



Disability Guide for Shop Stewards

Urban Postal Operations (UPO)

Rural and Suburban
Mail Carriers

(RSMC)

*Frequently Asked Question
about:*

Short Term Disability Plan (STDP)
and
Long Term Disability Plan (LTDP)

Spring 2020*

*(current as of May 12, 2020)



This guide has been updated by:

Cathy Kennedy

CUPW National Union Representative
and Negotiator



Disability Guide for Shop Stewards Urban Postal Operations (UPO) and Rural and Suburban Mail Carriers (RSMC)

Frequently Asked Questions about Short Term Disability Plan (STDP) and Long Term Disability Plan (LTDP)

Purpose of this guide

This guide aims to assist shop stewards and locals acquire a general understanding of the STDP (short term disability plan) found under article 20 for Urban and 36 for the RSMC, and the LTDP (long term disability plan) found in article 30 for Urban and 17 for the RSMC. This guide also serves to advise and support CUPW members at the beginning of their claim and to highlight the importance of following appropriate steps in order to increase the chances for a successful outcome.

This is not for workplace accidents. If a member is hurt at or as a function of work, report it to the LPO/supervisor, LJHSC committee and log the incident immediately. Management may direct



members to STDP, but workplace accidents are covered by Workers' Compensation. Make sure the members are clear that STDP is insurance for non-work related accidents or illnesses.

Under the former sick leave system (for those that had it); there was greater onus on the employer to prove you were able to perform your duties. Under the disability programs, the responsibility is on the member to gather supporting medical information in order to prove they are unable to work. This makes it even more important to provide solid advice from the beginning.

Short and long term disability plans are designed to offload responsibility from employers to insurance companies in business for profit. It suggests the "market" will make the best assessment of individual needs within certain medical boundaries.

This reduces costs for employers, places private insurance companies as decision makers and causes the employee to carry more of the burden for being unable to do their job. It is a trend across society that is affecting many workers.

Speaking with a CUPW member

The STDP and LTDP process and the downloading of responsibility to employees causes stress, hardship and uncertainty. It may feel uncomfortable at times to be an empathetic ear while providing clear advice and support for our co-workers going through a tough time.



There are things that members should know early in the process:

- a) Keep copies of everything;***
- b) Keep notes of discussions with Case Manager;***
- c) Sign a release allowing for the union to be involved in their case right from the beginning;***
- d) Be aware of the importance of meeting time limits;***
- e) Be aware that there is the possibility that they will have to pay back money.***

Mental illness and stress

A significant amount of disability in society is related to stress and mental health. This is the second leading cause for members on Long Term Disability Insurance. This problem is exasperated with speedup, overwork, shift work and life pressures that accompany the rise of neoliberal economics. Though these stressors may be a by-product of the nature of the work and corporate directives, society places the burden on the individual to take the steps to get well. Mental illness can be difficult to deal with, especially if you do not have a medical professional. The member may feel stigmatized or agitated. Understanding and complying with requirements can seem burdensome and overwhelming. Having an employer meet their legal duty to accommodate



mentally disabled workers can be a huge challenge. That is why we encourage our members to have union representation at all times.

There are some factors that you should be aware of:

- 1) One out of every four to five workers is affected by mental health issues each year. It is not uncommon, invisible perhaps.
- 2) One in six Canadians will suffer from a mental illness in their lives.
- 3) Mental illness is not a “character weakness” or “flaw” but are conditions that can affect the entire body.

It is not the job of the stewards to assess or judge mental illness in another person. Maintain confidentiality and be supportive without taking too much on. Refer the member to a social steward, to appropriate agencies and supportive networks if needed.

Speaking with an insurance company Case Manager

When dealing with frontline insurance company staff (case managers) advise members:

- To demonstrate the utmost respect and civility. Even if you disagree, don't be argumentative.



- Ask for clarification. They are interested in any medical information you can provide to support a claim.
- Keep clear lines of respectful communication open with the case manager.
- Keep notes of each conversation.
- The applicant (the member) should know that they have a right to union representation and it is highly recommended that they do so.

How long does it take for a claim to be processed?

There is no qualified answer as it varies from case to case. If you have a clear cut case where there is not the slightest room for doubt – (i.e. broken leg, terminal cancer, etc.) things can move quickly. When there are questions and denials, it could take months – even though that is not consistent with the contract.

Hopefully, the member will not go through this process and things will go smoothly. However, be aware, severe hardship can occur as you wait. In a clear cut case, things could be done in a month and pay should not be interrupted.

There are many possible causes for delays in the administration of a disability claim regardless of whether it is an STDP or LTDP claim. Both the



member and the Union need to keep on top of the process in order to have the best chance of a successful claim.

