

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

CHARLESTON DIVISION

JOHN W. MCCLAUGHERTY,

Plaintiff,

v.

CIVIL ACTION NO. 2:09-cv-01292

UNUM LIFE INSURANCE COMPANY
OF AMERICA, et al.,

Defendants.

MEMORANDUM OPINION & ORDER

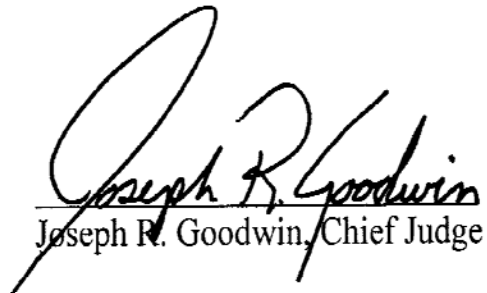
Pending before the court is a Motion by Unum Group and Unum Life Insurance Company of America (collectively, “Unum”) for Leave to Supplement the Administrative Record [Docket 24]. Unum acknowledges that “it was not entirely clear from the administrative record whether Unum’s medical professionals focused on five pages of records provided by R. Kent Dean.” (Mot. Leave Supplement Administrative R. ¶ 1.) Unum avers that on June 29, 2010, its in-house psychologist Dr. Zimmerman completed an addendum to her earlier reports to address these records, concluding that the records do not support a change to her previous determination.

On the same day Unum filed this Motion for Leave, I issued a Memorandum Opinion and Order denying Unum’s motion for summary judgment and the plaintiff McClagherty’s cross-motion for summary judgment, vacating the determination of the plan administrator, and remanding this action to the plan administrator, Unum, for its reevaluation, taking into account Dr. Dean’s records. [Docket 25].

Unum's Motion for Leave [Docket 24] is **DENIED**. Unum must conduct a "full and fair" review of the record. 29 U.S.C. § 1133(2). A last-minute addendum to the administrative record is an insufficient response to Unum's apparent oversight, especially considering the weight Dr. Zimmerman had previously placed on the lack of treatment records from the time period addressed by Dr. Dean's records.

This action is **DISMISSED** and **STRICKEN** from the docket, as the claim is remanded to Unum for further action. The court **DIRECTS** the Clerk to send a copy of this Order to counsel of record and any unrepresented party.

ENTER: July 19, 2010


Joseph R. Goodwin, Chief Judge