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4 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
5 AT SEATTLE

6 ADASHA TURNER,

7 Plaintiff,

8 v.

9 LIFE INSURANCE COMPANY OF
10 NORTH AMERICA,

11 Defendant.

C17-1 TSZ

MINUTE ORDER

12 The following Minute Order is made by direction of the Court, the Honorable
Thomas S. Zilly, United States District Judge:

13 (1) Plaintiff's motion for *de novo* standard of review and for limited discovery,
14 docket no. 14, is GRANTED in part and DENIED in part, as follows:

15 (a) Plaintiff brings this action pursuant to the Employee Retirement
Income Security Act of 1974 ("ERISA"), specifically 29 U.S.C. § 1132(a)(1)(B),
16 to challenge defendant's decision to deny, under the group life insurance policy at
issue, waiver of premium ("LWOP") benefits. A denial of benefits is reviewed
17 pursuant to § 1132(a)(1)(B) under the *de novo* standard unless the benefit plan
confers discretion on the plan administrator to determine eligibility for benefits or
18 construe the terms of the plan. *See, e.g., Pettit v. Life Ins. Co. of N. Am.*, 2016 WL
3668022 at *4 (D. Md. July 11, 2016) (citing *Firestone Tire & Rubber Co. v.*
Bruch, 489 U.S. 101, 115 (1989)). The plan at issue undisputedly contains no
19 grant of discretion. *See* AR 4325-72 (docket no. 13-12). Defendant, however,
20 contends that it was bestowed discretion by an undated Appointment of Claim
Fiduciary ("ACF"), which provides that "Claim Fiduciary shall have authority, in
21 its discretion, to interpret the terms of the Plan, including the Policies; to decide
questions of eligibility for coverage or benefits under the Plan, and to make any
22 related findings of fact." AR 4404 (docket no. 13-12 at 326). For support,
defendant relies on *Siegel v. Conn. Gen'l Life Ins. Co.*, 702 F.3d 1044 (8th Cir.

1 2013), and Raybourne v. Cigna Life Ins. Co. of N.Y., 576 F.3d 444 (7th Cir. 2009).
2 Both cases are easily distinguishable. In Siegel, the plan indicated that it could be
3 altered “by amendment signed by the Policyholder and by the Insurance Company
4 acting through its President, Vice President, Secretary, or Assistant Secretary.”
5 702 F.3d at 1048. The claim fiduciary appointment at issue in Siegel was signed
6 by the requisite officers and was therefore effective in granting discretion. Id. In
7 contrast, in this case, the plan states that “[n]o change in the Policy will be valid
8 until approved by an executive officer of the Insurance Company” and that “[t]his
9 approval must be endorsed on, or attached to, the Policy.” Defendant appears to
10 concede that the ACF was not endorsed on, or attached, to the plan. The other
11 case cited by defendant, Raybourne, was decided before the Supreme Court issued
12 its opinion in CIGNA Corp. v. Amara, 563 U.S. 421 (2011), and Raybourne’s
13 continued validity has been questioned by a variety of district courts. See Pettit,
14 2016 WL 3668022 at *8; Moran v. Life Ins. Co. of N. Am., 2014 WL 4251604 at
15 *6 (M.D. Pa. Aug. 27, 2014); Barbu v. Life Ins. Co. of N. Am., 987 F. Supp. 2d
16 281 (E.D.N.Y. 2013). Raybourne is also distinguishable for the reasons set forth in
17 Pettit, Moran, and Barbu. Unlike in Raybourne, which did not discuss the effect
18 of any integration clause, in Pettit, Moran, and Barbu, the failure to enumerate the
19 claim fiduciary appointment among the documents comprising the policy was
20 deemed a basis for refusing to consider such appointment a part of the benefit
21 plan. Pettit, 2016 WL 3668022 at *7; Moran, 2014 WL 4251604 at *7; Barbu,
22 987 F. Supp. 2d at 287-88. Similarly, in this case, the integration clause indicates
23 that “[t]he entire contract will be made up of the Policy, the application of the
Employer, a copy of which is attached to the Policy, and the applications, if any,
of the Insureds.” AR 4363 (docket no. 13-12 at 285). Thus, Raybourne’s holding
that the summary plan description’s explicit reference to the “claims fiduciary
agreement” was sufficient to confer discretion, see 576 F.3d at 448, is of no
persuasive value in this case. See Barbu, 987 F. Supp. 2d at 287. The Court is
persuaded by the reasoning of Pettit, Moran, and Barbu that the “discretion”
provision of the ACF is not a term of the benefit plan, and that the appropriate
standard of review is *de novo*, not “arbitrary and capricious” or “abuse of
discretion.” See Francis v. Anacomp, Inc. Accidental Death & Dismemberment
Plan, 2011 WL 4102143 at *4 (S.D. Cal. Sep. 14, 2011) (citing Grosz-Salomon v.
Paul Revere Life Ins. Co., 237 F.3d 1154 (9th Cir. 2001)).

