

Administrators, Inc. ("CBA"). Plaintiff's former employer, Harkers Island Electric Membership Corporation ("HIEMC") is a member of the trade group NRECA.

CBA initially awarded plaintiff disability benefits on the basis that her occupational asthma prevented her from performing her job as a custodian. However, at the end of the initial two-year "own occupation" period, defendant terminated plaintiff's benefits for failure to show that she was disabled from any occupation, the standard for continuing benefits. Plaintiff exhausted her administrative remedies, and then filed suit in this court, alleging that defendants wrongfully terminated her long-term disability benefits after 24 months. She seeks reinstatement of benefits, payment of back benefits to the date of judgment, pre-judgment interest, and an award of attorney's fees and costs pursuant to 29 U.S.C. §1132(g).

STATEMENT OF THE FACTS

I. The Defendants

NRECA, a non-profit corporation, is a national trade association for the more than 1,000 rural electric cooperatives located throughout the United States. NRECA offers services to its member corporations, including sponsoring disability, life, accident, medical and other welfare benefit plans through its Group Benefits Program. The member corporations have no ownership interest in NRECA or its wholly-owned subsidiary CBA.

The Group Benefits Program is a single plan of welfare benefits as defined in section 3(1), 29 U.S.C. §1002(1) of ERISA. It encompasses several component plans, including the self-insured LTD Plan. The LTD Plan is an "employee welfare benefit plan" that provides long-term disability benefits to employees of rural electric cooperatives that elect to participate in the Plan through a trust fund called the NRECA Group Benefits Trust ("Trust"). Employers (cooperatives) contribute funds to this Trust for the payment of administrative expenses and the provision of benefits.

NRECA, CBA and the member cooperatives retain no control or ownership over funds paid to the Trust.

CBA, a wholly-owned subsidiary of NRECA, is the claims adjudicator for the LTD plan. CBA is a fiduciary as defined in section 402(a) of ERISA. 29 U.S.C. §1102(a). NRECA has delegated full and final authority to CBA to interpret the LTD Plan and to determine the eligibility of participants to receive benefits.

II. The Terms of the LTD Plan

The LTD Plan contains two different standards for determining disability: an "own occupation" standard and an "any occupation" standard. During the first 24 months of eligibility, disability is measured by the "own occupation" standard, requiring that a participant be unable to perform each and every duty of her own occupation with the cooperative. At the end of 24 months,

disability is measured by the "any occupation" standard, evaluating whether the participant is able to engage in any gainful occupation for which she is fit, based on her education, training or experience. (CBA 308-309, 312¹.)

II. The Plaintiff

Plaintiff, a 56-year-old life-long resident of Harkers Island, North Carolina, who completed the ninth grade, has a good work history which includes seven years of cleaning for Harkers Island Fishing Center followed by 13 years as a janitor at HIEMC. During all relevant periods, plaintiff was a participant in the LTD Plan by virtue of her employment with HIEMC and therefore qualified to receive disability benefits according to the terms of the LTD Plan.

On March 23, 2002, plaintiff took disability leave from her job at HIEMC and on May 6, 2002, she submitted to CBA a claim for benefits under the LTD Plan because due to "lung problems" she could no longer "keep lifting, and working in environment of using cleaning products and working in heat outside." Her health problems included carpal tunnel syndrome, arthritis in her knees, asthma, sores on her skin, depression and anxiety, unsteady gait and balance, poor vision, obesity, high blood pressure, and high cholesterol. She stated that her "breathing problems" prevented her from performing her job duties. She supported her claim for

¹Citations indicated by CBA and a page number are citations to the administrative record, as submitted to this court and numbered by defendant CBA.

benefits with the Attending Physician Statement (APS) of her primary care physician, Dr. T.L. Goodman, dated June 3, 2002. Dr. Goodman determined she was totally disabled from her job as a custodian because it required "working around cleaners, dust, humidity because of breathing." He also concluded that she was not totally disabled from other employment.

On June 13, 2002, CBA sent plaintiff a letter approving her claim for benefits for the initial 24-month "own occupation" period under the LTD plan. The letter informed her that at the end of the 24 month "own occupation" period, the LTD plan required that she be totally disabled from "any and every occupation" in order for her to be eligible for continued benefits.

