

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JEFFERY M. COUZENS, : CIVIL ACTION
Plaintiff, :
 : NO. 98-527
v. :
 :
THE EQUITABLE LIFE ASSURANCE :
SOCIETY OF THE UNITED STATES :
and AETNA LIFE INSURANCE CO., :
erroneously designated as Aetna :
U.S. Healthcare, :
Defendants. :

M E M O R A N D U M

BUCKWALTER, J.

October 2, 1998

Plaintiff, Jeffery M. Couzens, has filed this claim for disability benefits pursuant to the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. § 1132(a)(1)(B), against The Equitable Life Assurance Society of the United States ("ELAS") and Aetna Life Insurance Company ("AETNA"), claiming that his long-term disability benefits were wrongfully terminated.¹ Presently before this Court are the parties' cross-motions for summary judgment. For the reasons discussed below, Defendants' motion is **GRANTED** and Plaintiff's motion is **DENIED**.

1. Plaintiff instituted the instant action against Defendants in the Court of Common Pleas of Philadelphia County. The action was removed to this Court by way of a Notice of Removal filed on January 30, 1998. On February 6, 1998, Defendants filed a Motion to Dismiss. In response, Plaintiff filed an Amended Civil Action, pleading the ERISA claim and omitting all preempted state court claims.

I. BACKGROUND

The relevant facts necessary for the disposition of both motions are not disputed by the parties. In January of 1993, Plaintiff was diagnosed with major depression. See Am. Compl. ¶ 13. As an insurance agent for ELAS, Plaintiff was covered under its group insurance plan. See Am. Compl. ¶¶ 4, 7. This plan was established by ELAS and administered by AETNA. See Am. Compl. ¶¶ 9, [10]. Upon Plaintiff's application, Defendant Aetna approved and paid long-term disability benefits to Plaintiff from August, 1993 through March 1, 1997. See Am. Comp. ¶¶ 13, 18.

The group plan expressly provides that it is administered, and all benefits are authorized, by the plan administrator or its authorized agent, who has the "discretionary authority" to determine eligibility for benefits under the plan. This discretionary authority includes "the right to make all determinations about the right of any person to receive reimbursement under the Plan and to interpret the terms of the Plan." Defs. Mem. (Exhibit C thereto). The plan further defines "Total Disability" to mean:

- during the first two years of your disability, you're unable to report to work and perform all of the material or essential duties of your own occupation . . . due to illness, injury or pregnancy; and

- after the first two years of your disability, you're unable to engage in any gainful occupation for which you are, or may reasonably become, qualified by education, training or experience, other than work under an approved rehabilitation program.

Id.

Interpreting this definition of "total disability," the plan administrator, Barbara A. Berry, R.N., defined "engage" to mean "eligible, potentially could" and "gainful" as meaning "something that the person had done before, can do again or can reasonably do as a new job, because the person has experience or education or can acquire the experience and education to go to that job." Berry Dep. at 42-43, lines 15-25 (attached as Exhibit A to Pl. Mem.). Accordingly, she terminated Plaintiff's long-term disability benefits because she found that Plaintiff was able to engage in gainful occupation. See Letter from Berry to Couzens of 2/21/97 (attached as Exhibit E to Defs. Mem.). In her termination letter to Plaintiff, Ms. Berry stated that "taking into consideration your age, education and work experience, we have determined that you are capable of engaging in any gainful occupation. Your medical condition does not preclude you from performing gainful work." Id.

This decision was based on three supporting sources. First, Plaintiff's own primary treating psychiatric physician, Carroll Weinberg, M.D., opined that Plaintiff was "nearing normal capabilities for work other than commissioned sales." Defs. Mem.

(Exhibit F thereto). Second, a Transferable Skill Analysis Report prepared by Defendant Aetna's rehabilitation consultant stated that Plaintiff had 22 transferable skills based on his age, gender, education, and employment history. See Defs. Mem. (Exhibit G thereto). And third, Plaintiff reported to Defendant's rehabilitation consultant that he had passed the examination to become a certified public accountant. See Defs. Mem. (Exhibit F thereto).

Moreover, it is important to note that during his deposition, Plaintiff admitted that he believed that he was not "totally disabled" as defined under the plan. See Couzens Dep. at 51, lines 3-15 (attached as Exhibit H to Defs. Mem). Plaintiff also admitted that he continuously has pursued other employment positions. Pl. Mem. at 3.

Defendants contend that, under the discretionary language of the plan, unless the administrator's denial of disability benefits was arbitrary and capricious, the decision is conclusive and binding as to all questions regarding the administration of the plan. See Defs. Mem. at 3. Under this standard, Defendants suggest that the termination of Plaintiff's long-term disability benefits was reasonable, supported by the evidence, and appropriate as a matter of law. See Defs. Mem. at 4.

Plaintiff, however, argues that, while the plan provided the administrator with discretionary authority to determine eligibility for benefits, the decision to terminate his benefits was arbitrary and capricious in light of his proffered definition that being "unable to engage in gainful occupation" is equivalent to being unable to find a job. Pl. Mem. at 6. Plaintiff further contends that the administrator's interpretation of the plan was contrary to its express terms and that Defendants' denial of benefits was fundamentally unfair. Pl. Mem. at 6, 10.