It may be necessary at times to contact the STDP or LTD case manager or the Canada Post Occupational Abilities Coordinator in order to minimize delays in the process.

It is important to understand that the programs shift more of an onus to the worker to substantiate their level of disability.

1. Short Term Disability Plan (STDP)

The Short Term Disability Plan is an income replacement system in which the worker receives 70% of their wage. In other words, being ill will cost you money.

How does a member apply?

As with all absences, the member must notify Canada Post as soon as possible to inform them that they will not be coming to work and the anticipated duration of the absence. The member must let CPC know what type of leave they are taking, e.g. illness.

The STDP kit can be printed from Intrapost or provided by a Canada Post manager. The included forms must be submitted within 16 days of application.



Once notified, Canada Post will provide the member with Canada Life's number to arrange for a telephone appointment with a case manager. If the member does not call, the case manager will call the member within 48 hours.

NOTE: The case manager will make 2 attempts to contact the member. If the member doesn't respond, the claim will be deemed abandoned.

What percentage of earnings do you receive and why?

The earnings are 70 percent of regular wages (Urban) and earnings including base and variable (RSMC). For all CUPW members this is administered between Canada Post and Canada Life. Clauses 20.10 of Urban and 36.10 of RSMC say that all plans are taxable (STDP and LTDP). Under the STDP, should members have remaining sick leave credits from the old urban contract, they can top up their pay to 100% for the first 15 weeks. After 15 weeks, the urban contract allows for topping up to 95% when under the EI portion. This will vary depending on each individual case and how much accumulated sick leave there is. This amount would be a combination of Disability, EI and top up credits should you have any. With no credits, you would still receive 70%. The breakdown of who is paying is what would change. After 15 weeks, a member would receive one amount from EI and one from Canada Post. If a member does not qualify for EI, CPC will pay the full 70% as long as they apply for EI.



There may be a qualifying period (see clause 20.10 of the urban and 36.10 of the RSMC contracts). It will vary depending on the nature of whether it is the result of an accident or illness. There could be up to a one week (7 calendar days) qualifying period for which the member will need to use their personal days to be paid. Once approved for STDP, if a member has no personal days or top up credits (urban) a member may use their annual leave (vacation leave) or compensatory leave (urban) to cover the qualifying period.

What if the claim is not approved?

A member is paid pending claim approval. If the claim is denied, they should appeal. If they don't appeal Canada Post will claw back the payments and deduct from their pay at a recovery rate of 10% gross.

If the member wants to pay it back faster, they should contact Canada Post.

If the claim is not supported due to “non-compliance” (i.e. not submitting timely medical information or not complying with supporting medical information), Canada Post will recover this money at 100% of the employee’s pay each pay period, excluding vehicle expense (RSMC).

Please see the section on the STDP appeal process for further information.



How does a member apply for EI Sick Benefits and what percentage do they cover?

You can apply online or in person through the Service Canada website or local Service Canada centre. ***This initiative is up to the individual!***

When a member approaches the end of the 15 weeks of STDP (around the 12-13 week mark) Canada Post will send a letter with instructions for applying for the EI. There is a special arrangement with Canada Post and EI under the sub plan.

Be careful! When filling out the application with EI, the member needs to ensure to **not** declare that they are receiving income with the following 2 exceptions: pay on a Statutory Holiday and pay while on modified duties.

Follow the instructions that Canada Post sends out. Failure to follow this process may delay an EI claim. Read the instructions carefully as the member is paid for Statutory Holidays and modified hours at 100%.

A record of employment (ROE) from the employer will be needed. It is the legal obligation of Canada Post to provide the document. It is in the member's best interest to ensure they have done so. The ROE can be found online on the Service Canada website.

An account online can be set up and the member will be able to find the data there. Service Canada and EI can help navigate the system if the member is having difficulty. If there is no ROE it means



Canada Post neglected to follow procedure. It could mean, perhaps, a supervisor did not input correct information into the SAP or some other administrative delay or mistake. In this case, the member should contact their steward immediately. Provide EI with all available information in this case.

Does a member request a record of employment?

Follow the process mentioned in the previous question above. If it does not show up within a week the union should be contacted. Unnecessary delays in processing can result in delayed claims. There is no longer a paper version of the ROE though you can print a copy from the website. Remember, that while a member is waiting for EI to approve their claim they are still being paid the full amount (70%) from CPC. When EI approves the claim, the member will be in an overpayment situation. CPC will deduct the overpayment at 100%.

What if EI is denied?

The obligation is to apply for EI. If denied it is perhaps due to insufficient hours. CPC will continue to pay 20.10 (g)(iii) urban and 36.10 (f)(ii) rural.

