THE WAGNER LAW GROUP

LAW ALERT
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Courts of Appeal Split on Circumstances Where it is Appropriate to Override the Arbitrary and Capricious Standard of Review

The U.S. Court of Appeals for the Eighth Circuit has ruled, in *McIntyre v. Reliance Standard Life*, that a claims decision will be judged under the arbitrary and capricious standard despite the fact that the claims administrator had a conflict of interest and that there were irregularities in the claims procedure.

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." ERISA's claims procedure regulations specify the time period in which a plan administrator must make a final decision on a benefit claim.

Facts

A participant in an insured long-term disability ("LTD") plan suffered from a degenerative neurological condition affecting peripheral nerves such as those in the hands and feet. The insurer paid disability benefits for a period of time, but then notified the participant that she longer qualified for benefits under the LTD plan because she was ineligible under the plan's "disability" definition. The insurance policy stated that the insurer was the "claims review fiduciary" and had "the discretionary authority to interpret the plan and the insurance policy and to determine eligibility for benefits." After a claim appeal process that extended beyond the period of time permitted under applicable regulations, the claim was again denied.

District Court

The district court decided that the de novo standard applies if: (1) either the administrator faces a "palpable conflict of interest" or if a "serious procedural irregularity" arose in the review process, and (2) either the conflict or the procedural irregularity "caused a serious breach of the plan administrator's fiduciary duty" to the participant.

With respect to the instant case, the district court found a palpable conflict of interest present insofar as the insurer "both determines and pays claims" and ostensibly has a "history of biased claims administration." The district court also found a serious procedural irregularity, namely, the long delay in deciding the participant's appeal.

Appeals Court

The Eighth Circuit Court of Appeals began by noting that, under a Supreme Court decision, it is "undisputed" that the district court erred in relying on the presence of a conflict of interest to justify using a *de novo* standard of review.

Noting that the Seventh Circuit Court of Appeals, in *Fessenden v. Reliance Standard Life Ins. Co.*, has held that a plan administrator' s decision to deny a participant' s claim for LTD benefits was subject to the de novo standard of review because the administrator failed to comply with ERISA's deadline for issuing a claims decision (see the Alert of 10/31/19), the Eighth Circuit declined to adopt this rationale. Rather, to obtain a less deferential review, the Eighth Circuit explained that a participant had to demonstrate that a palpable conflict of interest or a serious procedural irregularity existed that caused a serious breach of the plan administrator's fiduciary duty.

In the instant matter, because the participant had not demonstrated a serious breach of fiduciary duty by the plan administrator, the Eighth Circuit concluded that the district court also erred in treating an ostensibly serious procedural irregularity as a trigger for *de novo* review. Accordingly, it vacated the district court decision and remanded the case for the district court to review under the arbitrary and capricious standard.

www.wagnerlawgroup.com

@wagner-law-group
fb.com/WagnerLawGroup

Boston:
99 Summer Street, 13th Floor
Boston, MA 02110
Tel: (617) 357-5200

@wagnerlawgroup
@wagnerlawgroup

Boynton Beach:
1880 N. Congress Avenue, Suite 200
Boynton Beach, FL 33426
Tel: (561) 293-3590

Chicago:
180 N. LaSalle Street, Suite 3200
Chicago, IL 60601
Tel: (847) 990-9034

Lincoln, MA:
55 Old Bedford Road, Suite 303
Lincoln, MA 01773
Tel: (617) 532-8080

New York:
200 Park Avenue, Suite 1700
New York, NY 10166
Tel: (212) 338-5159

San Diego:
8677 Villa La Jolla Drive, Suite 888
San Diego, CA 92037
Tel: (619) 232-8702

San Francisco:
315 Montgomery Street, Suite 900
San Francisco, CA 94104
Tel: (415) 625-0002

St. Louis:
1099 Milwaukee Street, Suite 140
St. Louis, MO 63122
Tel: (314) 236-0065

Tampa:
101 East Kennedy Boulevard, Suite 2140
Tampa, FL 33602
Tel: (813) 603-2959

Washington, D.C.:
800 Connecticut Avenue, N.W., Suite 810
Washington, D.C. 20006
Tel: (202) 969-2800