During 2002, plaintiffs health problems continued. Surgery did not completely relieve the pain and weakness in her left wrist and hand from carpal tunnel. Her arthritis continued to cause her problems with her knees. Her cholesterol also was significantly elevated.

Between June 2002 and October 2002, medical records from three treating physicians were provided to CBA: Dr. Goodman, plaintiff's primary care physician; C. Hugh Everhart, M.D., her pulmonologist; and, Matthew L. Zettl, M.D., her orthopedist. While the records indicated that she could not continue her custodial work due to exposure to fumes, solvents and dust, the records indicated she had the capacity to perform other work (See CBA 087-089, 094-112, 194.)

Defendant referred plaintiff to a firm called Intracorp to conduct an employability assessment, including a determination of jobs that plaintiff could perform (CBA 250.) The case manager at Intracorp listed the following barriers to plaintiff's re-employment:

Ms. Guthrie does not have a high school diploma and may have limited transferable skills and abilities due to her limited work history as a Janitor. In addition, Ms. Guthrie's previous work history required medium strength, which may limit the use of some transferrable skills. Furthermore, due to her steady work history, she may need to learn job-seeking skills such as developing a resume and obtaining the skills necessary for interviewing.

(CBA 253.)

The case manager then identified the following sedentary/light duty jobs: document preparer, microfilming, reviewer, addresser, taxicab coordinator, telephone solicitor, call-out operator, order clerk for food and beverage, charge account clerk, dispatcher of motor vehicles, ticket taker, file clerk, and library assistant. (CBA 244-249.)

The list of the jobs, along with their descriptions, was provided to plaintiffs' doctors: Drs. Goodman, Zettl and Everhart, asking that they "indicate which positions would be physically and mentally appropriate for Mrs. Guthrie." (CBA 253, 244-249.) Dr. Zettl approved the list. (CBA 092.) Dr. Everhart stated that all the jobs were appropriate as long as plaintiff was not exposed to

excessive dust or fumes. (CBA 091.) Dr. Goodman stated that none of the jobs were appropriate (CBA 093.) When Intracorp contacted Dr. Goodman for an explanation of his assessment (in light of the fact that Dr. Goodman had previously indicated on June 3, 2002 that plaintiff could commence re-employment at any time), Dr. Goodman responded by letter dated November 21, 2002, which provided, that Dr. Goodman had not previously considered plaintiff's entire medical history, which

includes problems with asthma, occupational asthma, chronic nasal congestion, gastroesophageal reflux syndrome, obesity, hypertension, osteoarthritis, carpal tunnel syndrome, and mental status—specifically IQ. In this regard, I think that it is unlikely this patient will be able to manage even the sedentary occupations that were listed.

(CBA 090.)

Intracorp next scheduled a vocational evaluation, performed by Sylvia Henry, a Certified Vocational Evaluator, who holds a Masters of Science Degree in Rehabilitation Counseling and Vocational Evaluation. (CBA 229-235.) Her evaluation included a series of written tests of plaintiff's mental abilities; plaintiff's test scores were well below average in most areas. Based on her interview of plaintiff and plaintiff's former employer at HIEMC, a review of plaintiff's medical records and the results of the Career Occupational Preference System Profile from plaintiff's vocational testing, Ms. Henry concluded that plaintiff:

can perform unskilled sedentary jobs that have

a low requirement of reading, math and language skills such as the jobs listed by the case manager . . . Her work history points to the fact that she can successfully work in a variety of jobs . . .the jobs that [Intracorp] is suggesting need even less skill in general than the job Ms. Guthrie was doing as a janitor.

(CBA 234.)

Ms. Henry determined that plaintiff had the mental ability to perform the jobs of ticket taker, cashier, hostess, tagger (textiles), and photofinishing lab worker. (CBA 230-235.)

Following this evaluation, Intracorp contacted Dr. Goodman once again in order to determine which unskilled sedentary jobs he felt plaintiff could perform, given the results of the evaluation. Dr. Goodman responded on March 5, 2003, that plaintiff "could physically perform the following jobs: Host/Hostess, Hostess (rest), Surveillance System Monitor, Storage rental clerk, Ticket Taker, Order Clerk (food and beverage, Ticket Seller, Usher, Bicycle and Baby Stroller/Wheelchair Rental Clerk, and Counter Attendant." (CBA 216.)

