Circuit emphasized that a physician's medication recommendations, regardless of his experience and reputation, must be medically appropriate and follow community standards of care for the treatment to be deemed in the patient's best medical interest. The Ninth Circuit's ruling further emphasizes that other factors do not minimize the importance of adhering to medically-appropriate practice guidelines.

Disclosures of financial or other potential conflicts of interest: None.

Long-Term Disability for Mental Illness

Talene Keshishian, MD
Fellow in Forensic Psychiatry

John M. Stalberg, MD, JD
Forensic Psychiatrist

Department of Forensic Psychiatry
Institute of Psychiatry, Law, and Behavioral Science
University of Southern California
Los Angeles, CA

Decision to Discontinue Long-Term Disability Benefits Was Supported by Substantial Evidence and Was the Result of a Deliberate, Principled Reasoning Process

In *McAlister v. Liberty Life Assurance Company of Boston*, 647 F. App'x 539 (6th Cir. 2016) the United States Court of Appeals for the Sixth Circuit reviewed evidence on appeal to determine whether the decision by Liberty to discontinue long-term disability benefits due to mental illness after a 24-month period was arbitrary and capricious.

Facts of the Case

Yulunda Karen McAlister had enrolled in a long-term disability (LTD) insurance plan provided by Liberty Life Assurance Company of Boston (Liberty). In March of 2010, she applied for LTD benefits. Her treating psychiatrist, Dr. Angela Burt, stated that Ms. McAlister was "currently frequently suicidal" and diagnosed "MDD [major depressive disorder], severe recurrent." According to Liberty's policy, benefits for a mental illness disability would not exceed 24 months. Mental illness has been defined as "a psychiatric or psychological condition classified as such in the most current edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM) regardless of the underlying cause of the Mental Illness" (*McAlister*, p 541). In August 2010, Liberty approved Ms. McAlister's request for LTD benefits, advising her that they would be payable up to a maximum of 24 months.

During this time, Liberty asked for and received updated medical records. Ms. McAlister had been enrolled in an intensive outpatient treatment program, and her discharge summary indicated that she had major depressive disorder and borderline personality disorder. Dr. Burt also provided updated documentation, giving Ms. McAlister the same diagnoses.

On July 26, 2011, approximately one year before the maximum period of eligibility for her LTD benefits, Liberty concluded that Ms. McAlister was no longer disabled and that her benefits would be terminated. Ms. McAlister appealed Liberty's denial and provided documents from her neurologist, Dr. Abha Mishra, who reported that Ms. McAlister had abnormal findings on magnetic resonance imaging (MRI) and electroencephalogram (EEG). Dr. Mishra assigned diagnoses including seizure disorder, obstructive sleep apnea, and depression. Of note, a follow-up MRI showed "no abnormal enhancement" and a repeat EEG was "within normal limits." These procedures were performed one and two months after the initial MRI and EEG, respectively.

Liberty reinstated Ms. McAlister's benefits in light of the reviewed medical documents. Ms. McAlister received the LTD benefits until the maximum 24 months had been reached. In January 2013, however, Ms. McAlister filed a second appeal citing "significant psychological problems," as well as "cognitive problems of an organic etiology" (*McAlister*, p 549). She claimed that because her disability was due to an organic etiology, the 24-month maximum eligibility period did not apply, and her benefits should be extended for the duration of her disability.

Ms. McAlister submitted neuropsychological testing conducted by Dr. Melissa Aubert. Dr. Aubert reported, "McAlister is known to have several conditions that may have a negative impact, including uncontrolled diabetes, hypertension, and hypercholesterolemia. Regardless of the medical cause, Ms. McAlister is experiencing significant impairments in many areas of cognitive functioning" (*McAlister*, p 542–3). Dr. Aubert also referred to the original MRI stating it "suggest[s] a presence of progressive/deteriorating condition" (*McAlister*, p 543). She did not refer to either the follow-up EEG or MRI, both of which were within normal limits. Among other

things, she diagnosed cognitive disorder, not otherwise specified. Ms. McAllister argued that the diagnosis was due to "physiological effect[s] of a general medical condition" (*McAlister*, p 545), which she stated should be interpreted as an organic condition.

Liberty had Ms. McAlister's claim reviewed by Dr. Alter, who found that Dr. Aubert's conclusion that Ms. McAlister had an organic neurocognitive disease was "not supported by the data" (*McAlister*, p 543). Liberty denied continuation of Ms. McAlister's disability benefits, stating that she had not provided "proof of impairment from a physical component" (*McAlister*, p 543). Ms. McAlister then brought action against Liberty under the Employee Retirement Income Security Act (ERISA) in district court. The district court judged in favor of Liberty, concluding that Ms. McAlister had a mental illness with a psychiatric cause and criticized Dr. Aubert's report upon which Ms. McAlister had relied heavily in her claim. The court found that Liberty's decision was neither arbitrary nor capricious. Ms. McAlister then appealed to the Sixth Circuit Court of Appeals.

Ruling and Reasoning

Under Section 502(a)(1)(B) of ERISA, an individual can file a lawsuit against a plan administrator to "recover benefits due to him under the terms of the plan." The court of appeals sought to determine whether Liberty's decision to discontinue the LTD benefits was "supported by substantial evidence" and "the result of a deliberate, principled reasoning process" (*Glenn v. MetLife*, 461 F.3d 660 (6th Cir. 2006), p 666). Both the district court and the appellate court assumed, favorably to the plaintiff, that the mental illness provision in Liberty's LTD plan would not apply if the mental illness had been found to be due to an organic cause.

In analyzing whether Liberty's decision was supported by substantial evidence, the appellate court pointed out that several medical professionals, including Ms. McAlister's own expert, claimed that Ms. McAlister had major depression. Also, Ms. McAlister herself neither refuted having major depressive disorder or borderline personality disorder nor pointed out that these conditions were classified as psychiatric conditions in the DSM. Ms. McAlister's argument was that Liberty's expert, Dr. David Alter, did not offer any "clear opinion as to the cause of [her] cognitive deficits" (*McAlister*, p 546), and Liberty's decision was therefore not supported by substantial evidence. The court stated that even if Dr. Alter's report had not been considered, the diagnoses of the three other medical professionals constituted relevant evidence that she had mental illness.

Ms. McAlister argued that the report of her expert, Dr. Aubert, was not given the appropriate consideration in determining the denial of benefits. She cited *O'Callaghan v. SPX Corp.*, 442 F. App'x 180 (6th Cir. 2011), for the idea that "[A] plan administrator may not arbitrarily disregard reliable medical evidence proffered by a claimant" (*O'Callaghan*, p 184). She also argued that "[T]he failure to consider evidence that is offered after an initial denial of benefits renders a final denial of benefits arbitrary and capricious" (*Metropolitan Life Ins. Co. v. Conger*, 474 F.3d 258 (6th Cir. 2007), p 265). However, the appellate court pointed out that Liberty's evaluator, Dr. Alter, did not ignore Dr. Aubert's report, but rather acknowledged it and referred to it in his own report. Also, the court stated that nowhere in Dr. Aubert's report did she claim that Ms. McAlister's mental illness had an organic cause. Ms. McAlister inferred that cognitive disorder, not otherwise specified, is an organic disorder. The court stated that this inference could not be made as "[w]e are not medical specialists and that judgment is not ours to make" (*McAlister*, p 548). The court further stated that, even if they were to assume that Dr. Aubert suggested that Ms. McAlister's cognitive disorder had an organic cause, her report was not reliable because it was based on a limited set of documents. Dr. Aubert made no reference to the follow-up MRI and EEG, which were found to be normal. It is unclear whether Dr. Aubert knew about these test results or whether knowing about them would have changed her opinion. Therefore, the court stated that it was reasonable for Liberty to not give credit to Dr. Aubert's report.

Given these considerations, the appellate court affirmed the district court's judgment in favor of Liberty.

