2017 WL 4280563
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United States District Court,
M.D. Pennsylvania.

JENNIFER R. VERHAGEN, Plaintiff
v.
LIFE INSURANCE COMPANY OF NORTH AMERICA, Defendant

No. 1:17-cv-00577
|
Filed 09/26/2017

ORDER

Yvette Kane, District Judge United States District Court Middle District of Pennsylvania

***1 THE BACKGROUND OF THIS ORDER IS AS FOLLOWS:**

This action for long-term disability benefits under the Employee and Retirement Income Security Act, 29 U.S.C. § 1001, et seq. ("ERISA"), was initiated upon the filing of a complaint in this matter by Plaintiff Jennifer R. Verhagen on January 6, 2017 in the United States District Court for the Western District of Kentucky. (Doc. No. 1.) Defendant Life Insurance Company of North America ("LINA"), filed an answer to Plaintiff's complaint on February 17, 2017 (Doc. No. 10), and shortly thereafter, moved to transfer the case to the United States District Court for the Middle District of Pennsylvania pursuant to 28 U.S.C. § 1404(a). (Doc. No. 11.) On March 31, 2017, the district judge granted LINA's motion and transferred the above-captioned case to this Court for further proceedings (Doc. No. 16.)

On May 12, 2017, the Court conducted an initial telephonic case management conference with the parties, at which time Plaintiff notified the Court that she anticipated seeking discovery beyond the 1600-page administrative record produced by LINA. (Doc. No. 28.) Based on Plaintiff's representations concerning her purported need for discovery, the Court instructed Plaintiff to submit a status report following her review of the administrative record, apprising the Court of whether she still intended to pursue discovery in this matter. On June 14, 2017, Plaintiff filed a status report requesting that the Court establish a deadline for her to conduct discovery. (Doc. No. 29.) Rather than set a discovery deadline, as Plaintiff requested, the Court entered an Order on June 29, 2017, directing the parties to brief the applicable standard of review and the permissible scope of discovery in this case. (Doc. No. 30.) In accordance with the Court's Order, the parties fully briefed Plaintiff's request for extra-record discovery and the appropriate scope of review, which the Court has taken under advisement. (Doc. Nos. 35, 38, 39.)

As an initial matter, the Court observes from the parties' submissions that LINA has stipulated that the plan administrator's denial of Plaintiff's long-term ERISA benefits is subject to review under a de novo standard. (Doc. Nos. 35 at 1; 38 at 4.) In light of the parties' stipulation as to the proper standard of review to be applied in this case, and recognizing that the propriety of Plaintiff's discovery requests depends upon the applicable standard of review, the Court turns to whether discovery into extrinsic evidence is available to Plaintiff given that the denial of benefits in this case will be reviewed de novo.

The parties have taken diametrically opposed positions regarding the appropriate scope of discovery in this case. In her brief in support for her request for extra-record discovery, Plaintiff argues that she is entitled to full discovery under Federal Rule of Civil Procedure 26 in order to supplement the record with evidence she believes will assist the Court in its de novo review. (Doc. No. 35 at 2.) Specifically, Plaintiff seeks discovery into: (1) the factual basis for LINA's twenty-four (24) affirmative defenses; (2) the third-party medical record reviewers; (3) the claim administrative materials and manuals; and (4) the completeness of the administrative record.

***2** In opposition, LINA argues that Plaintiff is not conferred an unfettered right to conduct discovery merely because a de novo standard of review applies. Rather, LINA maintains that "[i]n de novo cases, the Court may permit limited discovery beyond the [a]dministrative [r]ecord if the Court—not the party—decides that additional information would be helpful in deciding the case." (Doc. No. 38 at 5.) LINA insists that discovery into extrinsic evidence is unwarranted in this case, as the administrative record "contains all records and documents that will help the Court evaluate LINA's

decision to terminate Plaintiff's [long-term disability] benefits." (Id. at 7.)

"The Supreme Court has held that 'a denial of benefits challenged under [ERISA] is to be reviewed under a de novo standard unless the benefit plan gives the administrator or fiduciary discretionary authority to determine eligibility for benefits or to construe the terms of the plan."" Viera v. Life Ins. Co. of. N. Am., 642 F.3d 407, 413 (3d Cir. 2011) (quoting Firestone Tire & Rubber Co. v. Bruch, 489 U.S. 101, 115 (1989) (alteration in original)). The role of a district court exercising de novo review over an ERISA determination between beneficiary claimants is to "determine whether the administrator ... made a correct decision." Id. at 413 (citation omitted). In conducting this inquiry, the court reviews the administrative record to "determine whether the administrator properly interpreted the plan and whether the insured was entitled to benefits under the plan." The administrator's ultimate denial of a claim for benefits is simply "accorded no deference or presumption of correctness." Id. (citation omitted).

As to the evidence a federal court may consider in its de novo review of a plan administrator's factual determinations, the United States Court of Appeals for the Third Circuit has held that a court reviewing an ERISA administrator benefit decision de novo is not limited to or constricted by the administrative record, and may "pursue whatever further inquiry it finds necessary or proper to the exercise of the court's independent judgment." Luby v. Teamsters Health Welfare & Pension Trust Funds, 944 F.2d 1176, 1184 (3d Cir. 1991) (citation omitted); see Laslavic v. Principal Life Ins. Co., Civ. No. 11–cv–0684, 2013 WL 254450, *9 (W.D. Pa. Jan. 23, 2013) ("[A] court reviewing a benefits decision de novo has discretion to consider 'any supplemental evidence' presented by the parties."). The Third Circuit has stressed, however, that a district court is not required to solicit additional evidence beyond what is contained in the administrative record before it where the "record on review is sufficiently developed," and "may, in its discretion, merely conduct a de novo review of the record of the administrator's decision, making its own independent benefit determination." Id. at 1185; see Viera v. Life Ins. Co. of N. Am., 871 F. Supp. 2d 379, 385 (E.D. Pa. 2012) ("When reviewing de novo a decision of the plan administrator, it is within the discretion of the court to expand the record as needed or proceed on the basis of the previously developed record."). Indeed, notwithstanding the Third Circuit's proscription against restricting the evidentiary scope of the district court's de novo review of an ERISA determination, the Third Circuit has recognized, as a general principle, that the administrative record should provide the primary basis for de novo review and that pretrial discovery should be permitted only "where necessary to provide the court with a complete record." ERISA Litigation 619 (Jayne E. Zanglein et al. eds., 5th ed. 2014).

***3** Having considered the arguments raised by the parties in their respective briefs, the administrative record produced by LINA, and the relevant case law addressing the scope of discovery in de novo review cases, the Court finds that Plaintiff has failed to demonstrate her entitlement to conduct discovery beyond the administrative record. First, with respect to Plaintiff's request that LINA provide the factual basis for each of its affirmative defenses, the Court is persuaded by LINA's representation in its brief in opposition that the evidence supporting each of LINA's affirmative defenses is contained within the administrative record previously furnished to Plaintiff. (See Doc. No. 38 at 11 ("LINA will not use any evidence outside the [a]dministrative [r]ecord to pursue its affirmative defenses.")). Second, the Court finds that any discovery into the independent medical reviewers would be irrelevant given that the Court is ultimately tasked with making an independent long-term disability benefit determination in connection with its de novo review of the claim administrator's adverse benefit decision. It appears that this category of discovery requests is geared at exploring whether a procedural or structural conflict of interest existed in the review process. However, "a plan administrator's alleged conflict of interest is only relevant—thus warranting pretrial discovery—when the standard of review ... is the lenient arbitrary and capricious standard." McKenna v. Aetna Life Ins. Co., No. 13-12687, 2014 WL 1389050, at *2 (E.D. Mich. Apr. 9, 2014); see also Musser v. Harleysville Life Ins. Co., No. 1:14-CV-2041, 2015 WL 4730091, at *9 (M.D. Pa. Aug. 10, 2015) ("[M]uch of the evidence Plaintiff seeks seems to relate to a potential conflict of interest, but a purported conflict of interest 'is only pertinent to an abuse-of-discretion standard of review.' ") (citation omitted).

