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**This Book is NOT Legal Advice.**

**The Bar Association requires that I say this! But, with that legal disclaimer, nothing prevents me from giving you an easy-to-understand overview of disability law related to your specific illness.**

Printed in the United States of America

**ISBN:**

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# INTRODUCTION

You may have purchased a disability policy through your employer, or on your own, to provide you and your family with peace of mind if you become disabled. Unfortunately, disability insurance companies do not make it easy for those with Myelofibrosis to get the disability benefits they deserve.

Disability carriers are denying more initial disability claims than ever, and are even denying Myelofibrosis disability claims they once accepted. Myelofibrosis is “an uncommon type of bone marrow cancer that disrupts your body's normal production of blood cells.” Myelofibrosis is a rare and serious disorder which can originate from a wide array of potential causes, ranging from genetic mutations to exposure to certain chemicals. This wide breadth of potential variables makes pinpointing a specific cause of disability due to your Myelofibrosis difficult. (Mayo Clinic Website)

That is why you have made the wise decision to retain me to help you get the disability benefits you deserve.

# **SECTION ONE**

## **The Disease**

Myelofibrosis is a type of bone marrow cancer which impacts the production of blood cells – it is considered a type of chronic Leukemia (i.e., a type of cancer which damages blood-producing tissue). (Mayo Clinic Website)

Myelofibrosis is notable for causing extensive damage within the bone marrow. In those with the disease, bone marrow – which is naturally soft and spongy – becomes scarred. This scarring generally results in a lack of red blood cells (leading to Anemia), an overabundance of white blood cells, and varying levels of platelets. Low levels of platelets – blood cells which aid in clotting – can lead to an increased risk of excessive bleeding. (Mayo Clinic Website)

Myelofibrosis is commonly separated into one of two categories depending on determined cause. If the disease happens on its own, it is known as Primary Myelofibrosis, and if it occurs due to another bone marrow disorder, it is known as Secondary Myelofibrosis. (Mayo Clinic Website)

## **SECTION TWO**

### **The Evaluation Process Used by Disability Insurance Carriers in Every Myelofibrosis Claim**

#### **Step One: Is Your Myelofibrosis a Pre-existing Condition?**

Every disability policy has a “pre-existing condition” clause. This clause provides that if you become disabled within a certain period before you were covered under the policy, your disability is considered a “pre-existing condition.” The carrier legally does **not** have to pay you benefits. It is crucial that you understand how the pre-existing condition clause works so you do not pick the “wrong” date to become disabled.

#### **Step Two: Is There Objective Medical Evidence Which Is the Basis for the Myelofibrosis Diagnosis?**

Many disability policies require objective medical evidence of a diagnosis, which can be difficult to produce in the case of Myelofibrosis.

It is crucial that you obtain the diagnosis from a specialist, such as a hematologist. Be sure to have an accurate history of your symptoms during each visit. The disability carrier will look closely at your

medical records to make sure the history of your symptoms and the examination findings are consistent with a Myelofibrosis diagnosis.

### **Step Three: Is There Objective Medical Evidence Which Is the Basis for the Restrictions and Limitations Assigned by Your Physician?**

Your physician will be asked to complete an Attending Physician Statement (APS) form explaining your restrictions and limitations. Unfortunately, there is no uniform APS form, and the form is designed to have your physician say that you can do at least sedentary simple routine repetitive work. Why? If you can do sedentary simple routine repetitive work, you may not be disabled under the terms of your policy.

Cases of mild Myelofibrosis are generally not severe enough to interfere with work activity, unless you have an occupation that requires high physical or cognitive ability. Moderate to severe Myelofibrosis cases are more likely to be accepted by the disability insurance carrier if you have undergone diagnostic testing.

The APS form will ask your physician to explain the objective medical evidence that supports the restrictions and limitations they assigned. That can be tough because Myelofibrosis symptoms must be substantiated on an objective basis. It is crucial



that you have diagnostic testing to help determine your diagnosis.

One way to help your physician complete the APS form is to explain at each visit what symptoms you have, and how those symptoms impact your ability to function.

