

## Westlaw.

242 F.3d 374

242 F.3d 374, 2000 WL 1728303 (C.A.8 (Ark.))

**(Table, Text in WESTLAW), Unpublished Disposition  
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NOTICE: THIS IS AN UNPUBLISHED OPINION.

(The Court's decision is referenced in a "Table of Decisions Without Reported Opinions" appearing in the Federal Reporter. Use FI CTA8 Rule 28A, FI CTA8 IOP and FI CTA8 APP. I for rules regarding the citation of unpublished opinions.)

United States Court of Appeals, Eighth Circuit.  
James GUGIN, Appellee,

v.

J.C. PENNEY COMPANY, Inc. Voluntary Employees Beneficiary Association Medical Benefit Plan, Appellant.

No. 98-3635, 98-3989, 98-4011.

Submitted Nov. 15, 2000.

Filed Nov. 22, 2000.

ERISA plan beneficiary brought suit challenging denial of benefits for a portion of time he was hospitalized for post-stroke psychiatric and related problems, and for his subsequent treatment at residential facility. The United States District Court for the Western District of Arkansas entered judgment granting beneficiary partial relief, and awarded attorney fees. Plan appealed. The Court of Appeals held that: (1) plan administrator abused its discretion by refusing to extend deadline for filing administrative appeal; (2) beneficiary was entitled to benefits for hospitalization, and for portion of time in residential facility; and (3) court failed to consider necessary factors in making award of attorney fees.

Affirmed in part, vacated in part, and remanded.

## West Headnotes

**[1] Labor and Employment 231H ⚡688**

231H Labor and Employment  
231HVII Pension and Benefit Plans  
231HVII(K) Actions

231HVII(K)5 Actions to Recover Benefits  
231Hk684 Standard and Scope of Review

231Hk688 k. Abuse of Discretion.  
Most Cited Cases

(Formerly 296k139)

Denial of benefits by ERISA plan administrator was subject to judicial review under abuse of discretion standard, where terms of plan gave plan administrator the exclusive right and discretion to interpret, to rule on plan language, and to determine coverage. Employee Retirement Income Security Act of 1974, § 2 et seq., 29 U.S.C.A. § 1001 et seq.

**[2] Federal Courts 170B ⚡776**

170B Federal Courts  
170BVIII Courts of Appeals  
170BVIII(K) Scope, Standards, and Extent  
170BVIII(K)I In General  
170Bk776 k. Trial De Novo. Most

Cited Cases  
Court of Appeals reviews de novo determination by district court as to whether administrator of ERISA plan abused its discretion in interpreting plan, and ruling on coverage under plan. Employee Retirement Income Security Act of 1974, § 2 et seq., 29 U.S.C.A. § 1001 et seq.

**[3] Labor and Employment 231H ⚡685**

231H Labor and Employment  
231HVII Pension and Benefit Plans  
231HVII(K) Actions  
231HVII(K)5 Actions to Recover Benefits  
231Hk684 Standard and Scope of Review

231Hk685 k. In General. Most  
Cited Cases  
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**Labor and Employment 231H ⚡691**

231H Labor and Employment  
231HVII Pension and Benefit Plans

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231HVII(K) Actions  
 231HVII(K)5 Actions to Recover Benefits  
 231Hk691 k. Record on Review. Most

Cited Cases

(Formerly 296k139)

Discretionary determinations by administrator of ERISA plan regarding plan interpretation, and coverage under plan, are reviewed to determine whether they are supported by substantial evidence, considering only the evidence that was before the administrator, and court must affirm if a reasonable person could have reached a similar decision, given the evidence before him, not merely if a reasonable person would have reached that decision.

**[4] Labor and Employment 231H 623**

231H Labor and Employment

231HVII Pension and Benefit Plans

231HVII(J) Determination of Benefit Claims by Plan

231Hk620 Administrative Review

231Hk623 k. Time Limitations. Most

Cited Cases

(Formerly 296k135)

Administrator of ERISA plan abused its discretion by refusing to extend deadline for filing administrative appeal challenging administrator's decision to deny medical benefits under plan for a portion of time that plan beneficiary was hospitalized for post-stroke psychiatric and related problems, and for his later treatment at residential facility. Employee Retirement Income Security Act of 1974, § 2 et seq., 29 U.S.C.A. § 1001 et seq.

