic fatigue syndrome (CFS), it is possible that you will eventually become unable to work and will seek various types of disability benefits.

It is extremely important that you seek competent and experienced legal advice before doing so or you could face ultimate denial of needed benefits.

There are several types of disability programs potentially available. The one that is selected and the order in which it is done, however, is of vital importance.

You may have the following options: (1) short term and long term disability insurance provided by an employer; (2) disability insurance purchased personally (not through an employer); (3) workers compensation (state or federal); and (4) Social Security disability (SSDI) and/or Supplemental Security Income (SSI) from the US Government.

Some of my clients are reluctant to file for Social Security Disability as they feel their employer or a third party is to blame, or may feel that they "paid" for their disability insurance so they ought to be able to receive it if they become unable to work. However, as is explained be-

low, this approach may cause serious problems in the long term.

First, the chances of success on disability insurance claims are not good for MCS, FM, and CFS sufferers. Additionally, the law for appeals is very restrictive for employer sponsored disability plans. Private individually purchased plans, while not having the same appeal restrictions, may nevertheless require you to incur huge legal expenses using the state court systems. Most lawyers will not want to take these types of cases on a contingency basis

Second, in insurance claims you will be treated as part of an adversarial system and will be sent to doctors who are "hired guns" for the insurance industry. They may issue negative reports, including assertions that there is no "scientific basis" for the MCS diagnosis. This can then find its way into a Social Security file and result in a denial of SSDI & SSI benefits.

Workers compensation plans will also require that you show a "causal relationship" between your work conditions and your impairments, and that you were exposed to a "risk of injury" higher than that of the public at large outside of the employment. This can be very problematic for MCS due to the multiplicity of non occupational exposures that are everywhere in the modern world.

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Many disability insurance policies also have limitations or exclusions for “mental impairments” causing benefits to be denied or terminated after a period of payment, usually two years. Insurance company doctors will therefore often allege that MCS is a “psychogenic or somatoform disorder” to place the claim in a limited pay status.

A more recent development is the appearance in some disability insurance policies of provisions to limit benefits to two years if the impairments are based on “self reported conditions”, which would apply to most MCS and related cases. The validity of this type of limitation has not yet been litigated to my knowledge.

You may also be required to file for Social Security Disability as a condition of continuation of insurance benefits. Any disability benefits you may be awarded from a disability insurance policy will usually also be reduced or “offset” by any Social Security disability payments. Workers compensation benefits will be subject to or cause similar offsets. Therefore, the total additional monthly benefit

you receive from an insurance or workers compensation claim may not be that much higher than if you had just applied for Social Security Disability.

Claims before the Social Security Administration are more likely to be successful, particularly if you appeal the case at least to the hearing level. The cases are non-adversarial and the Rules of Evidence do not apply. Doctors used by the US Government don’t necessarily have the type of agendas seen with those hired by the insurance industry to deny claims, and may not even be specialists in the correct medical area. If, however, you have applied for an insurance claim, adverse medical reports may be generated that can jeopardize a Social Security claim. This could leave you with no hope for future benefits from ANY source.

It is therefore recommended that you think carefully about applying for any insurance benefits for MCS, CFS, and/or FM and consult with an experienced attorney in this field before doing so. As there are often time limits with respect to filing for insurance claims, each case needs to be carefully reviewed and discussed before any decisions should be made.

