

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA**

|                                      |   |                            |
|--------------------------------------|---|----------------------------|
| <b>JAMES RILEY,</b>                  | ) | <b>CASE NO. 8:09CV303</b>  |
|                                      | ) |                            |
| <b>Plaintiff,</b>                    | ) |                            |
|                                      | ) |                            |
| <b>vs.</b>                           | ) |                            |
|                                      | ) | <b>ORDER ON MOTION</b>     |
| <b>SUN LIFE AND HEALTH INSURANCE</b> | ) | <b>FOR RECONSIDERATION</b> |
| <b>CO., f/k/a GENWORTH</b>           | ) |                            |
| <b>LIFE AND HEALTH INSURANCE</b>     | ) |                            |
| <b>CO., and GROUP LONG TERM</b>      | ) |                            |
| <b>DISABILITY INSURANCE,</b>         | ) |                            |
|                                      | ) |                            |
| <b>Defendants.</b>                   | ) |                            |

This Matter is before the Court on the Plaintiff’s Motion for Reconsideration (Filing No. 48). The Plaintiff asks the Court to reconsider its Memorandum and Order (Filing No. 46), granting the Defendants’ Motion for Summary Judgment. The Court has considered the parties’ briefs (Filing Nos. 49, 51, and 52) and the additional evidence submitted by the Plaintiff (Filing Nos. 50, 53).

“Motions for reconsideration are disfavored, and the court will ordinarily deny them without a showing of (1) manifest error in the prior ruling or (2) new facts or legal authority, neither of which could have been brought to the court’s attention earlier with reasonable diligence.” NECiv.R. 60.1(c). Although the new evidence submitted by Plaintiff could have been brought to the Court’s attention earlier with reasonable diligence, it is also evidence that is consistent with the Court’s prior ruling.<sup>1</sup> The additional evidence reaffirms the

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<sup>1</sup> Plaintiff’s new evidence, that may or may not have been part of the record before the Plan Administrator, confirms that Riley’s VA benefits in question were awarded due to his multiple sclerosis, the same disability that gave rise to his receipt of benefits under the Plan. It was not arbitrary or capricious for the Plan Administrator view the law under which such benefits were awarded as “similar” to the Social Security Act and the Railroad Retirement Act for purposes of determining “Other Income” under the Plan.

Court's conclusion that the Plan Administrator's interpretation of the Plan was not arbitrary and capricious, and that the Administrator's decision was not an abuse of discretion.

IT IS ORDERED:

The Plaintiff James Riley's Motion for Reconsideration (Filing No. 48) is denied.

DATED this 22<sup>nd</sup> day of July, 2010.

BY THE COURT:

s/Laurie Smith Camp  
United States District Judge