2020 WL 6867155
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United States District Court,
N.D. Georgia, Atlanta Division.

CHRISTOPHER W. GHATTAS, Plaintiff,
v.
BLUE CROSS BLUE SHIELD HEALTHCARE PLAN OF GEORGIA, INC., Defendant.

1:20-CV-03157-ELR
|
Filed 11/18/2020

ORDER

Eleanor L. Ross United States District Judge Northern District of Georgia

***1** Presently before the Court is the Parties' Joint Preliminary Report and Discovery Plan ("JPRDP"). [Doc. 15]. In the JPRDP, the Parties present two (2) preliminary issues for the Court's consideration. First, Defendant Blue Cross Blue Shield Healthcare Plan of Georgia, Inc. objects to providing initial disclosures. [Id. at 10]. Second, Plaintiff Christopher Ghattas seeks to conduct discovery, which Defendant opposes. [Id. at 1, 12–17]. After setting forth a brief overview of the relevant factual background, the Court addresses both preliminary issues. [1]

I. Background

This case concerns Defendant's alleged wrongful denial of Plaintiff's health insurance benefits. Compl. [Doc. 1]. As an employee of non-party Karna, LLC (or "Karna"), Plaintiff participates in a group health insurance policy offered by Karna and administered by Defendant. Id. ¶ 3.

In early 2020, Plaintiff's physicians diagnosed him with cancer and recommended proton beam therapy (or "PBT") for his treatment. Id. ¶¶ 7, 10–11. PBT is a form of radiation therapy that is potentially less damaging (compared to other forms of radiation therapy) to the healthy tissue surrounding a tumor in a patient's body. Id. ¶¶ 12, 15. Plaintiff's treating oncologist, Dr. Shu, submitted a request to Defendant to obtain insurance coverage for the PBT on April 14, 2020. Id. ¶ 19. According to the Complaint, Defendant denied the coverage request less than one (1) hour after Dr. Shu sent it. Id. ¶ 24.

Thus, on April 29, 2020, Dr. Shu filed a first-level appeal to Defendant on behalf of Plaintiff, again requesting insurance coverage to facilitate PBT for Plaintiff's cancer treatment. Id. ¶ 27. Approximately two (2) weeks later, on May 13, 2020, Defendant denied the first-level appeal. Id. ¶ 34. Subsequently, on May 22, 2020, Dr. Shu initiated a second-level appeal; however, Defendant denied the second-level appeal on June 9, 2020. Id. ¶¶ 46, 48. Thus, with no further appeals available, Plaintiff exhausted his administrative appeal rights. Id. ¶¶ 51–52.

Accordingly, Plaintiff filed his Complaint in this Court on July 29, 2020. See generally id. Pursuant to the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), 29 U.S.C. § 1132(a)(1)(B), Plaintiff brings claims against Defendant for payment of health insurance benefits, interest, and future medical expenses related to his cancer treatment. Id. Plaintiff also seeks to recover attorney's fees and costs. Id. On October 9, 2020, the Parties submitted their JPRDP, which identifies the above-referenced preliminary issues: whether Plaintiff may conduct discovery (and to what extent), and whether Defendant is required to produce initial disclosures. [See Doc. 15].

II. Plaintiff's Proposed Discovery

The Court first examines Plaintiff's argument that he is entitled to discovery in this matter beyond the administrative record. [Doc. 15 at 1, 12–17]. As noted above, this case concerns Defendant's alleged wrongful denial of Plaintiff's health insurance benefits for PBT, a type of cancer radiation treatment. [Id. at 1–2]. Plaintiff argues that discovery is necessary "to determine whether a conflict of interest exists[,] the scope of the conflict," and whether any such "conflict of interest affected [Defendant's] benefits decision" to deny his coverage. [Id. at 13–14]. In response, Defendant argues that discovery is inappropriate in this action "for review on an administrative record brought under ERISA," because "discovery is generally not permitted in ERISA cases." [Id. at 17] (citing Wells v. Unum Life Ins. Co. of America, 593 F. Supp. 2d 1303, 1305 (2008)).

