



DOL Says Audio Recording May Be Relevant to Benefits Claim

A recent Department of Labor (DOL) Information Letter says that ERISA Section 503 and the DOL's implementing claims procedure regulations require a plan fiduciary to provide, upon a claimant's request, a copy of an audio recording and a transcript of a telephone conversation between a claimant and a representative of the plan's insurer relating to an adverse benefit determination.

When the claimant originally requested the audio recording and transcript, the request was denied and the claimant was told that the recording was for "quality assurance purposes only," and "was not created, maintained, or relied upon for claim administration purposes, and therefore was not part of the administrative record."

The DOL's implementing claims procedure regulations require that, with respect to a denied claim, "a claimant shall be provided, upon

request . . . copies of all documents, records, and other information relevant to the claimant’s claim for benefits.”

A document, record, and other information is “relevant” to the claim if it, among other things:

“was relied upon in making the benefit determination; was submitted, considered, or generated in the course of making the benefit determination, without regard to whether such document, record, and other information was relied upon in making the benefit determination.”

Therefore, because the audio recording of the telephone call “was . . . generated in the course of making the benefit determination,” it is “relevant” even if it was not “relied upon in making the benefit determination.” The DOL further notes that a recording or transcript of a conversation with a claimant would not be excluded from the requirements under the regulations to disclose relevant “documents, records, and other information” merely because the plan or claims administrator does not include the recording or transcript in its administrative record.

Finally, with respect to the nature of the communication, an audio recording of a telephone call, the DOL points out that there is nothing in the regulations that requires that “relevant documents, records, and other information” consist only of paper or written materials.

Full text of Information Letter 06-14-2021 (DOL, June 14, 2021)

<https://www.dol.gov/agencies/ebsa/about-ebsa/our-activities/resource-center/information-letters/06-14-2021>

*This article is for informational purposes only and does not constitute legal advice. For additional assistance, please contact us at **202-705-3973**.*