

## ***Who Is Disabled?***

By Jacques Chambers

June 15, 2015

The term “disability” or “disabled” is heard frequently, especially when discussing a medical condition such as Hepatitis B or C, which tend to be progressive in their symptoms and can lead to an inability to work.

The word is used in so many contexts, however, that it has become virtually generic to mean any type of limitation. It really has no special meaning other than describing a condition of some sort that prevents a person from doing something.

- Is lack of height a disability? It is if you stand 5’ 6” and you are trying out for the NBA.
- Does an infected hangnail constitute a disability? Probably not. Then again, if you are a surgeon, it could be “disabling” – preventing him or her from performing surgery.
- Missing an arm or leg certainly seems to be a disability, but many people can perform their jobs perfectly well in that situation.

Clearly, then, when the term “disability” or “disabled” is used for a specific purpose, for example, to pay benefits to someone who is “disabled,” a clear definition of the term must be established. Social Security, disability insurance policies, and other programs for people with “disabilities” must define the term, and each seems to put their own slight twist on how they define it. *That is why your doctor’s letter stating that you are disabled will not automatically get you disability benefits.* Each party trying to determine your disability status must see that you meet their own definition of disability through the medical record and, occasionally, through physical examination.

### **Totally Disabled/Total Disability**

First, be aware that in this context, “disabled” and “disability” are really shorthand for what Insurance companies and the Social Security Administration actually refer to as “Total Disability” and “Totally Disabled.” All apply specific definitions to the term and it is important to know the specific definition as that is the yardstick with which a claimant’s medical condition is measured to see if they qualify for benefits.

**Social Security** defines “totally disabled” as:

- *“You have a serious, DOCUMENTED, physical or mental health condition;*
- *Which prevents you from being able to earn Substantial Gainful Activity (\$1,090/month in 2015); and,*
- *That condition is expected to last at least twelve months or result in death.”*

This is a very detailed definition, yet it can be one of the most difficult to meet. Notice that Social Security immediately eliminates coverage for brief periods of disability by

including the “12 month” limitation. The disability does not have to have lasted 12 months, only that it is expected to last that long. Also an exception is made for those with an illness that is terminal and can lead to death within twelve months.

Under Social Security rules, you are not necessarily disabled just because you can’t perform the occupation you used to have. Instead, if you can’t do your prior job, they will look to see if there is another occupation for which you might qualify either by past experience or training or education. Unfortunately, they will not find you that job; they will just list some occupations they feel you could perform.

For example, they may expect a 35 year old with a college degree, who can no longer perform his prior job, to be able to move to another job that he is able to do, both physically and mentally. In another case, a 55 year old who has only a high school diploma and spent his entire career in one, relatively unskilled job may be eligible for benefits just because he can no longer perform the only job he is qualified through education or experience to perform.

### **Private Disability Insurance**

Benefits paid under either employer provided disability plans or individually purchased disability policies are all paid according to the terms of the disability plan document or the insurance contract. Each policy will define “totally disabled/totally disability” in the contract so anyone contemplating leaving work due to disability should know how the particular plan defines it.

Although each plan’s definition may vary, there are some basic provisions that are usually included in the definition in one form or another:

- **Inability to work** – Most definitions include a phrase such as: “due to medical condition, the claimant is unable to perform the material and substantial duties of an “occupation.” This provision has some variants:
  - “His regular occupation” – If this is used in the definition, then a person is disabled only if he is unable to do the job he was doing when he became disabled; or
  - “Any occupation for which he is suited based on education, training, or experience.” This is somewhat similar to Social Security in that they are looking for any job the claimant might be able to do based on the claimant’s background.
  - Most employer-provided disability plans use both of the above definitions of inability to work. They look only at the “regular occupation” during the first two or three years of the claim and then shift to “any suitable occupation” for the remainder of the claim. This is one reason many claimants are dropped from benefits after the first couple of years.
  
- **Loss of income** – Some plans define disability as “due to a medical condition, the claimant has lost at least twenty percent of his prior earnings.” Such plans will only pay full benefits if the claimant has lost 80% or more of his income. If the

income loss is between 20% and 80% of prior earnings, then only a proportionate benefit is paid. Some plans use this provision without an “inability to work” provision; most, however, will use a combination of the two effectively requiring inability to work AND a loss of income.

- **Under medical care** – Many definitions also include a requirement that the claimant be under the ongoing care of a physician, although some contracts will waive that requirement if there is nothing medically to be done by further treatment.

The way insurance companies define “Totally Disabled” has a profound effect on who will get benefits, and knowing what definition a claimant has to meet should help him or her and his or her physician clearly document the medical record to reflect the claimant’s condition in the light of the definition used. Some older contracts written by professionals such as doctors and dentists defined disability so narrowly that they were obligated to pay full benefits even though the claimant was able to do other types of full-time employment. The days when those policies were written are long gone.

### **Partially Disabled**

Sometimes called Residual Disability, is not defined or used by Social Security. Their disability programs, both Social Security Disability (SSD) and Supplemental Security Income (SSI) have programs for persons “working while disabled” that effectively provide coverage for a partial disability. Note that the rules for working while disabled vary dramatically between SSD and SSI.

Partially Disabled is also used in disability insurance plans, both individual Disability Income and group Long Term Disability. Usually, they provide a proportionate benefit to the claimant based on the amount of wages they are able to earn compared with what they earned prior to disability, adjusted for inflation. For example a person who can do some work and earn 40% of their prior earnings would be eligible to get 60% of the total disability benefit. At least that is a “typical” partial disability provision. The contract should be checked as the provision can vary.

### **Permanently disabled**

This is really a non-term when referring to disability benefits. Other than Social Security’s requirement of lasting at least one year, benefit plans are more concerned with how total the disability is not how long it will last. All plans require that the person remain disabled and may terminate benefits if a medical review shows the disability has ended.

However, the term “permanently disabled” is occasionally used in some pension plans as the grounds for a disability retirement designation. To be honest, to say someone is permanently disabled is simply a prediction that may or may not be true. No disability plan makes you promise never to work again.

## **You Can Help**

Now that you know what yardstick a program uses to measure whether or not you are disabled, you can see why they will not accept your physician's opinion of your condition. You also can see why it is important that you discuss the disability definition of your plan with your doctor before, well before if possible, filing a disability claim.

While you and your physician usually focus on finding the diagnosis of your condition and methods of treatment, the disability carrier wants to know what symptoms your conditions cause that prevent you from doing whatever occupation the definition calls for. Unfortunately, in today's healthcare that limits time spent with doctors – instead there are computerized records that just require checking boxes and filling in blanks; there is little opportunity for a detailed description of your symptoms, much less details of their severity and frequency, and how they limit your ability to function.

Therefore, it is extremely important for people who may someday have to file for disability to provide such details to your physician regularly, and insist that they be included in the medical record. Take a written summary with you each time you see the doctor. List what symptoms you experienced and how they affected your ability to perform tasks at home and at work.