UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

JENNIFER GANNON, MD,
Plaintiff(s),

v.

HARTFORD LIFE AND ACCIDENT INSURANCE COMPANY,
Defendant(s).

No. 3:24-cv-01955 (VAB)

RULING AND ORDER ON MOTION TO COMPEL DISCOVERY

Generally, "when reviewing [ERISA] claim denials, whether under the arbitrary and capricious or *de novo* standards of review, district courts typically limit their review to the administrative record before the plan at the time it denied the claim." *Halo v. Yale Health Plan*, 819 F.3d 42, 60 (2d Cir. 2016). As both parties agree, however, the Court has discretion to consider additional evidence outside of the administrative record upon a showing of good cause. *See DeFelice v. Am. Int'l Life Assurance Co. of N.Y.*, 112 F.3d 61, 66 (2d Cir. 1997) ("[T]he decision whether to admit additional evidence is one which is discretionary with the district court, but which discretion ought not to be exercised in the absence of good cause."); *Halo*, 819 F.3d at 60 (citing *DeFelice*); *Locher v. Unum Life Ins. Co. of Am.*, 389 F.3d 288, 294 (2d Cir. 2004) (same); *accord* Pl.'s Mem. of Law in Supp. of Disc. ("Pl.'s Mem."), ECF No. 24, at 8; Def.'s Initial Br. Regarding Pl.'s Request for Disc. Beyond the Admin. R., ECF No. 25, at 6 ("Def.'s Initial Br."). At minimum, the party requesting the discovery must show "a reasonable chance that the requested discovery will satisfy the good cause requirement." *Hughes v. Hartford Life & Accident Ins. Co.*, 507 F. Supp. 3d 384, 394 (D. Conn. 2020) (discussing the two principal approaches courts take, the "good cause standard" and the "less stringent reasonable chance

standard," and ultimately deciding to use the "reasonable chance standard"); *accord* Pl.'s Mem. at 8, Def.'s Initial Br. at 7.

Dr. Gannon's discovery requests fall into two categories: "procedural irregularities" and a "conflict of interest." Pl.'s Mem. at 10.

The Court reviews each in turn.

1. The Alleged Procedural Irregularities

Under ERISA Claims Procedure regulation, 29 C.F.R. § 2560.503-1, "when the administrator makes an 'adverse benefit determination' on appeal, the claimant is entitled to free copies of 'all documents, records and other information relevant to' her claim for benefits." *Hughes*, 507 F. Supp. 3d at 402–03 (citing 29 C.F.R. § 2560-503.1(j)(3)). The regulation further defines "relevant" as any document that:

> (i) Was relied upon in making the benefit determination,
> (ii) Was submitted, considered, or generated in the course of making the benefit determination, without regard to whether such document, record, or other information was relied upon in making the benefit determination;
> (iii) Demonstrates compliance with the administrative processes and safeguards required pursuant to paragraph (b)(5) of this section in making the benefit determination; or
> (iv) In the case of a group health plan or a plan providing disability benefits, constitutes a statement of policy or guidance with respect to the plan concerning the denied treatment option or benefit for the claimant's diagnosis, without regard to whether such advice or statement was relied upon in making the benefit determination.

29 C.F.R. § 2560-503.1(m)(8).

Given claimant's entitlement to such discovery, courts have granted discovery requests that are subject to the Claims Procedure regulation. *See e.g.*, *Hughes*, 507 F. Supp. 3d at 403 ("[T]he Court is at a loss to understand why a plaintiff cannot obtain, through a Rule 34 request, documents that she could have obtained merely by sending a letter under the regulation."); *Kruk v. Metro. Life Ins. Co.*, 3:07-CV-01533(CSH), 2009 WL 1481543, at *8 (D. Conn. May 26,

2009) ("I conclude that [claimant] should be permitted to depose [the plan administrator], but she must limit her inquiry to . . . whether or not her determination departed from the standard procedures for decisions on [the policy's] benefits.").

Several of Dr. Gannon's discovery requests specifically conform with her entitlement to evidence under the Claims Procedure regulation by incorporating the regulation into the request, *see* Interrogatory no. 16; Deposition Notice, no. 15(d); RFP no. 4(a)-(c); Deposition Notice, No. 15(b); RFP No. 10, or by concerning a requirement under the regulation, *see* Deposition Notice No. 11 (extension of time). These fall squarely under Dr. Gannon's discovery entitlement under the regulation. As a result, the Court will permit these specific discovery requests relating to the alleged procedural irregularities.

