IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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JOSEPH M. WINTERS,

Plaintiff,

v.

UNUM LIFE INSURANCE COMPANY OF AMERICA,

Defendant.

OPINION AND ORDER

01-C-569-C

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In this civil action for monetary relief, plaintiff Joseph M. Winters contends that defendant UNUM Life Insurance Company of America terminated his long-term disability insurance benefits in violation of the Employee Retirement Income Security Act of 1974, 29 U.S.C. §§ 1001-1461. Jurisdiction is present under 28 U.S.C. § 1331.

Presently before the court is defendant's motion to limit the scope of discovery to the administrative record. The parties do not dispute that defendant has discretionary authority to determine long-term disability benefits under the terms of the policy, so review of its decision is made under the arbitrary and capricious standard. Defendant argues that under this standard, in determining whether defendant had a reasonable basis for denying benefits,

the court is limited to reviewing the record that defendant had before it at the time it made its decision. Although plaintiff asserts that he has presented sufficient evidence suggesting that defendant did not give his application a genuine evaluation, these affidavits do not support plaintiff's argument in any meaningful way. For this reason and because a review under the arbitrary and capricious standard requires only that a court determine whether defendant had a reasonable basis for denying the benefits on the basis of the record before it, defendant's motion to limit the scope of discovery to the administrative record will be granted.

THE POLICY

Plaintiff is insured for long-term disability benefits under a group insurance policy issued by defendant. The certificate of coverage provides that "[w]hen making a benefit determination under the policy, UNUM has discretionary authority to determine your eligibility for benefits and to interpret the terms and provisions of the policy." The policy also provides that "[p]roof of continued disability and regular attendance of a physician must be given to the Company within 30 days of the request for the proof."

OPINION

A. Standard of Review

The parties agree that the policy at issue is part of an employee welfare benefit plan regulated by ERISA, 29 U.S.C. §§ 1001-1461. The denial of benefits under an employee benefit plan governed by ERISA may be challenged pursuant to 29 U.S.C. § 1132(a)(1)(B). The standard of review a court applies when reviewing a plan administrator's decision to deny benefits is controlled by Firestone Rubber v. Bruch, 489 U.S. 101 (1989). In Firestone, the Supreme Court held that a plan administrator's denial of benefits must be reviewed de novo unless "the benefit plan gives the administrator or fiduciary discretionary authority to determine eligibility for benefits or to construe the terms of the plan." Id. at 115. If the plan gives the administrator or fiduciary such discretionary authority, the court reviews the denial of benefits under the arbitrary and capricious standard. See id. This standard was clarified recently by the Court of Appeals for the Seventh Circuit in Herzberger v. Standard Insurance Co., 205 F.3d 327 (7th Cir. 2000). The court upheld the presumption of plenary review, except where the language of the policy "indicates with the requisite if minimum clarity that a discretionary determination is envisaged" or where the "nature of the benefits or the conditions upon it will make reasonably clear that the plan administrator is to exercise discretion." Id. at 331.

In this case, the parties do not dispute that the plan grants the plan administrator sufficient discretionary authority to invoke the arbitrary and capricious standard. The plan indicates that "[w]hen making a benefit determination under the policy, [defendant] has

discretionary authority to determine [the insured's] eligibility for benefits and to interpret the terms and provisions of the policy." Because the language of the policy makes it clear that the administrator is to exercise discretion, Herzberger, 205 F.3d at 331, defendant's decision to deny benefits must be analyzed under the arbitrary and capricious standard.

B. Scope of Review under Arbitrary and Capricious Standard

In reviewing the denial of benefits under the arbitrary and capricious standard, the Court of Appeals for the Seventh Circuit has uniformly limited the scope of review to the record available to the plan administrator at the time the decision was made. See, e.g., Donato v. Metropolitan Life Insurance Co., 19 F.3d 375, 380 (7th Cir. 1994); Smart v. State Farm Ins. Co., 868 F.2d 929, 936 (7th Cir. 1989); Brown v. Retirement Committee of Briggs & Stratton, 797 F.2d 521, 532 (7th Cir. 1986). "[W]hen there can be no doubt that the application was given a genuine evaluation, judicial review is limited to the evidence that was submitted in support of the application for benefits, and the mental processes of the plan's administrator are not legitimate grounds of inquiry any more than they would be if the decisionmaker were an administrative agency." Perlman v. Swiss Bank Corporation Comprehensive Disability Protection Plan, 195 F.3d 975, 982 (7th Cir. 1999). Put differently, "[d]eferential review of an administrative decision means review on the administrative record." Id. at 981-82.

