

overborne that he lost his ability to make an independent decision. The presence of an “interested adult” does not automatically safeguard the juvenile’s interests or reduce the chance of unknowingly assisting the police in obtaining a confession. An interested adult is not a proxy for a lawyer and need not make decisions that an attorney would make in advising the juvenile to waive or enforce his rights.

Mr. Weaver raised the claim that parental coercion rendered his confession involuntary. Parental coercion has not been investigated as thoroughly as police coercion and could represent a new area of research. Future research may identify factors that either influence or protect against parental coercion of children in relation to matters of the law and how parental coercion is similar or different from police coercion.

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## Disability Claims Under ERISA

**Patrick Gibbons, MD**  
*Fellow in Forensic Psychiatry*

**Gretchen Foley, MD**  
*Assistant Professor of Psychiatry*

**J. Richard Ciccone, MD**  
*Professor of Psychiatry*  
*Director, Psychiatry and Law Program*

*University of Rochester Medical Center*  
*Rochester, NY*

### Reviews of the Employee Retirement Income Security Act (ERISA) Disability Claims Require a Deliberate and Reasoned Decision-Making Process

In *Okuno v. Reliance Standard Life Insurance Company*, 836 F.3d 600 (6th Cir. 2016), the Sixth Circuit held that the administrator of a long-term disability benefits plan acted improperly when it applied the plan’s one-year mental health limitation to a long-term disability claim and that further examination was needed to determine whether Ms. Okuno’s physical ailments were disabling when considered apart from any mental health component.

#### *Facts of the Case*

Seven months into her employment, Patti Okuno, a senior management level art director for a retail

clothing company, began experiencing symptoms of vertigo, severe headaches, memory loss, and abdominal pain. She had a history of fibromyalgia and degenerative disk disease that did not prevent her from working. After a lengthy medical workup, she was given diagnoses of narcolepsy, Crohn’s disease, and Sjögren’s syndrome.

Ms. Okuno became unable to work and went on short-term disability. When her short-term benefits were exhausted, she applied for benefits through her employer’s long-term disability plan administered by Reliance Standard Life Insurance Company (Reliance). Reliance denied her claim under the pre-existing condition limitation, determining that her disability was the result of her pre-existing fibromyalgia. Ms. Okuno appealed, citing that the medical evidence reflected that she was not disabled by her pre-existing condition, but rather by newly diagnosed Crohn’s disease, narcolepsy, and Sjögren’s syndrome. To support her claim, she offered additional medical records and letters from her treating physicians. Reliance reconsidered Ms. Okuno’s claim with the assistance of an independent internist who specialized in sports medicine and preventative/occupational medicine. Reliance upheld the denial of Ms. Okuno’s claim based on the pre-existing condition limitation.

Ms. Okuno appealed a second time, this time supplying a letter from her neurologist affirming her newly diagnosed conditions. Reliance relied on a second record review, this time by an independent internal medicine physician with experience as a director of a sleep disorders clinic.

Reliance affirmed its original decision that Ms. Okuno was not totally disabled by the newly diagnosed conditions. Reliance judged Ms. Okuno to be impaired due to “depression and anxiety” and approved her claim for benefits for a 12-month period under the mental or nervous disorders limitation in the plan.

This determination constituted a new decision on the part of Reliance, Ms. Okuno was given the opportunity to file a third appeal. She challenged the independent reviewer’s findings and repeated her claim that she was disabled due to the newly diagnosed conditions. Reliance obtained yet another record review, this time by a registered nurse. Reliance stated that Ms. Okuno’s records supported the presence of a psychiatric component, that payment un-

der the mental health provision was appropriate, and upheld the denial of Ms. Okuno's third appeal.

