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EMPLOYEE BENEFITS

Does your benefits plan give you sufficient discretion?

by Taylor Chapman

Does your employee benefits plan grant long-term disability (LTD) benefits based on proof of continuing disability that's "satisfactory" to the plan administrator? If your answer is "yes" or "I don't know," this article should prompt you to undertake a serious review of your plan language.

4th Circuit's decision

Recently, the U.S. 4th Circuit Court of Appeals, which is based in Richmond and whose rulings apply to Virginia employers, joined five sister circuits in ruling that plans governed by the federal Employee Retirement Income Security Act of 1974 (ERISA) that grant LTD benefits based on proof of continuing disability that's "satisfactory" to the plan administrator do not bestow discretionary decision-making authority on the plan administrator.

Beth Cosey, an employee of Bio-Merieux, Inc., a large medical diagnostics company, sued her employer and Prudential Insurance Company, the plan administrator for BioMerieux's LTD insurance plan. Cosey suffered from fatigue, hypotension, weight loss, and sleep apnea. In her lawsuit, she asserted that Prudential unlawfully denied her both short-term disability (STD) and LTD benefits. BioMerieux's plan required employees to establish entitlement to disability benefits by submitting proof of continuing disability that was "satisfactory" to the plan administrator.

The question before the 4th Circuit was whether the plan language unambiguously conferred discretion on the administrator to determine whether an employee's medical condition was sufficiently severe to qualify for LTD benefits. If the plan administrator has discretion, a court will review a legal challenge to the administrator's determination under an abuse-of-discretion standard rather than a *de novo* standard. The abuse-of-discretion standard places a high burden on the employee and favors the insurer and the employer. Under a *de novo* standard, a court undertakes a full judicial review of the propriety of the plan administrator's denial of benefits and, in essence, second-guesses the plan administrator.

Ambiguous language

For an abuse-of-discretion standard to apply, the plan must have clear language expressly creating discretionary authority. In this case, the 4th Circuit found that the ERISA plan language was inherently ambiguous and did not clearly notify employees that the administrator's denial of benefits wouldn't be subject to full judicial review. Because of that ambiguity, the court was concerned that employees who filed claims for benefits wouldn't be fully aware of the gravity of the plan's administrative proceedings since a court would review the results only for an abuse of discretion.

The appeals court also noted that it is required to construe the ambiguities in an ERISA plan against the administrator that drafted the plan and in favor of the employees covered by the plan. Because the trial court had reviewed the plan administrator's denial of benefits under an abuse-of-discretion standard rather than undertaking a full *de novo* review, the 4th Circuit sent the case back to the lower court to apply the correct standard. *Cosey v. The Prudential Insurance Company of America*, No. 12-2360 (4th Cir., Nov. 12, 2013).

Bottom line

In light of the 4th Circuit's decision, you should carefully review with your insurer the language of any ERISA plan your company may have. Make certain that the plan language confers on the plan administrator sufficient discretionary decision-making authority for benefit determinations. That way, if the administrator's decision is challenged, there will be an

abuse-of-discretion standard for court review rather than a *de novo* standard.

If you have specific questions about the legal effect of any language in your plan, you should consult your benefits counsel. Don't wait until a lawsuit challenging a benefits determination is filed to find out whether your plan language accords the administrator sufficient discretionary decision-making authority. ✤