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

JEAN MARIE KEARNEY	:	CIVIL ACTION
	:	
v.	:	
	:	
AETNA LIFE INSURANCE COMPANY	:	NO. 04-4246

MEMORANDUM AND ORDER

McLaughlin, J. February 6, 2006

In this case, the plaintiff, Jean Marie Kearney, appeals the decision of Aetna Life Insurance Company ("Aetna") to deny her disability benefits under a plan regulated by the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. §§ 1001-1461. Aetna's denial was based upon its decision that Kearney was no longer disabled within the meaning of the plan.

Kearney has spinal disc problems. She received long-term disability benefits ("LT benefits") from Aetna from 1999 through 2002. In August of 2002, based upon surveillance, the reports of Kearney's physicians, and Kearney's subjective complaints, Aetna terminated Kearney's benefits. Kearney appealed, and Aetna upheld its decision in 2003. Kearney filed her complaint in state court, and Aetna filed a notice of removal in this Court on September 7, 2004.

The Court decides here the parties' cross-motions for

summary judgment.[1] The Court will grant Aetna's motion for summary judgment and deny Kearney's motion for summary judgment. The Court concludes that there is no genuine dispute of material fact, and that Aetna's decision should be upheld under a somewhat heightened arbitrary and capricious standard of review.

I. Facts

A. Parties

Kearney is an adult female born on March 26, 1953. She is a registered nurse who was employed by Aetna as a Quality Manager from December of 1996 until she sustained a work-related spinal injury in March of 1999. (Pl. Mot. at p. 2, Ex. A; Def. Mot. at p. 2).

B. Receipt of Benefits

On May 26, 1999, Kearney began receiving worker's compensation benefits because of the disc herniations she had sustained at work. She became eligible for LT benefits from Aetna on November 24, 1999. During 1999 and 2000, Kearney underwent two discectomies and the implantation and

[1]Under Fed. R. Civ. P. 56, summary judgment is appropriate when, viewing the facts and inferences in the light most favorable to the nonmoving party, there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law.

reimplantation of spinal cord stimulators and battery packs. (Pl. Mot. at p. 2, Ex. C; Def. Mot. at p. 2).

During the first 24 months of her disability, Kearney's Aetna benefits plan required her and her doctor to provide evidence to show that she was unable to perform the material duties of her own occupation. Beyond 24 months, the plan required Kearney and her doctor to provide evidence that she was unable to perform *"any reasonable occupation."* (Def. Ex. 1 at AETNA-357).

C. Physicians' Reports

Kearney treated with an orthopedist, Dr. Auerbach, and a neurosurgeon, Dr. Barolat. On June 6, 2001, Dr. Auerbach provided Aetna with a statement that, according to the defendant, Kearney had filled out and Dr. Auerbach had signed. The statement described Kearney's "present limitations" as follows:

> unable to walk more than ½ mile per day; only able to walk on even surfaces; cannot tolerate sitting more than 30 minutes without significant increase in pain and ability to stand erect and weight bear on RLE; unable to lift; unable to perform household activities such as lifting laundry, vacuuming, mopping, etc. due to limited bending; unable to participate in recreational activities.

It described her "restrictions" as follows:

> no lifting greater than 5 lbs.; no driving with spinal cord stimulator on; no flexion or extension activities that increase pain in back, RLE or abdominal implant; no prolonged sitting; no stretching or reaching above head; walking limited to ½ mile per day on level surfaces; moderate to major restrictions in recreational activities.

(Pl. Ex. C; Def. Ex. 4).

On December 12, 2001, Dr. Auerbach wrote a letter to Dr. Barolat indicating that Kearney was "permanently disabled and unable to conduct any type of meaningful work," and Dr. Auerbach's letter to another of Kearney's doctors on February 11, 2002, confirmed this conclusion. (Pl. Exs. E, F).

On January 15, 2002, Dr. Auerbach provided another opinion to Aetna, in which he indicated that Kearney was permanently unable to perform any work at all, and not able to perform sedentary work because of a failed spine. (Def. Ex. 3).

That same day, Dr. Barolat provided Aetna with an opinion. Under "objective findings," he stated that a CAT scan of Kearney's thoracic spine and x-rays of her implant revealed "no pathology." Under "subjective findings," he noted that Kearney felt severe pain in her posterior thoracic region which radiated to her "trapez." muscle and into her upper extremities. Under "restrictions and limitations," he recommended "no lifting greater than 20 lbs.," and "no twisting, pushing or pulling." Under "return to work date," he wrote "to be determined." (Def. Ex. 5).

