How to Prevent a Lawsuit on Mental Health Claims

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## Mental Health Claims

- Statistics show disability claims regarding mental health are rising rapidly.
- Long term illnesses typically include a mental health condition.
- Stigmas remain that adversely affect acknowledgement and addressing the condition.
Mental Health Education

- Disability staff should be provided education on mental health symptoms and behaviours.
- Disability plan staff must have access to emergency services to address crisis situations.
- The Plan should allocate an Intake representative with Mental Health experience.
- The Plan should have a Mental Health physician available on Staff or on Contract.
Mental Health Illness Behaviors

- Disability plan staff should be aware of typical mental health behaviours related to mental illness:
  - Non-cooperative
  - Emotional outbursts
  - Non compliance
  - Failure to seek ongoing regular medical
  - Failure to respond to communication
<table>
<thead>
<tr>
<th>Mental Health Illness Behaviors</th>
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<tbody>
<tr>
<td>• Not the usual circumstances.</td>
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<td>• Typically non-compliance and lack of regular medical would result in a denied claim . . . Take a moment . . . Before a judgement is made . . .</td>
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<tr>
<td>• Consider if there is a mental health issue???</td>
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<td>• Take the extra step to delve further to seek medical, or compliance and or communication.</td>
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Plan Provisions

• How does your plan address mental health issues?
  – Mental health representative on staff.
  – Treatment options available: Additional funding for psychological services, on line therapy.
  – Review Pre-existing plan provisions.
  – Authorization process to seek medical information.
Plan Provisions

• Review plan provisions in terms of how it can affect those with mental health illnesses.
• Resolution of a severe mental health crisis may take several years. Consider if the terms of your plan’s own occupation coverage should be longer?
• Consider time frames to apply for disability. Consider extension of deadlines to respond, to attend treatment.
• Consider a Partial Disability Provision.
Adjudication Processes

• Disability insurance insures against loss of capacity to work. Causation is not relevant.
• The application of the contractual insurance provisions must be correctly and consistently interpreted and applied.
• The policy words must be interpreted reasonably in order to give meaning to the intent of the parties, to interpret the contract as the whole.
Adjudication Processes

- Consider . . . based on the behaviors exhibited, would a reasonable person consider that there may be a mental health issue?
- Courts may later look at the situation and determine that the plan “ought to have known” that there was a mental health issue, based on the symptoms identified.
- Is the illness related to work/labor relations?
Adjudication Process

- Consider if application forms can be simplified.
- Do the application forms adequately address mental health claims?
- Write to physicians to obtain additional medical.
- Early and regular communication.
- Decisions must be based on evidence.
Adjudication Processes

- Disabled from their Own Occupation?
- Does the medical support that the employee is totally disabled from their job?
- The medical should show that the employee cannot continue working in their own position.
- The reasonable interpretation is that although they can do some tasks, they cannot function in their usual role.
Adjudication Processes

- Disability plan rules should coordinate with accommodations and return to work situations.
- The employer is still obliged to accommodate employees who can fulfill the core duties of their job albeit with modifications.
- Not an easy distinction, consider the job tasks and medical to reach a “reasonable” decision.
- Cognitive assessments can provide key information to assess ability to work.
Adjudication Processes

- Disabled from Any Occupation: Should be in relation to their training, education and experience.
- Two employees with the same disability may not be disabled from any occupation.
- Total disability is where common care and prudence require that all work ceases to effect a cure or prolong life.
Disabled From Any Occupation

• Benefits should continue: When the employee is unable to do any work due to the disability.
  – If the employee is unable to work in a job for which they are reasonably suited, benefits will be paid.
  – Even if they are able to perform some unrelated task.
  – If extensive retraining is required to take a job, that is medically approved, it should be considered.
  – Based on proof that the inability to work had at least one disability as a proximate cause for inability to work.
Disabled From Any Occupation

- Consider the totality of the medical evidence.
- The employee does have to prove every diagnosis.
- Assumptions can lead to misattribution of causation and negate the diagnostic standards.
- The Courts tend to give the benefit of doubt to the employee, and will consider what is fair.
Disabled From Any Occupation

- Will be considered disabled when prudent management of their disability suggests that the employee should not be performing a substantial number of tasks related to his or her job, even if they can perform some of the tasks.
- Performing work out of the sheer economic desperation does not entitle an employee to benefits.
- Will working jeopardize their health status?
Disabled From Any Occupation

• Symptoms of mental health may impact the ability to work to a greater degree than other conditions.
• Cognitive deficiencies are a significant barrier to any return to work.
• Consider impact to mental health condition by a return to work in any occupation. Anxiety, panic can substantially increase.
Ongoing Claim Management

• Regular ongoing communication, not just for medical updates. Are they attending treatments?
• Do they need additional assistance reclaim processes?
• Do they need additional assistance for services?
• Record attempts to contact the disabled employee.
• May have to use Registered Mail.
• Reach out to their Advocates, with permission.
Medical Evidence

- There may be gaps in medical reports due to stigma.
- Stigma may prevent seeking help, full disclosure.
- Symptoms may be barrier to seek treatment.
- Does it include Cognitive assessments/tests?
- Does it include counselling, group therapy sessions?
- Outline expected/required medical evidence to be submitted to support the claim.
Treatments

• Seek confirmation of attendance appointments.
• Convey that attendance at treatments is necessary.
• Consider offering additional services/treatments covered by the plan, Counselling, Therapy.
• Consider payment for expenses and travel to treatments.
### Claim Decisions

- Process must be clearly defined and followed.
- Consider peer/Supervisor Staff review.
- Decisions must give full rationale.
- Seek medical consultation, internal or external Mental Health Practitioner, prior to decision.
Claim Decisions

- Principles of Natural Justice must be maintained.
- The plan must ensure that their conduct does not depart from ordinary standards of decency.
- There is a contractual duty to act in good faith.
- The decision must be with a proper purpose.
- Decisions cannot be arbitrary, based on assumptions.
Lawsuits

- The Courts may weigh the evidence against the Insurer, as the Insurer is the author of the plan.
- The Courts may give the benefit of doubt to the disabled employee.
- Lawsuits are lengthy processes, which may invoke damages due to suffering of employee.
- Disabled employees often do not sue due to lack of finances and or poor health.
### Other Appeal Options

- Face to face Appeal meetings.
- Mediation.
- Arbitration.
- Tribunals to decide appeals.
- Unions may fully fund disability lawsuits.
- Third party physician adjudication of claim.
Return to Work

- Consider return to work as the goal.
- Recovery may be lengthy. Relapses can occur.
- Provide disability benefits during the graduated return to work program.
- Continue to provide assistance and support during the graduated return to work program.
- Consider and support workplace accommodations.
Key Takeaways

• Mental Health claims require additional due diligence in adjudication.
• Education re mental health symptoms and behaviours can assist to recognize the illness.
• Lawsuits are not the answer, but claims should be processed in consideration of review by a Court.
• Incorporate extra measures with a goal to wellness and a return to work.