

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

JOSEPH REINWAND,

OPINION and ORDER

Plaintiff,

14-cv-845-bbc

v.

NATIONAL ELECTRICAL BENEFIT FUND,
LAWRENCE J. BRADLEY and
FRANK BLACKBURN, M.D.,

Defendants.

In this proposed civil action, pro se plaintiff Joseph Reinwand contends that his disability benefits were improperly terminated by defendants National Electrical Benefit Fund, Lawrence J. Bradley (the executive secretary and treasurer for the Fund) and Frank Blackburn (a doctor employed by the Fund to make disability determinations). Although plaintiff has paid the filing fee in full, his complaint must be screened under the Prison Litigation Reform Act, 28 U.S.C. § 1915A, because he is a prisoner at the Columbia Correctional Institution in Portage, Wisconsin. Having reviewed plaintiff's proposed complaint, I will allow him to proceed on his claims under the Employee Retirement Income Security Act. Plaintiff also asks the court for assistance in recruiting counsel. Because plaintiff has not shown that he has made his own efforts in recruiting counsel and because it is too early in the case to determine whether plaintiff requires the assistance of counsel,

his motion will be denied.

Plaintiff alleges the following facts in his proposed complaint.

ALLEGATIONS OF FACT

In or around May 1993, defendant National Electrical Benefit Fund approved disability benefit payments for plaintiff on the basis that he was unable to work as a result of post traumatic stress disorder, insomnia and related nervous disorders. In or around December 2012, the Fund stopped sending plaintiff his benefits. In April 2013, plaintiff received a letter from the Fund stating that its physician was unable to determine whether plaintiff was still disabled, and it asked plaintiff to send documentation of his disability. On January 29, 2014, plaintiff sent “medical diagnostic findings” from a physician, in which the physician found plaintiff to be disabled as a result of PTSD and related nervous disorders.

On May 14, 2014, plaintiff sent a follow up letter to check on the status of his benefits. On May 29, 2014, the Fund sent a form signed by defendant Dr. Frank Blackburn in which he had crossed out “PTSD” and checked “not disabled.” On July 11, 2014, plaintiff sent another follow up letter, and, on July 14, 2014, the Fund responded that plaintiff’s benefits had been suspended. On August 5, 2014, plaintiff sent the Fund a letter requesting all medical documents the Fund relied on when making its disability determination. (Plaintiff does not say whether he received these materials.)

The Fund has not issued a formal decision on plaintiff’s benefits and has not been paying them since December 2012. Plaintiff is still disabled as result of PTSD and related

nervous disorders.

OPINION

A. Plaintiff's Complaint

Plaintiff does not say what type of claim or claims he wishes to assert. However, because his benefits plan appears to be covered by the Employee Retirement Income Security Act and because the Act preempts breach of contract or related state law claims that plaintiff might assert, 29 U.S.C. § 1144, I am construing his claims under ERISA. 29 U.S.C. §§ 1003(a)(1)-(3) (plans covered under statute include “any employee benefit plan if it is established or maintained . . . by any employer engaged in commerce or in any industry or activity affecting commerce or by any employee organization or organizations representing employees engaged in commerce or in any industry or activity affecting commerce or by both.”).

First, plaintiff contends that defendants suspended his benefits without a proper reason. This contention states a claim for review of benefit determination and recovery of benefits under ERISA, 29 U.S.C. § 1132, which permits a beneficiary to sue “to recover benefits due to him under the terms of his plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan.” § 1132(a)(1)(B). At this stage, it is unclear whether plaintiff's status as a prisoner affects his rights to disability benefits under his plan. Because I do not have the plan before me and because plaintiff presents his claim as an issue over medical determinations, plaintiff will be allowed

to proceed on this claim. He should know that at summary judgment or trial he will be required to show that defendants' decision about his benefits was "arbitrary and capricious," in other words that it was "completely unreasonable." Kobs v. United Wisconsin Insurance Co., 400 F.3d 1036, 1039 (7th Cir. 2005); Manny v. Central States, Southeast & Southwest Areas Pension & Health & Welfare Funds, 388 F.3d 241, 242-43 (7th Cir. 2004).

Next, plaintiff contends that his benefits were suspended without the proper procedure, specifically, without a final decision or full review of plaintiff's claim. Plaintiff's contention is sufficient to state a claim under ERISA that his plan failed to "afford a reasonable opportunity to any participant whose claim for benefits has been denied for a full and fair review by the appropriate named fiduciary of the decision denying the claim." 29 U.S.C. § 1133; Williams v. Aetna Life Insurance Co., 509 F.3d 317, 324 (7th Cir. 2007) ("In order for a plan to have 'substantially complied' with the requirement that a claimant receive a full and fair review, 'the administrator must weigh the evidence for and against [the denial or termination of benefits], and within reasonable limits, the reasons for rejecting evidence must be articulated if there is to be meaningful appellate review.'") (quoting Hackett v. Xerox Corp. Long-Term Disability Income Plan, 315 F.3d 771, 775 (7th Cir. 2003)) (alteration in original).