Discussion

In this ruling, the appellate court highlights the importance of obtaining and commenting on all relevant information for the expert report to be considered comprehensive and reliable. Ms. McAlister presented a report from an expert who had given her a diagnosis of multiple etiologies, including major depressive disorder and cognitive disorder not otherwise specified.

However, the report did not include information obtained from the follow-up MRI and EEG, which were found to be within normal limits. Noting these "shortcomings" in Dr. Aubert's report, the court concluded that Liberty's decision not to credit the report was reasonable.

Dr. Aubert diagnosed cognitive disorder, not otherwise specified. She did not indicate whether she believed Ms. McAlister's cognitive deficits had an organic etiology. However, Ms. McAlister claimed that this assumption should be made because "cognitive disorder not otherwise specified" is formally referred to as an "organic mental disorder" in the DSM. The court, however, stated that since they were not medical experts, they could not interpret something that was not explicitly stated by the expert.

Disclosures of financial or other potential conflicts of interest: None.

A Question of Competence Raised After Unsuccessful *Pro Se* Litigation

Patrick Wiita, MD
Fellow in Forensic Psychiatry

Joseph Simpson, MD, PhD
Clinical Associate Professor

Department of Forensic Psychiatry
Institute of Psychiatry, Law, and Behavioral Science
University of Southern California
Los Angeles, CA

United States Court of Appeals Considers the Circumstances Under Which a District Court's Determination of Competence to Stand Trial Could Be Reversed

In *United States v. Dubrule*, 822 F.3d 866 (6th Cir. 2016), the United States Court of Appeals for the Sixth Circuit contemplated whether a district court erred in finding a defendant competent to stand trial before the sentencing phase, having failed to order a competency hearing *sua sponte* before or during the trial-in-chief.

Facts of the Case

Rosaire Dubrule, a former physician, was convicted on one count of conspiracy to distribute controlled substances and 44 counts of distributing controlled substances and sentenced to 150 months in prison. Codefendant Kim Dubrule, Dr. Dubrule's wife and medical assistant, was convicted of criminal conspiracy and sentenced to 18 months in prison. The Dubrules were alleged to be operating a "pill mill," a medical office that provides prescriptions for controlled narcotics in exchange for cash.

Before trial, Dr. Dubrule was arrested in July 2008 for driving while intoxicated on prescription drugs, which called into question his status on bond. He stated that he was a "world famous physician," that the government was trying to kill him, and that they had caused hurricane Katrina. No doubt was raised concerning his competence to stand trial. In September 2008, Dr. Dubrule's defense counsel moved to withdraw from the case, citing difficulties with their working relationship. Counsel declared that he believed his client to be competent and that he may have been "taking his advice elsewhere." A magistrate judge agreed and Dr. Dubrule moved to proceed to trial *pro se.* With nobody raising a doubt regarding Dr. Dubrule's competency, the magistrate judge granted Dr. Dubrule's motion to proceed *pro se* and appointed panel attorney, Ross Sampson, to serve as standby, or "elbow," counsel. Of the many pretrial motions Dr. Dubrule filed, some contained-conspiracy themes, including assertions that he had been victim of "government break-ins" and "financial schemes" and that his leg had been "intentionally broken."

The trial-in-chief concluded in August 2010 with the jury returning guilty verdicts on all counts. At this point, Dr. Dubrule requested legal representation, and Attorney Sampson was appointed. Mr. Sampson's first act was to raise a doubt as to Dr. Dubrule's competence to proceed to sentencing. A forensic psychologist for the Bureau of Prisons (BOP), Dr. Jeremiah Dwyer, evaluated Dr. Dubrule for approximately eight hours and submitted a report in which he opined that Dr. Dubrule had paranoid or grandiose delusions that rendered him incompetent to proceed to sentencing. Defense counsel requested an evaluation of Dr. Dubrule's competence at the time of the trial and at the time of the offenses. A second forensic psychologist for the BOP, Dr. David Morrow, evaluated Dr. Dubrule for approximately eight hours and reviewed the trial transcripts. Dr. Morrow opined in his report that Dr. Dubrule had personality and delusional disorders and, based on his intelligence, would have performed