UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DAVID ROBERT AITKEN,	:	16 Civ. 4606 (PGG) (JCF)
Plaintiff,	:	MEMORANDUM AND ORDER
- against -	:	
AETNA LIFE INSURANCE COMPANY,	:	
Defendant.	:	

JAMES C. FRANCIS IV
UNITED STATES MAGISTRATE JUDGE

The plaintiff, David Robert Aitken, brings this claim against Aetna Life Insurance Company ("Aetna") pursuant to the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1001 et seq., claiming that Aetna erroneously denied him long-term disability benefits after he was diagnosed with coronary artery disease. The plaintiff has moved for limited discovery outside of Aetna's administrative record.[1] For the following reasons, his request is granted in part and denied in part.

Background

The following facts are taken from the plaintiff's Complaint. Prior to the onset of his coronary artery disease, Mr. Aitken had

[1] The plaintiff has not yet made formal discovery demands. (Letter of Paul M. Kampfer dated Sept. 8, 2016 ("9/8/16 Kampfer Letter"); Letter of Paul M. Kampfer dated Sept. 19, 2016 ("9/19/16 Kampfer Letter")). Rather, the plaintiff has requested that the Court rule on the scope of discovery in this case. (9/8/16 Kampfer Letter).

worked as a Group Chief Financial Officer at Four Seasons Solar Products LLC. (Complaint ("Compl."), ¶ 9). His duties included:

> managing the financial functions of the companies and Retail Operations; overseeing the day to day strategic and commercial management of a budget in excess of $100 Million in revenues for the Home Improvement Group; overseeing the financial management of Retail Operations of $17 Million in revenues; meeting strict reporting deadlines; supervising 5 plus direct reports and a department of over 20 people; and attending multiple board meetings each month.

(Compl., ¶ 22).

Since November 10, 2014, Mr. Aitken has been precluded from performing his occupation because the symptoms of coronary artery disease prohibit him from working in stressful situations or traveling extensively. (Compl., ¶¶ 15, 21, 23-24). His symptoms include "irregular heart rhythm, chest pain, chest fluttering, palpitations, lightheadedness, fatigue, weakness[,] and nausea." (Compl., ¶ 23). Dr. Sandeep Gupta diagnosed Mr. Aitken with coronary artery disease on December 23, 2014, and Dr. Cornell Cohen reached the same diagnosis on January 23, 2015. (Compl., ¶¶ 30-31).

Mr. Aitken then filed a disability claim with his employer's long-term disability insurance plan, which was administered and sponsored by Aetna. (Compl., ¶¶ 4, 6, 10, 15). In a May 12, 2015 letter, Aetna denied the claim, relying on the opinions of "in-house vocational consultant, Jane Clifton." (Compl., ¶¶ 35, 38).

Mr. Aitken appealed the decision on November 5, 2015, submitting reports from Dr. Cohen and Dr. Gupta, and a vocational evaluation from Dr. Charles Kincaid. (Compl., ¶¶ 41-53). Dr. Marc J. Veneziano of Professional Disability Associates ("PDA") evaluated the appeal for Aetna. (Compl., ¶ 54). Dr. Veneziano wrote a report prior to the determination of the appeal, which was provided to Dr. Cohen for comment and review. (Compl., ¶ 59). Dr. Cohen replied to the report, and Dr. Veneziano then submitted a second report. (Compl., ¶¶ 60-67, 70). Relying on the opinions of Dr. Veneziano and Ms. Clifton, Aetna denied the appeal on February 11, 2016. (Compl., ¶¶ 72-74).

The plaintiff alleges that the determination was influenced by a structural conflict of interest since Aetna both administers the plan and is liable for the payment of benefits. (Compl., ¶¶ 77-78). Additionally, according to the plaintiff, PDA serves only insurance companies, and because "Aetna provides substantial revenue to PDA, PDA has an incentive to provide Aetna with reviews that Aetna deems favorable in order to preserve Aetna as a client." (Compl., ¶¶ 79, 84). The plaintiff further alleges that since Dr. Veneziano is paid "substantial sums of money to provide file reviews" through PDA, he therefore "derives substantial income for performing file reviews for Aetna insureds," and thus "he has an incentive to provide file reviews that Aetna deems favorable in

order to perform future reviews for Aetna's insureds." (Compl., ¶¶ 86-87).

