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IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

FILED
MAR 5 - 2004
IN THIS OFFICE
Clerk U. S. District Court
Greensboro, N. C.
By

JAMES LOUIS BEAM,

Plaintiff,)

v.) 1:02CV01046

THE PRUDENTIAL INSURANCE COMPANY OF AMERICA,

Defendant.)

ORDER AND RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE

This case involves application of the Employee Retirement Income Security Act of 1974, 29 U.S.C. §§ 1001, et seq. (ERISA). It comes before the Court on defendant's motion for summary judgment.

Facts

The facts in this case are relatively straightforward and undisputed. Beginning in 1968, plaintiff worked for Chemical Specialties, Inc. At least by his last date of work on August 11, 1997, he had attained the position of Chromate Copper Arsenate (CCA) Operator. This position required him to load and unload railcars and trucks, mix chemicals, use chemical processing equipment, and work a semi-tractor and forklift. Further, during much of the time that plaintiff was employed at Chemical Specialties, he was covered by a long term disability insurance plan (the Plan). At the time of plaintiff's last day of work, the Plan was administered by defendant.

The Plan stated in pertinent part that plaintiff could receive long term disability benefits if defendant determined (1) due to sickness or injury he could not perform the duties of his occupation, (2) after an initial period of disability, plaintiff could not perform the duties of any job for which he was reasonably well fitted given his education, training, and experience, (3) plaintiff was not working at any job, and (4) plaintiff was under the regular care of a doctor. A finding that any of these four conditions was not met would result in a finding that plaintiff could not receive long term disability benefits.

On August 13, 1997, plaintiff was diagnosed with a form of leukemia. Plaintiff's oncologist, Dr. Jonathan Levine, reported this diagnosis and stated that plaintiff could not work because the condition made plaintiff prone to infection. Based on this information, plaintiff requested and defendant approved an initial period of disability benefits for plaintiff on October 30, 1997. Defendant also referred plaintiff to an outside agency to assist him in filing a claim for disability benefits from the Social Security Administration. Plaintiff did so and received those benefits. Thereafter, plaintiff's payments under the Plan, which were larger than the amounts he received from the Social Security Administration, were reduced by the amount of Social Security benefits he received.

Throughout the remainder of 1997 and 1998, plaintiff received chemotherapy treatments for his condition and was under the care of Dr. Levine. The parties appear to agree that he met the

requirements of the Plan and was entitled to receive disability payments during this time. In November of 1998, defendant received updated statements from plaintiff and Dr. Levine. The statement from Dr. Levine indicated that plaintiff would end his chemotherapy within three months. Based on this statement, defendant further authorized payments through November 9, 1999.

During 1999, defendant continued to receive information from Dr. Levine. Records dated February 10, 1999 reported that plaintiff was feeling stronger and better, that he had some bone aches but was otherwise doing well, that his tests were negative for leukemia, and that he was in complete remission. Defendant then wrote to plaintiff on May 27, 1999, and informed plaintiff that his initial period of benefits would end on November 10, 1999, but that it would conduct a further evaluation to decide eligibility beyond that date. It also included paperwork asking for statements from plaintiff and Dr. Levine.

For his part, Dr. Levine reported on June 22, 1999 that plaintiff's leukemia was in remission, that he expected continued improvement, that plaintiff could not perform strenuous work, and that he could perform less strenuous work in one to two months. Then, about a month later, on July 26, 1999, Dr. Levine completed a job restrictions report which stated that plaintiff could drive, work near hazardous equipment and machinery, walk on uneven ground and be exposed to noise. The report did restrict plaintiff from being exposed to dust, gas, or fumes, extremes in temperature or

humidity, and heights, but did not otherwise limit plaintiff's ability to work.

Plaintiff also completed his paperwork and gave a somewhat, though not vastly different, picture of his abilities. Plaintiff confirmed several times in his statement that his doctor had said that he could not return to his prior work and that he was not to perform strenuous work. However, he did not claim that Dr. Levine imposed any other restrictions on his work or activities. Plaintiff did note that he was easily exhausted, that he could only be "up and about" for an hour to an hour and a half before needing a rest, and that he could only walk for 30 minutes before needing a rest. He also stated that it sometimes took him a very long time to bath and dress himself due to exhaustion.