To the extent that Dr. Gannon seeks discovery beyond the scope of the Claim Procedure regulation, however, the Court denies the request. *See e.g.*, RFP No. 22; RFP No. 23; Deposition Notice No. 7; RFP No. 4(d); Deposition Notice, No. 8. "An ERISA claimant may not obtain extra-record discovery merely by claiming a need to confirm that she was fairly dealt with." *Hughes*, 507 F. Supp. 3d at 402; *see also Feltington v. Hartford Life Ins. Co.*, 14CV6616GRBAKT, 2021 WL 2474213, at *9 (E.D.N.Y. June 17, 2021) ("[I]t is well-settled that the party seeking additional discovery must do more than merely claim that it is needed to determine whether she received a 'full and fair review.'" (citation modified) (quoting *Hamill v. Prudential Ins. Co. of Am.*, 11 CV 1464 SLT, 2012 WL 6757211, at *10 (E.D.N.Y. Sept. 28, 2012), *report and recommendation adopted*, 11-CV-1464 SLT CLP, 2013 WL 27548 (E.D.N.Y. Jan. 2, 2013)); *Lane v. The Hartford*, 06 CIV.3931 DC, 2006 WL 3292463 (S.D.N.Y. Nov. 14, 2006) (finding plaintiff did not show good cause for discovery based on "repeated assertion that it is needed to determine whether she received a 'full and fair review'").

As a result, the following discovery requests will be permitted, only to the extent that they are subject to disclosure under 29 C.F.R. §§ 2560.503-1(j)(3) and (m)(8): Interrogatory no. 16; RFP No. 22; RFP No. 23; Deposition Notice No. 7; Deposition Notice, no. 15(d); RFP, no. 4; Deposition Notice No. 11; Deposition Notice, No. 15(b); RFP No. 10; Deposition Notice, No. 8

2. The Alleged Conflict of Interest

"[A] conflict of interest does not *per se* constitute 'good cause' to consider evidence outside of the administrative record . . . ." *Locher*, 389 F.3d at 294. A plaintiff must show "additional facts beyond the existence of the conflict" to show good cause for discovery outside of the administrative record. *Hughes*, 507 F. Supp. 3d at 398 ("Courts in the Second Circuit typically deny 'conflict discovery' unless the plaintiff comes forward with some additional facts beyond the existence of the conflict, 'such as lack of established criteria for determining an appeal, a practice of destroying or discarding all records within minutes after hearing an appeal, or a failure to maintain written procedures for claim review.'" (quoting *Pretty v. Prudential Ins. Co. of Am.*, 696 F. Supp. 2d 170, 178 (D. Conn. 2010)); *see also Locher*, 389 F.3d at 294 (discussing how *DeFelice* found good cause based "not only on a demonstrated conflict of interest, but also upon the procedural problems with the plan's administrator's appeal process").

Dr. Gannon has failed to provide additional evidence to support a good cause finding here, as to the alleged conflict of interest. She offers Hartford's letter denying her claim as evidence of potential financial self-interest biasing the decision. In the denial letter, Hartford stated that "[its] decision makers are independent, impartial, and are not influenced by financial self-interest." But the existence of such language in the denial level is insufficient to support even a "reasonable chance" that the requested discovery regarding the alleged conflict of interest would satisfy the good cause standard. This letter alone fails to show how a conflict of interest influenced

Hartford's decision. She has failed to provide specific evidence in the record, such as "prior relationships between [Hartford] and the doctor [reviewing her claim] or questionable incentive structures," that would suggest potential conflict of interest. *See Pretty*, 696 F. Supp. 2d at 184 (quoting *Yasinoski v. Conn. Gen. Life Ins. Co.*, CV 07-2573RRMAKT, 2009 WL 3254929, at *11 (E.D.N.Y. Sept. 30, 2009)).

As a result, for these reasons, Dr. Gannon's discovery requests for RFP no. 3 and Deposition Notice, no. 14 will not be permitted.

Accordingly, for the foregoing reasons, the Court **GRANTS** in part and **DENIES** in part the motion to compel discovery, as set forth herein.