D. Surveillance

Because it found Kearney's physicians' reports inconsistent, Aetna decided to conduct video surveillance of

Kearney in order to observe her "level of functionality and/or impairment." On June 26 and 27 and July 5 and 16, 2002, Aetna videotaped Kearney without Kearney's knowledge. Maryanne Tranfaglia, a Physician's Assistant and an Aetna employee, reviewed the surveillance video. She noted that the June 26 video revealed Kearney "without any gait disturbance." She also noted the following:

> She is seen opening the back of her vehicle with one hand repeatedly, carrying a diaper bag with the left hand, and bending over emptying the back of her vehicle. The claimant is seen reaching forward while carrying over a baby/toddler. She is seen sitting on a pavement without support for 25 minutes under a tent, shading Ms. Kearney and the child from sunlight. In the pool . . . the claimant carries the baby in the pool, swings and bounces her through the water and places her on the pavement. She is frequently standing for periods up to 20 minutes, often with a diaper bag or baby held in one arm. Ms. Kearney is also observed folding up a 4-5 foot diameter tent and stuffing it forcefully in its container, carrying the tent in one hand while opening the vehicle with the other. The claimant is seen frequently bending at the waist, reaching forward and above the head and squatting on the ground. She is also seen driving (sitting) for 20-30 minutes on 6/27/02 and going in and out of her car. She is seen carrying packages in both hands.
>
> Impression: no evidence of gait disturbance is found during surveillance. The claimant is seen bending, reaching, walking, squatting, sitting, carrying multiple objects, removing objects from the car and driving without any evidence of any restrictions or limitations. The video surveillance reviewed does not support the restrictions and limitations given by the PCP, Dr. Auerbach.

(Pl. Mot. at p. 3; Def. Mot. at p. 4, Ex. 7 at AETNA-85).

Kearney now submits evidence to show that the child was her granddaughter, who weighed less than 20 lbs. at the time of the video. (Pl. Ex. L). Kearney did not present this evidence

to Aetna through administrative appeals, though she had the opportunity to do so. (Def. Mot. at p. 15).

E. Termination of Benefits

In a letter dated August 8, 2002, Aetna informed Kearney that her LT benefits would terminate as of that date. Because it had been more than 24 months since her disability began, Aetna based its decision to terminate Kearney's benefits upon its determination that she was no longer totally disabled from performing any reasonable occupation for which she was qualified by education, training, or experience. It made that determination after it "reviewed records and all medical documentation in [Kearney's] file and obtained three days of video observation of [her] performing activities over an extended period of time." (Def. Ex. 1 at AETNA-261).

Aetna's letter explained that it had found Kearney's physicians to be inconsistent regarding the restrictions and limitations preventing her from returning to her own occupation, and so it had obtained surveillance of her activity in June and July of 2002. The surveillance showed no evidence of a gait disturbance, and showed Kearney bending, reaching, walking, squatting, sitting, carrying multiple objects, removing objects from her car, and driving "without evidence of any functional deficits." (Def. Ex. 1 at AETNA-261-62).

The letter explained that this evidence, along with the medical records and Kearney's subjective complaints, led Aetna to the conclusion that Kearney was not unable to work in any reasonable occupation. Aetna concluded that Kearney would be able to perform an occupation that would allow her to alternate positions, sitting every 30 minutes and standing every 20 minutes, that would not require her to lift more than 20 lbs., and that would allow her to bend, reach and walk as needed. It found that her upper and lower extremities had no limitations. It found that she would be able to perform other occupations within her qualifications, such as a Nurse Case Manager, a Quality Assurance Coordinator, a Utilization Review Coordinator, an Office Nurse, a School Nurse, an Occupational Health Nurse and a Telephone Triage Nurse. (Def. Ex. 1 at AETNA-261-62).

