



Date: January 8, 2008

From: Disability RMS

To: Claimants Insured under a New York Policy

RE: Important Information Regarding New York Claims Denied Due to a Pre-existing Condition

A recent New York Court of Appeals decision may impact your disability claim if it was denied based on a pre-existing condition.

- The New York Court of Appeals ruled on June 27, 2007 in *Benesowitz v. Metropolitan Life Insurance Company*, 8 N.Y.3d 661, 870 N.E.2d 1136, 839 N.Y.S.2d 706 (2007) that with respect to disability insurance, the New York pre-existing condition statute permits a benefit waiting period of up to 12 months and not an exclusion of the pre-existing condition.
- This means that all future benefits for disabilities arising during the first 12 months of coverage that result from a pre-existing condition may only have a 12-month waiting period during which no benefits will be paid for such conditions. A claimant with a pre-existing condition must be paid benefits once he has been insured under a disability policy for 12 months and has satisfied the elimination period and other relevant policy provisions.

What does this mean for claimants?

- Claimants do not need to request re-examination of their claim denials because insurers are automatically undertaking a re-examination of group disability claims denied under a New York policy where the denial was based on a pre-existing condition. Insurers will re-examine claim denials going back two years from June 27, 2007. If, however, a claimant's policy provides for a period of time to bring legal action to recover on the policy that is greater than two years, then the insurer will go back and review all claim denials based upon a pre-existing condition for that greater period.
- Insurers must make a good faith effort to notify all impacted claimants in writing by **April 30, 2008** of the results of the review and retroactively pay any benefits due, with interest, from the commencement of the period for which the insurer would have been liable had the insurer applied the *Benesowitz* interpretation of Insurance Law Section 3234 (New York's pre-existing condition statute) to the claim at the time the proof of loss was first submitted to the insurer.
- If, during its re-examination of the claim, an insurer requires additional information to determine whether benefits are payable, the insurer should attempt to request the information on or before **April 30, 2008**. The insurer should make a decision on the claim and retroactively pay any benefits owed, with interest, no later than **60 days** from the receipt of all information necessary to complete the re-examination of the claim.

If you have any questions, please contact your Claims Administrator at (877) 254-0085.