IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

KENNETH L. MYERS, *et al.*, Plaintiffs,	:	
v.	:	Case No. 3:13-cv-75
BRICKLAYERS AND MASONS LOCAL 22 PENSION PLAN, *et al.*,	:	JUDGE WALTER H. RICE
Defendants.		

DECISION AND ENTRY OVERRULING PLAINTIFFS' MOTION TO QUASH SUBPOENAS (DOC. #36)

After Defendant Bricklayers and Masons Local 22 Pension Plan ("Local 22") denied his application for disability retirement benefits, Plaintiff Kenneth Myers ("Myers") and his wife, Kim, filed suit pursuant to the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1001 *et seq.*, challenging that adverse benefit determination. The Local 22 found that Myers was not eligible for disability retirement benefits because he had not worked 435 hours in covered employment in 2006, 2006, 2007, 2008, 2009, or 2010. Because he was deemed to have incurred a break in service, he was no longer considered to be an "active participant" in the Plan. Doc. #19, PageID##145-46. Plaintiffs allege that this determination was arbitrary and capricious, and contrary to law.

The Local 22 maintains that Myers's employment history is central to the eligibility determination. It therefore requested Myers's tax returns for the years 2005-2010. Because Myers did not have all of the requested tax returns in his possession, Defendants subpoenaed the relevant records from several of Myers's former employers, including Wright Brothers Waterproofing, W.I.W. Enterprises, and Buckeye Construction and Development. *See* Doc. #35. This matter is currently before the Court on Plaintiffs' motion to quash those subpoenas, Doc. #36. Defendants filed a memorandum in opposition, Doc. #38, but Plaintiffs did not file a reply brief.

A court may quash a subpoena that:

> (i) fails to allow a reasonable time to comply;
>
> (ii) requires a person who is neither a party nor a party's officer to travel more than 100 miles from where that person resides, is employed, or regularly transacts business in person--except that, subject to Rule 45(c)(3)(B)(iii), the person may be commanded to attend a trial by traveling from any such place within the state where the trial is held;
>
> (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
>
> (iv) subjects a person to undue burden.

Fed. R. Civ. P. 45(b)(3).

Plaintiffs rely on none of these provisions. Instead, citing *Wilkins v. Baptist Healthcare System, Inc.*, 150 F.3d 609 (6th Cir. 1998), they argue that the requested documents are irrelevant. In an ERISA case, the Court is limited to considering evidence already contained in the administrative record unless "that

evidence is offered in support of a procedural challenge to the administrator's decision, such as an alleged lack of due process afforded by the administrator or alleged bias on its part." *Id.* at 619. Although Plaintiffs admit that they have asserted a due process violation, they nevertheless maintain that the requested documents are irrelevant to the claim asserted.

Regardless of whether the requested documents are relevant to Plaintiffs' claims, Plaintiffs have no standing to challenge a subpoena that has been issued to a nonparty. Absent a claim of privilege, "[t]he party to whom the subpoena is directed is the only party with standing to oppose it." *Donahoo v. Ohio Dep't of Youth Servs.*, 211 F.R.D. 303, 306 (N.D. Ohio 2002). In this case, Plaintiffs do not assert any recognized claim of privilege in the documents requested. As such, they have no standing to move to quash the subpoenas. *See Hackmann v. Auto Owners Ins. Co.*, No. 2:05-cv-876, 2009 WL 330314, at *2 (S.D. Ohio Feb. 6, 2009) (refusing to reach question of relevancy where movants lacked standing to challenge subpoenas issued to nonparties).

For this reason, the Court OVERRULES Plaintiffs' Motion to Quash Subpoenas, Doc. #36.

Date: November 25, 2013

WALTER H. RICE
UNITED STATES DISTRICT JUDGE