F. Appeals

In its termination letter, Aetna invited Kearney to provide additional information and apprised her of her appeal rights. Kearney's attorney appealed Aetna's determination and requested more information in a letter dated September 17, 2002. In a letter dated May 30, 2003, Aetna responded that it believed it had already provided Kearney with all relevant information, and upheld its decision to terminate Kearney's LT benefits based upon the same evidence as its prior decision. It found that the

video surveillance "showed that Ms. Kearney's abilities were in excess of those reported by her physicians." It again invited additional information from Kearney and advised her of her appeal rights. In a letter dated July 2, 2003, Hickey informed Aetna that he was in the process of obtaining additional medical documentation for Aetna, and that he and his client did intend to pursue the case. Aetna, however, never received any additional information from Kearney after that date. Aetna did not conduct an independent medical examination ("IME") of Kearney. (Def. Ex. 1 at AETNA-261-62; Def. Exs. 10, 11, & 12).

G. Plan Documents

When Aetna first provided Kearney with the administrative record, it provided her with a summary plan description ("SPD"), located in Def. Ex. 1 at AETNA 276-381. The SPD makes reference to other "official plan documents." On July 6, 2005, six days before the arbitration hearing in this case, Aetna provided Kearney with the official plan documents ("the plan"), located at Def. Ex. 1 AETNA 382-424. Aetna contends that the prior failure to provide the plan was an inadvertent omission. The SPD does not explicitly grant discretionary authority over benefits determinations to Aetna, but the plan does. (Def. Resp. at p. 3-4, 6; Def. Ex. 1 at AETNA-404).

H. Medical Records and Declaration

Kearney includes some exhibits with her motion that she never presented to Aetna during the appeals process. They are her granddaughter's medical records and her declaration about her disability. (Pl. Mot. Exs. H, L). The medical records show that Kearney's granddaughter, Emma, who Kearney was seen carrying by the pool, weighed 8.14 kg, or 17.9 lbs., as of July 16, 2002. (Pl. Mot. Ex. H). It appears that Kearney attended the appointment at which Emma's doctor made this notation, which Kearney contends proves that she knew that Emma weighed less than 20 lbs. when she carried her. (Pl. Mot. Ex. H). Kearney's declaration reiterates the claims that she has made, and adds that she is still disabled. (Pl. Mot. Ex. L).

II. Procedural History

After Aetna upheld its termination of Kearney's benefits, Kearney filed a complaint in the Court of Common Pleas of Chester County, Pennsylvania, of which Aetna was notified on August 9, 2004. Aetna filed a notice of removal in this Court on September 7, 2004. Aetna filed a motion to dismiss, which was denied as moot on October 5, 2004, upon the filing of an amended complaint. The parties went to arbitration on July 12, 2005, and an award was entered the following day. On July 27, 2005, Aetna filed a request for trial de novo. Aetna filed a motion for

summary judgment on September 29, 2005. Kearney filed a motion for summary judgment on September 30, 2005.

III. Standard of Review for the Denial of ERISA Benefits

A. Which Standard Applies?

1. Discretion in the SPD and the Plan

The denial of ERISA benefits is reviewed under a de novo standard, unless the benefit plan gives the administrator or fiduciary the discretion to determine eligibility or construe the plan terms, in which case an arbitrary and capricious standard applies. Stratton v. E.I. Dupont De Nemours & Co., 363 F.3d 250, 253-54 (3d Cir. 2004). The arbitrary and capricious standard requires a court to defer to the plan administrator unless its decision is "clearly not supported by the evidence in the record or the administrator has failed to comply with the procedures required by the plan." Abnathya v. Hoffmann La Roche, Inc., 2 F.3d 40, 41 (3d Cir. 1993).

In cases that would normally fall in the arbitrary and capricious category, but in which the insurance company both determines benefit eligibility and pays those benefits out of its own funds, the United States Court of Appeals for the Third Circuit has held that a less deferential, heightened arbitrary and capricious standard applies. Pinto v. Reliance Standard Life Ins. Co., 214 F.3d 377, 378 (3d Cir. 1999). The rationale for

this heightened level of scrutiny is that in these cases, "insurance carriers have an active incentive to deny close claims in order to keep costs down and keep themselves competitive so that companies will choose to use them as their insurers." Id. at 388.

Kearney argues that the de novo standard of review should apply, because the SPD does not explicitly vest discretion in Aetna. She cites Burstein v. Ret. Account Plan for Employees of Allegheny Health Educ. & Research Found., 334 F.3d 365, 378 (3d Cir. 2003), for the principle that where an SPD conflicts with a detailed ERISA plan document, the SPD controls. In Burstein, there was an affirmative conflict between the SPD and the plan in that the SPD provided that vesting would occur "automatically" upon plan termination, whereas the plan provided that benefits would vest at termination only "to the extent funded." Id. at 375-76.

