

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

SHARON MAIER,)	
)	
Plaintiff,)	
)	
vs.)	No. 01-2675-V
)	
UNUM LIFE INSURANCE COMPANY)	
OF AMERICA,)	
)	
Defendant.)	

ORDER AFFIRMING THE PLAN ADMINISTRATOR'S DECISION TO DENY
BENEFITS

Before the court is the motion of the defendant, UNUM Life Insurance Company of America (UNUM), filed December 7, 2001, requesting the court to deny relief to the plaintiff, Sharon Maier, and to affirm the plan administrator's decision to deny benefits. For the reasons that follow, the motion is granted.

This cases arises from UNUM's termination of long-term disability benefits to Maier upon routine review of her medical records. Maier worked at a 7-Eleven convenience store, owned by Southland Corporation. Maier filed a long-term disability claim with Southland Corporation Basic Benefits Plan ("the Plan"), a self-insured plan, on November 4, 1987, and began receiving benefits in 1988. Beginning February 1, 1999, the Southland Corporation and UNUM Life Insurance Company entered into a Reserve

Buy-Out Agreement in which UNUM took charge of all administration and payment distribution of Southland employees' disability claims. On January 1, 1999, a group disability policy ("the Policy") was issued by UNUM to cover current employees of the Southland Corporation. Maier's disability claim, however, continued to exist under the terms of the Plan. The Plan, now administered by UNUM, is governed by the Employment Retirement Income Security Act (ERISA), 29 U.S.C. § 1001, et seq.

I. FINDINGS OF FACT

_____Maier worked as a store manager of a 7-Eleven. She was diagnosed with systemic lupus in September of 1987. Maier filed a disability claim with Southland on November 7, 1987, stating she was no longer able to work effective September 28, 1987. (AR at UACL 00030, 00087.)¹

Maier listed her primary store manager duties as standing for ten to sixteen hours a day, lifting, bending, stocking shelves, filling coolers, filling out paperwork, cleaning, operating a cash register and managing four employees. (AR at UACL 00249.) The

¹ To avoid confusion, the court has chosen to adopt the same citation method used by the defendant to cite to the administrative record. The letters "AR" stand for administrative record, and the letters "UACL" stand for UNUM claim file. The administrative record is numbered from back to front, with page number UACL-001 being the last page of the record. The benefits plan in question in this case is contained in the administrative record from pages UACL-00080 to 00058.

Plan administrator determined that Maier qualified for long-term disability benefits based on the definition found in the Plan handbook. The definition of "Totally Disabled" under the Plan is:

[D]uring the first twelve (12) months of a claimed Total Disability, an Employee is continuously and completely prevented by Injury or Sickness from engaging in the duties of his/her occupation, provided, however, that the beginning of the first day after the first twelve (12) months of such Disability, an Employee shall be considered Totally Disabled only if such Employee is continuously and completely prevented from performing duties of any and all occupations for compensation or profit for which the Employee is reasonably suited by education, training or experience.

(AR at UACL 00075.) Maier received her first benefit payment on March 31, 1988.

When UNUM took over the administration of Maier's disability claim in 1999, it requested updated information on Maier's condition to certify that she continued to be totally disabled.

(AR at UACL 00233.) Maier's primary care physician, Dr. Norwood, filled out the Long Term Disability Physician's Statement to update Maier's status. (AR at UACL 00237-40.) Dr. Norwood determined that Maier's primary illness was biliary cirrhosis, with secondary illnesses consisting of diabetes mellitus and arthritis. (AR at 00239.) He expected little change in her current functional

abilities. Dr. Norwood noted that Maier could occasionally² bend, kneel, crawl, climb stairs, reach above her shoulder and carry up to fifty pounds. He further concluded that Maier could engage in Sedentary Activity for two to three hours a day, Light Activity for one to two hours a day, Medium Activity for four hours a day, and no Heavy Activity.³ Dr. Norwood placed no restriction on Maier's dexterity or general use of her hands. He noted that this assessment was based on his own clinical impression of Maier as well as her subjective complaints. (AR at UACL 00238.)

UNUM also sent Maier an Education and Employment History form to complete and return. UNUM received the Education and Employment History form from Maier in November 1999, approximately

² "Occasionally" on the Estimated Functional Abilities form is quantified as 33 percent of the day or less spent engaged in the activity in question.

³ The levels of activities are defined in the Plan as follows:

- Sedentary Activity: 10 lbs. maximum lifting or carrying articles. Walking/standing on occasion. Sitting 6/8 hours.
- Light Activity: 20 lbs. maximum lifting, carrying 10 lb. articles frequently, most jobs involve standing with a degree of pushing and pulling. Standing 6/8 hours.
- Medium Activity: 50 lbs. maximum lifting with frequent lifting/carrying of up to 25 lbs. Frequent standing and walking.
- Heavy Activity: 100 lbs. maximum lifting, frequent lifting/carrying of up to 50 lbs. Frequent standing and walking.