Please note that the member is paid by CPC 100% for Statutory Holidays, not 70% as some would believe. Therefore, members must declare the



exact or full amount with EI. Not doing so could cause serious problems and even, as seen in some cases, be considered as fraud by EI.

The Appeal Process for STDP

What is a first level STDP review and how long do members have to appeal a denial decision?

The STDP appeal has two levels. Once the member submits the employee statement and the attending physician statement, their claim will be reviewed by the insurance company. They will receive a letter from the insurance company declaring if they have been accepted or denied. If the member has been denied, ***they MUST notify the Insurance provider within 7 days of receiving notification of the denial that they wish to appeal!***

The member will then have 30 calendar days to submit supporting medical documentation.

It is recommended that the member either fax or email the information and keep a record of the confirmation. During the time the member waits for a decision on the first level of appeal, he or she will receive STDP benefits. If the first level appeal is denied, the corporation will recover the overpayment at 10% of the members pay each period.

The member should communicate and have every appearance of being cooperative including informing them of new appointments, cancellations, things coming up, etc. This review of the case is done by the insurance company. The



member will receive a form to sign for a release of their medical file to the union. The member should sign it and return it to disability management provider while keeping a copy.

If there is a denial of benefits at the first level of appeal, the Union will determine whether the decision will be appealed to the final level. In that case the information would be reviewed by an independent medical physician.

The Final Appeal Process

If the member's claim is denied then the Union on behalf of the member will advise management, within 14 days, if they want to appeal the decision.

As soon as CPC receives the denied letter, they will start clawing back any STDP payments the member has received. Canada Post will stop the clawback if at any point in the appeal process Canada Life or an IMP accepts the claim. This adds pressure because the employer will start deducting if denied at the first level. Therefore, it is important to keep submitting information before the final appeal.

Again, if the member has not already signed, stress the importance of signing a release form so the union can appeal and advocate.

Proceeding to the final level of appeal is decided by the Union.



STD Recurrences: what if a member returns to work but must go off again? Is this a new claim? (Successive Periods of Total Disability)

Clause 20.11 of the urban contract and 36.11 of the RSMC, notes that if a member has a recurrence of the same or related medical condition within thirty (30) calendar days of a return to work following a STDP leave (and it is medically supported by the Disability Management Provider) a member will continue with disability benefits, with no qualifying period, for the remaining 30 weeks of STDP benefits.

If the member returns to work for longer than thirty (30) calendar days following a STDP leave the following absence is considered a new period of illness or injury.

Canada Post maintains you must be on full duties and full hours for those 30 days to count for a recurrence.

We disagree with this position and the member should contact the union.

Who regulates Canada Life and how would a member contact them?

They are an arm of Canada Post and have an internal ombudsman. Information is available on line or by request.

All insurance companies are governed by provincial insurance regulators.



What happens if a member is under the care of Worker' Compensation, can Canada Life get involved?

Canada Life may try to become involved as the disability management provider for Canada Post; they are not entitled to make any assessment of the validity of a Provincial Workers' Compensation claim.

If a claim is denied this could make it a STDP claim. Workers' Compensation can be denied because it is not work related. A member may be disabled but that does not mean it was work related (meaning provincial Workers' Compensation Plans do not apply).

If members injure themselves at work who do they deal with?

The WCB and the union should be involved in any workplace injury. While some workers are not so enthusiastic about claiming an injury initially, thinking it will "go away" or is "not that serious" you risk potential long term problems and recurrence.

Can Canada Life deem permanent restrictions?

They can validate or disagree but it is primarily up to the member's physician and their treatments.



What happens if there is a dispute with Canada Life and the member's personal doctor?

Always counsel people to go by the doctor's instructions. Our job is to counsel, not to be health professionals. It may require a very open and frank discussion between the member and their doctor.

What happens if a member is not happy with the therapist appointed to them by Canada Life?

Canada Life does not generally send you to a therapist.

Are they obligated to continue therapy if the member feels they are not getting the help they require?

This would be treated by the union as similar to an appeal or review where new evidence and information is introduced to indicate the treatment inappropriate to the diagnosis. Follow the doctor's prescription for therapy.



2. Long Term Disability Plan (LTDP)

For many years, the Long Term Disability Provider had been Sun Life Insurance. Canada Post recently changed providers and as of January 1, 2020, Canada Life will now be the Long Term Disability Provider.

Any member who is on LTD with Sun Life will stay with Sun Life as long as they qualify. Those who became disabled before July 1, 2019 will be covered by Sun Life and not Canada Life.