***2** The Court does not agree that discovery is inappropriate here. In matters such as the one at hand, "the body of case law developed under ERISA" requires "the [C]ourt, at the very least, [to] examine the facts as known to the

administrator at the time the decision to deny benefits was made to determine whether the administrator's decision was reasonable." Adams v. Hartford Life and Acc. Ins. Co., 589 F. Supp. 2d 1366, 1367 (N.D. Ga. 2008) (citing Glazer v. Reliance Standard Life Insurance Co., 524 F.3d 1241, 1246 (11th Cir. 2008)) (internal quotation marks omitted). As here, cases that involve alleged conflicts of interest "may necessitate a more comprehensive record" than the administrative record alone, "as even reasonable determinations by plan administrators are subject to judicial review for self-interest." Traina v. Metro. Life Ins. Co., 1:05-CV-2843-BBM, 2006 WL 8432889, at *5 (N.D. Ga. May 31, 2006) (quoting Brown v. Wal-Mart Stores, Inc., No. 3:05-cv-810-MEF (WO), 2006 WL 1094595, at *1 (M.D. Ala. Apr. 25, 2006)) (internal quotation marks omitted); accord Lake v. Hartford Life and Acc. Ins. Co., 218 F.R.D. 260, 261 (M.D. Fla. 2003) ("[B]ased on the issues raised by [p]laintiff[,] [ ] discovery may be conducted as to all 'the facts as known to the administrator at the time the decision was made.' ") (quoting Jett v. Blue Cross and Blue Shield of Ala., Inc., 890 F.2d 1137 (11th Cir. 1989)).

Additionally, the Court notes that the scope of evidence a court may consider in resolving an ERISA action depends largely upon the applicable standard of review. In Firestone Tire and Rubber Co. v. Bruch, the Supreme Court instructed:

> a denial of benefits challenged under § 1132(a)(1)(B) must be reviewed under a *de novo* standard unless the benefit plan expressly gives the plan administrator or fiduciary discretionary authority to determine eligibility for benefits or to construe the plan's terms, in which cases a deferential standard of review is appropriate.

489 U.S. 101, 102 (1989). Thus, the correct standard of review depends on whether the defendant-administrator possesses "fiduciary discretionary authority" pursuant to the terms of the relevant insurance plan. Id. The defendant-administrator's "discretion"—or lack thereof—determines the scope of the evidence a court may consider:

> [i]f an ERISA plan vests a plan administrator with discretion, then the [c]ourt may only consider the evidence the administrator was aware of at the time of its decision, but if the administrator has not been vested with discretion, the [c]ourt is not limited to the facts known to the administrator at the time of its decision.

Kirby v. Hartford, 4:08-CV-848-VEH, 2009 WL 10703312, at *2 (N.D. Ala. Mar. 6, 2009); accord Scippio v. Fla. Combined Life Ins. Co., 585 F. Supp. 2d 1317, 1328 (N.D. Fla. 2008) ("[I]f the administrator had no discretion[,] the [c]ourt is not limited to the facts known to the administrator at the time of the decision.") (citing Kirwan v. Marriott Corp., 10 F.3d 784, 789 (11th Cir.1994)).

Here, the Court chooses the narrower path. While "[i]t is unnecessary at this stage of the proceedings to decide which standard of review to apply," it is well-established that scope of allowable evidence (and thus, necessarily, the scope of appropriate discovery) is more narrow where a plan administrator is vested with discretion than where the administrator is not. See Lake, 218 F.R.D. at 261. In this case, Defendant claims to be vested with such discretion. [Doc. 15 at 5]. Accordingly, the Court finds it appropriate to allow Plaintiff to conduct discovery regarding "the evidence [Defendant] was aware of at the time of its decision[s.]" Kirby, 2009 WL 10703312, at *2.