(AR at UACL 00237.)

three months after the initial form and request were mailed. (AR at UACL 00248-49.) Michael Chretien, Rehabilitation Coordinator of UNUM, then requested that a Transferable Skills Analysis be conducted for Maier. Linda Gels, director of Vocational Directions, LLC, conducted the analysis and determined that occupations suitable for Maier included desk clerk, telemarketer, cashier and gate guard. (AR at UACL 00264-65.) In conjunction with Thomas Heiman, a rehabilitation specialist, Gels assessed the availability of these jobs in the local market through a Labor Market Survey. They determined that were existing jobs in the market suitable for Maier with her restrictions. These jobs included telephone solicitor, check cashier, gate guard and hotel clerk. (*Id.* at UACL 00275-84.) Based on this information, UNUM sent Maier a letter dated January 19, 2000, explaining that under the Policy definition, she was no longer totally disabled because she had part-time sedentary work capacity and therefore no longer qualified for long term disability benefits. (*Id.* at UACL 00288.)

In March of 2000, Maier sent UNUM a letter written by her physician, Dr. Norwood, which stated that Maier was disabled due to liver disease and diabetes. Additional medical records from Dr. Norwood's office were provided for the year 2000. Subsequently, UNUM sent a letter to Maier explaining that the additional documents were insufficient to reinstate her benefits for long-term

disability. (AR at UACL 00438.) UNUM requested that Maier provide any additional documents from Dr. Norwood for the previous two years to assist in further review of her claim. UNUM evaluated the information and again upheld its denial of benefits and explained that it had determined that Maier could work as a gate guard, telemarketer or cashier. (AR at UACL 00459-61.) This indicated that Maier was not totally disabled as defined by the Plan and therefore was precluded from receiving benefits.

A few months later, Maier submitted additional medical records from Drs. Hoover, Norwood and Fleckenstein. (AR at UACL 00595-467.) Maureen Lee, D.O., Internist, of UNUM, reviewed Maier's additional submissions in January of 2001 and found that many of the additional medical documents UNUM requested were not sent, and many were duplicates of previous records received. Lee determined that none of the additional records were sufficient to reverse the initial benefit denial, and UNUM advised Maier of the decision by letter dated January 26, 2001. (AR at UACL 00650-54, 00602.)

In March of 2001, Dr. Norwood submitted an additional Physician Statement for Maier's long-term disability claim. He diagnosed Maier with biliary cirrhosis, diabetes mellitus, proteinuria and nephritic syndrome which, he noted, caused fatigue. The Physician Statement included all of Maier's current medical records. (AR at UACL 00643-45.)

Three days later, Maier requested that UNUM review her claim again, and she also submitted Dr. Norwood's medical records regarding her care. (AR at UACL 00646.) Lee of UNUM reviewed Maier's claim for the second time and found that many of the records submitted were duplicates. She noted that there were no records indicating progression of her cirrhosis or any additional information indicating a change in Maier's condition to warrant a reversal of UNUM's denial of benefits. (AR at UACL 000650-54.) UNUM notified Maier of its decision by letter on May 24, 2001. (AR at UACL 00655.)

In June of 2001, Maier requested a copy of her claim file and a final review of UNUM's decision to deny benefits. She submitted records from Drs. Kerlan and Ebaugh in support of her request and explained that records from Dr. Hoover were forthcoming. UNUM sent Maier the documents from her claim file and then notified her that upon final review, the decision to deny Maier long-term disability benefits was upheld, as she did not meet the definition of "totally disabled" as it is set forth in the Plan. (AR at UACL 00688, 00694-95.)

II. CONCLUSIONS OF LAW

A. The Standard of Review

When a plan administrator has discretionary authority to interpret the terms of the policy, the court reviews the plan

administrator's decision to deny benefits under an arbitrary and capricious standard. *Firestone Tire and Rubber Co. v. Bruch*, 489 U.S. 101, 115 (1989). The plan at issue in this case contains express language vesting UNUM's plan administrator with the discretionary authority to determine eligibility for benefits and to interpret the terms and provisions of the policy: "The Plan Administrator . . . shall be responsible for the day-to-day operation and administration of the Plan, including, without limitation, any and all decisions pertaining to the granting or denial of benefit claims." (AR at UACL 00066.)⁴