If you are not happy with the initial decision, you can proceed to a first level review. While they call it an appeal, all LTDP reviews are internal “reviews”. There is no independent party deciding on the insurance company’s decision. It is not in essence an “appeal” in the way a court or arbitration would occur since there is no third party to make a decision, but rather an internal review process. At this point, a manager from the Disability Management Provider will take a second look at the file. A first level review can go ahead without additional information but the decision is usually the same. At each level, it is recommended that a doctor provide new information to support the member’s claim. There are three levels of review in the process and it is usually initiated by the member with the union’s support through the process.

The contract says the case will be reviewed by the “disability Team Leader” at Sun Life/Canada Life.



If a member is denied again, they will go through the Senior Disability analyst.

The final decision should be within 10 working days of receiving complete medical file including additional information.

When does Sun Life/Canada Life get involved in a claim?

Sun Life/Canada Life will get involved near the end of the thirty-week period of STDP.

Canada Life sometimes contracts out to a third party (Morneau Shepell) for short-term claims and then may contract out the long-term claim to another company as well. Canada Life will administer the transfer of information at around week 22 of the STDP claim. Ask the member to check with their STDP case manager to ensure the file has been sent at that time otherwise there could be a gap in payment.

Canada Post and Canada Life will have Access HR send out an application to the member for Long Term Disability around week 22.

If the member has not received an application as they approach 25 weeks disability benefits, contact Access HR.

How long is a member Covered for Long Term Disability?

As long as the member is still disabled from their own occupation, they can remain on disability for



up to an additional two years if medically supported. At the end of the two-year mark Sun Life/Canada Life will assess whether you are able to work elsewhere. This point is commonly referred to as the “*change in definition*”.

After 2 years, Sun Life/Canada Life have a change in definition of Total Disability. To be considered totally disabled the medical evidence must support that the member cannot work elsewhere, in a “commensurate” occupation.

Accommodation? What if CPC says NO?

If Canada Post won’t accommodate a member in a modified condition but Sun Life/Canada Life says they can work on a modified schedule (physically able and Canada Post refuses to accommodate) Sun Life/Canada Life will terminate benefits. A member should contact the union immediately and file a grievance and/or appeal. If we can prove that work is available for the member to perform then we should file a grievance. If there is no suitable work available, we should file an appeal with Sun Life/Canada Life.

The member will receive a letter authorizing the Union to represent them at Sun Life/Canada Life. They should do this immediately and keep a record. Frequently these authorization letters are not sent to the union. It is also a good idea to keep a diary of events for later reference all through the process, recording conversations, appointments, who they spoke with, what was said, what was sent, etc. The member should follow up with the union to ensure the release was sent.



Members whose STDP benefits are denied should request the LTDP application prior to week 13 of their absence.

What about a recurrence? Is this a new claim? (Successive Periods of Total Disability)

There are different answers to this depending on the scenario (called successive periods of total disability). This is complex and the Sun Life/Canada Life definition is as follows:

While the policy is in force, an Elimination (waiting) period will not be applied if an Employee, in the interval between successive periods of Total Disability, is Actively At Work for a period of less than:

1. One month, if the subsequent Total Disability is due to an entirely unrelated cause or illness; or
2. Six consecutive months, if the subsequent Total Disability is due to another illness resulting from the same cause; or
3. Twelve consecutive months, if the subsequent Total Disability is due to the same illness.

If during the interval between the successive periods of Total Disability:

1. The Employee is Actively at Work for a period of at least 13 weeks; and



2. Premium payments for the Employee's insurance reflect an increase in the Employee's Insured Earnings; and
3. Then the Monthly Benefit will be increased to reflect such higher Insured Earnings, when the sum of the existing Monthly Benefit paid during the period equal to the Elimination Period, which has been waived, is exceeded by the accumulated value of the increase in the Monthly Benefit resulting from the higher Insured Earnings.

What is commensurate occupation?

"An occupation for which the current salary or current rate of pay is not less than 66 2/3% of the then current salary for the employee's own regular occupation."

If after two years, Sun Life/Canada Life deems you totally and permanently disabled from any commensurate occupation they pay the member until age 65.

Sun Life/Canada Life can mitigate (reduce) their expenses by directing the claimant to apply for Canada Pension Plan (CPP) disability benefits and if approved this will be deducted from Sun Life/Canada Life benefits.

If denied CPP (which many are on the first go round) Sun Life/Canada Life is still responsible to pay and they may direct you to appeal. If CPP is



approved you will receive payment from two sources (Sun Life/Canada Life and CPP), to a maximum of 70%.

This is also true if a member qualifies for Canada Post disability medical retirement or an unreduced pension.

Sun Life/Canada Life will deduct from their payment to the member the difference from what the member receives from CPC pension, CPP or QPP and they pay the member. Sun Life/Canada Life will only allow a maximum payment of 70%.

Remember that the first payer is considered to be Canada Post Pension, Canada pension plan disability or Quebec pension plan where it applies.

