

allowed prosecutors to obtain their own expert witnesses in mental health cases. Nonetheless, Massachusetts courts have also recognized the potential risk to defendants of such an arrangement. In *Commonwealth v. Stroyny*, 760 N.E.2d 1201 (Mass. 2002), the Massachusetts Supreme Judicial Court ruled that an expert hired by the prosecution is prevented from sharing with the prosecutor any statements made by the defendant in the course of the examination until such time as the defendant has waived his privilege against self-incrimination (i.e., the defendant enters a plea of not guilty by reason of insanity and indicates that the defense will rely on his or her own statements). These cases demonstrate the focus on preserving defendants' rights in mental health cases, although the procedures and rulings differ greatly between the jurisdictions.

ERISA and Disability Benefits

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Insurance Plan Administrators Are Not Required to Produce Medical Reports Requested by the Claimant During the Pendency of the Disability Review and Description of Functional Impairments Are Used for Disability Determinations

In *Glazer v. Reliance Standard Life Insurance Company*, 524 F.3d 1241 (11th 2008), the Eleventh Circuit Court of Appeals examined whether the district court for the Southern District of Florida had erred in its summary judgment upholding defendant Reliance Standard Life Insurance Company's denial of plaintiff Glazer's long-term disability benefits. The court of appeals, in a unanimous decision, upheld the district court's summary judgment as applying the correct standard of review in holding that Reliance had granted Ms. Glazer a "full and fair" review under the provisions of ERISA (Employee Retirement Income Security Act of 1974). The court of appeals also concluded based on a review of the factual records

that Reliance had rightly denied Ms. Glazer's long-term disability benefits.

Facts of the Case

Priscilla Glazer worked for The Ultimate Software Group as a senior technical writer. The Ultimate Software Group offered its employees long-term disability insurance under a plan provided by Reliance. According to the plan, an insured is "totally disabled" if he/she "cannot perform the substantial and material duties of his/her regular occupation." Per the plan, Reliance had the discretion "to determine eligibility for benefits."

Ms. Glazer experienced shoulder pain in 1996, leading to a diagnosis of numerous medical conditions, including myofascial pain syndrome, fibromyalgia, cervical spondylosis, chronic cervical strain, and radiculopathy. In June 2003, she stopped working, in accordance with the recommendations of her physician, Dr. Thomas Hoffeld. She also applied for disability benefits. Dr. Hoffeld's findings in the fall of 2003 documented that she had trouble with typing and sitting certain lengths of time. In January 2004, her disability application was approved by Reliance. Dr. Alan Novick started treating her in October 2003. In April, 2004, Dr. Hoffeld assessed her as still unable to return to work. However, in the subsequent month, Dr. Novick noted that her pain had been ameliorated.

Reliance's request to Ms. Glazer's physicians, Dr. Hoffeld and Dr. Novick, for her most current medical records as a part of re-examining her benefits in March 2004 was only responded to by Dr. Novick. In May 2004, Dr. Novick documented that Ms. Glazer, in addition to sedentary work, could now perform physical activities like simple grasping and fine manipulation (required for typing). In July 2004, after taking into consideration Dr. Novick's report, an interview with Ms. Glazer, and her job description, Reliance determined that she was capable of performing her occupation and her long-term disability benefits were terminated.

Ms. Glazer then went to see Dr. Benjamin Lechner, although she had not seen him since their last appointment in February 2003. Dr. Lechner reviewed her records and in his report noted that she could not use a computer and stated that her medical conditions rendered her "disabled for gainful employment." Dr. Novick reported that she was feeling better in July 2004, and her condition was stable

during her subsequent visits (November 2004, twice in February 2005, and March 2005), although she verbalized increased pain.

Dr. William Hauptman conducted an independent peer review of the medical records at the request of Reliance to help decide whether to terminate Ms. Glazer's benefits. Dr. Hauptman opined that her complaints of increased pain were not substantiated by medical evidence, that the reason for improvements in her physical capabilities after Dr. Hoffeld's 2003 evaluation were related to Dr. Novick's treatment, and that Dr. Novick's description of her capabilities (in May 2004) matched those described in the medical records.

After Ms. Glazer's disability application review, Reliance denied her application for long-term disability benefits. In response to Reliance's decision she filed a petition in the district court, the result of which was a summary judgment favoring the position taken by Reliance.

Ruling

Judge Pryor, writing for the Eleventh Circuit Court of Appeals, upheld the district court's summary judgment. The court of appeals ruled that Reliance had granted Ms. Glazer a "full and fair" review under the ERISA provisions and that the district court had implemented the correct standard of review in reaching its decision. The court concluded that Reliance rightly denied her application.

Reasoning

In its reasoning, the court explained Ms. Glazer's arguments, the issues, and the decision in three main points. In the first matter, Ms. Glazer argued that she had not been given a "full and fair review" of the denial of her application, per requirements by ERISA. She cited 29 C.F.R. § 2560.503-1(h)(2)(iii) (2007), which states that the administrator must "[p]rovide . . . upon request . . . all documents, records, and other information relevant to the claimant's claim for benefits" for the review to qualify as a "full and fair review." She argued that Reliance had failed to provide her a copy of Dr. Hauptman's report while the review of the initial denial was pending. Reliance's answer to her argument was that it would only be required to provide her all the documents it had reviewed after a final decision was made. The appeals court concurred with Reliance. It cited *Metzger v. UNUM Life Insurance Company of America*, 476 F.3d 1161 (10th Cir. 2007), in its explanation that a plan administrator is not

obliged to provide a plaintiff with medical reports before its final decision on appeal. The court noted that a requirement to produce the records before a final determination had been made would have been "superfluous" as it would create "an unnecessary cycle of submission, review, re-submission, and re-review" (*Metzger*, p 1166).

On the second matter, the court of appeals held that the district court had applied the correct standard of review in upholding Reliance's decision to deny Ms. Glazer's disability benefits. The court of appeals found that the applicable standard of review was a standard that examined whether the decision was "arbitrary and capricious" and whether there was a reasonable basis for Reliance's decision based on the facts that were known to it at the time.

The court of appeals, relying on several prior cases, found that regardless of whether the arbitrary and capricious review or the heightened form of that standard of review applies, the district court would have to make an independent review of the decision by the administrator to determine whether it was "wrong." A decision is wrong if the court disagrees with the administrator's decision based on the court's fresh review and perspective (*Williams v. Bellsouth Telecomm., Inc.*, 373 F.3d 1132 (11th Cir. 2004), p 1138). The court of appeals reasoned that there was no dispute about the information available in the record when Reliance made its decision, even if there was a disagreement about whether Ms. Glazer was disabled. The district court, which had reviewed the record, found that the decision by Reliance was right, which made analysis of whether Reliance's decision was arbitrary and capricious unnecessary. Thus, the court of appeals determined that the district court had been correct in the standard of review that had been applied.

The third question in the case involved the appellate court ruling that Reliance's denial of Ms. Glazer's disability benefits was correct. Since she bore the burden to prove that she was disabled, the appeals court agreed with the district court's finding that she failed in proving how her medical condition prevented her from conducting the "substantial and material" duties related to her work. Dr. Hoffeld's failure to respond to Reliance's request for updated medical records, the inadequacy of Dr. Hoffeld's and Dr. Lechner's reports in establishing a nexus between her physical disabilities and the demands of her work, the fact that Dr. Lechner had not seen her for

more than a year at the time of formulating his report, which, furthermore, was incompatible with both Dr. Novick's and Dr. Hauptman's assessments, together provided enough evidence that she did not meet the disability criteria set by her insurance plan.

Discussion

The U.S. Supreme Court denied *certiorari* on December 1, 2008. Nevertheless, *Glazer v. Reliance* highlights the importance of a thorough assessment, while maintaining clinical objectivity in rendering opinions regarding disability. Very often, disability evaluations are performed by treating physicians who in addition to confronting a bias in trying to help the patient, may not perform an extensive record review and a detailed information analysis as a forensic clinician might. In rendering opinions, a treating clinician is at a risk of providing an assessment that may be based on partial information and is not fully substantiated by all medical evidence available. When treating clinicians are performing assessments for the purposes of disability determinations, they should be mindful of the fact that disability determinations are made by examining how medical symptoms affect the patient's occupational function. Therefore, descriptive language regarding symptoms and functioning can help establish a nexus that becomes an important factor in a disability determination.

Unconditional Release of Committed Insanity Acquittes

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Eighth Circuit Reverses a Missouri Appeals Court Decision That Required an Insanity Acquittee to Show That He Would Not Become Mentally Ill and Dangerous in the Future in Order to Gain Unconditional Release

In *Revels v. Sanders*, 519 F.3d 734 (8th Cir. 2008), the U.S. Court of Appeals for the Eighth Circuit

reviewed the decision of the Missouri Court of Appeals to deny an insanity acquittee's request for unconditional release from the psychiatric facility to which he had been involuntarily committed. The issue before the Eighth Circuit was whether the standard used by the Missouri courts in rejecting the petitioner's request for unconditional release violated due process rights as set forth by the U.S. Supreme Court.

Facts of the Case

On June 22, 1988, Frederick Lee Revels killed three members of his family. At that time, he was hearing voices and abusing a controlled substance. In July 1988, a grand jury indicted Mr. Revels on two counts of first-degree murder, one count of second-degree murder, and three counts of armed criminal action. In August 1992, Mr. Revels entered a plea of not guilty by reason of insanity on all counts in the Circuit Court of Jackson County, Missouri. The circuit court accepted his plea, found him not guilty by reason of mental disease or defect excluding responsibility, and committed him to the care and custody of the Missouri Department of Mental Health.

In 1993, Mr. Revels applied to the Jackson County Circuit Court for a conditional release from Northwest Missouri Psychiatric Rehabilitation Center (NMPRC), where he had been hospitalized following his commitment. To obtain a conditional release, according to Missouri law, Mr. Revels bore the burden of proving, by clear and convincing evidence, that he was "not likely to be dangerous to others while on conditional release."

For an unconditional release, Missouri law requires that Mr. Revels show, by clear and convincing evidence, that he "does not have, and in the reasonable future is not likely to have, a mental disease or defect rendering [him] dangerous to the safety of himself or others." In addition, for both conditional and unconditional release, the court had to find that Mr. Revels was not likely in the reasonable future to commit another violent crime against another person because of his mental illness, that he was aware of the nature of the violent crime committed against another person, and that he possessed the capacity to appreciate the criminality of a violent crime against another person and had the capacity to conform his conduct to the requirements of the law in the future. Finally, in considering an application for release, Missouri law requires that the court consider a six-