#### **Step Four: Is There a Causal Relationship between the Myelofibrosis, the Assigned Restrictions and Limitations, and Your Inability to Do Your Own, or Any, Possible Occupation?**

The key to getting your disability benefits is an APS form, or a Social Security Disability Myelofibrosis Residual Functional Capacity (RFC) form that explains your functional capacity in detail. I may modify the carrier's APS form with questions from the Social Security Disability Myelofibrosis RFC form to make sure your physician is asked and answers the **right** questions about your Myelofibrosis, or its complications.

The disability carrier will have their hired medical unit review your file, and the APS forms, to determine what your "real" restrictions and limitations are.

Unfortunately, they **do not** have to accept what your physician has to say. The disability carrier may have a hired medical gun claim there is no

objective basis for the restrictions and limitations assigned by your physician.

### **Subsection One: What Happens Next?**

The disability carrier will send your file to their vocational rehabilitation counselor (VE) to determine:

- What your occupation was at the time you became disabled,
- The physical and cognitive duties of your occupation, and
- Whether you can perform those occupational duties based on whatever restrictions and limitations the disability carrier thinks apply.

You **must** show a causal relationship between the diagnosis, the restrictions and limitations, and an inability to do your own, or another, occupation.

### **Subsection Two: What Is Your Occupation?**

Your policy may provide that the carrier can determine your occupation based on how the Dictionary of Occupational Titles (DOT) describes those occupational duties, and **not** how you performed your occupational duties for your employer. That can be a problem! Worse yet, many

times, the carrier's VE gets your occupation completely wrong.

Many policies provide that after a certain period, the standard of disability changes from an inability to perform your own occupation, to an inability to perform any occupation. The disability carrier will re-evaluate your restrictions and limitations, and determine if there is any other occupation you can perform which pays similar wages. This is not a real-world test. Often, the carrier will determine you can do a sedentary job just to deny benefits!

### **Step Five: Is What You Say on Your Activities of Daily Living Form Consistent with What Is in Your Medical Records, or What You Tell the Adjuster during a Call?**

Disability carriers are in the business of collecting premium dollars, not paying benefits! They will look at what you say you can do on your ADL forms, and compare that with what is in the medical records. Do not be surprised if they call on a regular basis to check up on you. They may even put surveillance on you. If you are getting calls, or suspect surveillance, please call me immediately.

### **Step Six: Does the Policy Limit How Long the Carrier Has to Pay Benefits?**

Some policies limit how long a disability carrier must pay a Myelofibrosis claim! There may be a

“psychiatric limited pay” or “subjective condition” clause in the policy that will legally limit a carrier’s obligation to pay. The carrier will be looking for that clause in your policy!

### **What’s Next?**

We will talk next about how disability carriers view Myelofibrosis claims.

## SECTION THREE

### How Disability Carriers View Myelofibrosis Disability Claims

As Myelofibrosis can present with varying severity of disease, subsequent levels of disability can also vary. Myelofibrosis develops quite slowly, so early sufferers of the disorder typically show no symptoms. Late-stage sufferers, or those with aggressive forms of Myelofibrosis, can develop several disabling complications. (Mayo Clinic Website)

Disabling complications can include, but are not limited to: **portal hypertension** (increased blood pressure within the portal vein – which leads from the spleen to the liver – which can cause the rupturing of smaller veins within the stomach and esophagus), **pain** (abdominal or back pain caused by the enlargement of the spleen), **abnormal growths** (tumors comprised of blood cells may form in various parts of the body, leading to gastrointestinal bleeding, coughing or spitting up blood, spinal cord compression, and seizures), **bleeding** (low levels of platelets, or functionally impaired platelets, can lead to easy bleeding), and **Acute Leukemia** (having Myelofibrosis leads to an increased risk of developing Acute Leukemia). (Mayo Clinic Website)

Many Myelofibrosis cases are denied simply because disability carriers hate any claim based on the subjective complaints of the policyholder. After all, anyone can say they have physical pain, poor memory, or difficulty concentrating, and cannot work.

### **Subsection One: Disability Carrier's Position Papers on Myelofibrosis Claims**

Many disability carriers have internal policy statements that guide the claims adjuster, physician, and vocational evaluator on how to evaluate a Myelofibrosis claim. There are three disturbing patterns in these policy statements:

1. Myelofibrosis cases without objective medical evidence are denied.
2. Little weight is given to subjective complaints if there is no objective basis for the diagnosis or causation.
3. Anyone with Myelofibrosis, regardless of severity, can work.