Ms. Okuno's benefits plan was governed by the Employee Retirement Income Security Act (ERISA), and she filed a lawsuit in federal court. Both Ms. Okuno and Reliance filed motions for judgment on the administrative record. Ms. Okuno asserted that the mere presence of a psychiatric component did not justify paying benefits under the mental health limitation. She claimed her physical ailments alone, regardless of the mental health component, were disabling. The district court ruled in favor of Reliance, finding a mental health limitation applied as a result of the presence of depression and anxiety throughout her records. Ms. Okuno appealed, and the Sixth Circuit reversed the district court's ruling.

#### *Ruling and Reasoning*

The Sixth Circuit found that, based on the file administrative record, Reliance had acted in an arbitrary and capricious manner in their application of the mental health limitation. That a psychiatric disorder contributes to a disability condition does not justify the use of the limitation. The court decided that Ms. Okuno's physical ailments should be further evaluated to determine if they were disabling in and of themselves.

The Sixth Circuit found, for several reasons, that Reliance lacked a "deliberate and reasoned decision-making process" in determining that Ms. Okuno's physical ailments alone were not disabling: (1) Reliance relied solely on reviews that did not include a physical examination; (2) the reviewers lacked expertise in Ms. Okuno's physical illnesses and mental health conditions; (3) there was a conflict of interest in that Reliance relied exclusively on physicians whom they employed for reviews; and (4) Reliance made no effort to consult with Ms. Okuno's treating physicians.

#### *Discussion*

The decision in this disability benefits litigation was governed by ERISA, which was signed into law in 1974. ERISA was designed to protect pension plans by establishing national standards for funding and payment of these plans. At the 11th hour, the legislation extended ERISA's scope to all employee benefit plans, including health care and disability. To minimize the administrative and financial burdens of monitoring a pension plan, ERISA would pre-empt all state laws on the subject, thus requiring partici-

pants to bring claims to federal courts to seek remediation over disputes about ERISA plan disability claims (Ciccone JR: Employee Retirement Income Security Act, in *Principles and Practice of Forensic Psychiatry* (ed 3). Edited by Rosner R, Scott C. CRC Press, 2016, pp 897–901).

Ms. Okuno brought a lawsuit in federal district court under ERISA § 1132(a)(1)(B), which allows for civil action to recover benefits. The challenge to an ERISA disability determination denying benefits may be based on the plan administrator's erroneous findings of fact and lead to a *de novo* finding allowing the court to substitute its decision for that of the plan administrators. This outcome differs from an arbitrary and capricious review that shows deference to plan administrator's determinations which "would be reversed 'only where they are arbitrary, capricious or made in bad faith, not supported by substantial evidence, or erroneous on a question of law'" (Kennedy KJ: Judicial Standard of Review in ERISA Benefit Claim Case. *Am. U. L. Rev.* 50(5):1102, 2001).

In 1988 the Supreme Court ruled "a denial of benefits challenged under ERISA §1132(a)(1)(B) (1974), is to be reviewed under a *de novo* standard unless the benefit plan gives the administrator or fiduciary discretionary authority to determine eligibility for benefits or to construe the terms of the plan" (*Firestone Tire & Rubber Co. v. Bruch*, 489 U.S. 101, (1989), 115). Since Reliance had discretionary authority over this plan, the Sixth Circuit applied the arbitrary and capricious standard stating that the company ". . . would uphold an administrator's denial where the determination resulted from a deliberate, principled reasoning process" and "was supported by substantial evidence" (*Okuno* p 607, citing *Baker v. United Mine Workers of Am. Health & Ret. Funds*, 929 F.2d 1140, 1144 (6th Cir. 1991)).

Ms. Okuno's brief asserted that because Reliance both pays the claims and decides who is entitled to receive payment, the deferential standard of review is tempered by Reliance's structural conflict of interest. She argued that a tempered review calls for a somewhat more thorough examination of the administrator's decision to deny benefits in close cases. The conflict of interest is one of several factors considered when determining if the plan administrator abused discretionary authority in denying benefits.