Third, the Court similarly finds that Plaintiff is not entitled to conduct discovery into LINA's "claim manuals ... or

any other documents indicating its guidelines, standard, training, policies, and/or procedures for adjudicating ERISA disability claims." [1] Specifically, the Court finds Plaintiff's argument that these materials are discoverable under 29 CFR § 2560.503-1(h)(2)(iii), [2] and "will necessarily inform the Court of how LINA treats specific terminology in the policy or how it handles specific diagnoses—all of which [are] relevant to showing if LINA rendered an accurate decision within the terms of [Plaintiff's] policy," to be untenable. Plaintiff offers no persuasive authority on point that supports these propositions. Indeed, Plaintiff's briefing is devoid of any citation to a decision in which a court, reviewing an administrator's decision de novo, required materials of this nature to be produced as part of the administrative record under 29 CFR § 2560.503-1(h)(2)(iii). Rather, Plaintiff points to Kalp v. Life Insurance Company of North America, No. CIV. A. 08-1005, 2009 WL 261189, at *1 (W.D. Pa. Feb. 4, 2009), Melech v. Life Insurance Company of North America, 739 F.3d 663 (11th Cir. 2014), Smith v. Life Insurance Company of North America, 33 F. Supp. 3d 1324 (N.D. Ala. 2014), and Fischer v. Life Insurance Company of North America, No. 1:08-CV-0396-WTL-TAB, 2009 WL 734705, at *1 (S.D. Ind. Mar. 19, 2009), as examples of courts "in the Third Circuit and across the country [that] have routinely required LINA to produce its claim manual and related documents." (Doc. No. 35 at 8.) However, her reliance on these cases is misplaced, as these cases applied a deferential standard of review, and thus, necessitated the production of certain internal manuals, standards, policies, and procedures because those documents were relevant to the question of whether the plan administrators acted arbitrarily and capriciously in connection with the denial of these plaintiffs' claims. Here, the Court is unpersuaded that the requested materials are discoverable and will assist the Court in conducting a de novo review of the administrative decision.

***4** Lastly, the Court finds unavailing Plaintiff's argument that she is entitled to conduct discovery into the "completeness of the record." To the extent that Plaintiff has identified inconsistencies between the documents generated/obtained during the administrative process that are not included within the administrative record, the Court agrees with LINA that such discrepancies can and should be resolved informally without the need for formal discovery.

AND SO, on this 26th day of September 2017, in accordance with the foregoing, **IT IS ORDERED THAT**:

1. Plaintiff's request to conduct pretrial discovery beyond the administrative record (see Doc. Nos. 29, 35), is **DENIED**;

2. The parties are directed to confer at the earliest possible convenience to address any unresolved matters concerning the completeness of the administrative record;

3. LINA shall file a certification of the administrative record with the Court together with any additional materials to be included in the administrative record on or before October 16, 2017; and

4. The parties are directed to submit proposed deadlines for the filing of cross motions for summary judgment on or before October 16, 2017.

All Citations

Slip Copy, 2017 WL 4280563

Footnotes

1 This category of discovery requests includes the following: (1) Interrogatory No. 2, which provides that LINA "[s]tate and describe in detail, [its] formal and informal policies and procedures regarding the processing and adjudication of claims, and the gathering of claims information, and to ensure the fair and proper administration of Plaintiff's claim" (Doc. No. 35-3 at 2); and (2) Requests for Production Numbers 5, 6, 7, 8, 9, which request, inter alia, the production of all "internal rules, guidelines, protocols, or other similar criterion relied upon by Defendant's claim personnel," claim administration materials and manuals, and training materials and manuals (Doc. No. 35-4).

2 29 CFR § 2560.503-1(h)(2)(iii) and 29 CFR § 2560.503–1(m)(8)(iv) contain the Department of Labor's regulations regarding the "full and fair review" to which claimants are entitled under ERISA, and provide that a claimant be permitted access to "statement[s] of policy or guidance with respect to the plan concerning the denied treatment option or benefit for the claimant's diagnosis, without regard to whether such advice or statement was relied upon in making the benefit determination." The Court notes that to the extent Plaintiff argues that certain materials contemplated by these regulations

were generated during the administrative appeals process but not included in the administrative record before the Court, Plaintiff will have the opportunity to confer with LINA to identify and obtain those materials to complete the administrative record.

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