### **Subsection Two: The Initial Claim for Disability Benefits**

The disability carrier will obtain a copy of your medical records, and have those records, and your physician's Attending Physician Statement (APS)

form, reviewed by its medical team. Many Myelofibrosis cases are initially accepted by disability carriers, but then denied once treatment has plateaued, or there are no complications from the disease process.

### **Subsection Three: The Denial of Benefits After Stabilization of Your Myelofibrosis**

Carriers assume that because your Myelofibrosis is stable with medication or treatment, you can immediately return to work, or simply refuse to acknowledge the progression of your Myelofibrosis, and its complications.

Not all disability claims adjusters are familiar with the stages and progression of Myelofibrosis, or the symptoms, treatment, and side effects of medication that result in disability. That is why it is especially important that your medical records document your symptoms, document objective medical testing that supports your claim, and that your physician properly complete an APS form or Myelofibrosis Residual Functional Capacity (RFC) form.

We want to provide the disability carrier with ***all*** the necessary information that explains the extent of your disability, and how you qualify for disability benefits.

## **Subsection Four: Analysis of Your Medical Records by the Disability Carrier**

A claims examiner will ask that a staff nurse or physician evaluate your records to determine if there is an objective basis of the diagnosis, restrictions, and limitations. The disability carrier might even have your case assigned to a peer review medical company who has hired medical guns to review your file and create reasons to deny your claim. They will look for:

- How long you have had Myelofibrosis symptoms,
- The nature of your symptoms,
- The results of diagnostic testing,
- How your symptoms have progressed or changed over time,
- What you reported to your physicians about how your Myelofibrosis symptoms impacted your daily activities, and what you reported on your Activity of Daily Living forms,
- The nature of your treatment, and the response to the treatment,
- Side effects of medication,



- The extent and nature of your symptoms,
- What other physicians have **also** diagnosed Myelofibrosis, or its complications,
- What your physicians say about your physical examination, diagnostic testing, and laboratory findings, and
- Whether you have been seen by specialists for treatment of your symptoms, such as a hematologist.

### **Subsection Five: What Else Will the Claims Examiner Have Reviewed?**

The next piece of medical evidence that will be reviewed is the Attending Physician Statement (APS) form completed by your physician, and any diagnostic testing. They will want the raw data from the testing.

The carrier will pick it apart, and may even have their physicians contact your physician to persuade them that you can work in at least a sedentary capacity with simple routine repetitive tasks.

Please ask your physician's office to request that any carrier questions be put into writing so there is no chance the peer review provider will misrepresent what your physician had to say during a call. Do not be surprised that disability physicians

lie about these conversations! Ask your physician to send me a copy of the letter, and their response, **before** it is submitted to the disability carrier.

### **Subsection Six: Independent Medical Examinations**

Your policy probably gives the disability carrier the right to have you examined by a physician or hematologist they chose. That examination is called an “independent medical examination,” and is anything but independent. These liars for hire are paid to give the disability carrier ammunition to deny your claim.

If the disability carrier’s physician or claims adjuster questions your restrictions and limitations, you may be scheduled for an independent medical examination. The IME provider will report on the severity and duration of your symptoms, your response to treatment, and any side effects of medication.

We will prepare you for the examination and, if possible, video tape the examination. If that is not possible, we will ask you to bring a third-party witness to audio tape the examination, or take notes. If the carrier contacts you directly and sets an IME, please contact us immediately!

## **What's Next?**

I will talk about how the disability carrier must consider not only your Myelofibrosis, but its complications, and other conditions which may have caused or contributed to your disorder.

## SECTION FOUR

### **The Disability Carrier Must Consider Multiple Medical Conditions Which May Have Caused or Contributed to Your Myelofibrosis**

Myelofibrosis can be caused or contributed to by numerous factors, although, typically, the disorder will arise due to a random gene mutation within the DNA of bone marrow stem cells. As mutated cells replicate and divide, they pass these mutations onto new cells, eventually usurping the production of healthy cells. There have been several specific gene mutations identified in correlation with Myelofibrosis – commonly, a Janus Kinase 2 (or JAK2) gene mutation is to blame. Less common mutations may impact the CALR or MPL genes. (Mayo Clinic Website)

There are other risk factors for developing Myelofibrosis which include, but are not limited to: **age** (the disease can impact anyone, but those over fifty are more likely to be diagnosed), **having another blood cell disorder** (rarely, those with conditions such as Thrombocythemia or Polycythemia Vera may also develop Myelofibrosis), **exposure to certain chemicals** (the disease has been linked to exposure to industrial chemicals such as toluene or benzene), and **exposure to high levels of radiation**. (Mayo Clinic Website)

These conditions alone, or in combination, can contribute to your inability to work in your own occupation, or any occupation. The disability carrier is required to consider each of your medical conditions ***individually and in combination*** when determining if you are entitled to disability benefits.