Next, Intracorp conducted a Labor Market Survey, which identified available jobs in the local market that plaintiff was physically and mentally able to perform, focusing on the restaurant-type jobs that Dr. Goodman had indicated. From February 2003 to June 2003, Intracorp provided job leads to plaintiff. Plaintiff repeatedly advised Intracorp that she believed her health problems prevented her from working. Intracorp assured plaintiff

that "if a job was offered, Dr. Goodman could be contacted to ensure she would be physically able to perform the job duties in question. (CBA 201.) Plaintiff did follow up on some job leads, but Intracorp concluded she was often excessively and unnecessarily negative in explaining her medical condition and physical abilities to potential employers. (CBA 196-210.) Intracorp's assistance was eventually terminated.

As part of its continuing review, CBA obtained a second evaluation from Dr. Goodman, dated October 8, 2003. (CBA 503-504.) Dr. Goodman noted that plaintiff's condition was "unchanged" and rated her impairment as "Class 4-Moderate limitation of functional capacity, capable of clerical/administrative (sedentary) activity (60-70%)." Under Mental impairment, he wrote, "Very prominent anxiety symptoms. See recent psychological assessment." Dr. Goodman checked the boxes indicating plaintiff was disabled from any work. Included in the evaluation was a report by James Lauve, a board certified and licensed clinical social worker, dated May 15, 2003, to whom Dr. Goodman had referred plaintiff for a psychosocial evaluation. (CBA 083-084.) Mr. Lauve concluded:

It is evident to this examiner that the employability of Ms. Guthrie at this point and in the foreseeable future is slim to none. Her physical and mental state preclude work areas commensurate with her experience, education and physical capabilities. Although possessing a pleasing personality, her social skills, anxieties and dermatology problems make any public situation highly risky. Her physical health status restricts even more any

employability options from the perspective of stamina, driving, lifting, carrying and handling objects.

(CBA 081-082.)

By letter dated January 22, 2004, CBA informed plaintiff that her "own occupation" period would expire June 22, 2004 and that CBA was commencing its investigation and review of her disability status. (CBA 277.) At CBA's request, Dr. Goodman submitted another evaluation, along with plaintiff's medical records through December 4, 2003 (CBA 498-499, 044-075.) Dr. Goodman checked the boxes indicating that plaintiff could not perform any job. Under Physical Impairment, Dr. Goodman checked "Class 5-severe limitation of functional capacity; incapable of minimal (sedentary) activity (75-100%)." Under Mental nervous impairment," Dr. Goodman wrote "very prominent anxiety symptoms. See recent psychological assessment." A nurse analyst at CBA conducted a medical review of these records, concluding that plaintiff's medical problems remained relatively unchanged since her disability benefits commenced in June 2002. (CBA 020.)

By letter dated May 24, 2004, CBA informed plaintiff that her "own occupation" period was to expire on June 22, 2004, and that "although medical conditions may prevent you from returning to your previous occupation as a custodian, you would not be prevented from returning to other gainful employment." (CBA 266.) Plaintiff was informed of her right to appeal the termination and that she should

submit any written materials she wanted considered in support of her appeal. (CBA 266-267.)

On June 1, 2004, plaintiff appealed the denial of benefits, enclosing with her letter a copy of the Social Security Administration decision awarding her disability benefits effective March 22, 2002. (CBA 256-263.) CBA referred plaintiff's claim file to ProPeer Resources, Inc. for an independent medical review. James Pearl, M.D., Board Certified in Pulmonary Medicine, reviewed Guthrie's medical records and submitted a report dated June 22, 2004 that concluded she was not disabled. His report indicated:

There is inadequate information in the chart to appropriately adjudicate whether she has adequate airway restriction to continue disability. She has multiple other problems including psychological and dermatologic along with hand problems which have had surgical correction for carpal tunnel syndrome.

Based on records provided at this time, there is no evidence to determine that this patient has a disability based upon her lung disease. Should pulmonary functions be available for review, they could be considered for evaluation.

(CBA 026-027.)