**[5] Insurance 217 2494(2)**

217 Insurance

217XX Coverage--Health and Accident Insurance

217XX(B) Medical Insurance

217k2493 Settings for Care; Service Organizations

217k2494 In-Patient Hospital Treatment

217k2494(2) k. Mental or Emotion-

al Disorders. Most Cited Cases

**Labor and Employment 231H 565**

231H Labor and Employment

231HVII Pension and Benefit Plans

231HVII(H) Coverage and Benefits of Particular Types of Plans

231Hk564 Medical and Health Plans

231Hk565 k. In General. Most Cited

Cases

(Formerly 296k121)

Administrator of ERISA plan abused its discretion by determining that plan beneficiary was not entitled to medical benefits to cover a portion of cost for period in which he was hospitalized for treatment of his post-stroke psychiatric and related problems. Employee Retirement Income Security Act of 1974, § 2 et seq., 29 U.S.C.A. § 1001 et seq.

**[6] Insurance 217 2494(2)**

217 Insurance

217XX Coverage--Health and Accident Insurance

217XX(B) Medical Insurance

217k2493 Settings for Care; Service Organizations

217k2494 In-Patient Hospital Treatment

217k2494(2) k. Mental or Emotional Disorders. Most Cited Cases

**Labor and Employment 231H 567**

231H Labor and Employment

231HVII Pension and Benefit Plans

231HVII(H) Coverage and Benefits of Particular Types of Plans

231Hk564 Medical and Health Plans

231Hk567 k. Treatments and Benefits

Covered. Most Cited Cases

(Formerly 296k121)

Administrator of ERISA plan did not abuse its discretion by determining that plan beneficiary was not entitled to medical benefits under plan covering

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cost of treatment at residential facility for post-stroke psychiatric and related problems, based on finding of its reviewing physicians that such care was medically unnecessary. Employee Retirement Income Security Act of 1974, § 2 et seq., 29 U.S.C.A. § 1001 et seq.

**[7] Federal Courts 170B ↪830**

170B Federal Courts  
170BVIII Courts of Appeals  
170BVIII(K) Scope, Standards, and Extent  
170BVIII(K)4 Discretion of Lower Court  
170Bk830 Costs, Attorney's Fees and Other Allowances. Most Cited Cases  
Award of attorney fees in an ERISA case is reviewed for abuse of discretion. Employee Retirement Income Security Act of 1974, § 2 et seq., 29 U.S.C.A. § 1001 et seq.

**[8] Labor and Employment 231H ↪711**

231H Labor and Employment  
231HVII Pension and Benefit Plans  
231HVII(K) Actions  
231HVII(K)8 Costs and Attorney Fees  
231Hk711 k. Factors Considered in General. Most Cited Cases  
(Formerly 296k143)  
In deciding whether to award attorney fees in an ERISA case, district court should consider, in addition to amount of recovery, the opposing party's culpability or bad faith, its ability to pay, the deterrent effect an award would have on others, whether the requesting party sought to benefit all participants or to resolve a significant ERISA legal question, and the relative merits of the parties' positions. Employee Retirement Income Security Act of 1974, § 2 et seq., 29 U.S.C.A. § 1001 et seq.

**[9] Labor and Employment 231H ↪717**

231H Labor and Employment  
231HVII Pension and Benefit Plans  
231HVII(K) Actions  
231HVII(K)8 Costs and Attorney Fees

231Hk713 Particular Cases  
231Hk717 k. Actions to Recover Benefits. Most Cited Cases  
(Formerly 296k143)

District court abused its discretion by awarding attorney fees to ERISA plan beneficiary in its action challenging plan administrator's denial of benefits, where court considered only amount of recovery, and did not consider additional appropriate factors, including plan's culpability or bad faith, its ability to pay, deterrent effect an award would have on others, and the relative merits of the parties' positions. Employee Retirement Income Security Act of 1974, § 2 et seq., 29 U.S.C.A. § 1001 et seq.

Appeals from the United States District Court for the Western District of Arkansas.

Before BOWMAN, FAGG, and BEAM, Circuit Judges.

PER CURIAM.