However, I note that plaintiff may be including this information because plaintiffs proceeding under ERISA are required to exhaust their claims with the appropriate administrators before bringing a lawsuit, Edwards v. Briggs & Stratton Retirement Plan, 639 F.3d 355, 360 (7th Cir. 2011), and plaintiff anticipates that defendants will raise this issue.

Schorsch v. Reliance Standard Life Insurance Co., 693 F.3d 734, 739 (7th Cir. 2012) (“Schorsch argues that Reliance should be estopped from asserting her failure to exhaust as a defense.”).

In addition, plaintiff’s allegation that he requested documents from defendant may be an attempt to state a claim under § 1132(c)(1), which allows beneficiaries to sue when “[a]ny administrator . . . fails or refuses to comply with a request for any information which such administrator is required by this subchapter to furnish to a participant or beneficiary . . . within 30 days after such request” Under ERISA’s regulations, “a claimant shall be provided, upon request and free of charge, reasonable access to, and copies of, all documents, records, and other information relevant to the claimant’s claim for benefits.” 29 C.F.R. § 2560.503-1(h)(2)(iii). A document is “relevant” if it “[w]as relied upon in making the benefit determination” or “[w]as submitted, considered, or generated in the course of making the benefit determination.” 29 C.F.R. § 2560.503-1(m)(8). However, plaintiff does not say whether or when he received the documents he requested. Therefore, I will give plaintiff an opportunity to amend his complaint to explain whether he received the documents he requested from defendant.

Finally, it is not clear whether plaintiff is suing proper defendants. “Generally, in a suit for ERISA benefits, the plaintiff is ‘limited to a suit against the Plan.’” Mote v. Aetna Life Insurance Co., 502 F.3d 601, 610 (7th Cir. 2007) (quoting Blickenstaff v. R.R. Donnelley & Sons Co. Short Term Disability Plan, 378 F.3d 669, 674 (7th Cir.2004)). However, there are limited exceptions in which administrators may be sued under §

1132(a)(1), id., and section 1132(a)(3) of the statute, which provides for equitable relief under ERISA, “admits of no limit . . . on the universe of possible defendants.” Harris Trust & Savings Bank v. Salomon Smith Barney, Inc., 530 U.S. 238, 246, 120 S. Ct. 2180, 2187, 147 L. Ed. 2d 187 (2000). I cannot determine at this stage that defendants Bradley and Blackburn do not meet any of the exceptions that allow plaintiff to sue nonplan parties, so he will be allowed to proceed against them.

B. Assistance in Recruiting Counsel

Under the “request for relief” section of plaintiff’s complaint, he asks the court to appoint him a lawyer. I do not have the authority to appoint plaintiff a lawyer, so I construe this request as a motion for assistance in recruiting counsel. Because it is too early to determine whether the case is too complex for plaintiff’s abilities, Pruitt v. Mote, 503 F.3d 647, 654, 655 (7th Cir. 2007), and because plaintiff has not presented evidence that he has attempted to find a lawyer on his own by submitting at least three rejection letters from lawyers, Jackson v. County of McLean, 953 F.2d 1070 (7th Cir. 1992), his motion must be denied at this time.

ORDER

IT IS ORDERED that

1. Plaintiff Joseph Reinwand is GRANTED leave to proceed on his claims that defendants National Electrical Benefit Fund, Lawrence J. Bradley and Frank Blackburn

improperly suspended his benefits and failed to fully and fairly review the suspension decision in violation of ERISA, 29 U.S.C. §§ 1132-33.

2. Plaintiff may have until February 10, 2015, to file a proposed amended complaint or supplement to his complaint that explains whether he received the documents about his benefits claim that he requested from defendants. If plaintiff fails to respond by that date, the case will go forward on only the claims listed in paragraph 1 of the order.

3. Plaintiff's motion for assistance in recruiting counsel is DENIED without prejudice.

4. For the time being, plaintiff must send defendants a copy of every paper or document that he files with the court. Once plaintiff learns the name of the lawyer or lawyers who will be representing defendants, he should serve the lawyer or lawyers directly rather than defendants. The court will disregard documents plaintiff submits that do not show on the court's copy that he has sent a copy to defendants or to defendants' attorneys.

5. Plaintiff should keep a copy of all documents for his own files. If he is unable to use a photocopy machine, he may send out identical handwritten or typed copies of his documents.

6. I will send copies of plaintiff's complaint and this order to the United States Marshal for service on defendants after this court issues an order on plaintiff's response to paragraph 2 of this order. Plaintiff should not attempt to serve defendants on his own at this time.

7. Plaintiff is obligated to pay the unpaid balance of his filing fees in monthly

payments as described in 28 U.S.C. § 1915(b)(2). The clerk of court is directed to send a letter to the warden of plaintiff's institution informing the warden of the obligation under Lucien v. DeTella, 141 F.3d 773 (7th Cir. 1998), to deduct payments from plaintiff's trust fund accounts until the filing fee has been paid in full.

Entered this 22d day of January, 2015.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge