**IN THE UNITED STATES DISTRICT COURT**
**FOR THE SOUTHERN DISTRICT OF OHIO**
**EASTERN DIVISION**

**J. KAY RAVER,**

**Plaintiff,**

**v.**

**Case No. 2:12-cv-830**
**JUDGE GREGORY L. FROST**
**Magistrate Judge Mark R. Abel**

**LINCOLN LIFE & ANNUITY COMPANY OF NEW YORK, et al.,**

**Defendants.**

## OPINION AND ORDER

This matter is before the Court for consideration of the following filings:

(1) a motion for judgment on the administrative record (ECF No. 20) filed by Plaintiff, J. Kay Raver;

(2) a motion for judgment on the administrative record (ECF No. 21) filed by Defendants, Lincoln Life & Annuity Company of New York and Monro Muffler Brake, Inc.;

(3) a memorandum in opposition (ECF No. 25) filed by Defendants; and

(4) a combined reply memorandum and memorandum in opposition (ECF No. 26) filed by Raver.

For the reasons that follow, the Court **DENIES** Raver's motion (ECF No. 20) and **GRANTS** Defendants' motion (ECF No. 21).

## I. Background

Donald Raver, Jr. was involved in a single vehicle crash on April 26, 2011. As a result of injuries sustained during that accident, he died the next day. At the time of his death, Donald Raver, Jr. was an employee of Defendant Monro Muffler Brake, Inc. ("Monro"). As a Monro employee, Donald Raver, Jr. was a participant in the company's life insurance benefits plan,

which provided him with a life insurance policy to which he named his wife the policy beneficiary. Plaintiff, J. Kay Raver ("Raver"), is the surviving spouse.

Raver received basic life insurance benefits. She made an additional claim for a $100,000 Accidental Death and Dismemberment benefit. Defendant Lincoln Life & Annuity Company of New York ("Lincoln"), the issuer and administrator of the life insurance policy, denied the accidental death claim. Lincoln predicated the denial on a policy limitation that stated that accidental death "[b]enefits are not payable for any loss to which a contributing cause is: . . . the Insured Person's being under the influence of any narcotic; unless administered on the advice of a Physician." (ECF No. 23, at Page ID # 1158.) Raver twice appealed the denial, and Lincoln twice denied the claim on appeal. In a June 20, 2012 denial letter, Lincoln explained that the coroner's toxicology report indicated an oxycodone level in Donald Raver, Jr.'s blood of 250ng/ml, that this level is in the toxic range, that an expert had opined that this would affect one's ability to drive a motor vehicle, that there was no evidence that Donald Raver, Jr. was prescribed oxycodone, and that the limitation applied because the drug was a contributing cause in Donald Raver, Jr.'s death. (ECF No. 23, at Page ID # 1209-12.)

On August 14, 2012, Raver filed an action in the Licking County Court of Common Pleas (ECF No. 2), which Defendants removed to this Court on September 10, 2012 (ECF No. 1). In her three-count Complaint, Raver asserts a claim to recover benefits and to obtain other relief under the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. § 1132(a)(1)(B)(2), a claim for breach of contract under Ohio law, and a claim for breach of the duty of good faith under Ohio law. (ECF No. 2 ¶¶ 15-29.) The parties have filed dispositive motions, which are ripe for disposition. (ECF Nos. 20, 21.)

## II. Discussion

### A. Count I

Raver asserts a claim in Count I under 29 U.S.C. § 1132(a)(1)(B), which "gives a participant the right to bring a civil action 'to recover benefits due to him under the terms of his plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan.' " *Creech v. Unum Life Ins. Co. of N. Am.*, No. 05-5074, 2006 WL 41186, at *2 (6th Cir. Jan. 9, 2006). It is well settled that "a denial of benefits challenged under § 1132(a)(1)(B) is to be reviewed under a *de novo* standard unless the benefit plan gives the administrator or fiduciary discretionary authority to determine eligibility for benefits or to construe the terms of the plan." *Kalish v. Liberty Mutual/Liberty Life Assur. Co. of Boston*, 419 F.3d 501, 505-06 (6th Cir. 2005) (citing *Firestone Tire & Rubber Co. v. Bruch*, 489 U.S. 101, 115 (1989)). *See also Calvert v. Firstar Finance. Inc.*, 409 F.3d 286, 291-92 (6th Cir. 2005). If the plan provides the administrator with discretion, then "the highly deferential arbitrary and capricious standard of review is appropriate." *Borda v. Hardy, Lewis, Pollard, & Page, P.C.*, 138 F.3d 1062, 1066 (6th Cir. 1998). *See also Calvert*, 409 F.3d at 291-92.

All parties agree that the arbitrary and capricious standard applies in the instant case. (ECF No. 20, at Page ID # 173; ECF No. 21, at Page ID # 195.) The Sixth Circuit has explained that, in determining whether this standard applies, a court should remain cognizant that a plan is not required to use certain magic words to create discretionary authority for a plan administrator in administering the plan. *Johnson v. Eaton Corp.*, 970 F.2d 1569, 1572 at n.2 (6th Cir. 1992). What is required is "a clear grant of discretion [to the administrator]." *Wulf v. Quantum Chemical Corp.*, 26 F.3d 1368, 1373 (6th Cir. 1994), *cert. denied*, 513 U.S. 1058 (1994).

The plan involved here provides that Monro is the plan sponsor and the plan administrator. (ECF No. 23, at Page ID # 1190.) The plan also provides that Lincoln "has the sole discretionary authority to determine eligibility and to administer claims in accord with its interpretation of policy provisions, on the Plan Administrator's behalf." (*Id.*) In light of this delegated authority provision, this Court therefore agrees with the parties that the arbitrary and capricious standard applies.

This standard "does not require [the Court] merely to rubber stamp the administrator's decision." *Jones v. Metropolitan Life Ins. Co.*, 385 F.3d 654, 661 (6th Cir. 2004) (citing *McDonald v. Western-Southern Life Ins. Co.*, 347 F.3d 161, 172 (6th Cir. 2003)). Rather, under the arbitrary and capricious standard, a plan administrator's decision will not be deemed arbitrary and capricious so long as "it is possible to offer a reasoned explanation, based on the evidence, for a particular outcome." *Davis v. Ky. Fin. Cos. Ret. Plan*, 887 F.2d 689, 693 (6th Cir. 1989) (noting that "the arbitrary and capricious standard is the least demanding form of judicial review"). In other words, the Court will uphold a benefit determination if it is "rational in light of the plan's provisions." *Yeager v. Reliance Standard Life Ins. Co.*, 88 F.3d 376, 381 (6th Cir. 1996). *See also Calvert*, 409 F.3d at 292.

In evaluating the record, then, the Court is required to consider only the facts known to the plan administrator at the time the final decision was made to deny benefits. *Moon v. Unum Provident Corp.*, 405 F.3d 373, 378 (6th Cir. 2005); *see also Miller v. Metropolitan Life Ins. Co.*, 925 F.2d 979, 986 (6th Cir. 1991). The Court is also required to remain cognizant of the potential inherent conflict of interest that arises given that Lincoln acts as both the decision maker on a claim and the potential payor of that claim. *Calvert*, 409 F.3d at 292. With these

concerns in mind, the Court shall turn to the merits of Count I.

Analysis of the merits leads to the conclusion that this Court must uphold the denial of Raver's claim. The accident report indicates that at the time of the crash, Donald Raver, Jr. had in his vehicle five 15 mg oxycodone pills, nine 7.5 mg hydrocodone pills, a substance believed to be marijuana, a metal smoking pipe, and empty beer cans. There was a heavy odor of alcohol in the vehicle. A urine test indicated the presence of oxycodone and marihuana, as well as an alcohol level of 23 mg/dl in Donald Raver, Jr.'s system. The forensic toxicology report indicated an oxycodone level of 250 ng/ml, and the blood sample that produced that result also indicated the presence of marijuana and an alcohol level of 0.023 g/dl. A postmortem liver sample indicated trace amounts of hydrocodone. No documentation indicated that Donald Raver, Jr. had been prescribed the oxycodone or hydrocodone.

Citing these results, Dr. Alan L. Weiner opined as follows:

> **It is more likely than not that oxycodone played a role in the death of the claimant. A blood oxycodone level taken shortly after the accident showed a level of 250 ng/ml, which is more than twice the expected upper limit of normal in a patient who is chronically taking the drug.** Such levels have been reported to cause toxicity, such as central nervous system (CNS) and respiratory depression. Such a level would absolutely affect one's ability to drive a motor vehicle. When taken together with alcohol and marihuana, the effects if oxycodone are exaggerated.

(ECF No. 23, at Page ID # 1265.) Weiner also opined that the oxycodone was a contributing factor that led to Donald Raver, Jr.'s death, explaining:

> The level of oxycodone was more than twice the upper limit of normal for a patient who was chronically prescribed the drug. There is no evidence that the claimant was prescribed oxycodone. These effects would be more pronounced in a person who was not chronically taking the drug and had not developed a tolerance to the effects of the drug. The toxic effects of oxycodone are increased if it is taken at the same time as alcohol and marijuana.

(*Id.*) Weiner noted that the oxycodone level involved was within the toxic range, that it would

cause depression of the central nervous system, and that this would affect the ability to drive a motor vehicle. According to Weiner, the presence of alcohol and marijuana would likely further hinder the ability to operate a motor vehicle. Thus, he opined, the level of alcohol involved here may have been enough to enhance the depressant effect of the oxycodone despite the fact that Donald Raver, Jr. was below the limit for legal intoxication.

Lincoln credited these opinions in its ultimate decision to deny the claim. In so doing, Lincoln did not accept the opinions of Raver's expert, Dr. Alfred Staubus, who had pointed to Donald Raver, Jr.'s prior drug addiction treatment, his apparent relapse, and the possibility that he may have developed a tolerance to the effects of oxycodone. Staubus deemed it speculative to consider oxycodone as a contributing factor of the accident.

This Court must conclude that because Lincoln has offered a reasoned explanation, based on the evidence, for the decision to deny the claim, that denial was not arbitrary and capricious. Although it is possible that Donald Raver, Jr. had developed a tolerance, there is little evidence that he had done so (aside, *perhaps*, from the layperson opinions of two of Donald Raver, Jr.'s co-workers, who earlier in the day had noticed nothing awry with him). Moreover, there is no evidence that a tolerance existed so that the oxycodone involved in the accident played *no* role in causing the crash. It is important to note that the conclusion reached was that drug use was at least *a* contributing cause of the accident and that the exclusion did not require a greater percentage of causation. In other words, although individuals may disagree as to the most likely effect of oxycodone here, it was neither irrational nor unreasonable for Lincoln to credit Weiner and to deny the claim based on the relevant contributing cause exclusion. It does not matter whether Staubus or even this Court might have reached a different conclusion. What matters is

whether Lincoln's benefit determination was rational in light of the evidence and the plan's provisions. It was, and this Court "must accept a plan administrator's rational interpretation of a plan even in the face of an equally rational interpretation offered by the participants." *Morgan v. SKF USA, Inc.*, 385 F.3d 989, 992 (6th Cir. 2004).

The parties have spent a fair amount of their briefing discussing inapplicable cases in arguing whether Lincoln had to prove that the oxycodone use was the proximate cause of Donald Raver's, Jr.'s death. Raver's position, that Ohio law applies to supplement the body of ERISA law that applies here so as to impose such an additional burden on Defendants, is without foundation. The contributing cause exclusion *sub judice* does not incorporate state law as some plans do. *See, e.g., Cultrona v. Nationwide Life Ins. Co.*, No. 5:12-cv-00444, 2013 WL 1284344, at *1, 7 (N.D. Ohio Mar. 26, 2013) (interpreting plan exclusion that expressly incorporated state law). In fact, the contributing cause exclusion's plain language in no way suggests the involvement of state law as Raver suggests.

Adding the causation requirement urged by Raver to the analysis would rewrite the plain language of the plan limitation, transforming an exclusion that requires some degree of causation into an exclusion that mandates a far greater degree of causation. This would override the explicit terms of the plan. But "[i]n interpreting a plan, the administrator must adhere to the plain meaning of its language as it would be construed by an ordinary person." *Morgan*, 385 F.3d at 992. The plain language of the plan here does not support the causation requirement for which Raver understandably argues, but it does support the meaning Lincoln gave the exclusion. This Court thus declines Raver's invitation to rewrite the plan and to inject state requirements into what is an ERISA analysis.

**B. Counts II and III**

The parties' briefing focuses on the ERISA analysis, the determination of which necessarily resolves Counts II and III. Assuming that these counts remain viable given the state of the briefing, this Court also concludes that there has been no breach of contract or breach of the duty of good faith. Defendants are also entitled to judgment on both Counts II and III.

## III. Conclusion

This Court **DENIES** Raver's motion (ECF No. 20) and **GRANTS** Defendants' motion (ECF No. 21). The Clerk shall enter judgment accordingly and terminate this case on the docket records of the United States District Court for the Southern District of Ohio, Eastern Division.

**IT IS SO ORDERED.**

**/s/ Gregory L. Frost**
**GREGORY L. FROST**
**UNITED STATES DISTRICT JUDGE**