The Court cautions Plaintiff that his discovery requests "must be narrowly tailored to obtain potential evidence concerning a serious procedural irregularity constituting a denial of due process." Traina, 2006 WL 8432889, at *5 (citing Miller v. Bank of Am. Corp., 401 F. Supp. 2d 1372, 1379 (N.D. Ga. 2005)). For example, discovery requests that seek to have Defendant "rehash the medical reasons for its denial" are improper. Id. at *6 (internal citation omitted). However, to the extent the administrative record does not reflect the facts—as known to Defendant at the time the benefit denial decisions were made—"nothing prohibits Plaintiff from conducting discovery as it pertains to (1) examining whether [Defendant] fulfilled [its] fiduciary duties, (2) whether proper procedures were followed in compiling the record; (3) whether the

record is complete; and (4) whether the administrator had a conflict of interest." Adams, 589 F. Supp. 2d at 1367 (citing Lake, 218 F.R.D. at 261) (internal quotation marks omitted).

***3** At this juncture, the Court "does not attempt to delineate the parameters of the plaintiff's discovery" beyond the guidance provided above. See id. at 1368. If Defendant disputes any of Plaintiff's discovery requests as outside these parameters, the Parties should meet (by telephone, videoconference, or in person) and confer in good faith to resolve the discovery dispute. If the Parties are unable to resolve any such potential discovery dispute after they meet and confer, they should promptly file into the docket a Joint Discovery Statement in accordance with the undersigned's Instructions for Civil Cases. [See Doc. 8 at 4–5].

III. Defendant's Objection to Providing Initial Disclosures

Next, the Court turns to Defendant's objection to providing initial disclosures. Defendant objects to providing initial disclosures, arguing that "Parties in an action for review on an administrative record are not required to provide initial disclosures" pursuant to Federal Rule of Civil Procedure 26(a)(1)(B)(i). See FED. R. CIV. P. 26(a)(1)(B)(i) ("The following proceedings are exempt from initial disclosure: an action for review on an administrative record[.]").

The Court disagrees that this provision of the Federal Rules controls in the circumstances of this case. As another district court in the Eleventh Circuit observed: "[b]ecause this [ERISA] case involves more than just the administrative record and because the parties will be engaging in discovery, [defendant is] required to provide initial disclosures in accordance with Rule 26(a)." Golden v. Sun Life Fin., Inc., 2:08-CV-070-WKW, 2008 WL 2782736, at *3 (M.D. Ala. July 15, 2008) (citing FED. R. CIV. P. 26(a)). Further, Defendant does not identify "any ERISA cases in which initial disclosures were not required, and at least one court has required initial disclosures when other discovery was allowed." Id. (citing Hamma v. Intel Corp., No. 07–cv–1795, 2008 WL 648482 *2–3 (E.D. Cal. Mar. 4, 2008)). Accordingly, the Court finds that Defendant must produce initial disclosures in accordance with Rule 26(a). See FED. R. CIV. P. 26(a).

IV. Conclusion

For the foregoing reasons, the Court **DENIES** Plaintiff's request for a scheduling conference. [Doc. 15 at 11]. The Court **DIRECTS** the Parties to conduct discovery consistent with this order and **ORDERS** Defendant to produce initial disclosures in accordance with Rule 26(a). If any discovery dispute should arise, the Court **DIRECTS** the Parties to meet and confer in good faith to resolve the dispute. If the Parties are unable to resolve any such potential discovery dispute, the Court **DIRECTS** them to promptly file a Joint Discovery Statement in accordance with the undersigned's Instructions for Civil Cases. [Doc. 8 at 4–5].

Additionally, upon review of the information contained in the Joint Preliminary Report and Discovery Plan form completed and filed by the Parties [Doc. 15], the Court **ORDERS** that the time limits for adding parties, amending the pleadings, filing motions, completing discovery, and discussing settlement are as set out in the Federal Rules of Civil Procedure and Local Rules of this Court. As such, this case remains on a four (4) month discovery track.

SO ORDERED, this 18th day of November, 2020.

All Citations

Slip Copy, 2020 WL 6867155

Footnotes

1 In the JPRDP, Plaintiff additionally requests a scheduling conference with the Court to determine these issues. [Doc. 15 at 11]. In light of the Court's rulings herein, the Court denies Plaintiff's request.