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4th Circuit considers ERISA's 'full and fair review' requirement

A recent ruling from the 4th U.S. Circuit Court of Appeals found that because a disability plan administrator failed to consider "readily available material evidence of which it was put on notice," the claim review process failed to meet the requirements of the Employee Retirement Income Security Act.

The case of *Harrison v. Wells Fargo Bank*, 2014 WL 6845461 (4th Cir., Dec. 5, 2014), arose when Nancy Harrison, who had worked as an online customer service representative for Wells Fargo from 2008 until 2011, had to undergo surgery to remove an enlarged thyroid and a mass in her chest that was causing pain and breathing difficulties.

Harrison applied for and was approved to receive short-term disability benefits, but the benefits were terminated after only three weeks, which was deemed the normal recovery time for such procedures.

However, Harrison did not have a normal recovery. Additional surgery was necessary due to an inability to remove the entire mass during the first procedure. And, during her recovery, Harrison's husband died unexpectedly, which triggered a recurrence of post-traumatic stress disorder relating to the death of her mother and children in a house fire in 2004.

The disability plan was self-funded by Wells Fargo but administered by Liberty Life Assurance Company of Boston, which had responsibility for making initial claim determinations and first-level appeal decisions. The plan permitted a second-level appeal to Wells Fargo, which had the final say.

After receiving the initial denial, Harrison appealed on her own to Liberty. When her first appeal failed, she submitted a second appeal pro se to Wells Fargo. As part of that appeal, Wells Fargo sought two independent file reviews, which included a psychiatric evaluation. The psychiatric consultant spoke to Harrison's primary care doctor, however, he failed to contact Harrison's psychiatrist, which resulted in a finding that Harrison's functional capacity was not limited due to her psychiatric condition.

Harrison challenged that determination in court. The 4th Circuit agreed with the plaintiff that Wells Fargo failed to meet its obligation to conduct a thorough review by not contacting the treating psychiatrist once it learned that Harrison was receiving treatment from that doctor, had the doctor's contact information and possessed a signed authorization to contact the doctor.

The Harrison *ruling goes a long way toward advising plan administrators of their fiduciary responsibilities and the consequences of not meeting those obligations.*

The court faulted Wells Fargo for choosing "to remain willfully blind to readily available information that may well have confirmed Harrison's theory of disability."

The 4th Circuit deemed that failure a breach of fiduciary duty that Wells Fargo owed Harrison under the ERISA law. Explaining that although "the primary responsibility for providing medical proof of disability undoubtedly rests with the claimant," the court added, "a plan administrator cannot be willfully blind to medical information that may confirm the beneficiary's theory of disability where there is no evidence in the record to refute that theory."

Consistent with that requirement, the court pronounced that ERISA "does not permit a plan administrator to shut his eyes to the most evident and accessible sources of information that might support a successful claim."

Although the court made it clear that plan administrators are not required "to scour the countryside in search of evidence to bolster a petitioner's case," in this case, Wells Fargo was "repeatedly put on notice" that Harrison was receiving psychiatric treatment but failed to notify its psychiatric consultant of that doctor's contact information.

Hence, the court concluded that based on the evidence presented, "Wells Fargo's process was simply not the collaborative undertaking that ERISA envisions."

The court added the following observation that summed up the entire issue at stake:

"The plan itself recognizes that, consistent with ERISA, the claims process must be collaborative not adversarial, especially in light of the fact that claimants must often proceed without the aid of legal counsel. Wells Fargo should have made clear that records from Dr. [R.] Glenn were absent from the record and necessary to perfect Harrison's claim. It was not appropriate under the circumstances to require that the claimant wonder and guess."

Although this case did not involve a significant amount of benefits, the principle expressed in this ruling is of major significance. A fair ERISA claim process is essential to claimants receiving a fair opportunity to demonstrate their entitlement to benefits. When plan administrators fail to meet their fiduciary obligations, as the facts of this case illustrate, the denial of benefits is tragic.

A 10th Circuit ruling the court cited, *Gaither v. Aetna Life Insurance Co.*, 394 F.3d 792, 807 (10th Cir. 2004), reached a similar conclusion by finding: "While a fiduciary has a duty to protect the plan's assets against spurious claims, it also has a duty to see that those entitled to benefits receive them. It must consider the interests of deserving beneficiaries as it would its own. An ERISA fiduciary presented with a claim that a little more evidence may prove valid should seek to get to the truth of the matter."

Because the ERISA claim process is not intended to be adversarial and since claimants often present claims without benefit of legal representation, the *Harrison* ruling goes a long way toward advising plan administrators of their fiduciary responsibilities and the consequences of not meeting those obligations.

WORKPLACE ISSUES

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