### **Subsection One: Combined Effects of Multiple Disabilities**

The disability carrier must consider the combined effects of multiple impairments which may have caused or contributed to the Myelofibrosis.

Many times, the medical evidence just does not establish that the policyholder is disabled solely because of Myelofibrosis. However, that is not the end of the analysis! The disability carrier is required to consider whether the policyholder is disabled because of the totality of their medical conditions, including depression.

So, the carrier must consider whether the combined effects of these medical conditions meet the policy definition of disability.

### **Subsection Two: Combined Effects of Physical and Mental Impairments**

Many times, people who have Myelofibrosis become depressed because of limitations on their ability to function. The disability carrier must consider the

combined effects of both physical and mental impairments. The carrier should consider how your physical and mental impairments limit your activities of daily living and social functioning, whether you have problems with concentration, and whether you have problems finishing tasks in a timely manner.

The disability carrier must also consider the effects of any physical impairment when determining whether the policyholder is disabled because of a mental impairment.

### **Subsection Three: The Disability Carrier's Vocational Analysis of Myelofibrosis, and Combined Medical Impairments**

From an exertional standpoint, the question is whether you are capable of sedentary, light, medium, or heavy work. We want to establish that you have sedentary or less capabilities because of both exertional and non-exertional impairments. Non-exertional impairments can include psychological problems.

Non-exertional limitations can limit, and even erode, the number of sedentary occupations available to you. So, if for example, you have depression that limits your ability to interact with co-workers, or the public, that can erode your ability to do a sedentary occupation. If you combine those restrictions, most sedentary occupations are eliminated. The disability carrier

must consider all impairments, even minor ones, to determine whether you can perform your own occupation, or any occupation.

A properly completed Myelofibrosis APS or RFC form is key to winning your claim, and it is my job to show that each additional limitation establishes that you meet the definition of disability.

### **What's Next?**

Having the right medical evidence is crucial, and I will explain what is required in the next section.

## **SECTION FIVE**

### **The Medical Evidence Required to Win Your Myelofibrosis Disability Claim**

You must have a diagnosis of Myelofibrosis, and the disability carrier will want to see in your medical records the result of diagnostic testing that objectively confirms your diagnosis. It is crucial that you obtain the diagnosis from a specialist. The carrier will want to see a history of your symptoms, examination findings, and diagnostic testing in your medical records which document the status of your Myelofibrosis, and response to treatment.

#### **Subsection One: Objective Basis of the Diagnosis**

The carrier will want to see the results of blood tests, X-rays, and other, more specific tests, such as bone marrow biopsies. (Mayo Clinic Website)

#### **Subsection Two: Tell Your Physician All of Your Disabling Myelofibrosis Symptoms or Complications**

The carrier will closely review your medical records for not only the objective basis of the diagnosis, but your report about your symptoms! Your medical records are the key to establishing that



your Myelofibrosis meets the policy definition of disability. Your report of symptoms will be compared to the results of neuropsychological testing.

For example, your medical records might demonstrate that you have difficulties with:

- Concentration,
- Pace,
- Completion of tasks in a timely manner,
- Communication,
- Social situations,
- Work situations,
- Social cues, and
- Judgment.

You may also be depressed because your Myelofibrosis limits your daily activities, social functioning, or ability to concentrate.

Make sure you accurately and completely tell your physician about your cognitive and physical problems, and any side effects of medication usage. Also, be sure to clearly communicate to your physician how your symptoms impact your overall functionality.

It is also especially important that you give your physician an interval history about your symptoms between visits. Bring your physician a list of your symptoms and your functionality for your medical chart so those problems are documented. You can find a copy of our Symptoms and Functionality form you can use on our website. Do not forget to give your physician a copy at each visit, and send my office a copy as well.

