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United States District Court,
S.D. New York.

Ellen Kostas, Plaintiff,
v.
Prudential Insurance Company of America,
Defendant.

16-CV-1033 (VSB)
|
Signed 10/13/2016

Attorneys and Law Firms

Jeffrey David DeLott, for Plaintiff.

Alnisa Shakirah Bell, Seyfarth Shaw LLP, New York, NY, for Defendant.

ORDER

VERNON S. BRODERICK, United States District Judge

***1** Currently pending before me is Plaintiff's motion for discovery beyond the administrative record in this case brought under the Employee Retirement Income Security Act of 1974 ("ERISA"). (Doc. 23.) For the reasons stated herein, Plaintiff's motion is GRANTED IN PART AND DENIED IN PART.

I. Factual and Procedural Background[1]

Plaintiff was an employee of the Bank of New York Mellon Corporation ("Bank of New York") from November 1993 through April 2008. (Doc. 1 ¶ 24.) Plaintiff, together with other employees of the Bank of New York, was covered by a group insurance policy administered by Defendant Prudential Insurance Company of America ("Prudential") that included a short-term and long-term disability plan. (*Id.* ¶ 3, 4.) Prudential both issued the plan and decided whether claimants were entitled to benefits under the plan. (*Id.* ¶ 3.) Plaintiff alleges that Prudential found her disabled under its plans from April 18, 2008 until May 1, 2015 due to her fibromyalgia, but then terminated her long-term disability benefits without pointing to any medical findings to demonstrate that her medical impairments had changed or improved. (*Id.* ¶ 6.) Plaintiff contends she is entitled to disability benefits from May 1, 2015 to present, to continued monthly benefits, and to equitable and injunctive relief against Prudential for breach of fiduciary duty. (*Id.* at 59-60.)

Plaintiff filed her Complaint in this matter on February 10, 2016. (Doc. 1.) I held an initial conference in this matter on April 27, 2016. (ECF Entry April 27, 2016.) At that conference, the parties first disclosed to me that there was a dispute over whether Plaintiff was entitled to discovery beyond the administrative record in this matter. I issued an Order following the conference directing that Plaintiff file a letter by May 18, 2016 detailing why additional discovery beyond the record was appropriate, and that Defendant file a response letter by May 25, 2016. (Doc. 15.) Plaintiff filed its letter requesting additional discovery on May 18, 2016, (Doc. 23), and Defendant responded on May 25, 2016, (Doc. 25).

II. Preliminary Issue

Defendant raises the specter of a dispute between the parties over the applicable standard of review, and whether the standard of review has an effect on Plaintiff's ability to receive discovery outside of the record. (*See* Def.'s Let. at 1.)[2] However, I need not resolve the question of what standard of review should apply; "[t]he standard of review, the admissibility of evidence outside of the administrative record, and the scope of discovery are three separate issues, and the Court need not decide the first two in order to decide the last." *Shelton v. Prudential Ins. Co. of Am.*, No. 16-CV-1559, 2016 WL 3198312, at *2 (S.D.N.Y. June 8, 2016); *see also Mergel v. Prudential Life Ins. Co. of Am.*, No. 09-CV-39, 2009 WL 2849084, at *1 (S.D.N.Y. Sept. 1, 2009) (rejecting the argument Defendant raises here because it "conflates the standard of review with the standard for discovery"). Therefore, I only resolve the scope of discovery at this early stage of the litigation.

III. Legal Standard

***2** Plaintiff contends that there is an inherent conflict of interest because Prudential both determines whether a claim is payable and pays the claims. (Pl.'s Let. at 3.)[3] In *Metropolitan Life Ins. Co. v. Glenn*, 554 U.S. 105, 128 (2008), the Supreme Court emphasized that such conflict of interest is a factor to be considered in a court's review of an ERISA benefits determination: "[W]hen judges

review the lawfulness of benefit denials, they will often take account of several different considerations of which a conflict of interest is one." 554 U.S. at 117. Thus, when a plaintiff contends that a benefits determination under ERISA is tainted by the plan administrator's conflict of interest,

> [i]t logically follows that some amount of discovery is necessary, to enable the Court to determine the extent and nature of the conflict and the appropriate weight to give this conflict in the ultimate merits analysis, *i.e.*, to enable the Court to determine whether [administrator's] conflict of interest affected the reasonableness of the administrator's benefits decision.