II. DISCUSSION

Both Plaintiff and Defendants have requested summary judgment. The standards by which a court decides a summary judgment motion do not change when the parties file cross-motions. See Southern Pa. Transp. Auth. v. Pennsylvania Pub. Util. Comm'n 826 F. Supp. 1506, 1512 (E.D. Pa. 1993). When ruling on cross-motions for summary judgment, the court must consider the motions independently. See Williams v. Philadelphia Hous. Auth. 834 F. Supp. 794, 797 (E.D. Pa. 1993). Summary judgment may 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 facts are

viewed in the light most favorable to, and all inferences shall be taken in favor of, the non-moving party. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). The court's responsibility is not to resolve disputed issues of fact but to determine whether there are any factual issues to be tried. Id. at 247-49.

ERISA does not set forth the standard of review for an action brought under § 1132(a)(1)(B) by a participant alleging denial of benefits. See Firestone Tire & Rubber Co. v. Bruch 489 U.S. 101, 109 (1997). When a plan governed under ERISA provides the administrator with discretionary authority to determine eligibility for benefits under the plan, a district court reviews the determination under the arbitrary and capricious standard. See id. at 115. Under that standard, the administrator's interpretation of the plan "will not be disturbed if reasonable." Id. at 114. That is, "the District Court may overturn a decision of the Plan Administrator only if it is 'without reason, unsupported by the evidence or erroneous as a matter of law.'" George Mitchell, 113 F.3d 432, 438 (3rd Cir. 1997). The scope of this review is narrow, and the court is not free to substitute its own judgment for that of the administrator to determine a participant's eligibility for plan benefits. See id. As there is no dispute that the plan in this case grants discretionary

authority to the administrator, this Court will apply the arbitrary and capricious standard.

A review of the applicable provision of the instant plan is necessary to determine whether the plan administrator's decision to deny Plaintiff's long-term disability benefits was arbitrary and capricious. An applicant is totally disabled and qualified for long-term disability when, after the first two years of disability, the applicant is "unable to engage in any gainful occupation" for which the applicant is, or may reasonably become, "qualified by education, training or experience, other than work under an approved rehabilitation program." Defs. Mem. (Exhibit C thereto). If an applicant satisfies the terms of the plan, the administrator will grant the applicant disability benefits.

There is overwhelming support in the record for the termination of Plaintiff's long-term disability benefits. All the evidence before the administrator supports her determination that Plaintiff was able to engage in gainful employment: Plaintiff's own primary treating physician opined that Plaintiff was capable of working in areas other than commissioned sales; an internal report indicated that Plaintiff had 22 transferable skills based on his age, gender, education, and employment history; and Plaintiff successfully passed the examination to become a certified public accountant. Due to the lack of any

medical basis to the contrary, and in light of the reports on Plaintiff, the Court finds that the undisputed evidence supports the administrator's conclusion that Plaintiff was not totally disabled and that he was able to engage in gainful employment. This conclusion is buttressed by Plaintiff's own admission that he is able to engage in gainful occupation. Plaintiff also admits that he has actively, albeit unsuccessfully, pursued other employment positions. While Plaintiff may be psychiatrically unable to return to his occupation as an insurance salesman (as suggested by his physician's report), he has unequivocally indicated that he is able to work in other professions.

Plaintiff's attacks on the administrator's interpretations of the terms of the plan fail to persuade this Court. When a term is not defined in an insurance policy but possesses a clear legal or common meaning, the court may supply that meaning. See City of Erie v. Guaranty Nat'l Ins. Co., 109 F.3d 156, 163 (3rd Cir. 1997). The court will not torture the language in a policy to create an ambiguity where none exists. See Doe v. Provident Life and Accident Ins. Co., No. Civ. A. 96-3951, 1997 WL 799439, *3 (E.D. Pa. Dec. 30, 1997). While the Court agrees that the plan fails to define what would suffice as being able to "engage" in any "gainful" employment, the term is not misleading or beyond the understanding of an individual of average intelligence.

The administrator's interpretation of being able to engage in any gainful employment (for purposes of determining whether Plaintiff was totally disabled) was also plainly in accordance with the express terms of the plan. The Court will not rewrite the clear and unambiguous definition of "total disability" to mean that an applicant for long-term disability is totally disabled when that applicant is not able to find a job. Total disability does not mean that Plaintiff cannot find a job, but rather that Plaintiff is unable to perform any gainful occupation. Accordingly, the administrator's findings were reasonable even in light of the fact that the administrator failed to consider whether Plaintiff had already obtained a job.

Finally, Plaintiff asserts that the administrator's lack of consideration of the stigma associated with having a mental illness (which would arguably reduce Plaintiff's ability to find a job) amounted to fundamental unfairness and further supports his argument that the administrator's decision was made arbitrarily and capriciously. In light of the analysis above, I find that the lack of consideration of this one factor would not have made any appreciable difference in the ultimate outcome. Moreover, a careful reading of Ms. Berry's deposition testimony does not demonstrate any failure on her part to consider all relevant aspects of Plaintiff's condition.

For the foregoing reasons, Defendants' motion is **GRANTED** and Plaintiff's cross-motion is **DENIED**. An appropriate order follows.

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O R D E R

AND NOW, this 2nd day of October 1998, upon consideration of Defendants' Motion for Summary Judgment (Docket No. 10), Plaintiff's Response and Cross-Motion for Summary Judgment (Docket No. 13) and Defendants' Answer thereto (Docket No. 14), it is hereby **ORDERED** that summary judgment is **GRANTED** as to Defendants, Equitable Life Assurance Society of the United States and Aetna Life Insurance Co., erroneously designated as Aetna U.S. Healthcare, and **DENIED** as to Plaintiff, Jeffery M. Couzens. Judgment is therefore entered in favor of defendants and against plaintiff. This file may be marked **CLOSED**.

BY THE COURT:

RONALD L. BUCKWALTER, J.