

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

MELVIN MCCOLLUM,

Plaintiff,

v.

Case No. 10-11471

LIFE INSURANCE COMPANY OF NORTH
AMERICA, et al.,

Defendants.

ORDER REMANDING TO FABRISTEEL PRODUCTS, INC.

Pursuant to this court's October 23, 2012 order, Plaintiff submitted a proposed order consistent with the Sixth Circuit's August 21, 2012 opinion. The Sixth Circuit concluded that Life Insurance Company of North America ("LINA") improperly rejected Plaintiff's claim for disability benefits but that Plaintiff was not clearly entitled to benefits because the plan administrator's decision was incomplete. (Opinion at 16, Dkt. # 42.) The Sixth Circuit "remand[ed] to the district court with instructions to remand to the plan administrator to provide a full and fair review." (*Id.* at 21.) Plaintiff's proposed order follows this direction.

Defendants object to the proposed order arguing that the Sixth Circuit mistakenly instructed that the case be remanded to the wrong entity. Defendants assert that the Sixth Circuit, this court, and Plaintiff all agree that Fabristeel Products, Inc. ("Fabristeel") is the plan administrator. (*Id.* at 17.) However, as the Sixth Circuit recognized, LINA reviewed Plaintiff's claim for disability benefits. (*Id.* at 16.) Defendants argue that LINA

is the entity that reviews disability claims and that the case should be remanded to LINA instead of Fabristeel.

The court acknowledges the merits of Defendants' objection. LINA may be the appropriate party to complete a full and fair review of Plaintiff's disability claim, and remanding the case to Fabristeel might cause unnecessary delay in determining whether Plaintiff is entitled to benefits. However, the district court is bound by the Sixth Circuit's mandate that unambiguously instructs the court "to remand to the plan administrator." See *Fort Gratiot Sanitary Landfill, Inc. v. Mich. Dep't of Natural Res.*, 71 F.3d 1197, 1202 (6th Cir. 1995) ("The customary procedure on remand creates a duty on the part of lower courts, which obtain jurisdiction after receiving the mandate of an appellate court, to obey the terms of the mandate and to carry it into effect.").

Accordingly,

IT IS ORDERED that the case is REMANDED to Fabristeel Products, Inc., the plan administrator, to provide a full and fair review of Melvin McCollum's claim for disability benefits.

s/Robert H. Cleland
ROBERT H. CLELAND
UNITED STATES DISTRICT JUDGE

Dated: December 6, 2012

I hereby certify that a copy of the foregoing document was mailed to counsel of record on this date, December 6, 2012, by electronic and/or ordinary mail.

s/Lisa Wagner
Case Manager and Deputy Clerk
(313) 234-5522