The Sixth Circuit found that Reliance had not conducted a diligent and reasoned review. The Sixth Circuit also cited precedent that record reviews alone

are often insufficient to determine disability, particularly in mental health cases (*Javery v. Lucent Techs. Inc.*, 741 F.3d 686 (6th Cir. 2014), and *Smith v. Bayer Corp.*, 275 F App'x 495 (6th Cir. 2008)). The lack of an interview with Ms. Okuno raised “questions about the thoroughness and accuracy of the benefits determination” (*Okuno*, p 610, citing *Shaw v. AT&T Umbrella Ben. Plan No. 1*, 795 F.3d 538, 550 (6th Cir. 2015)). Further, Reliance failed to consult with medical professionals with expertise in mental health. The court pointed out that the language of ERISA § 2560-503-1 (h)(3)(iii) (2001) states that when any adverse determination is based on a medical judgment, the fiduciary shall “consult with a health care professional who has appropriate training and experience in the field of medicine involved in the medical judgment.” The *Okuno* case emphasizes the importance of using consultants with the relevant expertise.

Anxiety and depression are frequent components of physical ailments, particularly those resulting in disability. If the mere presence of these psychiatric symptoms obviated the disability claim, as a practical matter, virtually all disability claims based on physical ailments would be denied. For evaluators, the ruling reinforces the importance of a thorough examination and at times, an in-person examination and consultation with the claimant's treatment providers.

Ms. Okuno's case was remanded to the district court. The district court directed Reliance to undertake another review of Ms. Okuno's claim that, apart from her psychiatric diagnoses, she was disabled as a result of her physical ailments.

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## Psychiatric Record Discoverable as Brady Material

**Catherine Cashman, DO**  
Fellow in Forensic Psychiatry

**Robert Weisman, DO**  
Associate Professor of Psychiatry  
Co-Director, Forensic Psychiatry Fellowship

Department of Psychiatry  
University of Rochester Medical Center  
Rochester, NY

## Psychiatric Records in the Possession of the Prosecution are not Privileged, but Discoverable as Brady Material

In *Fuentes v. Griffin*, 829 F.3d 233 (2d Cir. 2016), the U.S. Court of Appeals for the Second Circuit reversed the U.S. District Court for the Eastern District of New York's decision that denied state inmate Jose Fuentes' petition for *habeas corpus* after his conviction for first-degree rape was affirmed on direct appeal. The defense contended that the prosecution withheld a psychiatric record that was needed to discredit the alleged victim and potentially exonerate Mr. Fuentes, and the nondisclosure of this record denied Mr. Fuentes a fair trial. In particular, the victim's psychiatric consultation met the *Brady* standard for evidence and should have been made available to the defense (from *Brady v. Maryland*, 373 U.S. 83 (1963)), in which the U.S. Supreme Court ruled that suppression of evidence favorable to a defendant by the prosecution violates due process). The U.S. Court of Appeals agreed that Mr. Fuentes' petition should have been granted based on his *Brady* claim. The court ordered that a new judgment be entered and Mr. Fuentes be released unless afforded a new trial within 90 days.

### Facts of the Case

The defendant/petitioner, Jose Alex Fuentes had oral and vaginal intercourse with G. C. on the roof of her apartment building in January 2002. At issue is whether these acts were consensual or rape. Because only Ms. C. and Mr. Fuentes were present, this case relies heavily on the credibility of Ms. C.'s report.

Ms. C. testified that she had gone to an arcade shortly after midnight with her friend Tammy and three others. They all left to go home from the arcade at 3:00 a.m. by subway. Ms. C. switched trains from the others and exited the subway station alone near her building when a stranger, later identified as Mr. Fuentes, followed her home, threatened her with a knife, and raped her. Later that day, Ms. C. went to Tammy's home and told her friend she had been raped and then went to Woodhull Hospital where a rape kit was prepared and police were informed.

While at Woodhull Hospital, following collection of the rape kit, Ms. C. received a psychiatric consultation. According to the record of the psychiatric consultation, Ms. C. had a two-year history of depression, suicidal thoughts, relationship problems with her mother, and crying spells. She also reported