



Eastern District of Kentucky
FILED
JUN 12 2019
AT LEXINGTON
ROBERT R. CARR
CLERK U.S. DISTRICT COURT

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
SOUTHERN DIVISION
AT LONDON

REBECCA ASHER,
Plaintiff,

CIVIL ACTION NO. 6:18-308-KKC

V.

ORDER

RELIANCE STANDARD LIFE
INSURANCE COMPANY,
Defendants.

*** **

Plaintiff Rebecca Asher asks the Court to reverse Defendant Reliance Standard Life Insurance Company’s decision to discontinue her long-term disability benefits. [DE 12.] For reasons stated below, the Court will **remand** the dispute for reevaluation of Asher’s claim.

BACKGROUND

Rebecca Asher, now 55 years old, worked for Appalachian Regional Healthcare, Inc. (“ARH”) for approximately 13 years. Most recently, Asher held the title of “Food Production Coordinator” and was responsible for the preparation and inspection of food in the facility’s kitchen. As an employee of ARH, Asher was covered by a long-term disability policy (“the Policy”) issued by Reliance Standard Life Insurance Company (“Reliance Standard”). [DE 1-1, at 3.] The Policy provided that in the event of a “total disability,” Asher would be paid 60% of her earnings with a maximum benefit date of December 19, 2030. The definition of total disability varied, however, depending on how long Asher had been receiving benefits. In the elimination period, and for the first 24 months for which disability benefits were payable, Asher would be considered totally disabled if she could not perform the material duties of her

regular occupation. From then on, Asher would be required to demonstrate that she could not perform the material duties of *any occupation* in order to continue receiving disability benefits. [DE 1-1, at 4.]

On July 9, 2014, Asher was admitted to a local hospital for complications arising from iron deficiency anemia and diabetes mellitus. She has not worked since. [DE 12-1, at 6.] Asher applied for and was awarded long-term disability benefits under her Reliance Standard Policy in November of 2014. [DE 1-1, at 4.] Specifically, Reliance Standard determined that as a result of her medical conditions, Asher was no longer able to work in the capacity of Food Production Coordinator and was eligible to receive monthly benefits as of October 7, 2014. [AR. 267.]

In August of 2015, Reliance Standard sent Asher a notice that she would stop receiving her disability benefits on October 8, 2016. Reliance Standard explained that per the language of her Policy, once Asher had received benefits for 24 months, she would only be considered totally disabled if she could not perform the material duties of *any occupation*. [DE 12-1, at 16.] And since Asher could perform other occupations, such as a Fast Food Services Manager or a Food Checker, Reliance Standard concluded that she would no longer meet the definition of total disability beyond the 24-month mark. Reliance Standard continued to pay Asher's benefits until October 7, 2016. [DE 1-1, at 4.]

On October 28, 2016, Asher appealed the decision, arguing that she continued to meet the definition of total disability under the Policy. In support of her appeal, Asher submitted additional medical records and the opinions of two treating providers, George Chaney, M.D. and Terry Smith, MPAS, PA-C. As part of the appeals process, Reliance Standard directed Asher to undergo an independent medical evaluation by Loey Koussa, M.D.

On May 3, 2017, while her appeal with Reliance Standard was still pending, the Social Security Administration ("SSA") approved Asher's claim for disability benefits following a

hearing before an Administrative Law Judge (“ALJ”). [DE 1-1, at 5.] The ALJ observed that Asher suffered from a number of impairments including residuals of cerebral vascular accident/stroke, osteoarthritis of the acromioclavicular joints, a left rotator cuff tear, diabetes with neuropathy, COPD, sleep apnea, heart palpitations, obesity, hypertension with coronary artery disease, and degeneration of the spine. [AR. 1914.] The ALJ designated Asher as disabled effective August 12, 2016 (the date of her alleged stroke) and determined that she had “the residual functional capacity to perform less than the full range of sedentary work.” Asher submitted the fully favorable decision to Reliance Standard on June 5, 2017. [AR. 1907.]