By letter dated June 30, 2004, CBA denied plaintiff's appeal. Plaintiff was informed of her right to appeal within 60 days to the Appeal Committee and to submit any written materials she wanted considered in support of her appeal. (CBA 264-265.)

On July 30, 2004, plaintiff appealed to the Appeal Committee and enclosed a letter dated July 21, 2004 from Dr. Goodman,

stating:

I continue to follow Callie Guthrie for a number of medical problems, which include osteoarthritis, severe dermatitis, asthma with occupational component, esophageal disease, hyperlipidemia, and hypertension.

The patient continues to be disabled from any occupation.

If I can be of help in supplying other information regarding this patient's medical problems, please feel free to notify me.

(CBA 043).

Dr. Goodman did not submit any medical records or objective studies with his letter.

The Appeal Committee also received a letter from James M. Zechman, M.D., Board Certified Allergy and Immunology, dated August 10, 2004, stating that plaintiff had "occupational asthma" which he considered a permanent disability. (CBA 035.) Upon request, CBA also received plaintiff's medical file from Dr. Zechman. Dr. Zechman did not contend that plaintiff's other medical conditions disabled her in any way or limited her capacity to work in environments not involving exposure to fumes and solvents.

Plaintiff's claim file was referred to ProPeer for a second independent medical review. Leonard Sonne, M.D., Board Certified Specialist in Pulmonary Disease, submitted a report dated September 15, 2004, with the following conclusion:

There is no documentation that the claimant is disabled. The asthma is extremely mild and treated with Singulair. Advair was started at

one point. She notes one hospitalization for asthma in her allergy history. Pulmonary function studies were normal, chest was clear and the x-ray was not remarkable. There is no documentation to substantiate any disability from sedentary work, light work or medium work. The plan language states that the claimant must be totally disabled and completely unable to work in any job as a criteria for disability. The claimant does not meet this criteria and is not disabled per plan language.

(CBA 024-025.)

By letter dated September 30, 2004, the Appeal Committee denied plaintiff's claim for LTD benefits. (CBA 001-002.)

Plaintiff brought this suit, arguing that defendants abused their discretion in two respects, by relying on Intracorp's outdated vocational analysis and by failing to consider whether plaintiff was disabled from illnesses other than asthma.

COURT'S DISCUSSION

I. Motion to Strike

Plaintiff moves to strike the declaration of Robert F. Fuentes, a Vice President of NRECA. The declaration was presented as evidence that there is no potential conflict of interest in CBA's administration of the Plan. Plaintiff argues that the district court should strike this declaration because the court may consider only the record that was before the fiduciary at the time it made its final decision, i.e., only the administrative record.

When a court conducts a review of a claim administrator's decision for abuse of discretion, evidence is limited to the facts

that were before the administrator when it made its decision. See Elliott v. Sara Lee Corp., 190 F.3d 601, 608-09 (4th Cir. 1999). Additional discovery is not allowed -- only the administrative record is admissible. See Burkhart v. Metro. Life Ins. Co., 2003 WL 21655486, *2 (E.D. Va. June 11, 2003) (unpublished). However, "discovery is permitted to determine whether the plan administrator acted under a conflict of interest at the time it rendered its benefits decision." Abromitis v. Continental Cas. Co., 261 F.Supp.2d 388, 391 (W.D.N.C. 2003); see Bedrick v. Travelers Ins. Co., 93 F.3d 149, 152-154 (4th Cir. 1996) (court relied on discovery responses in determining the scope of a conflict of interest). The court finds that the Declaration of Robert F. Fuentes can be reviewed by this court in determining whether a conflict of interest exists. Therefore, plaintiff's motion to strike [DE #20] is DENIED.

II. Standard of Review

A. Summary Judgment pursuant to Fed. R. Civ. P. 56

Summary judgment is appropriate pursuant to Rule 56 of the Federal Rules of Civil Procedure when no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247 (1986). The party seeking summary judgment bears the initial burden of demonstrating the absence of a genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 325 (1986).

Once the moving party has met its burden, the non-moving party may not rest on the allegations or denials in its pleading, Anderson, 477 U.S. at 248, but "must come forward with 'specific facts showing that there is a genuine issue for trial.'" Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986) (quoting Fed. R. Civ. P. 56(e)). As this court has stated, summary judgment is not a vehicle for the court to resolve disputed factual issues. Faircloth v. United States, 837 F. Supp. 123, 125 (E.D.N.C. 1993). Instead, a trial court reviewing a claim at the summary judgment stage should determine whether a genuine issue exists for trial. Anderson, 477 U.S. at 249.