Discussion

In ERISA cases, the denial of a claim is reviewed de novo by the district court, unless the defendant can show that the plan gives the administrator "discretionary authority to determine eligibility for benefits or to construe the terms of the plan." Chau v. Hartford Life Insurance Co., No. 14 Civ. 8484, 2016 WL 7238956, at *2 (S.D.N.Y. Dec. 13, 2016) (quoting Firestone Tire and Rubber Co. v. Bruch, 489 U.S. 101, 115 (1989)); accord Baird v. Prudential Insurance Co. of America, No. 09 Civ. 7898, 2010 WL 3743839, at *6 (S.D.N.Y. Sept. 24, 2010). If the claim administrator has such authority, then a district court "will not disturb the administrator's ultimate conclusion unless it is 'arbitrary and capricious.'"[2] Baird, 2010 WL 3743839, at *6 (quoting Hobson v. Metropolitan Life Insurance Co., 574 F.3d 75, 82 (2d Cir. 2009)). "[W]hen reviewing claim denials, whether under the arbitrary and capricious or de novo standards of review,

[2] The parties here dispute whether the plan provides for discretion. (Letter of Kenneth J. Kelly dated Sept. 15, 2016 ("Kelly Letter"), at 1; 9/19/16 Kampfer Letter at 1). However, it is unnecessary to determine the standard of review before deciding on the scope of discovery. See Shelton v. Prudential Insurance Co. of America, No. 16 Civ. 1559, 2016 WL 3198312, at *2 (S.D.N.Y. June 8, 2016); Trussel v. Cigna Life Insurance Co., 552 F. Supp. 2d 387, 391 (S.D.N.Y. 2008).

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, Director of Benefits & Records Yale University, 819 F.3d 42, 60 (2d Cir. 2016).

A district court has discretion to admit additional evidence if there is good cause. Id. "However, the standard for permitting discovery outside the administrative record is 'far less stringent' than the 'good cause' standard for actually considering the outside evidence." Durham v. Prudential Insurance Co. of America, 890 F. Supp. 2d 390, 397 (S.D.N.Y. 2012) (quoting Joyner v. Continental Casualty Co., 837 F. Supp. 2d 233, 240 (S.D.N.Y. 2011)). "Accordingly, courts in this district generally require an ERISA plaintiff seeking additional discovery to show only a 'reasonable chance that the requested discovery will satisfy the good cause requirement.'" Id. (quoting Baird, 2010 WL 3743839, at *9, and Trussel, 552 F. Supp. 2d at 390). Indeed,

> "[i]f a plaintiff were forced to make a full good cause showing just to obtain discovery, then he would be faced with a vicious circle: To obtain discovery, he would need to make a showing, that in many cases, could be satisfied only with the help of discovery." The good cause standard required to obtain evidence beyond the administrative record is therefore less stringent than when requesting that the court [] consider such evidence in its final determination.

Trussel, 552 F. Supp. 2d at 390-91 (footnotes omitted) (quoting Anderson v. Sotheby's Inc. Severance Plan, No. 04 Civ. 8180, 2005

WL 6567123, at *6 (S.D.N.Y. May 13, 2005)).

A. Discovery Regarding Scope of Administrative Record

The plaintiff first seeks "discovery regarding the parameters of the administrative record and the reasoning/actions undertaken by Aetna in the evaluation of Plaintiff's claim." (9/8/16 Kampfer Letter at 2). Generally, discovery is limited to the actual evidence that was before the claims administrator when the decision was made. See Chau, 2016 WL 7238956, at *5 ("The 'administrative record' in an ERISA action is 'the evidence that the fiduciaries themselves considered.'" (quoting Miller v. United Welfare Fund, 72 F.3d 1066, 1071 (2d Cir. 1995))); S.M. v. Oxford Health Plans (N.Y.), Inc., 94 F. Supp. 3d 481, 505 (S.D.N.Y. 2015) (the administrative record consists only "of the documents before the claims administrator when the decision regarding benefits was made" (quoting Novick v. Metropolitan Life Insurance Co., 914 F. Supp. 2d 507, 521 (S.D.N.Y. 2012))). However, if the plaintiff shows that the record may be incomplete -- for instance, if the administrator referenced evidence outside the administrative record -- then a plaintiff may inquire into the completeness or scope of the record.[3] See Chau, 2016 WL 7238956, at *5; Mitchell

[3] For example, the parties in Mirsky v. Horizon Blue Cross and Blue Shield of New Jersey, No. 11-CV-2038, 2013 WL 5503659 (D.N.J. Sept. 30, 2013), disagreed on whether documents submitted by the plaintiff to the external evaluator during the final round

v. First Reliance Standard Life Insurance Co., 237 F.R.D. 50, 54 (S.D.N.Y. 2006). Unless it is shown that there is a reasonable chance that the requested discovery will satisfy the good cause requirement, a plaintiff is limited to the administrative record. S.M., 94 F. Supp. 3d at 505; but see Nagele v. Electronic Data Systems Corp., 193 F.R.D. 94, 103 (W.D.N.Y. 2000) ("[R]eview under this deferential standard does not displace using pretrial discovery to determine the actual parameters of the administrative record . . . ."). Since the plaintiff has not shown the need to inquire into the parameters of the record in this case, that request is denied.