On August 23, 2017, 79 days after receiving notice of the SSA’s award, Reliance Standard sent Asher a final denial letter upholding its previous decision to terminate her disability benefits. [AR. 265-280.] The letter provided justification for the determination and notified Asher that her administrative remedies had been exhausted. It did not, however, address the fact that Asher had been approved for SSA disability benefits. The letter instead indicated that Reliance Standard was under the impression that the SSA was still reviewing Asher’s benefits claim. [AR. 279] (“[Reliance Standard] understands that Asher continues to pursue Social Security Disability (SSDI) benefits.”). It was not until after Reliance Standard issued its final denial letter that it acknowledged receipt of Asher’s SSA award. [AR. 170.]

Asher brings the current action pursuant to 28 U.S.C. § 1132(a)(1)(B), which allows the beneficiary of an ERISA-governed plan to bring a civil action to recover benefits due under the terms of a policy. *Bagsby v. Cent. States, Se. & Sw. Areas Pension Fund*, 162 F.3d 424, 428 (6th Cir. 1998). Asher contends that Reliance Standard’s refusal to reinstate her disability benefits on appeal was arbitrary and capricious. She requests the full restoration of her benefits together with attorney’s fees and interest pursuant to 29 U.S.C. § 1132(g).

ANALYSIS

A district court reviews an ERISA plan administrator's denial of benefits *de novo*, unless the plan gives the administrator discretionary authority to determine eligibility for benefits. *Cox v. Standard Ins. Co.*, 585 F.3d 295, 299 (6th Cir. 2009). If the plan gives the administrator discretionary authority, the Court administers the highly deferential “arbitrary and capricious” standard of review. *Id.* “When it is possible to offer a reasoned explanation, based on the evidence, for a particular outcome, that outcome is not arbitrary or capricious.” *Schwalm v. Guardian Life Ins. Co. of Am.*, 626 F.3d 299, 308 (6th Cir. 2010) (quoting *Shields v. Reader's Digest Ass'n, Inc.*, 331 F.3d 536, 541 (6th Cir. 2003)).

“Deferential review is tempered, however, when an important conflict of interest consideration requires that benefits decisions be closely scrutinized.” *Cox*, 585 F.3d at 299. When the plan administrator both determines eligibility for benefits and also pays those benefits, an inherent conflict of interest arises that must be weighed as a factor in the court's determination. *Id.* The existence of such a conflict does not heighten the standard of review but rather is “one factor among many that a reviewing judge must take into account.” *Metro. Life Ins. Co. v. Glenn*, 554 U.S. 105, 116 (2008). Here, the parties agree that the Policy at issue grants ample discretion to Reliance Standard. Moreover, it is undisputed that Reliance Standard determines the eligibility for benefits under its policies and also pays out those benefits. As such, the Court reviews this matter under the highly deferential “arbitrary and capricious” standard, while bearing in mind that an inherent of interest exists. *McCandless v. Standard Ins. Co.*, No. 2:08-CV-14195, 2014 WL 4681480, at *2 (E.D. Mich. Sept. 19, 2014).

Asher attacks Reliance Standard's final denial letter on the basis that it failed to address the SSA's award of disability benefits. Though Reliance Standard admits that it did not contemplate the SSA's decision, it argues that the “oversight” was harmless since ERISA

plan administrators are not bound by SSA decisions. *Wooden v. Alcoa, Inc.*, 511 F. App'x 477, 484 (6th Cir. 2013).

