Standard of Review

Court Rules Limited Discovery Allowed On Financial Incentives, Denial History

The U.S. District Court for the District of South Dakota ruled April 14 that a disability benefit plan participant can conduct limited discovery as to financial incentives an administrator has in denying benefit claims and as to its claims reviewing history with two consulting doctors (*Hackett v. Standard Insurance Co.,* D.S.D., No. 06-5040-JLV, 4/14/10).

Judge Jeffrey L. Viken said the U.S. Supreme Court recognized in *Metropolitan Life Insurance Co. v. Glenn*, 128 S. Ct. 2343, 43 EBC 2921 (2008) (119 PBD, 6/20/08; 35 BPR 1501, 6/24/08) that these issues are areas of concern in benefit denials by conflicted administrators. In *Glenn*, the Supreme Court ruled that during an abuse of discretion review of a benefit denial a court must take into account a dual-role administrator's conflict of interest.

Since the Supreme Court decided *Glenn*, lower federal courts have divided on whether *Glenn* expands discovery beyond the administrative record in benefit denial cases under the Employee Retirement Income Security Act.

James D. Leach of Rapid City, S.D. , who represented disability benefit plan participant Kathleen M. Hackett in the case, told BNA April 15 the decision is significant because "for too long ERISA defendants have been allowed not to provide even the most basic discovery that would allow claimants to challenge the legal fiction that insurance companies make benefits decisions without regard to their own financial self-interest in denying claims."

Explaining that Hackett's claim denial was based on the opinion of two consultants who had not examined her and who each had been paid significant sums by the administrator over a three-year period, Leach said the facts and *Glenn* justified the limited discovery.

The discovery issue arose during Hackett's lawsuit against Standard Insurance Co. in which she alleged that Standard wrongfully denied her claim for long-term disability benefits. In an earlier decision by Chief Judge Karen E. Schreier, the court granted summary judgment to Standard, applying the standard from *Woo v. Deluxe Corp.*, 114 F.3d 1157, 28 EBC 1312 (8th Cir. 1998) (25 BPR 1350, 6/8/98; 26 BPR 1350). *Woo* only took into account an administrator's conflict of interest if a plaintiff could prove the conflict led to a serious breach of the administrator's fiduciary duty.

Hackett's case was appealed to the Eighth Circuit, which reversed the lower court decision and remanded the case for reconsideration of the conflict of interest in light of *Glenn* (52 PBD, 3/20/09; 36 BPR 716, 3/24/09; 46 EBC 1559). The Eighth Circuit said that *Glenn* made it clear that a conflict does not change the standard of review applied by a district court, whereas, under *Woo*, the level of deference afforded to a plan administrator decreased in proportion to the seriousness of a conflict.

Following remand, Hackett served additional discovery requests on Standard regarding financial incentives for denying benefit claims, penalties for inaccurate decisionmaking, and the medical reviewers' histories regarding benefit denials. Magistrate Judge Veronica Duffy allowed limited discovery and Standard objected, arguing, among other things, that the requested discovery was cumulative and irrelevant given its presumed conflict. The case then came to Judge Viken.

Glenn Changed Analysis of Conflicts.

According to the court, *Glenn* changed the analysis of how district courts should weigh the existence of other evidence in light of a conflict. The question post-*Glenn*, the court said, is whether a court should allow discovery into areas of concern expressed in the *Glenn* decision. Those areas include a history of biased claims administration and whether an administrator has taken active steps to reduce potential bias and to promote accuracy in decisionmaking.

"The plaintiff must be allowed to make inquiry into the factors which will affect the weight that the court must give to the conflict of interest analysis under *Woo v. Deluxe Corp.*," the court said.

Noting that the Supreme Court was concerned about efforts to ensure accurate claims assessment, the district court said Hackett's discovery requests regarding Standard's efforts to ensure accurate claim assessments were consistent with *Glenn*.

"Where a conflict of interest exists, the court . . . should allow plaintiff to inquire into any financial incentive an administrator or its claims department may have in denying claims which, but for the conflict, would seem appropriate for payment of benefits," the court said. The same also is true with respect to the relationship between an administrator's claims department and outside medical reviewers who may have an incentive to inappropriately deny claims so as to extend their financial relationship with the administrator, the court added.

The conflict could not be considered in a "vacuum," the court said, but rather discovery was needed to explore the nature and extent of the alleged conflict.

In addition, the court said Hackett's inquiries as to penalties against employees for inaccurate decisionmaking were also appropriate under *Glenn*. However, the court limited those inquiries to the time period relevant to the denial of Hackett's claim. In so doing, the court rejected Standard's argument that the discovery request should be denied because the cost of producing such documents outweighed the benefit to Hackett.

The court went on to grant Hackett's request for discovery regarding the claim reviewing history of two doctors. The requested information was relevant to the *Glenn* court's concern about whether an insurance company administrator has a history of biased claims administration, the court said.

Hackett was represented by James D. Leach of Rapid City, S.D. Standard was represented by Brad J. Lee of Beardsley Jensen & Von Wald, Rapid City, S.D., and Terrance J. Wagener of Krass Monroe, Minneapolis.

The full text of the opinion is at http://op.bna.com/pen.nsf/r?Open=mmaa-84jfv7.

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