Murphy v. First Unum Life Ins. Co., No. 15-CV-820, 2016 WL 526243, at *5 (E.D.N.Y. Feb. 9, 2016) (quoting *Tretola v. First Unum Line Ins. Co.*, No. 13-CV-231, 2013 WL 2896804, at *3 (S.D.N.Y. June 13, 2013)) (internal alteration omitted). *Glenn* does not address the standard for granting discovery. Indeed, following *Glenn*, "[c]ourts around the country have adopted a wide range of standards—some permitting open discovery, others limited discovery on conflicts, and others no discovery at all." *Joyner v. Cont'l Cas. Co.*, 837 F. Supp. 2d 233, 242 (S.D.N.Y. 2011). *Glenn* may in fact provide for more expansive discovery with regard to a potential conflict, and less discovery with regard to the merits of the claim determination itself as one judge stated:

> In my view, Glenn dictates more constrained discovery in one respect and somewhat more expansive discovery in another. Because it is now clear that a deferential standard of review applies when a plan accords the claims administrator discretion, even when the administrator is operating with a conflict, it will be more difficult in such cases to show good cause for discovery on the merits of the claim determination itself: "absent serious procedural deficiencies, discovery into the substantive merits of a claim remains off limits." On the other hand, by identifying an administrator's conflict as one factor to be weighed in evaluating whether a denial of benefits is arbitrary and capricious, Glenn invited discovery relating to any such conflict, since much of the relevant information would not have been part of the record.

Tretola, 2013 WL 2896804, at *2 (quoting *Schrom v. Guardian Life Ins. Co.*, No. 11-CV-1680, 2012 WL 28138, at *4 (S.D.N.Y. Jan. 5, 2012)).

Although a court has the discretion to admit evidence outside of the record, "such discretion 'ought not to be exercised in the absence of good cause.' " *Shelton v. Prudential Ins. Co. of Am.*, 2016 WL 3198312, at *1 (quoting *Krauss v. Oxford Health Plans, Inc.*, 517 F.3d 614, 631 (2d Cir. 2008)). However, "[t]he standard a plaintiff must meet to obtain evidence outside the administrative record is lower than the standard a plaintiff must meet before the district court may consider evidence outside the administrative record." *Id.* Therefore, "[a]t the discovery stage, the plaintiff need not 'make a full good cause showing, but must show a reasonable chance that the requested discovery will satisfy the good cause requirement.' " *Garban v. Cigna Life Ins. Co. of N.Y.*, No. 10-CV-5770, 2011 WL 3586070, at *2 (S.D.N.Y. Aug. 11, 2011) (quoting *Quinones v. First Union Life Ins. Co.*, No. 10-cv-8444, 2011 WL 797456, at *2 (S.D.N.Y. Mar. 4, 2011). One way for a Plaintiff to demonstrate a reasonable chance that her requested discovery will satisfy the good cause requirement is to "alleg[e] facts suggesting that the administrator's conflict may have affected its decision on the plaintiff's claim." *Durham v. Prudential Ins. Co. of Am.*, 890 F. Supp. 2d 390, 397 (S.D.N.Y. 2012).

IV. Discussion

A. *Whether Additional Discovery is Appropriate*

***3** Plaintiff argues that she should be entitled to discovery outside of the administrative record related both to Defendant's conflict of interest, as well as to whether the plan at issue in this case complies with the Department of Labor's claims-procedure regulation. (Pl.'s Let. at 1-5.) Defendant counters that Plaintiff has not evinced good cause to demonstrate the need for additional discovery, (Def.'s Let. at 1-5), and specifically that a conflict of interest standing alone cannot constitute good cause to permit additional discovery, (*id.* at 1). Further, Defendant attached to its letter Plaintiff's specific discovery requests, which consist of 18 interrogatories and 29 document requests. (*Id.* Exs. A, B.) Defendant argues that Plaintiff has not shown good cause for seeking this discovery, and that "Plaintiff's discovery requests improperly seek to expand the administrative record or probe matters irrelevant to determining the effect, if any, of Prudential's dual role as decision maker on the claim and the insurer of benefits." (*Id.* at 4.) Plaintiff states in its letter that it will also seek to depose the medical consultant, vocational consultant, the person who made the decision to terminate Plaintiff's benefits, and the person who upheld that decision. (Pl.'s Let. at 2.)

First, I note that the two cases cited by Defendant for the

notion that a conflict of interest, standing alone, cannot permit additional discovery predate *Glenn* and are therefore of limited value to my analysis. (*See* Def.'s Let. at 1 (citing *Lochner v. Unum Life Ins. Co. of Am.*, 389 F.3d 288, 294 (2d Cir. 2004) and *Krizek v. Cigna Grp. Ins.* 345 F.3d 91, 98 (2d Cir. 2003)). However, following *Glenn* some courts in this district have still required that a plaintiff present additional reasons beyond simply a conflict of interest to permit additional discovery. *See, e.g. Shelton*, 2016 WL 3198312, at *2-3.