Although SSA determinations are not binding on ERISA plan administrators, they are far from meaningless. *Calvert v. Firststar Fin., Inc.*, 409 F.3d 286, 294 (6th Cir. 2005). Indeed, a reviewing court may use the failure to consider an SSA decision as a factor when evaluating whether a plan administrator's benefits decision was arbitrary and capricious. *Salomaa v. Honda Long Term Disability Plan*, 642 F.3d 666, 679 (9th Cir. 2011) ("Evidence of a Social Security award of disability benefits is of sufficient significance that failure to address it offers support that the plan administrator's denial was arbitrary, an abuse of discretion."); *Glenn v. MetLife*, 461 F.3d 660, 669 (6th Cir. 2006), *aff'd sub nom. Metro. Life Ins. Co.* 554 U.S. at 128 (2008) ("[A]n ERISA plan administrator's failure to address the Social Security Administration's finding that the claimant was 'totally disabled' is yet another factor that can render the denial of further long-term disability benefits arbitrary and capricious."); *Kosiba v. Merck & Co., No. CIV.A. 98-3571 MLC*, 2011 WL 843927, at *18 (D.N.J. Mar. 7, 2011) (noting that a plan administrator's failure to consider an SSA determination in making its own benefit decisions "suggests arbitrary decisionmaking").

Here, the ALJ determined that Asher was disabled as of August 12, 2016, the day she suffered a stroke. [AR. 1914.] The ALJ also found that, in addition to the residual effects from her stroke, Asher continued to suffer from diabetes with neuropathy, coronary disease, neck/back pain, and other impairments. Accordingly, the ALJ concluded that (1) Asher had the residual functional capacity to perform less than the full range of sedentary work, and (2) there were no jobs that exist in the significant numbers in the national economy that she could perform. [AR. 1915.] In making these determinations, the ALJ attributed partial weight to the opinions of Asher's treating providers, George Chaney, M.D. and Terry Smith, MPAS, PA-C. [AR. 1915.]

The final denial letter issued by Reliance Standard did not address any of the ALJ's findings or even mention the fully favorable decision. While this silence does not make Reliance Standard's denial decision arbitrary per se, it is "among those serious concerns" that, "taken with some degree of conflicting interests," can provide an adequate basis for concluding that the insurance company abused its discretion. *DeLisle v. Sun Life Assur. Co. of Canada*, 558 F.3d 440, 446 (6th Cir. 2009). The Court has reviewed the relevant factors—including Reliance Standard's conflict of interest and its failure to consider the favorable SSA determination—and determines that the final denial decision was not the result of a "deliberate principled reasoning process." *See id.*

Having found that Reliance Standard acted arbitrarily and capriciously in denying Asher's appeal, the Court must determine the appropriate remedy. When a plan administrator fails to provide adequate reasoning, the proper remedy is to remand for further consideration, unless "it is so clear cut that it would be unreasonable for the plan administrator to deny the application for benefits on any ground." *Daft v. Advest, Inc.*, 658 F.3d 583, 595 (6th Cir. 2011) (citing *Tate v. Long Term Disability Plan for Salaried Emps. of Champion Int'l Corp. # 506*, 545 F.3d 555, 563 (7th Cir. 2008)). Here, the evidence is not so one-sided as to conclusively entitle Asher to disability benefits. Accordingly, the Court **remands** the case to Reliance Standard to consider Asher's file anew giving it "a full and fair review." *Pitts v. Prudential Ins. Co. of Am.*, 534 F. Supp. 2d 779, 791 (S.D. Ohio 2008). On remand, Reliance Standard must adequately consider the SSA's decision to award Asher disability benefits. The Court further directs Reliance Standard to squarely address the opinions of Asher's treating providers that she is totally disabled and unable to work. Reliance Standard **shall** render its decision within **90 days** of this Order.

Lastly, the Court finds that Asher's request for attorney's fees pursuant to § 1132(g)(1) is premature. The appropriate time for attorney's fees is after entry of judgment. *Thorn v. Northside Hosp.*, No. 1:07-CV-155, 2008 WL 2600791, at *9 (W.D. Mich. June 24, 2008). Because the Court has not determined how much, if any, monetary relief will be awarded to Asher, it is in no position to decide whether she is entitled to attorney's fees. *Id.*

Dated June 12, 2019.



Signed By:
Karen K. Caldwell
United States District Judge