It does not appear that either Dr. Levine or plaintiff submitted any further records to defendant. However, defendant did contact Dr. Levine's office to inquire as to whether plaintiff could perform jobs other than his previous job at Chemical Specialties. Defendant left a message to that effect and, on October 26, 1999, a person listed in defendant's telephone logs only as "Ginger" returned defendant's call and confirmed that plaintiff could work in other jobs. Therefore, on that day, defendant sent plaintiff a letter confirming that he was no longer considered disabled under the Plan. Defendant did offer job placement assistance to plaintiff.

On November 30, 1999, counsel for plaintiff sent a letter to appeal the termination of benefits, request a copy of the Plan, and

inquire as to what type of placement assistance was available. Defendant responded with this information. It also allowed plaintiff the opportunity to submit further information to be considered for the appeal, but heard nothing from plaintiff or his counsel through June 15, 2000. At that point, defendant again wrote to plaintiff's counsel, notifying him that he could submit further information. Having still received no response on November 7, 2000, defendant closed plaintiff's claim. This action was filed on October 25, 2002.

Plaintiff's Claim

Plaintiff's sole claim for relief alleges that defendant acted arbitrarily and wrongfully when it denied plaintiff's long term disability payments under the Plan after November of 1999. Plaintiff seeks as damages the amount of these payments from November of 1999 until four months after his 65th birthday, or October of this year. This is the date that he states benefits were to end under the Plan whether or not he was disabled. Defendant has requested summary judgment on this claim.

Summary Judgment Standard

Summary judgment should be granted only "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). The Court must view the evidence in a light most favorable to the non-moving party. Pachaly v. City of Lynchburg, 897 F.2d 723, 725 (4th Cir.

1990). When opposing a properly supported motion for summary judgment, the party cannot rest on conclusory statements, but must provide specific facts, particularly when that party has the burden of proof on an issue. Id. "The summary judgment inquiry thus scrutinizes the plaintiff's case to determine whether the plaintiff has proffered sufficient proof, in the form of admissible evidence, that could carry the burden of proof of his claim at trial." Mitchell v. Data General Corp., 12 F.3d 1310, 1316 (4th Cir. 1993) (emphasis added). A mere scintilla of evidence will not suffice. Rather, there must be enough evidence to render a verdict in favor of the party making a claim. A few isolated facts are not sufficient. Sibley v. Lutheran Hosp. of Maryland, Inc., 871 F.2d 479 (4th Cir. 1989).

Discussion

There appears to be agreement between the parties that plaintiff's claim is governed by ERISA. Under ERISA, special deference will be given to defendant's decision to terminate plaintiff's benefits in certain circumstances. Specifically, if the Plan gives defendant the authority to determine benefit eligibility or to construe its terms, plaintiff cannot prevail unless the decision involved an abuse of discretion. Booth v. Wal-Mart Stores, Inc. Associates Health and Welfare Plan, 201 F.3d 335, 342 (4th Cir. 2000). It is clear that the Plan does give defendant such authority in the present case. The Plan explicitly states that total disability under the Plan exists "when Prudential determines that all of [the following] conditions are met."

Practically identical language has been construed by the Fourth Circuit to provide discretionary authority. Bernstein v. CapitalCare, Inc., 70 F.3d 783, 788 (4th Cir. 1995)(phrase, "benefits will be paid 'only if CapitalCare determines' that certain conditions are met," gives discretionary authority). This Court must follow Bernstein as binding authority and apply an abuse of discretion standard to defendant's decision.[1]

In reviewing a case for abuse of discretion, the Fourth Circuit has explained that there is a limited review of the record and listed factors that may be considered. Thus, defendant's decision will not be found lacking if it is reasonable. Reasonableness is determined by examining whether or not the decision was reached through a "'principled reasoning process and if it is supported by substantial evidence.'" Ellis v. Metropolitan Life Ins. Co., 126 F.3d 228, 232 (4th Cir. 1997), quoting, Brogan v. Holland, 105 F.3d 158, 161 (4th Cir. 1997). Whether a decision is reasonable and supported by substantial evidence is to be decided based solely on the facts in front of the plan administrator at the time of the challenged decision. Sheppard & Enoch Pratt Hosp., Inc. v. Travelers Ins. Co., 32 F.3d 120, 125 (4th Cir. 1994). Finally, in evaluating reasonableness, the Court may look at (1) the Plan's language, (2) the purpose of the Plan, (3) the materials used to reach the decision and the