Plaintiff opposes the limitation of discovery to the administrative record on the ground that his application for disability benefits was not given a "genuine evaluation." See id. at 982. Plaintiff asserts that discovery is the only method by which he can obtain information to support the inference that defendant avoided getting additional information from plaintiff intentionally and instead denied benefits on the incomplete records it had before it. According to plaintiff, additional discovery will help the trier of fact know whether defendant's initial denial of benefits was made in bad faith. Plt.'s Br. in Opp., dkt. #14, at 9.

Plaintiff argues that the administrative record and the affidavits he submitted in opposition to this motion present sufficient evidence to raise the issue whether defendant's denial was made in bad faith. According to plaintiff, the administrative record demonstrates that defendant did not try to obtain plaintiff's medical records that might have shown that his disability had worsened. However, plaintiff's argument that defendant failed to seek out his medical records is wholly unpersuasive because under the terms of the policy, plaintiff has the burden of submitting to defendant proof that he is disabled within the meaning of the policy. The fact that plaintiff may have provided defendant with the names and contact information of his attending physicians does not transfer the onus of gathering proof onto defendant. Because it was plaintiff's responsibility to produce evidence of his disability, the lack of medical evidence in the administrative record standing alone does not support

plaintiff's argument that the scope of discovery should extend beyond the administrative record itself.

Plaintiff also asserts that the affidavits he submitted show that defendant did not consider all the evidence available to it. First, plaintiff alleges that the affidavit of his former lawyer, S. Michael McGarragan, reinforces the conclusion that defendant did not consider all pertinent information, namely a report written by one of his physicians, Dr. Graebner. This report is not contained in the administrative record. Plaintiff alleges that Dr. Graebner sent the report to McGarragan, who "would have" forwarded it to defendant. Plt.'s Br. in Opp., dkt. #14, at 15. However, in his affidavit, McGarragan states only, "I had [the report] in my possession and I would have sent them to [defendant] sometime after June 6, 2000 although I presently have no specific memory of doing so." The fact that McGarragan does not recall sending Dr. Graebner's report to defendant does little to strengthen plaintiff's assertion that defendant denied his disability benefits without genuine evaluation. To the contrary, McGarragan's inability to remember whether he sent the report to defendant may also explain why the report is not contained in the administrative record: it is reasonable to infer from the affidavit that McGarragan never forwarded Dr. Graebner's report to defendant despite his best intentions.

Similarly, the affidavit of Dr. Leslie Goldsmith does little to advance plaintiff's assertion that defendant denied his disability benefits without a genuine evaluation. In his

affidavit, Goldsmith challenges defendant's reliance on the Dictionary of Occupational Titles in concluding that plaintiff's occupation did not involve physical exertion. In making his assessment of the physical demands of plaintiff's job, Goldsmith relies on documents contained in the administrative record: plaintiff's application for disability benefits and a letter dated April 7, 2000, in which plaintiff's boss describes the physical demands of plaintiff's position. Goldsmith matched those descriptions to positions listed in a different text, the Occupational Outlook Handbook, concluding that plaintiff's sales job required him to exert himself physically. Plaintiff argues that Goldsmith's affidavit leads to the inference that defendant "came up with" information to support its denial of benefits. Plt.'s Br. in Opp., dkt. #14, at 12. However, under the policy, defendant has the discretion to interpret the terms of its policy, including the method by which it defines the material duties of an insured's regular occupation. Moreover, the fact that Goldsmith obtained the underlying information about plaintiff's job from the administrative record demonstrates that it is not necessary to expand the scope of discovery beyond the administrative record in order to argue that the denial of benefits was arbitrary and capricious.

Accordingly, I conclude that the scope of discovery should be limited to the administrative record. Defendant's motion to limit the scope of discovery to the administrative record will be granted.

ORDER

IT IS ORDERED that defendant UNUM Life Insurance Company of America's motion to limit the scope of discovery to the administrative record is GRANTED.

Entered this 21st day of February, 2002.

BY THE COURT:

BARBARA B. CRABB
District Judge