In making this determination, the court must view the inferences drawn from the underlying facts in the light most favorable to the non-moving party. United States v. Diebold, Inc., 369 U.S. 654, 655 (1962) (per curiam). Only disputes between the parties over facts that might affect the outcome of the case properly preclude the entry of summary judgment. Anderson, 477 U.S. at 247-48. Accordingly, the court must examine "both the materiality and the genuineness of the alleged fact issues" in ruling on this motion. Faircloth, 837 F. Supp. at 125.

B. Review of Denial of Benefits Under ERISA Plans

Courts in the Fourth Circuit utilize a well-established framework for the review of denials of benefits under ERISA plans. See Ellis v. Metro. Life Ins. Co., 126 F.3d 228, 232 (4th Cir.

1997). “[Where] the benefit plan grants the administrator or fiduciary discretionary authority to determine eligibility or to construe the terms of the plan,” a court reviews the determination for abuse of discretion. Id. (citing Firestone Tire and Rubber Co. v. Bruch, 489 U.S. 101, 111 (1989); Brogan v. Holland, 105 F.3d 158, 161 (4th Cir. 1997); Bedrick v. Travelers Ins. Co., 93 F.3d 149, 152 (4th Cir. 1996); Bernstein v. CapitalCare, Inc., 70 F.3d 783, 787 (4th Cir. 1995); Doe v. Group Hospitalization & Medical Servs., 3 F.3d 80, 85 (4th Cir. 1993)). In general, a court should not disturb such a determination if it is “the result of a deliberate, principled reasoning process and if it is supported by substantial evidence.” Bernstein, 70 F.3d at 788.

Plaintiff and defendants agree that the abuse of discretion standard is applicable to the court’s review in this case.

However, it is also well-settled that courts in the Fourth Circuit modify the abuse of discretion standard when necessary to counteract the conflict of interest presented by an administrative decision-maker’s status as both fiduciary and plan insurer. See Ellis, 126 F.3d at 233. ERISA imposes on fiduciaries a duty of loyalty to act “with respect to a plan solely in the interest of the participants and beneficiaries and for the exclusive purpose of providing benefits . . . and defraying reasonable expenses.” 29 U.S.C. § 1104(a)(1)(A); Doe v. Group Hospitalization & Medical Services, 3 F.3d 80, 86 (4th Cir. 1993); see also Restatement

(Second) of Trusts § 170(1) (1959). An insurer's discharge of this duty may be clouded by its self-interested concerns about the impact of benefit payments on its own bottom line. See, e.g., Doe, 3 F.3d at 86. The Supreme Court has noted that such a conflict "must be weighed as a 'factor[] in determining whether there is an abuse of discretion.'" Bruch, 489 U.S. at 115 (quoting Restatement (Second) of Trusts § 187 cmt. d (1959)). The Fourth Circuit has provided additional guidance to district courts, stating,

in no case does the court deviate from the abuse of discretion standard. Instead, the court modifies the abuse of discretion standard according to a sliding scale. The more incentive for the administrator or fiduciary to benefit itself by a certain interpretation of benefit eligibility or other plan terms, the more objectively reasonable the administrator or fiduciary's decision must be and the more substantial the evidence must be to support it.

Ellis, 126 F.3d at 233.

Plaintiff contends that the abuse of discretion standard should be modified due to CBA's alleged financial conflict of interest as the wholly-owned subsidiary of NRECA. The court finds that plaintiff has not shown a conflict of interest in this matter. CBA administers benefit claims, but those benefits are paid from the Trust, not CBA or NRECA's own assets. Based on the facts in the record, there is no conflict of interest, and this court will not modify the abuse of discretion standard.

Therefore, this court will apply the deferential abuse of

discretion standard. This court cannot disturb the decision of CBA as long as it is reasonable, even if the court itself would have reached a different conclusion. In order to avoid defendants' motion for summary judgment being granted, plaintiff must show that the Appeal Committee abused its discretion in terminating her long-term disability benefits.