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[1]Plaintiff makes a statement in his brief opposing summary judgment that defendant's benefits determination should be given no deference and that the proper standard to be applied is de novo review. However, he provides no legal or factual support for this statement.

degree of support they provide for it, (4) whether the decision is consistent with other Plan provisions and earlier interpretations of the Plan, (5) whether the process used was reasoned and principled, (6) whether the procedural and substantive requirements of ERISA were met, and (7) any external standard relevant to the exercise of discretion. Booth, 201 F.3d at 342-343. It must also consider any conflict of interest that the administrator may have had at the time of the decision. Firestone Tire and Rubber Co. v. Bruch, 489 U.S. 101, 115, 109 S.Ct. 948, 957, 103 L.Ed.2d 80 (1989).

This final consideration takes on special significance because it can be used to modify the standard of review. Where a plan administrator has a conflict of interest, the standard of review remains "abuse of discretion," but the decision must be more objectively reasonable and the evidence supporting it must be more substantial. Ellis, 126 F.3d at 233. The required level of reasonableness and support is modified on a sliding scale according to the nature of the incentive that the fiduciary in charge of the plan had to benefit itself. Id. Here, defendant admits that it was both the Plan's administrator and the Plan's insurer. Therefore, it had a direct interest in whether or not plaintiff received benefits. Notwithstanding, although the conflict of interest was direct, the amounts of money involved were not so large that defendant would have felt tremendous pressure to terminate plaintiff's benefits. Because plaintiff's payments under the Plan were offset by his Social Security payment, defendant paid

him only $372.11 a month. It was scheduled to make that payment, at the longest, only until October of this year. Overall, the Court finds that it is appropriate to give a somewhat lower, although still considerable, level of deference to defendant's decision to terminate plaintiff's benefits.[2]

Applying the standards and factors set out above, the Court finds that defendant's decision was objectively reasonable based on the record before it and that the decision is supported by substantial evidence. Turning first to the Plan's language, it does give defendant the power and discretion to determine whether plaintiff meets all of the conditions necessary to qualify for long term benefits. One of these conditions is that plaintiff must be unable to perform the material and substantial duties of any job for which he is reasonably fitted due to his education, training, and experience. There is no question that defendant's decision rests squarely on plaintiff's failure to meet this particular requirement for benefits. Therefore, its decision was one which, if supported by evidence, is within the plain language of the Plan.

It is not surprising then that most of the parties' arguments in their briefs are directed toward the quality and nature of the evidence used by defendant to reach its termination decision. Plaintiff frequently derides defendant for making its decision based only on a call back message from "Ginger" in Dr. Levine's

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[2]It is worth noting that even if only a minimal amount of deference were given, the outcome of this case would not change because, as will be discussed below, almost all of the evidence in the record points to the same conclusion.

office. However, the call back message was not the only evidence on which defendant's decision was based. Dr. Levine noted in November of 1998 that plaintiff would be off all therapy in three months. In keeping with this prediction, Dr. Levine indicated in February of 1999 that plaintiff was free of his leukemia, getting stronger, and feeling better. A few months later, in June of 1999, Dr. Levine reported that plaintiff was still in remission and stated that he expected that plaintiff would be able to preform "less strenuous work" in one to two months. Then, about a month later, in July of 1999, Dr. Levine filled out a form indicating that plaintiff had few work limitations. This conclusion is consistent with the expectations he expressed a month earlier.

Looked at together and over time, the records received by defendant from Dr. Levine paint an increasingly bright picture of plaintiff's health and it is clear that by July of 1999, Dr. Levine felt that plaintiff could work in "less strenuous" occupations even though he could not return to his prior employment. Certainly, at that time, it would have been reasonable for defendant to conclude that plaintiff was not disabled as defined under the Plan.

Still, defendant did not cease gathering information. In August of 1999, it accepted plaintiff's statements concerning his activities. These statements agreed with plaintiff's medical records to a great extent in that plaintiff reported a residual lack of stamina and acknowledged that he could not return to his job at Chemical Specialties. Plaintiff's statements do arguably contradict Dr. Levine's conclusion that plaintiff could work at

some jobs because plaintiff reported extreme tiredness and a need to rest frequently. However, plaintiff did not actually state on any of the forms that he could not work in any job. Further, his statements are so general that it is not clear from reading them that he even believed that he could not. In the end, apparently out of an abundance of caution, defendant attempted to obtain further information from Dr. Levine. It was unsuccessful in procuring later records, but did receive the call back message from "Ginger" stating that plaintiff was able to perform some jobs.