Can Sun Life/Canada Life deem permanent restrictions?

Technically, only a Medical Doctor can do that, Sun Life/Canada Life can accept it.

Sometimes Sun Life or Canada Life will say different or conflicting things about the same member or claim. They have their own culture and operating procedures.

Can Sun Life/Canada Life facilitate a return to work meeting/plan?

Yes, they have a Rehabilitation program. Sun Life/Canada Life theoretically has jurisdiction to review the return to work plan.



What happens if a member is unable to return to full duties during a return to work plan?

Sun Life/Canada Life implements a return to work plan with the hope that the member will return to full duties. However, it may not always be the case. The member may take longer than expected to return to full duties or they may never be able to work full duties. An employer has an obligation to accommodate a disabled member up to the point of undue hardship.

Are there other companies involved in the member's claim?

Just like Canada Life sub-contracts (involves) Morneau Schepell in the STDP, Sun Life/Canada Life can also hire sub-contractors. The member's responsibility to cooperate with them is no different than with Sun Life/Canada Life. Also, the member's rights are also no different.

What happens if a member does not get along with their Sun Life/Canada Life Case Manager?

Sun Life/Canada Life assigns their case manager. You do not have a choice. That is why it is advisable to get a union rep involved.

Can a member complain about their case manager? Who do they complain to?

There is an internal Sun Life/Canada Life Ombudsmen with whom Members can register complaints. This may go nowhere however the complaints will become a matter of record. Unless



you have good cause to complain there is little to gain from complaining about a case manager who is just doing their job. Disagreement is not enough to have a case manager removed. Having a case manager removed could happen in the event that the case manager is homophobic, sexist, threatening, etc. You will need something substantive. This is not the norm. In an extreme and rare case it is possible.

Are there any groups that regulate Sun Life/Canada Life Disability and how can they be contacted?

You can always litigate a claim. The Union does not pay for a litigation case. Litigation would be a last resort after all appeals are exhausted.

All provinces have a provincial “superintendent of insurance” who can intervene in abuses of insurance policy and regulations. You must go through other steps first. Contact the Insurance Board of Canada for more information.

Do members lose seniority while on Sun Life/Canada Life?

No, a member maintains seniority and continuous service. As long as they are employed, they continue to accumulate.

Can Canada Post Fire a Member if they are on Approved Long Term Disability?

Yes, they can! If Canada Post believes the member has no hope of ever returning back to CPC, they



can fire them. If an employer can prove there is no hope that an employee will return to work, arbitrators have allowed a discharge while on legitimate leave. However, usually CPC will write to the member and suggest that the member retire by a certain date and if they do not, they will fire them. A member should contact the Local and the Local their Regional Office, should this occur.

What happens if the member's installation is going through a restructure or their section is going through a schedule change while they are on Sun Life/Canada Life?

As a union, we take the position that a restructure or a schedule change is the ideal time to structure the work in a fashion that will accommodate all workers and possibly allow the member to return to work.

Do members on Sun Life/Canada Life maintain their bidding rights?

Yes. A worker ought to put in writing that they expect to be notified of bidding opportunities. It is good to keep a copy and note the time, date, who it was given to (and any witnesses if applicable).

Who is responsible for informing Sun Life/Canada Life if the job duties change while the member is on LTDP?

There is no definite answer at this time. Our position is that this is the employer's responsibility.



What are the members responsible for informing Sun Life/Canada Life? (i.e. Changes)

The member is responsible to inform Sun Life/Canada Life about any change in medical condition (if it becomes worse/improved). If the member is unavailable, they will terminate benefits also if they leave the country without approval. The member is also responsible to inform them of any outside employment or disability benefits from another company or insurance provider. When informing Sun Life/Canada Life, keep a note of time/date and who you left the message with. If no response, call again.

Who qualifies for Sun Life/Canada Life Disability?

Any-permanent member who is enrolled in the plan qualifies as long as they meet the requirements of disability from doing their own occupation.

Does Canada Life have to approve a member's absence to claim LTDP?

With Canada Life taking over the LTD program it is doubtful that a member's LTDP claim will be approved if Canada Life denied the STDP claim.

What about paying for benefit coverage while off on LTDP?

They will send out a letter implying that a member has to choose whether they want to maintain benefits or not.



The impression is that the member has to sign the form. The member is under no obligations to sign this form. Before the member makes a decision on their benefits, they should ensure that they know all the ramifications.

They should ask:

- How much they will pay in premiums?
- What happens if they do not return to work? What will be the cost?
- Can the member opt back in when they return to work?
- Can the member opt back in if they do not return to work?

What happens to members who are over 65 years old?

LTDP Benefits cease at age 65.

