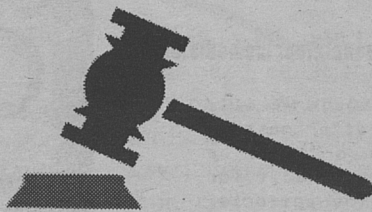


LEGAL BRIEFS

by Bennett Klein and Gavriel Wolfe



Protecting HIV/AIDS Disability Benefits

BY BENNETT KLEIN AND GAVRIEL WOLFE

Editor's note: Susan and Beth begged for the month off. Bennett and Gavriel from Gay and Lesbian Advocates and Defenders in Boston offered to sit in for our dynamic duo this month.

Living with AIDS in Portland, Maine, Robin Lambert was understandably panicked when he received a letter from his long-term disability insurer stating his benefits were being terminated. Disability benefits, whether private benefits from a long-term disability insurer or public such as Supplemental Security Income and Social Security Disability Insurance, are a matter of survival for people unable to work due to HIV or AIDS.

From Lambert's point of view, he had advanced AIDS, low T-cell counts, a history of opportunistic infections, side effects from medications, and constant, debilitating fatigue, which made regular employment impossible for him. The insurer, however, claimed improved anti-viral medications had "stabilized" his condition. Lambert, according to the insurer, had not been hospitalized or diagnosed with an AIDS-related illness in a long time. The insurer even hired a detective to videotape Lambert doing errands to show he was fully capable of working.

Many people with HIV or

AIDS who received disability benefits in the past have been able to return to work. Insurers, however, may attempt to terminate benefits for people who, like Lambert, are significantly improved and living longer, but still unable to work due to severe fatigue, medications' side effects, infections, or other debilitating effects of advanced HIV disease. With much publicity about improved treatments, long-term disability insurers, possibly even the Social Security Administration, will likely review claims more closely down the road.

There is no need for panic. But more than ever, people with HIV and their doctors must understand what to do today to protect themselves from unwarranted and arbitrary assaults on benefits in future.

Receipt of Social Security benefits does not automatically entitle a person to coverage under a private disability policy. An insured must provide independent proof of meeting the insurance policy's definition of disability. The key to this is ongoing, consistent and detailed documentation in the medical record of a person's limitations.

It is not necessary to demonstrate hospitalization or current opportunistic infections to be eligible for disability benefits. Another real—often underestimated—reason a person with HIV may be unable to work is severe fatigue.

But insurers often try to deny disability benefits if there

is no laboratory data or other objective evidence that a person is unable to work. Fortunately, many courts squarely reject the insurer's position, ruling that disability insurers cannot disregard a subjective symptom such as fatigue simply because a doctor cannot measure it or determine its precise cause.

Many people with HIV stop reporting fatigue at every doctor's visit because it has become the norm and no longer

Silence can give an insurer a basis to claim that a person has no HIV-related limitations.

seems remarkable or noteworthy. But this silence can give an insurer a basis to claim that a person has no HIV-related limitations. Even if a person has become accustomed to a certain level of fatigue, the relevant factor for determining disability benefits is a person's current level of fatigue as compared to the pre-disability level. Therefore, people should report at every doctor's visit symptoms such as fatigue, low energy or reduced stamina, sleeplessness or insomnia, sleeping long hours, need to sleep and nap during the day, difficulty with concentration or memory, medication side effects, or any other HIV-related effects.

This is particularly important because in assessing disability due to subjective symptoms, many courts give more weight to the opinion of a physician who has assessed the patient's symptoms over time than to paper review of records by the insurance company's medical consultant.

Some people with HIV claim inability to work due to their medications. It is often difficult to establish that a person is unable to work simply because it's difficult to maintain a complex medication regimen in the workplace: employers are obligated to provide employees with reasonable accommodation to take medications if necessary. Side effects or toxicities from medications, however, can help establish disability if they are sufficiently debilitating. It is

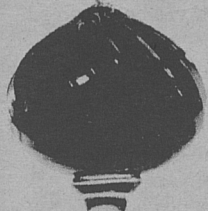
response with disability insurers, doctors explain that while antiviral medications may have slowed the pace of disease progression, such notations have to be taken in context of the individual's overall medical history and condition. Terms such as "clinically stable" and "doing well" are relative to the patient's baseline medical condition and do not necessarily indicate the absence of HIV-related deficits.

It is normal for insurers to ask doctors for periodic updates about a patient's medical condition. In the past, indicating that the patient has AIDS may have been sufficient justification of eligibility for benefits. Today, however, it is important that the doctor provide detailed explanation of the person's limitations from HIV.

After months of legal battling and emotional stress, Robin Lambert's disability benefits were ultimately restored. His case gives us the most important lesson in protecting disability benefits in future: communicate with your doctor. What is in your medical records today can affect your disability coverage tomorrow and for years to come.

Bennett Klein is AIDS Law Project Director at Gay & Lesbian Advocates & Defenders in Boston. Gavriel Wolfe is GLAD Bilingual Client Advocate. GLAD is a New England-wide legal organization that fights in the courts for the rights of lesbians, gay men, bisexuals and people living with HIV. Note: GLAD represented Robin Lambert. ▼

INSPIRATIONS
handcrafted gifts for everyday living



Caspian Hot Glass Studio
hand blown oil lamps

37 Tafts Corners Shopping Center
Williston, VT 872-8891
Weekdays 10-6, Saturday 10-5



802.660.8396

Diane M. Felicio, Ph.D.

mediator

Trying to work it out and getting nowhere?
Conflict *can* be productive.

separation • divorce • employee relations • consumer disputes



Laurie S. Rosenzweig

Attorney at Law

18 South Main Street, P.O. Box 1455,
Rutland, VT 05701

802-786-2251

e-mail: Sabu234@AOL.com

Real Estate, Wills & Trusts, General Practice



Good legal advice can make all the difference.

Langrock Sperry & Wool offers the services of 22 lawyers with over 300 years combined experience in all areas of the law — including two lesbian attorneys with special expertise serving the legal needs of the g/l/b/t/q community.

SUSAN MURRAY & BETH ROBINSON

With offices in Middlebury and Burlington

Middlebury (802) 388-6356

Burlington (802) 864-0217

smurray@langrock.com brobinson@langrock.com

Langrock Sperry & Wool, LLP

ATTORNEYS AT LAW