Kearney argues that LT benefits are "mandatory" under the SPD, because the SPD provides that a claimant is entitled to benefits if he and his physician provide evidence that the claimant is unable to perform the duties of any reasonable occupation. The Court is not convinced that the SPD leaves Aetna without discretion to determine who is disabled. Although the SPD makes no explicit statement about discretion, it also does not say that benefits are mandatory. Rather, it is silent on the

issue of discretion.

Implicitly, however, the SPD vests discretion in Aetna. For example, it states: "if you start work at any reasonable occupation, *you will no longer be deemed eligible,*" and "*if you are identified* as a candidate for rehabilitation, you will be required to participate in Aetna's rehabilitation program in order to continue receiving benefits." (Def. Ex. 1 at AETNA-357, emphasis added).

Kearney does not dispute that the plan clearly vests discretion in determining who is disabled with Aetna. For example, it states that "[a] period of disability will be certified by Aetna if, and for only as long as, Aetna determines that you are disabled as a direct result of a significant change in your physical or mental condition occurring while you are covered under this Plan." (Def. Ex. 1 at AETNA-404). The Court finds that the plan is consistent with the SPD. Thus, the facts of this case are distinguishable from those in Burstein.

As Aetna notes, 29 U.S.C. § 1022(b) requires that an SPD contain certain language, but does not require discretionary authority language. The SPD explicitly states that it does not set out the complete terms of the plan. The plan was available to Kearney. These reasons further undercut Kearney's Burstein argument.

2. Judicial Estoppel

Kearney argues that the defendant should be judicially estopped from arguing that it has discretion based upon the plan. Judicial estoppel only applies if the "party to be estopped is asserting a position that is irreconcilably inconsistent with one he or she asserted in a prior proceeding; (2) the party changed his or her position in bad faith, i.e., in a culpable manner threatening to the court's authority or integrity; and (3) the use of judicial estoppel is tailored to address the affront to the court's authority or integrity." Montrose Med. Group Participating Savs. Plan v. Bulger, 243 F.3d 773, 777 (3d Cir. 2001).

Aetna did not take inconsistent positions. Even if it originally only presented the SPD, and even if the SPD is silent regarding discretion, the SPD explicitly states that it does not set out the complete terms of the plan. Moreover, the SPD is not "irreconcilably inconsistent" with the plan, because both can be read to grant Aetna discretion. Although Aetna has admitted that it did not provide Kearney with the SPD until a few days before the arbitration hearing, Kearney provides no evidence of bad faith. Aetna was entitled and indeed required to supplement its discovery. Because Kearney had notice of the plan before the parties' motions were filed with this Court, she cannot successfully contend that there was harm to the integrity of this

Court. Judicial estoppel is not an appropriate remedy here.

Because the SPD arguably, and the plan definitely, vests discretion over claims with Aetna, Pinto's heightened arbitrary and capricious standard of review applies.

B. How Heightened?

The Pinto court held that this heightened standard should be applied through a sliding scale approach, under which the degree of scrutiny intensifies to match the degree of conflict. Pinto, 214 F.3d at 379. In calibrating the standard of review under this approach, courts examine the facts of each case. Id. at 392. They may take into account, for example, the sophistication of the parties, and whether the administrator took into account the advice of its own employees. Id. at 394.

As to the sophistication of the parties, it is proper to "assume there was a sophistication imbalance between the parties," because "there is no reason why [Kearney] would have had ERISA or claims experience, whereas [Aetna], a large, successful company with many employees, had numerous such claims." Stratton, 363 F.3d at 254. Aetna took into consideration the advice of Tranfaglia, its employee.

Although the Court will consider the plan, the fact that Aetna failed to produce it and relied on the SPD until a few days before the arbitration hearing gives the Court some pause.

Aetna should have realized at the beginning of this case that the plan would be an important document, and it should have provided it early on, particularly because it relies on its discretion language heavily. Although this delay did not occur prior to Aetna's decision to terminate and uphold its termination of Kearney's benefits, this is a procedural irregularity. Aetna's decision, then, should be subject to somewhat heightened review.

IV. Analysis

Under somewhat heightened review, the Court finds that Aetna's decision was not arbitrary and capricious because Dr. Barolat's report indicates, and the video surveillance reveals, that Kearney could perform many tasks that would enable her to work in some reasonable occupation.

