

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

ARTHUR F. LESSER, IV,

Plaintiff,

v.

RELIANCE STANDARD LIFE
INSURANCE COMPANY,

Defendant.

CIVIL ACTION NO.

1:18-CV-00824-JPB

ORDER

This matter came before the Court on Arthur F. Lesser’s (“Plaintiff”) Motion for Attorney’s Fees and Costs Under ERISA § 502(g) [Doc. 41]. After due consideration, this Court finds as follows:

BACKGROUND

On June 4, 2019, Judge Thomas W. Thrash granted Plaintiff’s Motion for Judgment on the Administrative Record and determined that Reliance Standard Life Insurance Company (“Defendant”) wrongfully denied benefits to Plaintiff. [Doc. 40, p. 45]. Because the issue of attorney’s fees and prejudgment interest had not been briefed, Judge Thrash postponed entering final judgment until the briefing could be completed. [Doc. 40, pp. 45–46]. Judge Thrash also instructed the

parties to submit a proposed final judgment that detailed, in specific dollar amounts, the award owed. [Doc. 40, pp. 45-46].

ANALYSIS

A. Award of Benefits

This Court incorporates the findings and conclusions detailed in the June 4, 2019 Order [Doc. 40]. In said Order, the Court indicated it would order Defendant to “pay all benefits due through the date of entry of final judgment or 36 months from the date that monthly benefits became payable under the Plan, whichever is earlier.” [Doc. 40, p. 45]. This Court finds that Plaintiff is entitled to payment of all benefits due through thirty-six months from the date that monthly benefits became payable under the Plan because thirty-six months has already passed without a final order.¹ Plaintiff previously received benefit payments for two months—August 2016 and September 2016. Therefore, Defendant owes payment of benefits for the remainder of thirty-four months—October 2016 through August 2019. [Doc. 44, pp. 7–8].

¹ Defendant objects to Plaintiff’s request for thirty-six months of benefit payments because at the time the parties filed their briefings, thirty-six months had not yet passed. [Doc. 44, pp. 7–8]. This objection, however, is now moot because August 13, 2019, marked the passage of thirty-six months, which occurred before the date of this Final Judgment.

Plaintiff's net monthly benefit under the Plan is \$1,561.89 per month, totaling \$53,104.26 over thirty-four months. [Doc. 44, p. 8]. The Plan, however, requires that this amount be offset by Plaintiff's receipt of any overpayment of long-term disability benefits. [Doc. 44, p. 8]. In 2016, there was an overpayment of long-term disability benefits totaling \$7,671.60. [Doc. 44, p. 8]. Therefore, Plaintiff is entitled to recover from Defendant a total of \$45,432.66 in benefits ($\$1,561.89 \times 34 - \$7,671.60 = \$45,432.66$).

B. Attorney's Fees

i. Entitlement to Fees

Plaintiff seeks attorney's fees pursuant to 29 § U.S.C. 1132(g)(1). Under 29 § U.S.C. 1132(g)(1), a district court may, in its discretion, award reasonable attorney's fees, "as long as the fee claimant has achieved 'some degree of success on the merits.'" Hardt v. Reliance Standard Life Ins. Co., 560 U.S. 242, 245 (2010) (citation omitted). Here, it is undisputed that Plaintiff achieved some degree of success on the merits.

Where, as here, the party meets the required threshold of success on the merits, the district court must then consider five factors when deciding whether to award fees to the prevailing party:

- (1) the degree of the opposing parties' culpability or bad faith;
- (2) the ability of the opposing parties to satisfy an award of attorney's fees;

(3) whether an award of attorney's fees against the opposing parties would deter other persons acting under similar circumstances; (4) whether the parties requesting attorney's fees sought to benefit all participants and beneficiaries of an ERISA plan or to resolve a significant legal question regarding ERISA itself; [and] (5) the relative merits of the parties' positions.

Freeman v. Cont'l Ins. Co., 996 F.2d 1116, 1119 (11th Cir. 1993). No one factor listed above is decisive and other considerations may also be relevant to a determination of attorney's fees. Id. Importantly, Defendant does not oppose Plaintiff's request for fees based on the five-factor test. [Doc. 44, p.2]. Instead, Defendant contends that the hours billed were "clearly excessive." [Doc. 44, p.1].

ii. Calculation of Fees

A party seeking an award of attorney's fees bears the burden of documenting the appropriate hours and hourly rate. Coastal Fuels Mktg., Inc. v. Florida Exp. Shipping Co., 207 F.3d 1247, 1252 (11th Cir. 2000). Courts properly calculate an initial estimate of reasonable attorney's fees "by multiplying the number of hours reasonably expended on the litigation times a reasonable hourly rate. Adjustments to that fee then may be made as necessary in the particular case." Blum v. Stenson, 465 U.S. 886, 888 (1984) (citation omitted). When adjusting the initial fee calculation, courts should exclude hours that are "excessive, redundant, or otherwise unnecessary" and may consider other factors such as the quality of the results obtained. Hensley v. Eckerhart, 461 U.S. 424, 434 (1983).

Plaintiff argues he is entitled to \$95,060.00 in attorney's fees, which represents 271.6 hours of work performed by Paul J. Sharman, Esq. at \$350.00 per hour. [Doc. 41, pp. 6–7]. Although Defendant does not contest the hourly rate of Plaintiff's attorney, Defendant does object to the alleged number of hours dedicated to the case as unreasonable.