These forms will help your physician complete the Attending Physician Statement (APS) or Myelofibrosis Residual Functional Capacity (RFC) forms which are crucial to your case!

### **Subsection Three: What Symptoms Are Important?**

In addition to the difficulties outlined above, you might have other symptoms that impact your ability to work, which include:

- Headaches,
- Dizziness,
- Fatigue,
- Depression, and,
- Sleep problems.

## **What's Next?**

The disability carrier will determine your physical and mental limitations based on various forms you submit. I will talk about the importance of these forms next!

## **SECTION SIX**

### **The Key to Winning Your Disability Benefits, and the Attending Physician Statement (APS) and Myelofibrosis Residual Functional Capacity (RFC) Forms**

The disability carrier will review the Attending Physician Statement (APS) form or Residual Functional Capacity (RFC) form completed by your physician that addresses your ability to sit, stand, walk, lift, carry, bend, squat, use your upper and lower extremities, and your cognitive problems, such as how well you can focus and comprehend simple instructions.

Disability carriers rarely send the right form to the right physician that asks the right questions about your Myelofibrosis, or its complications. As a result, I modify the carrier's APS form, or supplement the carrier's form with the Social Security Disability Myelofibrosis Residual Functional Capacity (RFC) form that asks all the *right* questions.

#### **Subsection One: The Myelofibrosis Residual Functional Capacity Form**

Myelofibrosis needs to be addressed separately from any other physical problems that you have. It may be necessary to have your physician fill out

more than one RFC form to address all the physical and mental limitations you have.

You might have the residuals from a Stroke or tumor that must be addressed. For example, a Stroke and its complications may impact your ability to sit, stand, and walk, and your capacity to lift, carry, push, and pull. You may have to change positions frequently, cannot stand or sit for more than thirty minutes at a time, or have sleepless nights that require you to take naps during the day.

The side effects of medication can also cause exertional and non-exertional limitations that can reduce, or even eliminate, your ability to work. The disability claims adjuster and the vocational evaluator will compare the residual functional capacity form to the types of occupations within your exertional abilities to determine whether you can perform the duties of your occupation, or any occupation.

### **This is where the rubber meets the road!**

I think that less than sedentary functional limitations are key to winning your case.

Sedentary work is the ability to lift a maximum of ten pounds at a time, sit for six hours, and occasionally walk and stand two hours per eight-hour day. I want an RFC form that is less than sedentary from an exertional standpoint, or one that allows me to erode your occupational base to

less than sedentary because of non-exertional or psychiatric limitations.

So, for example, if you cannot lift more than ten pounds, cannot sit, walk, or stand more than two hours out of an eight-hour day, you are at less than sedentary capacity, and you have a great chance of winning! A limitation on how long you can sit, stand, or walk can result in a sedentary RFC.

Non-exertional limitations can also be key! If you have a sedentary RFC, but you must change position frequently, have a limited ability to sit, stand, and walk, or cannot be far from a bathroom, your RFC will erode to less than sedentary. If you have problems with concentration or memory, need breaks because of pain, take naps, or will be absent more than four times per month, the non-exertional impairments will reduce, or erode, the RFC to less than sedentary.

## **Subsection Two: Mental Residual Functional Capacity Form**

It is common for those who have Myelofibrosis to have trouble concentrating, be depressed, or isolate themselves. If your depression is severe enough, it can erode a sedentary RFC to less than sedentary.

Those problems should be reported to your physician, and documented in your medical records. You have a great chance of winning if

those are documented in your medical records, and on the RFC form. However, we do have to be aware of any limitations on the payment of benefits based on any mental nervous limitations in your policy.

### **Subsection Three: Training Your Physician about APS or RFC Forms**

I have sent your physician "What Every Physician Needs to Know about Residual Functional Capacity Forms," and "How to Fill Out a Winning Residual Functional Capacity Form." If your physician has any questions, they can call me. I can even do a presentation for your physician's office on how to fill out the form!

We always review the form your physician filled out to make sure there are not any problems before we send it to the disability carrier.

### **What's Next?**

One key to winning your claim is to develop the symptoms of your Myelofibrosis in your medical records, and on your forms. The next section will discuss how those symptoms may qualify you for your disability benefits.