In making a determination based on the arbitrary and capricious standard of review, the court may only consider certain information. The court's role is limited to a review of the administrative record before the administrator at the time the final decision to deny benefits was made. *Miller v. Metropolitan Life Ins. Co.*, 925 F.2d 979, 986 (6th Cir. 1991). Evidence or

⁴ Maier agrees that normally the arbitrary and capricious standard of review is appropriate; in this case, however, she insists that UNUM violated due process when it relied on the wrong definition of "long-term disability" to deny her benefits claim and that a *de novo* standard of review is required for due process challenges. She bases this assertion on *Wilkins v. Baptist Healthcare Sys., Inc.*, 150 F.3d 609 (6th Cir. 1998.) (Pl.'s Mem. at 2.) Maier, however, did not plead a due process challenge in her complaint. (Pl.'s Cmpl., filed Aug. 23, 2001.) Without pleading a violation of due process, the issue is not properly before this court. *Roeder v. American Postal Workers Union, AFL-CIO*, 180 F.3d 733, 737 n.4 (6th Cir. 1999).

information not presented to the administrator may not be reviewed by the court. *Id.*; *Perry v. Simplicity Engineering*, 900 F.2d 963, 967 (6th Cir. 1990) (applying the principle to both *de novo* and arbitrary and capricious standards of review); *Crews v. Central States, Southeast and Southwest Areas Pension Funds*, 788 F.2d 332, 336 (6th Cir. 1986) (applying the principle to arbitrary and capricious standard of review).

When it reviews the administrative record, the court must determine whether the administrator's decision was "rational in light of the plan's provisions." *Miller*, 925 F.2d at 984 (quoting *Daniel v. Eaton Corp.*, 839 F.2d 263, 267 (6th Cir. 1988)). In other words, the administrator's decision to deny benefits is not arbitrary or capricious if the administrator could have rationally come to that decision based on the evidence in the administrative record. According to the Sixth Circuit, "[w]hen it is possible to offer a reasonable explanation, based on the evidence, for a particular outcome, that outcome is not arbitrary or capricious." *Davis v. Kentucky Finance Cos. Retirement Plan*, 887 F.2d 689, 693 (6th Cir. 1989) (quoting *Pokratz v. Jones Dairy Farm*, 771 F.2d 206, 209 (7th Cir. 1985)).

B. UNUM's Decision to Deny Benefits

UNUM insists that given the information available to the Plan administrator at the time the decision to deny benefits was made,

the decision was rational in light of the Plan's provisions and was not arbitrary and capricious. It relies on *Baker v. United Mine Workers of America Health and Retirement Funds*, 929 F.2d 1140, 1144 (6th Cir. 1999), in which the court stated that the denial of benefits is proper "if it is the result of a deliberate, principled reasoning process and if it is supported by substantial evidence." In support of its position, UNUM points to several facts.

First, UNUM highlights Dr. Norwood's findings in his initial Physician's Statement. Dr. Norwood has treated Maier for approximately the last five years. Dr. Norwood placed minimal restrictions on Maier's ability to work. He determined that she could perform a few hours of work at each designated activity level except Heavy Activity. (AR at UACL 00237-39.)

Second, Maier's original diagnosed condition of systemic lupus was later ruled out by treating physicians. She was then diagnosed with biliary cirrhosis, a chronic liver disease. (AR at UACL 00239.) Recent tests, however, showed no signs of liver decomposition. (AR at UACL 00652.) Maier also suffers from diabetes mellitus, which, doctors have noted, has been difficult to regulate. Much of this difficulty rests with Maier herself, who admittedly has not followed a healthy diabetic diet. This fact is noted in her medical record on numerous occasions by various treating physicians. (AR at UACL 00488, 00483, 00394.) Nothing in

the record indicates that her diabetic condition, even when exacerbated by Maier's failure to adhere to a healthy diet, impairs her ability to work.

Third, Dr. Norwood submitted a letter and supplemental Physician's Statement to UNUM, expressing his opinion that Maier was disabled due to diabetes, cirrhosis and nephritic syndrome. (AR at UACL 00643-45, 00436-37.) Nevertheless, Dr. Maier submitted no new medical evidence, such as tests or office notes, to support his altered assessment of Maier's functional abilities in the workplace.

Finally, UNUM reviewed Maier's claim for benefits six times. (AR at UACL 0064-65, 00438, 00460, 00602, 00656-57, 00675.) UNUM had its in-house doctors and nurses review all of Maier's submitted medical records. In several of those reviews, UNUM requested many additional medical records from Maier, many of which she never provided. (AR at UACL 00601, 00233, 00438.) These records may have benefitted Maier's claim. Without them, the Plan administrator was left with his initial determination that Maier was not totally disabled, or as the Plan definition states, "continuously and completely prevented from performing the duties of any and all occupations for compensation or profit for which the Employee is reasonably suited by education, training, or experience." (AR at UACL 00075.) UNUM argues, therefore, that as

the Sixth Circuit stated in *Baker*, it used a well-reasoned process to determine that Maier was not entitled to any further disability benefits and that substantial medical evidence in Maier's record supports its finding.