III. Analysis

A. The Plan Language

The Plan contains a definition of disability that changes from "own occupation" to "any occupation" after two years. Section 2.01 of the Plan provides, in relevant part:

2.01 "Totally Disabled" means that the participant is

both:

(i) due to sickness or accidental bodily injury

[. . .](B) after two years measured from the end of the Benefit Waiting period, completely unable to engage in any and every gainful occupation for which the Participant is reasonably fitted by education, training or experience, and

(ii) not engaged in any Gainful Occupation and is not confined in a penal institution or other house of correction as a result of a conviction for a criminal or other public offense.

The plan also provides that a participant's benefits under the

Plan terminate if, inter alia, "the Participant fails to furnish written proof of the Participant's continued Total Disability, satisfactory to CBA, when and as required by CBA . . ." (CBA 308 and 312.)

The "any occupation" requires only that the employee be able to perform a job for which she is qualified or for which she reasonably can become qualified by training, education or experience. See Stup v. Unum Life Ins. Co. of Am., 390 F.3d 301, 308 (4th Cir. 2004). Plaintiff has not shown how CBA abused its discretion by finding that plaintiff did not meet the requirements of the Plan under the "any occupation" standard. Plaintiff argues that the materials relied upon by CBA were inadequate and CBA's decision-making was not reasonable and principled. Plaintiff believes that CBA did not properly consider plaintiff's other impairments, beyond her asthma. She lists evidence that was allegedly not considered by CBA, yet was favorable to plaintiff. She believes that CBA "simply ignored compelling evidence that plaintiff was limited by a number of physical and mental ailments in addition to asthma." (Pl. Mem. in Support of Summ. Judg., 25.) She believes that the fact that the reviewing physicians were both pulmonologists demonstrates that CBA was focused solely on her asthma and ignored her other health problems. She further argues that CBA abused its discretion by relying on the January 27, 2003, vocational assessment and by the Appeal Committee relying on "the

erroneous and outdated vocational report." (Pl's Mem., in support of Summ Judg., 25.)

Plaintiff also argues that defendant CBA violated ERISA regulations by failing to "consult with a health care professional who has appropriate training and experience in the field of medicine involved in the medical judgment." 29 C.F.R. 2560.503-1(h)(3) and (4) (2002). She contends that there is no evidence in the record to suggest that CBA ever considered whether she was disabled from any condition other than asthma.

Defendants, however, point to substantial evidence in the record showing that plaintiff could perform sedentary jobs. Two of her treating physicians stated that she could perform sedentary jobs. Although plaintiff's medical situation did not change substantially during the initial 24-month disability benefits period, Dr. Goodman changed his opinion during that time, eventually concluding that she was totally disabled from any occupation. Furthermore, defendants point out that two independent medical consultants, Drs. Pearl and Sonne, concluded that plaintiff could return to work. Although those doctors were pulmonologists, they acknowledged that plaintiff had other medical conditions. Defendants contend that the record shows that plaintiff's other conditions were mild to moderate in nature and did not, either individually or together, prevent plaintiff from engaging in sedentary employment.

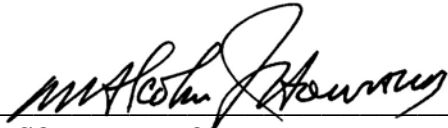
Plaintiff's argument regarding the failure to comply with ERISA regulations also fails. The Appeal Committee decision was based on the medical opinions of all of plaintiff's treating physicians as well as its consulting medical experts.

It is not this court's job to substitute its judgment for the judgment of the Appeal Committee. Without stating whether this court believes plaintiff to be totally disabled, the court, having considered the entire record, as well as the briefs of the parties, determines that plaintiff has not shown that CBA abused its discretion in finding her not disabled under the Plan. CBA relied on substantial evidence in the record in reaching its conclusion, and this court will not disturb its findings.

CONCLUSION

For the foregoing reasons, defendants' motion for summary judgment [DE #15] is GRANTED, and plaintiff's motion for summary judgment [DE #11] is DENIED. Also, plaintiff's motion to strike [DE #20] is DENIED. The clerk is directed to close the case.

This the 22nd day of March, 2006.



MALCOLM J. HOWARD
Senior United States District Judge

At Greenville, NC
#26