A. The Physicians' Opinions

As stated above, a plan administrator's decision is arbitrary and capricious if it is clearly unsupported by the evidence or procedures required by the plan were not followed. Abnathya, 2 F.3d at 41. The Court should examine Aetna's decision somewhat more closely, as explained above.

It is important to examine whether an insurance company considers additional information and medical history from a claimant's previous treating physicians in making its decision.

Stratton, 363 F.3d at 257. Although an insurance company may not arbitrarily refuse to credit the opinions of a claimant's treating physicians, it is not required to accord special weight to those opinions in the face of contrary evidence. Black & Decker Disability Plan v. Nord, 538 U.S. 822, 834 (2003). As the United States Supreme Court has noted, this is because "a treating physician, in a close case, may favor a finding of 'disabled.'" Id. at 832.

Aetna considered the recommendations of Kearney's treating physicians in making its decision. Aetna's determination acknowledged that Kearney could only perform jobs with certain restrictions. Namely, it found that Kearney could work in a job that would allow her to "alternate positions, sitting every 30 minutes and standing every 20 minutes, . . . that would not require [her] to lift greater that 20 pounds," and that would allow her to "bend, reach and walk as needed." (Def. Ex. 2 at AETNA-261). It listed several positions related to nursing that would accommodate these needs. (Def. Ex. 2 at AETNA-262). It should be noted that like Aetna, Dr. Barolat never concluded that Kearney was completely or permanently disabled; rather, he noted her problems and imposed certain restrictions upon her.

Aetna did, however, find inconsistencies between the reports of Drs. Auerbach and Barolat. Kearney argues that the

only reason that any reports of Drs. Auerbach and Barolat were inconsistent was that they were written on different dates. She argues that Dr. Auerbach did not submit an updated list of restrictions in January of 2002 because, after communicating with Dr. Barolat, he agreed with Dr. Barolat's updated restrictions. Aetna argues that Dr. Auerbach never updated his restrictions, and so his recommended restrictions from June of 2001, which clearly conflict with Dr. Barolat's restrictions in January of 2002, never changed.

It is true that it is not fair to cite differences in Dr. Auerbach's report of June 6, 2001, and the reports of both doctors of January 15, 2002, as inconsistencies, because more than 6 months passed between those dates. Viewing the facts in the light most favorable to Kearney, the Court should accept her argument in her response to Aetna's motion that Dr. Auerbach did not update his restrictions in January of 2002 because he agreed with Dr. Barolat's updated restrictions. The issue is whether, even disregarding Dr. Auerbach's old list of restrictions, the reports of both doctors in late 2001 and early 2002 were inconsistent.

It is clear that as of early 2002, both doctors found that Kearney was experiencing some pain related to her spinal injuries. Dr. Auerbach stated that Kearney was permanently unable to perform any work at all, but Dr. Barolat's diagnosis

was less pessimistic. (Def. Exs. 3, 5). Although he noted that Kearney experienced severe pain, he noted no pathology, imposed only certain restrictions upon her, and stated that her return to work date was to be determined. (Def. Ex. 5). It was not arbitrary and capricious of Aetna to conclude that these reports contained inconsistencies.

B. Aetna's Investigation and Conclusion

Kearney argues that because Aetna did not conduct a functional capacity exam or an IME, and because non-physicians examined the video surveillance, Aetna's decision was arbitrary and capricious. Video surveillance is a proper method of investigating disability insurance claims. Russell v. Paul Revere Life Ins. Co., 288 F.3d 78, 81 (3d Cir. 2002)(affirming the District Court's decision to uphold the denial of benefits, and discussing its proper reliance on video surveillance of the plaintiff's non-job activities).

In addition, an insurance company is under no duty to conduct its own investigation or gather more information, as long as its decision based upon the information available is not arbitrary and capricious. Pinto, 214 F.3d at 394 n. 8; Thompson-Harmina v. Reliance Standard Life Ins. Co., 2004 U.S. Dist. LEXIS 23797 at *8 (E.D. Pa. Nov. 24, 2004); McGuigan v. Reliance Standard Life Ins. Co., 2003 U.S. Dist. LEXIS 17593 at *20 (E.D.