In response, Maier argues that she is not trained in any of the positions that UNUM asserts she would be able to perform. (Pl.'s Mem. at 6.) The jobs listed, however, are not of the type which would require specialized education in those fields. Maier did not indicate that she had any prior specialized training aside from any training she might have received on-the-job before she became a store manager at the 7-Eleven. Her educational background consists of high school until the tenth grade and beauty school. UNUM took into consideration Maier's level of experience and training when it assessed available positions. (AR at UACL 00264-65.)

Maier insists that UNUM cannot deny her disability benefits because it used the wrong definition to disqualify her. (Pl.'s Mem. at 5.) UNUM admits that initially it used the new Policy definition, under which current Southland employees are covered, to deny Maier's receipt of further benefits.⁵ During the review

⁵ The Policy provision originally used by UNUM to disqualify Maier states:

"Total Disability or Totally Disabled" mean:

process, this mistake was corrected. Maier contends that the Policy, unlike the Plan, required that she be under active treatment by a physician and that she be disqualified specifically from part time and full time work, and that based on these differences in the Policy and the Plan, she incorrectly was denied benefits. Maier fails to note the importance of Dr. Norwood's original Physician's Statement. In it, he claims that Maier can lift up to fifty pounds, has no dexterity problems and can work at various activity levels throughout an eight-hour workday. Based on this assessment, and a lack of any medical evidence to the contrary, Maier is not totally disabled under *either* definition. The court notes that it would be easier for a claimant to show that

During the first twelve (12) months of a claimed Total Disability means that the Employee is continuously and completely prevented by injury or sickness from engaging in the duties of his occupation with the Employer or all other Employers by whom the Employee is employed. After the first twelve (12) months of such Total Disability such phrase means that the Employee is continuously and completely prevented from performing *either full time or part time duties* of any and all occupations for compensation or profit fow (sic) which the Employee is reasonably suited by education, training, or experience *and Employee is under Active Treatment by a qualified Physician.*

(Pl.'s Resp. to Def.'s Mtn. to Deny Relief, Ex. C.) (Emphasis added to note differences between Plan language and Policy language, above.)

he was disabled under the Plan definition, as it does not require the claimant to be under active treatment by a physician; in Maier's case, however, this does not play a role in UNUM's decision to deny benefits. UNUM insists that based on Dr. Norwood's assessment and lack of medical evidence to the contrary, Maier is able to work in certain jobs and thus is not totally disabled, regardless of whether a physician is currently treating her.

Maier also argues that the Labor Market Study conducted to determine her abilities to work was incorrect, as it was used in conjunction with the Policy definition rather the Plan definition of total disability and erroneously assessed her ability to work part time and full time. The definition in the Plan states that the claimant must be unable to work in "any and all occupations for compensation or profit." (AR at UACL 00075.) The Labor Market Study revealed that there were several positions where Maier could work. Thus the study's findings fit within the Plan's definition as well.

Finally, Maier asserts that Dr. Norwood's Physician Statement was "clarified" by his supplemental Physician's Statement in March of 2001 and his letter in January of 2000 and that UNUM should have reversed its decision to deny benefits.⁶ Maier insists that there

⁶ Maier puts forth an additional argument regarding the theory of *contra proferentum*, suggesting that the Plan definition

is no basis for UNUM to need additional medical documentation that would support this change in Dr. Norwood's opinion. Rather, UNUM should take Dr. Norwood at his word. That is simply an invalid argument and does not apply to the review of denial of benefits under ERISA. The Plan administrator must assess the medical information in the claimant's record and adhere to the Plan's definition of "totally disabled"; he cannot rely solely on a doctor's assertion that a patient is totally disabled.

CONCLUSION

Accordingly, the court concludes that the Plan administrator's decision to deny benefits in this case was rational based on the evidence contained in the administrative record, and that the decision to deny benefits was not arbitrary and capricious. For the reasons set forth above, the Plan administrator's decision is affirmed and UNUM's motion to deny relief to Maier is granted.

IT IS SO ORDERED this 21st day of February, 2002.

DIANE K. VESCOVO
UNITED STATES MAGISTRATE JUDGE

is ambiguous and should therefore be construed against the drafter. (Pl.'s Mem. at p. 7.) This court finds the definition of "Totally Disabled" in the Plan to be completely straightforward. There is no need to interpret or construe the Plan in any form other than that in which it exists.