

## **WHAT A DIFFERENCE A “P” MAKES: HAIRSPLITTING DECISION DENIES DISABILITY CLAIM**

A recent decision by the U.S. Court of Appeals for the Seventh Circuit in Chicago underscores the care that needs to be exercised in preparing plan documents.

In *Marrs v. Motorola, Inc.*, 577 F.3d 783 (7th Cir. 2009), the Court reviewed a plan administrator's decision cutting off disability benefits on the basis of a plan amendment that limited coverage for mental and nervous conditions to a two year period.

Michael Marrs was on disability leave for a psychiatric condition at the time of adoption of the plan amendment, and argued that a plan provision stating that no amendment "shall adversely affect the rights of any Participant to receive benefits with respect to periods of Disability prior to the adoption date of the [amendment]" applied to protect his benefits from being discontinued. The plan administrator determined that "periods of Disability" meant only periods of disability completed prior to the adoption of the amendment, so that Marrs' disability, which only began prior to the adoption of the amendment, was subject to the two year cap on benefits. The reviewing Court agreed with the plan administrator in the following paragraph from the opinion:

The reference in the plan to "periods" rather than "period" suggests the segmentation of a period of disability, with some segments ("periods") lying before and some after the amendment. It is true that the plan defines the term "Period of Disability" to mean "one or more periods of absence from Active Employment due to Disability," and if we substituted "Period of Disability prior to the plan" for "periods of Disability prior to the plan" we would come closer to Marrs's preferred interpretation. But the plan provides that only words the initial letters of which are capitalized are defined terms, and so "periods of Disability" cannot be equated to "Period of Disability." The Court draws a line between "periods of Disability" and "Period of Disability," suggesting that a different outcome might result if the plan protective provision applied to a "Period of Disability" rather than just "periods of Disability."

**Recommendation:** While it is easy to dismiss the Court's musings as legal nitpicking, the fact remains that the rights of participants are determined by the text of plan documents. Those documents and their amendments need to be accurate and comprehensive. Your organization should rely on experienced legal counsel in preparing or revising plan documents, including summary plan descriptions and other employee communication pieces. As the Marrs decision illustrates, any misunderstanding as to the meaning of your welfare plan and retirement plan documents can result in costly complications.

Andrew S. Williams  
330 N. Wabash Avenue, Suite 1700  
Chicago, IL 60611  
(312) 755-3145  
[awilliams@agdglaw.com](mailto:awilliams@agdglaw.com)  
[www.benefitslawgroupofchicago.com](http://www.benefitslawgroupofchicago.com)

*Andrew S. Williams has practiced in the employee benefits and ERISA arena since ERISA was passed in 1974. He has been recognized by his peers through a survey conducted by Leadings Lawyers Network as among the top 5 percent of Illinois lawyers in Small, Closely and Privately Held Business Law and Employee Benefits Law. He maintains a website at [www.benefitslawgroupofchicago.com](http://www.benefitslawgroupofchicago.com) with additional updates, commentary and analysis of benefits and employment topics. The above material is intended for general information and promotional purposes, and should not be relied on or construed as professional advice. Under the Illinois Rules of Professional Conduct, the above information may be considered advertising material. The transmission of this information is not intended to create, and receipt of it does not create, a lawyer-client relationship.*

537853.1