Pa. Oct. 6, 2003). The non-binding cases cited by Kearney to support the argument that IMEs are required are distinguishable, because they involved unusual diseases, or a decision to deny benefits based upon a typographical error in a doctor's note. Cook v. Liberty Life Assurance Co. of Boston, 320 F.3d 11, 23 (1st Cir. 2003); Woo v. Deluxe Corp., 144 F.3d 1157, 1161 (8th Cir. 1998). Notably, in Cook, 320 F.3d at 23, the court stated that it was "not suggesting that [an IME or records review is] necessary in every termination of disability benefits case to establish a reasonable basis for the termination."

Because Aetna found inconsistencies in Kearney's physicians' reports, it conducted surveillance of Kearney. The Court has reviewed the surveillance video. On the video, Kearney opens the car door with one hand, carries a diaper bag, bends over and empties her vehicle, carries, swings and bounces a baby, sits without support for 25 minutes, stands for 20 minutes while holding a bag or a baby, folds and packs up a tent, carries the tent while opening a car with her other hand, squats, drives for 20-30 minutes, and carries packages. She takes these actions without visible restrictions or limitations.

As Tranfaglia noted, this activity is inconsistent with Dr. Auerbach's conclusion that Kearney was permanently unable to perform even a sedentary occupation. Notably, Tranfaglia did not find that this activity was inconsistent with Dr. Barolat's

limitations. Dr. Barolat found that Kearney could not lift greater than 20 lbs., twist, push or pull, and that her return to work date was to be determined. It is not entirely clear whether the activity on the video was inconsistent with Dr. Barolat's limitations. (Def. Ex. 5). Regardless, as stated above, Aetna's determination largely encompassed Dr. Barolat's limitations. Allowing for these restrictions, however, the fact that Kearney performed active daily functions without any evidence of limitation indicates that she could perform a sedentary occupation. Aetna's decision to terminate Kearney's benefits based upon its conclusion that she could perform a sedentary occupation with certain restrictions was not arbitrary and capricious under a heightened standard.

C. Emma's Medical Records

Kearney argues that Emma's medical records and her knowledge of them show that she was and knew she was acting within her medical restrictions on the surveillance video, namely because Emma weighed less than 20 lbs. Aetna argues that because Kearney did not introduce these records during the appeals process, despite numerous opportunities to do so, the Court should not consider them now. The law in this Circuit allows courts exercising de novo review over decisions in ERISA cases to consider evidence outside the administrative record. Luby v.

Teamsters Health, Welfare, and Pension Trust Funds, 944 F.2d 1176, 1184-85 (3d Cir. 1991). In arbitrary and capricious cases, however, courts may only do so in determining what standard of review to employ, or to aid in their "understanding of the medical issues involved," but they must base their ultimate decisions on the information that was before the administrator. Kosiba v. Merck & Co., 384 F.3d 58, 67 n.5, 69 (3d Cir. 2004).

Kearney seeks to introduce Emma's medical records to show that Aetna's determination that she was acting outside her medical restrictions on the video was erroneous. This relates to an ultimate issue in the case, and is unrelated to the standard of review or an understanding of medical issues. Moreover, Kearney had multiple opportunities to present this information to Aetna at the administrative level, and failed to do so.

The Court need not resolve this issue, because Aetna does not dispute Dr. Barolat's finding that Kearney could not carry more than 20 lbs. Aetna concluded that Kearney could only work in occupations that would allow for that restriction, rendering additional evidence supporting that conclusion at this stage moot.

D. Attorneys' Fees

Because Aetna's decision was not arbitrary and capricious under the heightened standard, Kearney's request for

attorney’s fees is moot.

An appropriate Order follows.

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

JEAN MARIE KEARNEY	:	CIVIL ACTION
	:	
v.	:	
	:	
AETNA LIFE INSURANCE COMPANY	:	NO. 04-4246

ORDER

AND NOW, this 6th day of February, 2006, upon consideration of the motions for summary judgment of both parties (Docket Nos. 19 and 21), all responses and replies thereto, and the surveillance tape, and after oral argument on the motions on January 6, 2006, IT IS HEREBY ORDERED that, for the reasons set forth in a memorandum of today's date, the defendant's motion for summary judgment is GRANTED and the plaintiff's motion for summary judgment is DENIED. This case is closed.

BY THE COURT:

/s/ Mary A. McLaughlin
MARY A. McLAUGHLIN, J.