(b) Under *de novo* review, the Court evaluates whether the plan administrator correctly or incorrectly denied benefits, without regard to whether the administrator operated under a conflict of interest. See Abatie v. Alta Health & Life Ins. Co., 458 F.3d 955, 963 (9th Cir. 2006). Thus, to the extent that plaintiff’s proposed discovery requests seek evidence of any conflict of interest defendant might have, they are outside the bounds of appropriate discovery. See Bourland v. Hartford Life & Accident Ins. Co., 2014 WL 4748218 at *2-*3 (W.D. Wash. Sep. 24, 2014); see also Frost v. Metro. Life Ins. Co., 414 F. Supp. 2d 961, 965 (C.D. Cal. 2006) (disallowing inquiry into the reasonableness of the plan

1 administrator's reliance on reviewing doctors' opinions). Many of plaintiff's
2 discovery requests, however, are aimed at the credibility of medical reviewers,
3 which will be relevant to the weight the Court assigns to their opinions on *de novo*
4 review. *Id.* at *3; *see also Opetta v. Nw. Airlines Pension Plan for Contract Emps.*,
5 484 F.3d 1211, 1217 (9th Cir. 2007) (indicating that extrinsic evidence may be
6 considered on *de novo* review in certain limited circumstances, including when
7 issues arise regarding the credibility of medical experts (quoting *Quesinberry v.*
8 *Life Ins. Co. of N. Am.*, 987 F.2d 1017, 1027 (4th Cir. 1993))). The Court will
9 therefore permit limited discovery concerning the relationship between defendant
10 and Drs. S. Rebecca Gliksman, Sami Kamjoo, Joseph Rea, and Jacqueline W.L.
11 Wong, as follows:

7 (i) For the years 2014 and 2015 (the years in which plaintiff
8 became disabled and her application for LWOP benefits was denied,
9 respectively), defendant shall indicate (A) the number of reviews each
10 doctor listed above conducted for defendant in connection with an
11 application for LWOP benefits, (B) in what percentage of such reviews did
12 each doctor conclude that the claimant was not disabled, and (C) the
13 amounts paid to each doctor by defendant during the year in connection
14 with LWOP-benefit applications and in total for all reviews; and

11 (ii) Defendant shall produce copies of any bills for service,
12 invoices, or records of payments relating to the reviews each doctor listed
13 above conducted with respect to plaintiff's application for LWOP benefits.

13 Defendant's responses shall be served on plaintiff within thirty-five (35) days of
14 the date of this Minute Order. Except as granted in Paragraphs 1(b)(i) & (ii),
15 above, plaintiff's motion to conduct discovery is denied.

15 (2) The Clerk is directed to send a copy of this Minute Order to all counsel of
16 record.

17 Dated this 12th day of July, 2017.

18 William M. McCool
19 Clerk

19 s/Karen Dews
20 Deputy Clerk