\*1 J.C. Penney Company, Inc. Voluntary Employees Beneficiary Association Medical Benefit Plan ("the Plan"), set up under the Employment Retirement Security Act of 1974 (ERISA), denied medical benefits to Plan participant James Gugin for a portion of the time he was hospitalized for post-stroke psychiatric and related problems, and for his later treatment at Timber Ridge Ranch (Timber Ridge), based on the finding of its reviewing physicians that the care was medically unnecessary. The Plan also denied as untimely one of Gugin's administrative appeals. After Gugin brought suit under 29U.S.C. § 1132(a)(1)(B) for wrongful denial of benefits, the district court decided (1) the administrative appeal should be deemed timely; (2) Gugin was entitled to recover benefits for his hospitalization; (3) although Gugin was not entitled to recover the costs of Timber Ridge, he should recover the cost of certain alternative care for the period of time he spent there; and (4) he was entitled to attorney fees of \$8,400. The Plan appeals the district court's award of benefits and attorney fees. Gugin

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cross-appeals the district court's conclusion he was not entitled to coverage for his Timber Ridge stay. We affirm the award of medical benefits, but remand to the district court for reconsideration of the attorney fees award.

[1][2][3] Because the Plan gave the administrator-Aetna, or the J.C. Penney Board of Governors (Board), in an appeal the exclusive right and discretion to interpret, to rule on Plan language, and to determine coverage, the district court properly reviewed the decisions at issue for abuse of discretion. *See Birdsell v. United Parcel Serv. of Am., Inc.*, 94 F.3d 1130, 1133 (8th Cir.1996). We review the district court's determination de novo. *See id.* Like the district court, we determine whether the Plan's decisions were supported by substantial evidence, considering only the evidence that was before the administrator. *See Farley v. Arkansas Blue Cross and Blue Shield*, 147 F.3d 774, 777 (8th Cir.1998). We must affirm if “ ‘a reasonable person could have reached a similar decision, given the evidence before him, not that a reasonable person would have reached that decision.’ ” *See Sahulka v. Lucent Tech., Inc.*, 206 F.3d 763, 769 (8th Cir.2000) (citation and emphasis omitted).

[4][5] The Plan argues the district court did not apply this deferential standard of review in considering as timely the administrative appeal the Plan administrator had rejected as untimely. Our review of the court's thorough order, however, convinces us the court properly reviewed for an abuse of discretion, and we agree with the court it was unreasonable for the Plan administrator not to extend the appeal deadline in the circumstances of this case. We also agree with the district court that the Plan's denial of hospitalization costs was unreasonable but the Timber Ridge denial was reasonable.

[6] The Plan contends the district court was precluded from awarding Gugin the charges he would have incurred for care in a less medically intense setting for the period of time he was hospitalized at Timber Ridge once it upheld the Plan's refusal to provide coverage for Timber Ridge. The Plan also

argues the district court wrongly considered material submitted by the parties, at the court's request, in determining the proper award. We disagree. The Plan had suggested partial hospitalization or skilled nursing care in lieu of treatment at Timber Ridge. Further, the Plan presented no evidence showing Gugin would not have required the suggested alternative care for at least as long as he incurred charges at Timber Ridge, and the district court sought additional evidence only to determine the cost of the alternative benefits the Plan had suggested it would provide-not to determine the reasonableness of the denial of the requested coverage. *Cf. Mansker v. TMG Life Ins. Co.*, 54 F.3d 1322, 1328 (8th Cir.1995) (declining to adopt insurer's view that, when plan administrator has discretionary authority to decide issues concerning payment of benefits but fails to do so because coverage is being denied, courts may not independently decide issues after determining benefits were improperly denied). Likewise, we disagree with Gugin that remand to Aetna to determine the cost of alternative benefits was required.

\*2 [7][8][9] Finally, the Plan argues the court failed to apply the relevant factors in awarding attorney fees, and the amount was unreasonable given Gugin's limited success. We review the award of attorney fees in an ERISA case for abuse of discretion. *See Dodson v. Woodmen of the World Life Ins. Co.*, 109 F.3d 436, 440 (8th Cir.1997). In deciding whether to award attorney fees, the district court should consider the opposing party's culpability or bad faith, its ability to pay, the deterrent effect an award would have on others, whether the requesting party sought to benefit all participants or to resolve a significant ERISA legal question, and the relative merits of the parties' positions. *See id.* Although the amount of the recovery is relevant, *see Griffin v. Jim Jamison, Inc.*, 188 F.3d 996, 997 (8th Cir.1999), the district court mentioned only that factor, *see id.* at 997-98 (it is unnecessary for the district court to examine explicitly and exhaustively all factors relevant to fee award, but where court mentioned only amount of recovery, other factors

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deserved explicit consideration). We thus find the district court abused its discretion in awarding attorney fees without consideration of the additional factors.

Accordingly, we affirm the district court's award of medical benefits, we vacate the award of attorney fees, and we remand for further proceedings consistent with this opinion.

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