## **SECTION SEVEN**

### **The Symptoms of Your Myelofibrosis, and Your Disability Claim**

The symptoms of Myelofibrosis can include, but are not limited to:

- Feeling tired, weak, or short of breath (which are signs of Anemia),
- Pain or fullness below the left side of the ribs (which is a sign of an enlarged spleen),
- Easy bruising,
- Easy bleeding,
- Night sweats,
- Fever, and
- Bone pain. (Mayo Clinic Website)

The disability carrier is likely to give more weight to your report of those symptoms if you have diagnostic testing that confirms them. Do not minimize those symptoms!

Your Myelofibrosis must be established by objective medical evidence, as we discussed. Merely telling



the disability carrier you are disabled is not enough to win your case!

The disability carrier will look at your medical records for the results of physical examinations and objective testing that are consistent with the diagnosis.

Now, the question in the carrier's mind is "Just how disabling is your Myelofibrosis?"

### **Subsection One: Proving That Your Symptoms Are Disabling**

One way to prove disabling symptoms is to have regular medical treatment. Please give your physician an interval history at every visit of your symptoms, and the impact those symptoms have on your ability to function. You can use our Symptoms and Functionality form, and send me a copy of that document **before** you see your physician so that I can review and approve it.

You may also have complications from other impairments, and you should get treatment for the same. Make sure your physician comments on those problems in your records, and documents the medical basis for those problems.

## **Subsection Two: Documenting Your Symptoms in Your Medical Records**

I will be frank - most physicians do not do a respectable job documenting your symptoms and the impact your symptoms have on your ability to do your daily activities of living. That is why it is important that you give your physician a great interval history about:

- The location, duration, frequency, and intensity of your symptoms,
- How your symptoms impact your activities of daily living,
- How your pain, cognitive problems, or depression impact your activities of daily living,
- What activities increase your symptoms, and
- Any side effects of medication.

You might want to give your physician a copy of your Symptoms and Functionality form about these factors, and ask that the form be made part of your medical records.

### **What's Next?**

It is important that you understand how we prove that your functional limitations reduce, or

eliminate, your ability to perform your own occupation, or any occupation. I will address that next!

## **SECTION EIGHT**

### **Proving That Your Myelofibrosis Symptoms and Complications Cause Functional Limitations**

The disability adjuster and the insurance physicians will determine your credibility, and whether your Myelofibrosis, and the physical causes of the Myelofibrosis, constitute a disability. It is important that you do not exaggerate your symptoms, or how those symptoms impact your activities of daily living. The adjuster will review your initial application, forms, and your statements. The medical team will review your medical records and APS forms completed by your physician.

#### **Subsection One: Activities of Daily Living**

One of the primary ways we tell your story is to explain in your medical records, ADL forms, and your statements what you can do every day despite your disability.

Can you cook, clean your house, do the laundry, grocery shop, do yard work, play with your children, or attend school events? How do your symptoms impact your ability to do those activities?

For example, you may only:

- Be able to perform certain tasks without taking a break,
- Be able to make just one bed before you are exhausted,
- Be able to go grocery shopping for only thirty minutes, or have your family members do your shopping.

You may have to:

- Plan your trips outside your home based on your ability to drive that day,
- Make notes of things you must do because you cannot remember things, or
- Break up your chores because you do not have the energy to get things done all at once, or get help from your family.

Make sure that you write this down, and give the information to your physician. We have a Symptoms and Functionality form we have created to help you record this information. Be honest, and do not exaggerate! Our form also asks what you do to reduce or control your symptoms, and the side effects that might occur from your medication.

## **Subsection Two: How Your Activities of Daily Living Demonstrate the Limits on Your Ability to Engage in Your Own Occupation, or Any Occupation**

There is no uniform definition of disability, so I suggest you get out your disability policy and find the definition in yours. The policy may say you are disabled if you cannot do the material and substantial duties of your own, or any, occupation you might be qualified to do based on your education and prior work experience.

Your activities of daily living (ADL) can demonstrate the limits on your ability to perform your own occupation, or any other occupation. If your symptoms limit:

- Your ability to complete specific tasks,
- Your ability to complete a task on time, or
- Your ability to have a good relationship with others,

you will not be able to meet the pace and production requirements of a job.