Active members over 65 do not have coverage under LTDP but they still have STDP. Also, they do not pay premiums anymore for LTDP after the age of 64 years and 8 months.

Have the member keep an eye on their pay stub to ensure the deduction are not continuing for something they are no longer entitled to.



What happens to a member who is deemed permanently and totally disabled from all occupations?

A member disabled from all occupations should continue to receive benefits to age 65. Sun Life/Canada Life will require that the member apply for CPP disability benefits and if successful Sun Life/Canada Life will offset their payments with the CPP disability payments.

Does a member have to apply for Canada Pension Plan (CPP) disability?

If a member is declared totally and permanently disabled by the LTD insurance provider, they will direct a member to apply for CPP benefits.

A member is required to comply with the direction of the insurance company and complete an application. Failure to comply will impact on the LTD benefits.

What happens when CPP Disability denies the member's claim?

Sun Life/Canada Life will assess whether they think that the CPP should be appealed and may direct the member to do so. Sun Life/Canada Life benefits are not reduced if CPP denies the claim.



What happens when CPP Disability deems a member totally disabled from all occupations, but Sun Life/Canada Life Disability believes the member can return to work?

Sun Life/Canada Life will respond that they operate on a different definition of disability than CPP – never mind that the CPP definition is more stringent. The member will have to have a review of the Sun Life/Canada Life decision and medically establish their level of disability.

Sometimes the doctor sends more or different information to CPP than they did to Sun Life/Canada Life.

What does a member over 65 years old do once the 15 weeks of EI runs out?

This is one of those circumstances where the union would likely guide the member toward their CPC pension and CPP benefits to secure an income. It depends on the circumstances (for example the employer chooses to accommodate).

What are pre-existing conditions?

A pre-existing condition is a condition the member had prior to their start at Canada Post and are still receiving treatment for. A member needs to be 13 weeks treatment free to avoid being labelled as having a “pre-existing condition.”



Limitation Act

Each province has legislation governing the time period with which a member can initiate legal action. In Ontario for example, there is a 2 year provincial limit from the initial denial. It differs by province.

LTDP Appeal Questions

Should a member use the Collective Agreement appeal process or go directly to litigation through the courts?

A member is not obligated to use the Collective Agreement appeal process and always has the option to go directly to litigation.

In most cases you would recommend using the appeal process as this provides an opportunity to review the claim while avoiding the expense of litigation.

In a case where there is absolutely no additional medical information that can be provided and the insurance company maintains the denial, you might recommend that the member abandon the subsequent levels of appeal and go directly to litigation. An internal review by the insurance company of the same medical information is not likely to change the decision.



When should a member abandon the Collective Agreement appeal process with Sun Life/Canada Life and pursue litigation through the courts?

This depends on the individual circumstances of the claim including when the claim was denied and the province in which the member resides.

The insurance policy is subject to provincial legislation that establishes limitation periods for filing a claim through the courts.

In Ontario, the Provincial Limitations Act specified the period of time is 2 years from the date the benefits were terminated.

For example:

- The member resides in Ontario.
- Date of disability: November 13, 2010.
- LTD first payment date: February 12, 2011.
- Change of definition: February 11, 2013.
- The employee is approved for the entire own occupation period until February 11, 2013.
- Benefits were terminated at the change of definition date.

Therefore, the 2-year limitation period commences as of February 2013 and will end in February 2015.



Important: If the appeal process is taking an exceptionally long time, the reasons for the delays in the appeal process do not change the limitation dates for filing with the courts regardless of whether the delay is caused by the applicant or the insurance company.

Can a member simultaneously pursue both the appeal process and litigation through the courts?

An employee cannot simultaneously pursue an appeal through Appendix N and litigation against Sun Life/Canada Life.

Once Sun Life/Canada Life is served with a Statement of Claim, all authorizations are essentially revoked and any communications thereafter ought to be delivered through the employee's legal counsel.

If a member is concerned that they will lose their right to litigate based on the insurance act (2 years from Sun Life/Canada Life's decision), they should appeal in a timely manner.

Family Responsibility Order

Should a member have legal requirements like garnishment or enforced settlements such as family payments, these deductions will still occur



from the employer portion. A member is responsible for making these payments should they have no income.

Tax Deduction

If off on LTD, the member should obtain a letter from CPC which states the amount of LTD premiums they paid during their career at CPC. This amount can then be deducted off their income tax.

Other:

What is non-compliance?

The member must ensure they meet the criteria and remain in contact with the insurance provider and Canada Post. Failure to do so risks the success of the claim.

In the event that an applicant (the member) fails to comply with the requirements of any of the disability programs either upon initial review or at any point during the ongoing claim management, the member would be considered non-compliant and their claim would not be supported.

