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LAW ALERT
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Plan Participants Must be Informed of Plan Documents and Standards of Review

The Tenth Circuit Court of Appeals has ruled, in Lyn M. v. Premera Blue Cross, that the "arbitrary and capricious" standard cannot be applied to a plan administrator's denial of a participant's claim unless the plan administrator has sufficiently notified the participant in advance that its decision will be subject to this standard of review.

Applicable Law

Generally, the default standard of review for benefit denials in an ERISA-covered plan is the *"de novo"* standard of review, which means that a court will independently review a claim and not defer to the plan administrator's, or insurer's, decision. However, if the plan document (or insurance contract) grants discretionary authority to determine benefit entitlement, the court applies a less demanding "arbitrary and capricious" standard of review, under which the plan's or insurer's decision will be upheld unless it is determined to be "without reason, unsupported by substantial evidence or erroneous as a matter of law."

Facts

A participant's daughter was placed in long-term psychiatric residential treatment. The participant then submitted a claim for the treatment to her group health plan. The claim was denied and the participant sued in federal court. Using the arbitrary and capricious standard, the lower court ruled in favor of the plan. The participant appealed to the Tenth Circuit.

Tenth Circuit

On review, the Tenth Circuit quoted a Seventh Circuit opinion which stated that, "An employer should not be allowed to get credit with its employees for having an ERISA plan that confers solid rights on them and later, when an employee seeks to enforce the right, pull a discretionary judicial review rabbit out of his hat. The employees are entitled to know what they're getting into, and so if the employer is going to reserve a broad, unchanneled discretion to deny claims, the employees should be told about this, and told clearly."

In the instant matter, the Tenth Circuit observed that, "The plan administrator claims that it provided [participants] with notice of discretionary authority in a document called the 'Plan Instrument'" [which, presumably, was a part of the ERISA plan document]. Although the Plan Instrument creates discretionary authority, the court found that the participant had no way of knowing that the Plan Instrument even existed. "Because [participants] lacked notice of the Plan Instrument, it does not trigger arbitrary-and-capricious review. ERISA requires plan administrators to enable "beneficiaries to learn their rights and obligations at any time."

The Tenth Circuit explained that ERISA requires a plan administrator to disclose to participants its discretionary authority, or the existence of a document with information about the discretionary authority. "Without either

form of notice, participants cannot be bound by a reservation of discretionary authority inserted into some secret document locked away by the plan administrator."

In this case, the court found that the plan administrator did not disclose the Plan Instrument or furnish participants with any information that would have made them aware of the existence of the Plan Instrument. Instead, it supplied a summary plan description ("SPD"), which participants would ordinarily regard as their primary source of information about the plan. The SPD said nothing about the existence of the Plan Instrument or any other plan document reserving discretion to the plan administrator.

Consequently, the court determined: (i) that the plan administrator did not adequately notify the participant about its reservation of discretionary authority in deciding benefit claims; and (ii) the Plan Instrument does not affect the standard for reviewing the plan administrator's decision in this case. Accordingly, the court concluded that the participant could not be bound to terms contained in a policy about which she had no notice or knowledge.

The Tenth Circuit therefore reversed the lower court's decision and remanded the case with instructions to review the denial of benefits using a de novo standard of review.

Employer Takeaway

Although this was an unusual decision, which may be reviewed by the entire Tenth Circuit, plan SPDs should always refer specifically to all applicable plan documents and clarify that these documents will take precedence over the SPD.

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