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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JAN ELLEN REIN,)	
)	2:09-cv-02348-GEB-EFB
Plaintiff,)	
)	<u>ORDER DENYING PLAINTIFF'S</u>
v.)	<u>MOTION FOR SUMMARY JUDGMENT*</u>
)	
THE STANDARD INSURANCE COMPANY,)	
UNIVERSITY OF THE PACIFIC LONG)	
TERM DISABILITY BENEFITS PLAN,)	
)	
Defendants.)	
_____)	

Plaintiff Jan Ellen Rein moves for summary judgment, in which Plaintiff seeks "a determination that the appropriate standard of review of her claim for long term disability benefits is *de novo*." (Pl.'s Notice & Mot. for Summ. J. 1:24-26.) Defendants Standard Insurance Company ("Standard") and University of the Pacific Long Term Disability Benefits Plan oppose Plaintiff's motion, arguing Plaintiff's ERISA claim should be reviewed under the abuse of discretion standard of review.

Plaintiff was employed as a law professor by the University of the Pacific, McGeorge School of Law, until May 31, 2007. (Compl. ¶ 9.) As a University of Pacific employee, Plaintiff was a "participant" and received coverage under a group long term disability

* This matter is deemed suitable for decision without oral argument. E.D. Cal. R. 230(g).

1 insurance policy ("the Policy"). (Smith Decl. ¶ 4, Ex. A; Compl. ¶¶
2 6, 10.) Plaintiff had a history of back problems, and on November 28,
3 2006, submitted a claim for long term disability benefits under the
4 Policy to Defendant Standard. (Compl. ¶ 10.) However, on February
5 22, 2007, Standard denied Plaintiff's claim for benefits. (Id.)
6 Plaintiff filed her complaint in this federal court on August 21,
7 2009, challenging Standard's denial of her benefits claim under 29
8 U.S.C. § 1132(a)(1)(B); she filed her pending summary judgment motion
9 on June 28, 2010.

10 ***I. The Policy Constitutes the ERISA Plan at Issue in This Case***

11 Plaintiff's ERISA claim is brought under 29 U.S.C. §
12 1132(a)(1)(B), which "permits a participant in an ERISA-regulated plan
13 to bring a civil action to recover benefits due to her under the terms
14 of her plan, to enforce rights under the terms of the plan, or to
15 clarify her rights to future benefits under the terms of the plan."
16 Gilliam v. Nevada Power Co., 488 F.3d 1189, 1192 n.2 (9th Cir. 2007)
17 (quoting 29 U.S.C. § 1132(a)(1)(B)).

18 Plaintiff alleges in her complaint that the Policy is the ERISA
19 plan at issue. (Compl. ¶ 1.) However, Plaintiff argues in her
20 summary judgment motion that "the administrative record [in this case]
21 contains no plan" (Pl.'s Mot. for Summ. J. 5:2-3.) Standard
22 counters that the Policy is the pertinent plan. (Opp'n 7-9.)

23 Plaintiff's argument that there "is no plan" is unavailing;
24 "[t]he [group disability] insurance policy is the [ERISA] plan
25 document in this case." Sterio v. HM Life, No. 08-17426, 2010 WL
26 750032, at *1 (9th Cir. Mar. 4, 2010) (rejecting plaintiff's argument
27 that "there is no plan document, only an insurance policy," citing
28 Cinelli v. Security Pacific Corp., 61 F.3d 1437, 1441 (9th Cir. 1995)

1 (stating "it is clear that an insurance policy may constitute the
2 'written instrument' of an ERISA plan")).

3 **II. The Abuse of Discretion Standard of Review Applies to Plaintiff's**
4 **ERISA Claim**

5 A "denial of benefits challenged under 29 U.S.C. §
6 1332(a)(1)(B) is to be reviewed under a *de novo* standard unless the
7 benefit plan gives the administrator or fiduciary discretionary
8 authority to determine eligibility for benefits or to construe the
9 terms of the plan." Firestone Tire & Rubber Co. v. Burch, 489 U.S.
10 101, 115 (1989). However, "the plan must unambiguously" confer
11 discretion on the administrator or fiduciary to invoke the abuse of
12 discretion standard of review. Abatie v. Alta Health & Life Ins. Co.,
13 458 F.3d 955, 962 (9th Cir. 2006) (en banc) (citing Kearney v.
14 Standard Ins. Co., 175 F.3d 1084, 1090 (9th Cir) (en banc))

15 Plaintiff argues *de novo* review is the applicable standard
16 of review in this case because "no plan instrument properly creates or
17 delegat[e]s discretionary authority" to Standard. (Mot. for Summ. J.
18 3:13.) The essence of Plaintiff's argument appears to be that where
19 the ERISA plan is an insurance policy, it is improper for the policy
20 to confer discretion upon the insurer. (Reply 1:26-2:1 (stating that
21 "an insurance company [cannot] bestow discretion on itself in a
22 policy.)) Defendant counters that its "denial of [Plaintiff's]
23 benefits should be reviewed for abuse of discretion because the Policy
24 unambiguously confers discretionary authority upon Standard"
25 (Opp'n 7:3-7.)

26 The relevant language of the plan is included in a section
27 entitled "Allocation of Authority" and provides:

28 Except for those functions which the Group Policy
specifically reserves to the Policyholder or

1 Employer, [Standard] [has] **full and exclusive**
2 **authority to control and manage the Group Policy,**
3 **to administer claims, and to interpret the Group**
4 **Policy and resolve all questions arising in the**
5 **administration, interpretation, and application of**
6 **the Group Policy.**

7 [Standard's] authority includes, but is not limited
8 to:

- 9 1. The right to resolve all matters when a
10 review has been requested;
- 11 2. The right to establish and enforce rules
12 and procedures for the administration of
13 the Group Policy and any claim under it;
- 14 3. The right to determine:
 - 15 a. Eligibility for insurance;
 - 16 b. Entitlement to benefits;
 - 17 c. The amount of benefits payable; and
 - 18 d. The sufficiency and the amount of
19 information [Standard] may
20 reasonably require to determine a.,
21 b., or c., above.

22 Subject to the review procedures of the Group
23 Policy, **any decision we make in the exercise of our**
24 **authority is conclusive and binding.**

25 (Smith Decl. Ex. A STND 1469-00971) (emphasis added).

26 This plan language unambiguously confers discretionary
27 authority upon Standard to construe and interpret the plan and make
28 final benefits determinations. Therefore, the abuse of discretion
standard of review applies to Plaintiff's ERSIA claim. See Abatie v.
Alta Health & Life Ins. Co., 458 F.3d 955, 963-64 (9th Cir. 2006) (en
banc) (holding that abuse of discretion standard of review applies if
a plan grants the power to construe and interpret the plan and to make
final benefit determinations); see also Bendixen v. Standard Ins. Co.,
185 F.3d 939, 943 (9th Cir. 1999), overruled on other grounds by
Abatie, 458 F.3d at 966-69 (finding nearly identical policy language
sufficient to confer discretion on insurer to warrant application of
abuse of discretion standard of review); Sterio v. Highmark Life Ins.

1 Co., No. 2:06-CV-1045 MCE GGH, 2008 WL 4454047, at *3 (E.D. Cal. Sept.
2 30 2008) (same); Skeen v. Rite Aid Corp., 2010 WL 231383, at *5 (E.D.
3 Cal. Jan. 12, 2010) (same); Whalen v. Standard Ins. Co., No. SACV08-
4 0878 DOC (MLGx), 2009 WL 3756651, at *7 (C.D. Cal. Nov. 5, 2009)
5 (same); Ekno v. Northwestern Mut. Life Ins., No. Civ. S-06-2148 RRB
6 EFB, at *4 (E.D. Cal. Mar. 20, 2008) (same); Lawless v. Northwestern
7 Mut. Life Ins. Co., 360 F. Supp. 2d 1046, 1054 (N.D. Cal. 2005)
8 (same).

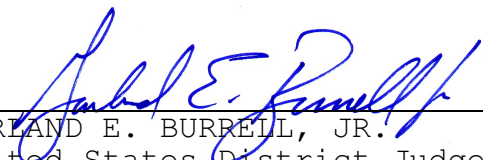
9 Plaintiff's reliance upon Madden v. ITT Long Term Disability
10 Plan for Salaried Employees, 914 F.2d 1279 (9th Cir. 1994) for the
11 proposition that the University of the Pacific, as the plan
12 administrator, was required to confer discretion upon Standard is
13 unpersuasive. In Madden, the Ninth Circuit held: "where: (1) the
14 ERISA plan expressly gives the administrator or fiduciary
15 discretionary authority to determine eligibility for benefits or to
16 construe the terms of the plan **and** (2) pursuant to ERISA, 29 U.S.C. §
17 1005(c)(1)(1998), a named fiduciary properly designates another
18 fiduciary, delegating its discretionary authority, the arbitrary and
19 capricious standard of review" applies. Id. at 1283-84 (emphasis
20 added).

21 Under ERISA, an entity "is a fiduciary with respect to a
22 plan to the extent (i) [it] exercises any discretionary authority or
23 discretionary control respecting management of such plan or exercises
24 authority or control respecting management or disposition of its
25 assets . . . or (iii) [it] has any discretionary responsibility in the
26 administration of such plan." 29 U.S.C. § 1002(21)(A). Since the
27 plan provides Standard with discretionary authority concerning the
28 management and administration of the plan, Standard is a fiduciary of

1 the plan and the plan unambiguously confers discretionary authority
2 upon a fiduciary to determine eligibility for benefits and construe
3 the terms of the plan. Since Standard did not delegate its
4 discretionary authority to another entity, Madden is inapplicable.
5 Further, Plaintiff has not supported his contention that an insurance
6 policy may not confer discretion upon the insurer with authority or
7 otherwise shown that this contention comports with authority
8 construing ERISA.

9 Since the plan at issue in this case unambiguously confers
10 discretionary authority upon Standard to determine benefit eligibility
11 and interpret the plan, the abuse of discretion standard of review
12 applies to Plaintiff's claim. Therefore, Plaintiff's motion for
13 summary judgment is DENIED.

14 Dated: July 30, 2010

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18 GARLAND E. BURRELL, JR.
19 United States District Judge
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