In support of the motion, Plaintiff provided declarations and supporting time records setting out in detail the number of hours his attorney expended on this case. [Doc. 41-1]. After Plaintiff obtained Mr. Sharman as counsel, Plaintiff's substantive filings included a Motion for Judgment on the Administrative Record [Doc. 28], a Response in Opposition to Defendant's Motion for Summary Judgment [Doc. 34] and a Reply to Defendant's Response in Opposition to Plaintiff's Motion for Judgment on the Administrative Record [Doc. 38]. This Court's review of Mr. Sharman's time records and substantive filings reflects that although most of Mr. Sharman's billing was reasonable, some was not.

The Administrative Record in this case is 1,211 pages and the evidence showed that Mr. Sharman spent 23.3 hours reviewing it. Without explanation, Defendant contends this amount of time is unreasonable. Based on this Court's experience and the length of the record, this Court finds that Mr. Sharman's initial review of the record was reasonable.

The time records also indicate Mr. Sharman spent 18.9 hours communicating with Plaintiff via phone calls and e-mail. Again, and without explanation, Defendant contends this amount of time is unreasonable. Based on this Court's experience and the complexity of the record, this Court finds that 18.9 hours of client communication over the course of seven months was reasonable.

The evidence further showed that Mr. Sharman spent 37.9 hours on legal research. Mr. Sharman spent a large portion of this time researching the complexity of idiopathic hypersomnolence and the differences between idiopathic hypersomnolence and narcolepsy. Importantly, however, after review of Plaintiff's substantive pleadings, this Court finds that such pleadings relied on only a basic understanding of these conditions and information already provided in the Administrative Record. Accordingly, this Court finds that 37.9 hours was not reasonable and will reduce the award by 18.0 hours.

The time records also indicate Mr. Sharman spent 76.2 hours responding to Defendant's Motion for Summary Judgment. Importantly, however, after review of the Response, this Court finds that, aside from a few changes, it is entirely duplicative of the Motion for Judgment. Accordingly, this Court finds that 76.2 hours was not reasonable and will reduce the award by 74.2 hours.

The evidence further showed that Mr. Sharman spent 28.0 hours replying to Defendant's Response in Opposition to Plaintiff's Motion for Judgment. Without explanation, Defendant contends this amount of time is clearly unreasonable for a reply brief. This particular brief, however, likely warranted several hours of additional research and writing because the Reply contained analyses of new case law that Plaintiff had not yet discussed in any of his filings. Therefore, this Court finds that 28.0 hours is reasonable.

After thoroughly reviewing the record and balancing the quality of the results obtained against excessive and redundant hours claimed, this Court finds that 179.4 hours would have been an appropriate amount of time to spend on this case. Therefore, this Court **HEREBY AWARDS** \$62,790.00 as a reasonable fee.

C. Prejudgment Interest

i. Entitlement to Prejudgment Interest

Plaintiff seeks prejudgment interest on his unpaid benefits. “[T]he award of prejudgment interest under ERISA is a matter committed to the sound discretion of the trial court” Moon v. Am. Home Assur. Co., 888 F.2d 86, 89–90 (11th Cir. 1989). The decision to award prejudgment interest is grounded in whether the award would make the wronged party whole. Louisiana & Ark. Ry. Co. v. Exp.

Drum Co., 359 F.2d 311, 317 (5th Cir. 1966).² Here, Plaintiff was wrongfully denied long-term disability benefits, and after review, this Court finds an award of prejudgment interest appropriate in this case.

ii. Rate of Prejudgment Interest

ERISA law is silent on the matter of prejudgment interest, but the Eleventh Circuit has explained “a district court can look to state interest rates to fill a gap in ERISA law.” Smith v. Am. Int’l Life Assur. Co., 50 F.3d 956, 958 (11th Cir. 1995) (finding the district court did not abuse its discretion by utilizing O.C.G.A. § 7-4-12 for guidance in determining the prejudgment interest rate). Under O.C.G.A. § 7-4-12(a), “[a]ll judgments in [Georgia] shall bear annual interest upon the principal amount recovered at a rate equal to the prime rate as published by the Board of Governors of the Federal Reserve System . . . on the day the judgment is entered plus 3 percent.” Because the prime rate is 5.25%, this Court **HEREBY AWARDS** prejudgment interest in the amount of 8.25% per year, to be compounded annually.

² “[D]ecisions of the United States Court of Appeals for the Fifth Circuit . . . handed down by that court prior to the close of business on [September 30, 1981], shall be binding as precedent in the Eleventh Circuit.” Bonner v. City of Prichard, 661 F.2d 1206, 1207 (11th Cir. 1981) (en banc).

CONCLUSION

For the foregoing reasons, Plaintiff's Motion for Attorney's Fees and Costs Under ERISA § 502(g) [Doc. 41] is **GRANTED**. This Court **HEREBY ORDERS** Defendant to (1) pay \$45,432.66 in disability benefits, (2) pay prejudgment interest at a rate of 8.25%, to be compounded annually, (3) pay \$62,790.00 in attorney's fees and (4) reinstate Plaintiff's claim. The Clerk is **DIRECTED** to close this case.

SO ORDERED this 20th day of August, 2019.



J. P. BOULEE
United States District Judge