Non-Compliance could include the following but is not limited to:

- Not providing forms / information when requested by Canada Post and the Disability Management Provider.



- For the STDP: (The Employee is responsible to provide the Employee Statement and the Attending Physician Statement, to the Disability Management Provider within 16 (sixteen) calendar days from the date of disability as well as any updated medical information as requested by the Disability Management provider). In other words, a member will be paid for 16 days. If after 16 days a member has not handed in the employee statement and the attending physician statement, payment will stop. Once the 2 statements are submitted and the claim is approved the member will be paid retroactively to the 17th day. This can be found in article 20.09 e (i) and (ii) for urban and 36.08 (e) (i) and (ii) for RSMC.
- Not maintaining direct contact with Case Manager and Canada Post (e.g. not returning phone calls or correspondence in a timely manner).
- Not engaging in active evidence based treatment or complying with a recommended treatment plan.
- Not participating in Return to Work (RTW) facilitation/ Rehabilitation when requested.
- Declining participation in Independent Medical Evaluations (IME) or Functional Abilities Evaluations (FAE).



- The applicant leaves the country without prior approval by the Disability Management Provider.

In these circumstances, the Case Manager will communicate and take action as follows:

- The Disability Management Provider will advise the member verbally and in writing that the claim is not supported and explain why.
- If deemed appropriate, the Case Manager will offer support to the applicant to reintegrate them into the workplace (i.e. Return to Work meeting).
- The applicant will be informed of their option to appeal the decision.

CPC is Notified

- The Disability Management Provider will advise the supervisor verbally and in writing that the absence is not supported and the next steps (i.e. return to work date, return to work meeting, accommodations or appeal).
- If an applicant's claim is non-supported the supervisor consults with the Subject Matter Experts (Occupational Abilities Manager/Co-ordinator, Labour Relations, Human Rights, etc.) to discuss internal



management of the decision. They will decide on an action plan with regards to consequences and next steps.

Confidentiality

An occupational abilities coordinator will make decisions that are not fully based on medical information.

Management does not have the right to know the member's confidential medical information. Management has the right to know if the member has any restrictions and if so, what those restrictions are. You should not be sharing personal medical data with frontline staff and all communications between the steward/union and the member are confidential, clause 10.05 urban.

What makes for a successful disability claim on either STDP or LTDP?

There has to be a disabling condition with enough severity to prevent a member from engaging in their normal occupation. There should be a diagnosis, and related symptoms identified. What limitations and restrictions are there and do they prevent the member from doing their job? There should also be a recognized treatment program for healing and a prognosis. A prognosis would include such things as a prediction of the probable course and outcome of a disease and the likelihood of recovery.



What deductions is the member responsible for paying while on STDP or LTDP?

While on STDP normal deductions will be made, even though you may only be paid at 70%, deductions for pension will be as if you were making 100%.

While on LTDP, deductions for Long Term Disability premiums nor for pension will be made. To have the period of LTDP considered pensionable, a member can arrange to pay their pension premiums during their absence or pay it back upon their return to work.

If pension premiums haven't been paid, Canada Post will double deduct until they are paid up. It is advisable to arrange to make pension payments while on LTD. Once on LTD, Sun Life/Canada Life will only deduct taxes on what they are paying.

What about union dues?

Under the STDP, Union dues are typically not waived.

Under LTDP a member can request to the Local to have their dues waived.

Does a member accumulate vacation leave or Personal Days while on STDP or LTDP?

For STDP the answer is yes. You can find this under 19.01(b) and 20.03(a) & (b) of the Urban agreement and 15.01 and 36.03(a) of the RSMC agreement.



For the LTDP the answer is no. As a member is no longer being paid directly from CPC they no longer earn leave.

What happens if a member returns to work and is unable to perform their full duties?

It is possible to have a failed return to work program and go back on disability benefits. It is essential that these cases are properly documented and supported by the treating physician(s). The Local should work with the member and the member's Doctor to see if they could approach the employer with a modified duty return to work program.

If the member still cannot return to work they can go back on STDP or LTDP provided the member still qualified.

There have been examples where the member cannot perform even modified duties and the Disability Management Provider will not continue the claim. In these cases some members have had to find other jobs, go on social assistance, take a medical retirement or retire.

What is a Medical Retirement?

A member can take a medical retirement if they cannot retire with an unreduced pension (no penalty) and cannot perform their work due to a disability.



A member will not have their pension penalized when they qualify for a medical retirement. Their pension, while not penalized will only be based on their years of pensionable service.

On a medical retirement, a member does not need 15 years of continuous service to qualify for Post-Retirement benefits.

What is an Unreduced Pension?

