

EIGHTH CIRCUIT FINDS NO ABUSE OF DISCRETION IN ADMINISTRATOR'S TERMINATION OF BENEFITS AND RAISES QUESTIONS CONCERNING PROPER STANDARD OF REVIEW UPON ALLEGATIONS OF "PROCEDURAL IRREGULARITIES"

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In a decision released July 24, 2012, the Eight Circuit affirmed a lower court judgment that a plan administrator committed no abuse of discretion when it terminated an employee's long-term disability benefits. The case, styled *Wade v. Aetna Life Ins. Co.*, No. 11-3295 (8th Cir. July 24, 2012), involved a Quest Diagnostics, Inc. employee's challenge to Aetna's termination of her benefits despite a previous, contrary decision from the Social Security Administration (SSA), coupled with allegations of "serious procedural irregularities."

In its decision, the 8th Circuit began by concluding that the district court had reviewed the termination decision under the correct "abuse-of-discretion" standard. Under ERISA, a court's review of a plan administrator's denial of benefits considers whether the benefit plan gives the administrator the discretion to determine eligibility for benefits. Here, the plan unequivocally granted Aetna this discretionary authority. Nevertheless, Wade sought de novo review of Aetna's termination decision by alleging that Aetna had committed "serious procedural irregularities," which included Aetna's failure to provide the plaintiff's attorney with the operative plan documents for more than two years. Under plaintiff's desired de novo review, the district court would independently examine the termination of benefits without any deference to Aetna's previous decision.

Citing the district court's opinion below, the 8th Circuit observed that the irregularities all took place after the decision to terminate the plaintiff's long-term disability benefits, as well as the appeal of that decision. The plaintiff had failed to offer any explanation how these irregularities could have affected the termination decision itself (or the appeal). As a result, the Eighth Circuit concluded that any irregularities lacked a "connection to the substantive decisions reached." Without this connection, the allegations failed to trigger the "sliding-scale" standard of review (see below), and Aetna's conclusion would be reviewed for only an abuse of discretion.

Next, the 8th Circuit found that Aetna had not abused its discretion by ignoring the SSA's award of long-term disability benefits to Wade. First, the court noted that plan administrators are not

generally bound by the SSA's disability determinations. Moreover, Aetna's termination occurred five years after the SSA's evaluation, with new information that the SSA never considered. Because the court was uncertain that the SSA would have made the same determination upon these facts, they concluded that substantial evidence supported Aetna's decision to terminate the plaintiff's benefits. Accordingly, the 8th Circuit affirmed the district court's judgment.

While the holding itself hardly stretches the imagination, in a footnote the panel interestingly suggested that the Eighth Circuit's "sliding-scale" approach toward standards of review might be in peril following the U.S. Supreme Court decision in *Metropolitan Life Ins. Co. v. Glenn*, 554 U.S. 105 (2008).

Over a decade ago, the Eighth Circuit adopted a sliding scale for both conflicts of interest and procedural irregularities in *Woo v. Deluxe Corp.*, 144 F.3d 1157 (8th Cir. 1998). (A conflict of interest is said to exist where, as here, an employer or insurance company serves the dual role of administering a plan and making eligibility decisions under that plan.) In the Eighth Circuit, courts would apply a less deferential standard of review to the plan administrator's decision than abuse of discretion when confronted with a conflict of interest or procedural irregularity. Thus, a "sliding scale" arose, with a spectrum of standards of review available between the highly-deferential abuse of discretion standard and non-deferential *de novo* review.

In *Glenn*, however, the U.S. Supreme Court clarified the manner in which conflicts of interest affect a district court's review of the plan administrator's eligibility decisions. The Supreme Court concluded that a conflict of interest should be considered a factor in a court's abuse-of-discretion analysis. In other words, no unique "sliding scale" exists for conflicts of interest, because courts could weigh these conflicts along with any other considerations for an abuse of discretion. As such, *Glenn* partially overruled *Woo*. *Glenn* did not, however, consider how procedural regularities might affect the appropriate standard of review. In its wake, the Eighth Circuit has largely continued to apply its sliding-scale approach in procedural irregularity cases.

While *Wade*'s actual holdings are certainly instructive—that (1) after-the-fact procedural irregularities will not affect judicial review of a plan administrator's denial, and that (2) the SSA is not the final word on disability determinations, especially in light of new evidence—the largest implication for administrators may be the possibility of challenges to the Eighth Circuit's sliding-scale approach for procedural irregularities. Plan administrators benefit from courts reviewing their decisions as deferentially as possible, and the elimination of the sliding-scale approach could potentially obligate courts to consider termination decisions for only an abuse of discretion.

At this point, three obvious solutions are available. First, if *Glenn* offers any insight on the issue, a procedural irregularity might simply be another factor for courts to consider in determining whether an abuse of discretion existed. At least one Eighth Circuit panel arguably applied this approach in *Chronister v. Unum Life Ins. Co. of Am.*, 563 F.3d 773 (8th Cir. 2009). Nevertheless, the Eighth Circuit has not formally adopted this standard.

Alternatively, the Eighth Circuit could conceivably swing the other direction completely and find that procedural irregularities might trigger de novo review of termination decisions by district courts. This would result in independent review by courts, which would be highly prejudicial to plan administrators.

Finally, the Eighth Circuit could continue on its current path and find that procedural irregularities occupy their own independent sphere within plaintiffs' challenges to administrator decisions and affirm the sliding-scale approach. In that case, only the Supreme Court would be available to modify the standard.

In short, questions continue to surround the proper standard of review for courts facing allegations of procedural irregularities in the administration of benefit plans. With the proper standard up in the air, plan administrators should be mindful of the relative benefits and challenges they face under any potential standard of review. When the dust settles, however, plan administrators may stand to benefit from a far less compromising standard of review than currently used within the Eighth Circuit.

MEET THE TEAM



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