Viewed in context, the telephone message is simply a call from a doctor's office confirming that he still held his earlier conclusions which were based on and included in the records he had already provided to defendant. The message is not some isolated, unexplained, or unsupported statement as plaintiff wishes to portray it. Nor has plaintiff shown that there was any indication to defendant that "Ginger" did not work for Dr. Levine or that her statement did not represent the doctor's view at the time. It was entirely reasonable for defendant to act on the confirmatory message in these circumstances.

Plaintiff also points to other steps that defendant could have taken to gather information, such as making further attempts to get his records from Dr. Levine or sending plaintiff to be evaluated by other doctors. While it is true that defendant could have done these things, nothing in the facts set out above would have compelled defendant to do so. Further, even when notified of defendant's decision and allowed to appeal, plaintiff did not

submit any evidence to defendant that Dr. Levine did not believe that he could work or that any other doctor felt that he was not employable in at least some jobs. In fact, he failed to submit any further evidence at all. He cannot now claim that defendant was unreasonable for failing to gather more information. Defendant gathered sufficient information to reach and support its conclusion and, when no contradictory evidence appeared, had no reason to gather more.

In addition to arguing that defendant based its decision solely on the one message from "Ginger," plaintiff also makes reference to the fact that the Social Security Administration pays disability benefits. His argument, based on this fact, is not entirely clear, but he apparently feels that it should somehow have affected defendant's decision or should influence this Court. Plaintiff does cite one case involving a person that was denied benefits under a plan after receiving Social Security benefits. Ladd v. ITT Corporation, 148 F.3d 753 (7th Cir. 1998). However, Ladd does not aid plaintiff because it is vastly different from the present case in critical ways.

As the court in Ladd noted, the only three doctors that actually examined Ladd found her to be disabled. However, the plan administrators ignored those three examining doctors and instead relied on the opinion of a doctor who merely examined Ladd's file. The court reversed the decision of the plan administrator. However, its decision was based mainly on the administrator's actions in ignoring the three examining doctors in favor of the one

non-examining doctor, not on the fact that Ladd had received Social Security benefits. Id. at 756. This stands in stark contrast to the present case where Dr. Levine, the only physician giving an opinion of any sort, has stated that plaintiff can work in some jobs and defendant has done nothing more than follow that uncontradicted opinion. Defendant's actions in the case at bar are simply not unreasonable in contrast to those of the defendants which were in Ladd.[3]

In the end, the record before the Court and, more importantly, the record before defendant at the time it made its denial decision are almost entirely one-sided and against plaintiff. All of Dr. Levine's records show that plaintiff's health steadily improved during 1999 to the point that the doctor felt that he could return to work in some fashion. Plaintiff did submit his own statement, but this statement partially supports Dr. Levine's observations and only indirectly contradicts them. After that time, Dr. Levine's office indicated to defendant in a telephone message that plaintiff could work in some jobs. Plaintiff never submitted further evidence, particularly contrary medical evidence, showing that this was not correct.

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[3]There is an additional difference between Ladd and the present case. In Ladd, the court noted that the uncontradicted evidence showed that the plaintiff's condition had actually worsened between the time she received Social Security benefits and the time the decision was made to deny her benefits under the ERISA plan. Ladd v. ITT Corporation, 148 F.3d 753, 756 (7th Cir. 1998). Here, just the opposite is true. The uncontradicted evidence shows that plaintiff's condition improved markedly between the time that he was granted Social Security benefits in January of 1998 and the time that defendant made its denial decision in October of 1999.

Based on this record, the Court finds that plaintiff has not produced more than a scintilla of evidence to generate a material dispute to show that defendant's decision was unsupported or unreasonable so that it constitutes an abuse of the discretion given to it by the Plan. Instead, the evidence shows the decision to be reasonable. Therefore, defendant's motion for summary judgment should be granted.

IT IS THEREFORE ORDERED that objections to the Recommendation shall be filed on or before March 17, 2004, responses to objections shall be filed on or before March 26, 2004.

IT IS THEREFORE RECOMMENDED that defendant's motion for summary judgment (docket no. 11) be granted and that Judgment be entered dismissing this action.

United States Magistrate Judge

March 5, 2004