You can see by these examples just how we explain how your symptoms impact your ability to function. But beware! The ADL forms can and will be used against you. So, for example, if you volunteer, take care of a child, or do things more than what you said you could do, the ADL forms will be thrown in

your and your physician's faces. Since the physician is relying, in part, on your self-report of symptoms, if you can volunteer, you should, go the disability carrier's reasoning, be able to work.

That is why it is especially important that your ADL forms be accurately completed, and be consistent with your medical records.

Do not forget that the disability carrier's vocational evaluator will also take into consideration your ADL's in determining whether you can do the material and substantial duties of your own, or any, occupation.

### **What's Next?**

The adjuster will also determine whether you are getting appropriate medical care, and your credibility. I will discuss that next!

## **SECTION NINE**

### **How the Disability Carrier Uses Your Medical Records to Determine Your Compliance with Medical Treatment, and Your Credibility**

The disability carrier will also determine your compliance with medical treatment, and your credibility, by reviewing your medical records.

Many disability policies require that you get appropriate medical treatment by the right medical specialist, and that you comply with that treatment. The carrier cannot make you have invasive procedures like surgery, but they will expect you to get treatment and follow your physician's recommendations, regardless of your finances.

The disability carrier's physician will review what your physician has recorded in your medical records about your symptoms and functionality, and compare that with your Activity of Daily Living (ADL) forms to determine if you are credible.

The physician will also consider what treatment you have gotten, and how long you have been getting that treatment. I cannot overemphasize how important it is that you have continuous medical treatment. The disability carrier will doubt that you have symptoms, or that those symptoms are severe enough to make you disabled, if you have



not gotten continuous medical treatment for your Myelofibrosis.

The treatment can include medication, rehabilitation, therapy, and exercise. If you are unable to get regular medical treatment, call us immediately so we can provide you with information about low cost, or free, medical services in the Tampa Bay area.

You should be sure that your medical records document:

- Activities that increase your Myelofibrosis symptoms,
- What physicians you see, how often, and what they do for you,
- What medication you are taking, the dosage, the effectiveness of the medication, and any medication side effects,
- What other treatment you use to relieve your symptoms, and
- What benefit you have gotten, if any, from any of the treatments you have received.

We do not want to give the disability carrier a reason to deny your claim because they do not believe you. Your credibility is key to winning your benefits.

## **What's Next?**

I will discuss a real-life example (and not one of our cases) where a disability policyholder lost their claim because of credibility issues.

## **SECTION TEN**

### **Credibility Issues Created by the Activities of Daily Living Forms**

When you apply for disability benefits, you are required to complete an Activities of Daily Living (ADL) form that will ask you many questions about what you can do despite your disability. If your medical records, ADL forms, and statements are contradictory, there is a good chance that the disability carrier will reject your physician's reliance on your self-reported symptoms in assigning restrictions and limitations. The carrier will instead rely on their physician's paper review (which will not be favorable to you).

Worse yet, any inconsistencies may result in the carrier assigning your file to a private investigator to conduct surveillance. Surveillance can destroy a claim, particularly if you are caught doing something you said you could not do!

#### **Subsection One: How A Disability Case Was Lost**

Actions speak **LOUDER** than words. In this case, the policyholder applied for disability benefits claiming that she was disabled because of Degenerative Disc Disease, and depression.

The disability carrier determined that the policyholder could do light work based on a review of her medical records, ADL forms, and her statements. The carrier concluded that her physician was wrong to rely on her self-report about her functionality and, as a result, disregarded her treating physician's opinion that she could not work. The carrier did not think she was believable - ultimately, a Federal Judge agreed.

The policyholder claimed that her depression and mental problems limited her ability to do more than simple 1+2 type mental activities, so she could not do her own occupation. But guess what? She indicated on her ADL forms that she recently completed twelve college credit hours, and had a perfect 4.0 average! Attending classes and getting great grades contradicted her physician's opinions about her abilities.

No wonder the Federal Judge upheld the denial of her disability benefits!

One secret to winning your disability claim is to make sure that your medical records, actions, and words are consistent! We make sure the evidence is consistent, and that you do not contradict yourself.

## **What's Next?**

The disability claim and appeal process can be overwhelming, and that is why you made the right

decision to hire me to represent you. In the next section, I will review the mistakes that you can make that can destroy your Myelofibrosis claim, and what I do in the appeal of a carrier denial.

