life annuity specialist

Plan Members Can Sue for Benefits Before Exhausting Appeals, Judge Says

By Arthur D. Postal October 25, 2019

A person covered by a long-term disability plan doesn't have to go through an insurer's appeals process before suing for denial of benefits, an Arizona judge said.

Vicki Greiff, a geriatrics doctor in Tucson, Ariz., sued the **Life Insurance Co. of North America**, a unit of **Cigna**, on Oct. 2 of last year. Under her group policy, Greiff said she was entitled to benefits for two years after a 182-day "elimination period" if she couldn't perform the duties of her job.

Greiff said she suffered from cognitive impairments and short-term memory loss. A doctor who examined her said she struggled with doing everyday activities in the proper order, such as closing a toilet lid before sitting down, according to her suit.

The Life Insurance Co. denied her application for benefits. The language of her workplace policy specified that she could appeal the decision, "but the language does not require the claimant to file an appeal to exhaust her administrative remedies," the lawsuit said.

A judge later agreed, rejecting the insurer's attempt to have the case tossed out of court.

Federal courts have held that under ERISA, a U.S. law governing minimum standards for workplace health and retirement plans, that someone denied benefits must follow a plan's internal review procedures, Judge **Rosemary Marquez** in the U.S. District Court for Arizona said a few months ago. Still, "ERISA does not explicitly require a participant or beneficiary to exhaust administrative remedies prior to filing suit," she said.

In the Ninth Circuit, where the court is located, if plan documents could "reasonably be read as making the administrative appeals process optional," there's no requirement to go through it, Marquez wrote.

Marcia Wagner, a Boston lawyer specializing in employment law, cautioned that the case may only apply to policyholders in the Ninth Circuit.

The suit was settled in September.