An unreduced pension is a pension without a penalty. A member can retire with an unreduced pension if:

1. For members who became a permanent employee before December 21, 2012 and have either:
 - 30 years of pensionable service and be at least 55 years of age, or
 - 2 years of pensionable years of service and be at least 60 years of age.
2. For members who became a permanent employee on or after December 21, 2012 and have either:
 - 30 years of pensionable service and be at least 60 years of age, or
 - 2 years of pensionable years of service and be at least 65 years of age.



*It should be noted that if a member takes an unreduced pension due to a disability, they can also be entitled to Post-Retirement benefits if they do not have 15 years of continuous service.

Who pays for medical reports?

If the disability management provider directly requests specific medical information; they pay for it, everything else, the member pays. Unfortunately, we are seeing the DM providers being very general in their requests to avoid paying.

Support networks

Sadly, CUPW members may require help through a period of great stress and economic hardship. This means looking at things like provincial disability support payments where applicable, food banks, etc. It is wise for a member to contact their bank and negotiate a temporary alternative. Most banks would prefer this over default and they can be approachable when discussing an alternative. Where applicable, a member should seek out a qualified social steward, EAP or other qualified agencies to help survive a difficult period.

What happens to CUPW members if Sun Life/Canada Life makes recommendations to Canada Post and CPC refuses to follow them?

If there are recommendations for accommodations, it becomes a contractual issue. It is best that the member talk with the Local.



What is a PPD review and how will this affect the member's current restrictions?

PPD stands for permanent partial disability. The insurer may send a letter to the member asking them to take a form to the doctor and identify any changes in their condition. A PPD review is a Canada Post process used on a regular basis purportedly to determine if there are any material changes in a worker's restrictions for better or worse.

How would a member complain if not satisfied with treatment and decisions made by the Disability Management Provider?

Similarly, all insurance companies have internal ombudsmen but because of the contractual relationship information should be brought to the employer and the union. If the employer will not act there may be a possible grievance. It is a case by case basis.

Does a member have to use the Employee Family Assistance Program (EAP)?

No, that is a personal decision. Members are not required to go through EAP. Further, if a member does require assistance of some kind it is best not to share their life story with their case manager as everything they may say, even unrelated matters, may haunt them later. Tell the member to seek confidential assistance through other service avenues if they wish. In using EAP, be cautioned!



Do not go through a supervisor but contact EAP directly. It is arm's length. Social stewards, where active, are preferred over EAP.

What is the Privacy Act and how does that protect the membership?

Medical info – other than what is shared – it is between the member and their doctor. Information under the Act should only be released under a need to know basis. For example, supervisors and managers, have no need to know. Supervisors and managers are not qualified to make decisions on health and capacity to work. They can and should have information on any restrictions a member may have if they are being accommodated or in a Graduate Return to Work Program.

What do members do if their personal information is shared with non-authorized persons?

File a grievance and a complaint under the Privacy Act. Though there is not a lot of teeth to the Privacy Act in terms of getting results, it does document the violation and could reduce the chances of it happening repeatedly. The privacy commissioner can make decisions but not impose conditions or fines.



Sometimes people on disability have painful stories. They can experience isolation and deep personal and emotional crisis. How do you deal emotionally with not taking on too much? What do you say to people who want to unload their problems?

Sometimes disabled members simply need someone to talk to and you can be an “ear” for them but you cannot take the place of proper medical counseling.

You can be sympathetic towards their plight but make sure you do not lead the member to believe that you can resolve their lives for them. Be honest with the member in terms of your role in the process.

You must be careful not to be consumed by their problems. If you take on the role of counselor in every case, you will find you have time for little else.

When members are dealing with the fall-out of the stress that comes along with their disability, you should encourage the member to discuss this with their treating physician. This hopefully will lead to the doctor referring their patient to the appropriate counseling and/or treatment.

Refer members to the appropriate social agency where indicated. When people are at the end of their rope you have to be honest with yourself and what you can accomplish – you can’t “wear it” or “take it home” with you.

This can be easier said than done!



What happens when a member is considered totally disabled from all occupations by both Sun Life/Canada Life and CPP Disability and their Worker Compensation claim denial is overturned? Is the member required to return to work based on their compensable injury?

Worker's Compensation will need to be appealed and the member should comply with clear direction from their treating physician(s).



GLOSSARY

- CPC: Canada Post Corporation
- CPP: Canada Pension Plan
- DMP: Disability Management Provider
- EFAP: Employee Family Assistance Program
- EI: Employment Insurance
- HR: Access HR
- IMP: Independent Medical Physician
- LTDP: Long Term Disability Plan
- PPD: Permanent Partial Disability
- ROE: Record of Employment
- STDP: Short Term Disability Plan
- WCB: Workers' Compensation Board

NOTES: