

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
CENTRAL DIVISION
LEXINGTON

CIVIL ACTION NO. 09-82-JBC

RONALD E. COX,

PLAINTIFF,

V.

MEMORANDUM OPINION AND ORDER

CIGNA GROUP INSURANCE,

DEFENDANT.

* * * * *

This matter is before the court upon the plaintiff's motion for leave to file favorable decision from the Social Security Administration (R. 9). The court will deny the plaintiff's motion because the SSA decision was issued after the defendant made its determination and was not before the plan administrator at the time it made its decision.

I. Background

The plaintiff was an employee of Phillips Lighting Company until November 2, 2007. His employer maintained a Long Term Disability group insurance policy with Life Insurance Company of North America ("LINA").¹ The plaintiff applied for long term disability benefits under the policy, alleging disability beginning on November 2, 2007. In a letter dated August 21, 2008, LINA denied plaintiff's application. The plaintiff appealed that determination and on January 27, 2009,

¹According to LINA, "Cigna Group Insurance" is only a service mark, and LINA is the proper defendant in this action.

LINA denied the appeal.

The plaintiff applied for disability insurance benefits from the Social Security Administration, also alleging disability beginning on November 2, 2007. The SSA issued a decision favorable to the plaintiff on March 4, 2009. The plaintiff requests that the favorable SSA decision be admitted into evidence in this action.

II. Analysis

The plaintiff's LTD policy is governed by the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. § 1001, *et seq.* Under ERISA, a district court analyzes the decision of the plan administrator under either a "de novo" or an "arbitrary and capricious" review standard, depending on whether the plan grants the administrator discretionary authority. *Sanford v. Harvard Indus., Inc.*, 262 F.3d 590, 595 (6th Cir. 2001); *see also Firestone Tire & Rubber Co. v. Bruch*, 589 U.S. 101, 115 (1989).

In reviewing the administrator's decision, "a court may consider only the evidence available to the administrator at the time the final decision was made." *Miller v. Metropolitan Life Ins. Co.*, 925 F.2d 979, 986 (6th Cir. 1991). It is not yet clear which standard of review is appropriate in this action. However, regardless of the standard of review applied, this court's review will be confined to the record as it existed on January 27, 2009, when LINA issued its final decision. *See id.* (citing *Perry v. Simplicity Eng'g*, 900 F.2d 963, 966 (6th Cir. 1990); *Crews v. Central States, Southeast and Southwest Areas Pension Fund*, 788 F.2d 332,

336 (6th Cir. 1986)). *Cf. Wilcox v. Standard Ins. Co.*, 340 F.Supp.2d 1266, 1282 (N.D. Ala. 2004) (observing that SSA decision issued after plan’s decision could “have some bearing” on court’s “arbitrary and capricious” review but concluding would not allow decision admitted into evidence because although some Eleventh Circuit cases allowed court to consider SSA decisions issued subsequent to plan’s decision, those cases involved “de novo” review). The court therefore will not consider the SSA decision issued on March 4, 2009.

III. Conclusion

Accordingly, **IT IS ORDERED** that the plaintiff’s motion to file the favorable Social Security Administration decision (R. 9) is **DENIED**.

Signed on June 12, 2009



Jennifer B. Coffman

JENNIFER B. COFFMAN, CHIEF JUDGE
UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY