Disability Discrimination and *Parker v. Metropolitan Life*: Separate, but Equal?

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In August 1997, the Sixth Circuit U.S. Court of Appeals ruled that disability insurance obtained as an employment benefit is not a "physical place" protected by Title III of the Americans With Disabilities Act (ADA). The majority held that because benefits were obtained from an employer instead of from an insurance office, the insurance plan's disparity between mental health benefits and benefits for physical disabilities did not constitute "discrimination" as defined by Title I of the ADA. Other circuit courts have held that illness-specific discrimination in disability insurance coverage is indeed prohibited under Title III. The conflict between the circuit courts may ultimately work its way to the U.S. Supreme Court.

The Americans With Disabilities Act[1] (ADA) and its predecessor, the Rehabilitation Act of 1973 (29 U.S.C. § 794 (1994)), are civil rights landmarks for persons with physical disabilities. However, the ambiguities of the ADA in protecting and excluding persons with mental impairments sometimes present an uncomfortable dilemma for those with mental disabilities. Gaps and ambiguities in the definitions of physical versus mental disabilities have challenged the application of the ADA to distinctions based on mental disability.[2] In August 1997, the Sixth Circuit U.S. Court of Appeals decided *Parker v. Metropolitan Life Ins. Co.*, holding that disability insurance obtained as an employment benefit is not a "physical place" protected by Title III of the ADA.[3] Because benefits were obtained from an employer instead of from an insurance office, the insurance plan's disparity between mental health benefits and benefits for physical disabilities did not constitute "discrimination" as defined by Title I of the ADA. In contrast to the instant case, at least one other circuit court (*Carparts Distribution Center v. Automotive Wholesalers Ass'n*) has held that illness-specific discrimination in disability insurance coverage is indeed prohibited under Title III.[4] It is likely that the conflict between the courts will ultimately work its way to the U.S. Supreme Court.

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An Overview of the ADA

The ADA helps people with mental disabilities ensure access to employment, state and local government programs and services, and public accommodations.[1] Mentally ill individuals who choose to disclose their impairments are entitled to a wide range of accommodations, particularly at work. Titles I and III of the ADA are relevant to the discussion of the instant case. Title I bars disability-based discrimination in hiring, advancement, or other conditions of employment. Only a "qualified individual with a disability" can obtain relief under Title I; such a person must be able to perform the essential functions of their employment position. Title III outlaws discrimination "in the full and equal enjoyment of goods, services, facilities, privileges, advantages, or accommodations" by anyone who operates a "public accommodation." An "insurance office" is one of many private entities that are considered public accommodations for purposes of Title III.

Parker v. Metropolitan Life: The District Court

Ouida Sue Parker, the plaintiff, worked at Schering-Plough Health Care Products, Inc. (Schering-Plough) and participated in a long-term disability insurance plan issued by Metropolitan Life Insurance Company (MetLife). Under the specific terms of her insurance policy, a person could be deemed totally disabled due to a mental or nervous disorder and could receive benefits for up to 24 months; mental health benefits could be extended for a longer time only if the person was hospitalized or receiving inpatient care for a mental disorder. However, there was no two-year cap on a person with a physical disability; physically disabled individuals could receive benefits until they reached 65 years of age.

After working for over nine years at Schering-Plough, Ms. Parker became disabled due to a depressive disorder. When her disability benefits stopped after 24 months, Parker alleged violation of the ADA ,Titles I and III, as well as violation of the Employee Retirement Income Security Act (ERISA) of 1974 (§ 2-1461, 29 U.S.C. §§ 1001–461 (1994)), a Federal law governing employee benefit plans offered by private employers. The district court initially dismissed the case outright for two reasons. First, Parker had no Title I protection; she was not a "qualified person with a disability" when her benefits were terminated because her disorder rendered her unable to perform the essential functions of her job. Second, she had no Title III protection because Title III covers discrimination in the "physical access to goods and services," but not discrimination in terms of insurance policies. In addition, Parker's ERISA claim was dismissed because the classification of her disorder as "nervous/mental" was not "arbitrary or capricious." Parker appealed the dismissal of her claim.

The Court of Appeals, Part 1: Initial Hearing

An appeals panel affirmed the lower court's dismissal of Parker's Title I and ERISA claims. However, the panel reversed the lower court's dismissal of Parker's Title III claim. The contents of

insurance products are indeed governed by Title III, the panel reasoned, because Title III prohibits discrimination not only in terms of "physical access" to places of public accommodation, but also in terms of "the contents of the goods and services offered at places of public accommodation." Insurance products are " 'goods' or 'services' provided by a 'person' who owns a 'public accommodation.' "[5] After the panel's decision, MetLife and Schering-Plough sought a rehearing *en banc* regarding Parker's Title III claim.[6]