## **SECTION ELEVEN**

### **The Five Mistakes That Can Destroy Your Myelofibrosis Disability Claim**

Carriers will use any reason to deny a legitimate disability claim. However, I have found, over the many years of representing clients who have had Myelofibrosis, that there are five mistakes that can destroy a Myelofibrosis claim.

These include:

1. Failing to understand your disability policy, including the definitions of disability, occupation, and self-limited or subjective medical conditions.
2. Failing to understand how disability carriers view Myelofibrosis claims, and the nature of the complications.
3. Failing to understand the importance of accurately completed Activity of Daily Living (ADL) and Attending Physician Statement (APS) forms, or a Myelofibrosis Residual Functional Capacity (RFC) form.
4. Failing to review the medical records to ensure there is documentation to establish the basis of the post-treatment diagnosis, the severity of your symptoms, and the impact

those symptoms have on your activities of daily living, and a causal relationship between the restrictions and limitations, and your inability to perform your own, or another, occupation.

5. Failing to ensure that all forms submitted to the disability carrier, your medical records, and any statements you give or calls with the adjuster, are consistent.

You can avoid these mistakes by reviewing this booklet, and calling us with any questions you have.

### **What's Next?**

I will talk about the five tips to winning your Myelofibrosis disability claim.

## **SECTION TWELVE**

### **The Five Tips to Winning Your Myelofibrosis Disability Claim**

Now you know the five mistakes you can make, let us talk about the five tips to winning your Myelofibrosis disability claim.

#### 1. Treat with a specialist.

The disability carrier will be skeptical of a claim based on Myelofibrosis, or its complications, if the diagnosis is made by a physician that does not specialize in Myelofibrosis, or its complications. I have found that my clients have greater success in winning their claims if they are treated by a hematologist who specializes in Myelofibrosis. If you are not, please call my office, and we will make a referral.

#### 2. Take your medication as prescribed, and follow your physician's instructions.

Your physician has prescribed medication and other treatment to help you with your symptoms. If you refuse or do not follow your physician's instructions, the carrier might just deny your claim on the basis that you are not



getting appropriate treatment. That is a legitimate reason to deny your claim, and leaves the door open for the disability carrier to argue that you might improve if you followed your physician's instructions.

### 3. Continue to get medical care.

Even if you have lost your health insurance, you must continue to get medical care while your claim is pending, and even if your claim has been denied. Providing the disability carrier with updated medical records that show a progression of your problems can be extremely helpful to your claim. Call us today for help if you are no longer able to afford medical care, as we can make suggestions as to where you can get medical care.

### 4. Send us all the forms you or your physician have been asked to complete by the disability carrier for our review before the forms are submitted to the disability carrier.

The disability carrier will send you stacks of forms to complete during the application stage of a disability claim, and even after you have been put on claim by the carrier. These forms are not easy to complete. For example, you might be sent a form asking you to document your problems and how those

symptoms impact your functionality. You may be asked “Do you drive a car?” You can answer “Yes” or “No” and explain how problems with concentration, focus, or the side effects of medication impair your ability to drive. Remember the section about your credibility? Many disability carriers will compare what you said about your symptoms and functionality on the forms to what is in your medical records. I cannot emphasize enough the need for consistency.

Make sure that your physician supports your claim, knows how to fill out APS / RFC forms properly, and will not get on the phone with the carrier’s peer review provider and be talked into saying you can work in a sedentary capacity.

Ask your physician if they support your claim and will fill out forms for the disability carrier. If the answer is “No” to either of these questions, call us immediately, and we will help you find a physician who will be supportive of your case.

5. Remember to tell your physician not to accept calls from the disability carrier’s medical peer review team, and to contact us immediately.

Have your physician ask that any questions from the peer review team be put into writing

so your physician has the time to properly answer the questions. Of course, we want to review your physician's response before we submit it to the disability carrier. Far too many times, treating physicians are intimidated by insurance company physicians, or the insurance company physician will flat out lie about what your physician had to say. Asking for the questions in writing is a far better approach to managing the disability carrier's medical peer review questions. After all, the disability carrier would not have a peer review medical provider contact your physician if they were going to continue to pay benefits. They are fishing for reasons to deny or terminate your benefits!

Following these tips will help you get the benefits you deserve! If you have any further questions, call us at **727-894-3188**.