

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

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ANITA G. MOORE,	:	CIVIL ACTION
Plaintiff,	:	
	:	
v.	:	NO. 98-4610
	:	
RELIANCE STANDARD LIFE INSURANCE	:	
COMPANY,	:	
Defendant.	:	

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MEMORANDUM

R.F. KELLY, J. MAY , 1999

Presently before this Court is the Motion of Defendant, Reliance Standard Life Insurance Company ("Reliance"), for Summary Judgment on Plaintiff's claim for long-term disability benefits under the Employee Retirement Income Security Act of 1974 ("ERISA"). 29 U.S.C. § 1001 et seq. In Plaintiff's Response to Defendant's Motion for Summary Judgment, Plaintiff ("Moore") claimed that her employer's plan is not governed by ERISA and submitted to the Court a notarized Affidavit which certifies that the subject plan is exempt from ERISA as a Church plan ("Plaintiff's Affidavit"). (Pl.'s Resp. to Def.'s Mot. Summ. J. Ex. A.) If ERISA does not apply, this Court lacks subject matter jurisdiction and must dismiss Moore's case. This Court ordered Reliance, on May 13, 1999, to show cause within twenty days why Plaintiff's Affidavit is insufficient to prove that ERISA does not apply in this matter.

Reliance does not question the accuracy of Plaintiff's

Affidavit. (Def.'s Resp. to Rule to Show Cause at 1.) Reliance instead argues that Moore is precluded, under the doctrine of judicial estoppel, from claiming that the subject plan is not governed by ERISA because she plead in her Complaint that ERISA was applicable. (Id. at 1.)

Judicial estoppel "seeks to prevent a litigant from asserting a position inconsistent with one that she has previously asserted in the same or in a previous proceeding." Ryan Operations G.P. v. Santiam-Midwest Lumber Co., 81 F.3d 355, 358 (3d Cir. 1996). In order to prove judicial estoppel, Reliance must show: 1) Moore's position is inconsistent with her previous position in the same or a previous proceeding; and 2) Moore asserted either or both of her inconsistent positions in bad faith. Id. at 361. Reliance claims that Moore did not act in good faith because "counsel for plaintiff was aware of plaintiff's employer and had a copy of the policy long before he filed this lawsuit." (Def.'s Resp. to Rule to Show Cause at 2.) Moore states that, in filing her Complaint, she reasonably relied on Reliance's statements, assertions and representations in August 27, 1996 and February 27, 1997 correspondence that her claim was subject to ERISA. (Pl.'s Resp. to Def.'s Mot. Summ. J. Ex. B at 6.) Moore, therefore, acted as a result of Reliance's representations, not in bad faith. Judicial estoppel is inapplicable and Plaintiff's Affidavit is proof that the plan is

exempt from ERISA. Thus, Moore's Complaint is dismissed without prejudice to its reassertion in state court and Reliance's Motion for Summary Judgment is denied.

An Order follows.