The Court of Appeals, Part 2: A Rehearing *en banc*

The eight to five *en banc* ruling affirmed the district court's original dismissal of the case and therefore rejected the panel's Title III determination. The court reasoned that although an insurance office is listed in Title III as a public accommodation, Parker's claim did not fall under that category because she "did not seek the goods and services of an insurance office." Instead, she merely "accessed a benefit plan offered by her private employer, . . . [and a] benefit plan is not a good offered by a place of public accommodation." Although an insurance office is a public accommodation, a public accommodation is a "physical space," not a "good or service." Title III only covers physical spaces, not goods or services. Because Parker obtained her disability benefits from her employer rather than from a MetLife insurance office, the court found "no nexus" between the disparity in Parker's benefits (i.e., the alleged discrimination) and the services that MetLife could have offered to a member of the public who walked into a MetLife office seeking to purchase insurance.

In addition, the court decided that Title III also does not govern the content of a long-term disability policy offered by an employer. Title III does not attempt to "alter the nature or mix of goods that the public accommodation has typically provided." Inasmuch as all that mattered was that the goods and services were available, the content of a disability policy was not at issue. In making this assertion, the court rejected a First Circuit Court's conclusion in *Carparts Distribution Center v. Automotive Wholesalers Ass'n* that a provider of medical benefit plans could be considered a place of public accommodation under Title III.[4] The Sixth Circuit Court commented that the First Circuit Court had given unintended breadth to the ADA in making its assertion.

Finally, the court also ruled that the "disparity in benefits provided in the policy at issue is also not prohibited by the ADA because the ADA does not mandate equality between individuals with different disabilities. Rather, the ADA prohibits discrimination between the disabled and the non-disabled." Because both disabled and non-disabled employees had access to the same plan, the plan did not discriminate between the disabled and the able-bodied. The court relied on the 1996 Mental Health Parity Act (42 U.S.C. §§ 300ggg–5 (1994)), as well as previous cases that had relied on interpretations of the Rehabilitation Act (an act that antedated the ADA, the purpose of which was "to assure that handicapped individuals received 'evenhanded treatment' in relation to nonhandicapped individuals"), to

support its position that unequal benefits are not discriminatory within the meaning of the ADA. The court also cited *Equal Opportunity Employment Commission (EEOC) v. CNA Ins. Co.*, a 1996 U.S. Seventh Circuit Court of Appeals case (96 F.3d 1039 (7th Cir. 1996)), which held that CNA Insurance Co. did not violate the ADA in unequal mental and physical disability benefits under its long term disability plan. The distinction " 'may or may not be an enlightened way to do things, but it was not discriminatory in the usual sense of the term' " (121 F.3d at 1017).

"An Absurd Result"

In dissent, the minority emphasized that Title III specifically identifies an insurance office as a "public accommodation." They noted that in *Carparts*, the First Circuit court reasoned that the U.S. Congress did not limit Title III protections to physical structures: " 'It would be irrational to conclude that persons who enter an office to purchase services are protected by the ADA, but persons who purchase the same services over the telephone or by mail are not. Congress could not have intended such an absurd result' " (121 F.3d at 1019). The majority's narrow interpretation of Title III diluted the intent of Title III. The dissent also relied on House and Senate Committee Reports, as well as the "safe harbor" provision of the ADA (legislation designed to allow restrictions in insurance based on sound actuarial data, but not on speculation) to argue that Title III naturally applies to employer-sponsored plans: "It boggles the mind to think that Congress would include only the few people who walk into an insurance office to buy health insurance but not the millions who get such insurance at work. This distinction drawn by the Court produces an absurd result" (121 F.3d at 1021).

Parker's Wake

The tide appears to be favoring very narrow interpretations of the ADA for psychiatric disabilities. This may be due at least in part to continued bias against mental illness, as well as continued reliance on precedents established under the Rehabilitation Act, even though the ADA should offer greater protections than the Rehabilitation Act to persons with psychiatric disabilities.[7] *EEOC v. CNA Ins. Co.*, as well as *EEOC v. Staten Island Savings Bank*, a similar case, continue to work their way through the federal courts even though the EEOC position on the application of the ADA to disability plans has been rejected by two appeals courts.[8] The EEOC alleges that long-term disability insurance policies that limit mental disability benefits but not physical disability benefits are illegal under the ADA. In light of *Parker* and similar cases, defense attorneys for employers and insurers will continue to ask the courts for summary judgment, which if granted, will continue to terminate lawsuits. Because at least one circuit court held in *Carparts* that illness-specific discrimination in disability insurance coverage is indeed prohibited under Title III, the conflict between the circuit courts may ultimately work its way to the Supreme Court. However, since more cases are currently allowing separate and unequal physical

and mental health disability benefits than those that are prohibiting this form of discrimination, fighting the battle in courts under the ADA may well be unsuccessful. Instead, the quest for equal disability benefits may play out as part of the greater national health care debate.

References

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