I need not resolve whether or not a conflict of interest alone justifies additional discovery because Plaintiff has fulfilled her burden to show that there is a reasonable chance that the additional discovery she requests will satisfy the good cause standard. Beyond Prudential's conflict of interest, Plaintiff's Complaint alleges, among other things, that: (1) after finding Plaintiff disabled for seven years, Prudential terminated Plaintiff's benefits without identifying a single medical finding that showed her impairments had changed or improved, (Compl. ¶ 6);[4] (2) in 2011, a medical review by Prudential's John Leclerq determined that Plaintiff's disability would not improve and that Prudential should "pay through the maximum duration date of 11/15/2038", (*id.* ¶ 95); (3) although Plaintiff had been found to be disabled for many years by numerous physicians, both employed by Prudential and otherwise, Prudential had another insurance medical examination performed in 2014 by Dr. William Head Jr., who Plaintiff alleges is "notorious for aggressively seeking to sell his IME opinion to whomever is willing to pay for it", (*id.* ¶ 125); (4) Dr. Head's November 13, 2014 report never explained how any of Plaintiff's records showed that Plaintiff's condition had improved enough that she had regained the ability to do full time work, (*id.* ¶ 130); (5) Dr. Head's November 13, 2014 report was rejected in March 2015 by Dr. Armistead Williams III, who had previously treated Plaintiff, (*id.* ¶ 136); and (5) in April 2015, Prudential terminated Plaintiff's benefits in reliance solely on Dr. Head's report, (*id.* ¶ 139). These allegations are more than sufficient to show the good cause necessary to receive additional discovery. *See* Shelton, 2016 WL 3198312, at *3 (quoting *Feltington v. Hartford Life Ins. Co.*, No. 14-CV-6616, 2016 WL 1056568, at *10 (E.D.N.Y. Mar. 15, 2016), for the proposition that "plausible allegations of 'procedural irregularities' in the administrative review process, considered in conjunction with a structural conflict of interest, may be sufficient to show that a plaintiff has a reasonable chance of success in meeting the good cause standard")).

B. ***The Scope of Additional Discovery***

Defendant also disputes the scope of additional discovery being requested by Plaintiff, (Def.'s Let. at 4-5), which Plaintiff did not have a chance to address as Plaintiff's letter to the Court preceded Defendants. Regarding the four depositions requested by Plaintiff, depositions of similar officials have been permitted in cases of this nature, *see, e.g.*, *Garban*, 2011 WL 3586070, at *3, (allowing five depositions which included depositions of (a) two independent medical examiners, (b) a 30(b)(6) deposition of a representative from the insurer; and (c) the depositions of one insurance employee involved in the decision to terminate the claim and one involved in the denial of the appeal), and I think that—particularly given the factual allegations concerning the numerous purported procedural irregularities here—such depositions are appropriate. Plaintiff will, however, be limited to those four depositions.

***4** As to the requests for documents and interrogatories, Defendant contends that many of these requests are redundant because they concern materials already contained in the administrative record, or are otherwise overbroad. (Def.'s Let. at 4-5.) Upon a preliminary review of Plaintiff's discovery requests, it does appear that many of the requests are either too broad or concern materials one would expect are already included in the administrative record. Accordingly, Plaintiff is not entitled to all of the discovery sought here. *See Durham*, 890 F. Supp. 2d at 397 (limiting discovery to reasonable document requests and a single deposition "in light of the 'the significant ERISA policy interests of minimizing costs of claim disputes and ensuring prompt claims-resolution procedures' " (quoting *Locher*, 389 F.3d at 295)); *Joyner v. Cont'l Cas. Co.*, 837 F. Supp. 2d 233 (limiting the scope of discovery outside the administrative record). Plaintiff must submit revised discovery requests consistent with this opinion, and the parties should meet and confer concerning those requests.

V. Conclusion

For the reasons stated herein, Plaintiff's motion for discovery beyond the administrative record is GRANTED IN PART AND DENIED IN PART. Plaintiff may seek discovery outside of the administrative record, but Plaintiff's current interrogatory and document requests are overbroad. However, Plaintiff is entitled to the four depositions requested.

Accordingly, Plaintiff is directed to serve revised discovery requests and the parties should meet and confer concerning those requests. If the parties cannot reach agreement, on or before November 2, 2016, the parties must submit a joint letter indicating the discovery requests

on which they agree and those on which they disagree. At that time, I will either resolve the parties' disputes or schedule a telephone conference to resolve the parties' disputes. If the parties can reach agreement, on or before November 2, 2016, the parties must submit both a joint letter informing me that they have agreed to the scope of discovery and an updated Case Management Plan and Scheduling Order.[5]

The Clerk of Court is respectfully directed to close the pending motion. (Doc. 23.)

SO ORDERED.

Dated: October 13, 2016.

All Citations

Slip Copy, 2016 WL 5957306

Footnotes

1 This factual background is derived principally from Plaintiff's Complaint, and is provided for the limited purpose of ruling on this motion. My statements here should not be taken as findings of fact, and I make no such findings.

2 "Def.'s Let." refers to Defendant's May 25, 2016 letter to the Court. (Doc. 25.)

3 "Pl.'s Let." refers to Plaintiff's May 18, 2016 letter to the Court. (Doc. 23.)

4 "Compl." refers to Plaintiff's Complaint. (Doc. 1.)

5 A template for the Case Management Plan and Scheduling Order is available at http://nysd.uscourts.gov/judge/Broderick.