B. Discovery Beyond the Administrative Record

The plaintiff requests discovery beyond the administrative record, alleging that Aetna is structurally conflicted and that it failed to follow claims procedure regulations. A plan administrator is "structurally conflicted" if it both sponsors and administers the plan; it is clear that if a plan administrator is structurally conflicted and if there are sufficient allegations of procedural irregularities and a reasonable chance that the good cause standard will be satisfied, then a plaintiff may compel

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of appeal were properly part of the record; the court ruled that they were. Id. at *4.

discovery beyond the administrative record.[4] See Kostas v. Prudential Insurance Company of America, No. 16 Civ. 1033, 2016 WL 5957306, at *3 (S.D.N.Y. Oct. 13, 2016); Shelton, 2016 WL 3198312, at *3; Feltington, 2016 WL 1056568, at *10. Additionally, good cause to admit evidence outside the record exists if a "plan's failure to comply with the claims-procedure regulation adversely affected the development of the administrative record." Halo, 819 F.3d at 60. A procedural irregularity may arise if a review does not take "into account all comments, documents, records, and other information submitted by the claimant relating to the claim,

[4] It is less clear, however, whether an allegation of a structural conflict alone is sufficient to compel discovery beyond the administrative record. Compare Feltington v. Hartford Life Insurance Co., No. 14 CV 6616, 2016 WL 1056568, at *9 (E.D.N.Y. March 15, 2016) ("[A] structural conflict of interest is not sufficient by itself to permit extra-record discovery and 'a party seeking to conduct discovery outside the administrative record must allege more than a mere conflict of interest.'" (quoting Rubino v. Aetna Life Insurance Co., No. 07 CV 377, 2009 WL 910747, at *3 (E.D.N.Y. March 31, 2009))); Quinones v. First Unum Life Insurance Co., No. 10 Civ. 8444, 2011 WL 797456, at *3 (S.D.N.Y. March 4, 2011) ("It is well-established that the mere appearance of a conflict alone is insufficient to meet the reasonable chance standard."); with Tretola v. First Unum Line Insurance Co., No. 13 Civ. 231, 2013 WL 2896804, at *2-3 (S.D.N.Y. June 13, 2013); Schrom v. Guardian Life Insurance Co. of America, No. 11 Civ. 1680, 2012 WL 28138, at *4 (S.D.N.Y. Jan. 5, 2012); Joyner, 837 F. Supp. 2d at 242 ("And since [the Supreme Court] warned against erecting procedural hurdles to showing a financial conflict, th[is] Court concludes that it is unwarranted to impose a standard such as a 'reasonable chance' that discovery will lead to 'good cause' at the discovery stage of litigation." (citation omitted)). However, since I find here that there are sufficient allegations of procedural defects in this case, I need not reach this issue.

without regard to whether such information was submitted or considered in the initial benefit determination." 29 C.F.R. § 2560.503-1(h)(2)(iv).

The plaintiff here has shown that there is a reasonable chance that he will satisfy the good cause requirement, albeit barely. He alleges that Aetna is structurally conflicted. (Compl., ¶ 77). He also alleges that the defendant ignored his treating doctors, vocational expert, and his own testimony:

> 40. In her Occupational Analysis, Ms. Clifton mischaracterized and misassessed the nature of Aitken's own occupation; ignored the restrictions and limitations of Aitken's treating doctors; and mischaracterized and misassessed the nature of Aitken's subsequent job as Director of Acquisitions.
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> 56. While Dr. Veneziano agreed with most of the restrictions and limitations given by Drs. Cohen and Gupta, he ignored the impact of significant stress on Plaintiff's ability to perform the material duties of his own occupation.
>
> 68. Despite Dr. Cohen's comments regarding Aitken's inability to deal with work stress, in his second report dated February 10, 2016, Dr. Veneziano again ignored this issue, speculating that Aitken's symptoms related to stress and travel could be related to anxiety -- a condition for which Plaintiff does not suffer or treat [sic].
>
> 71. In both reports, Dr. Veneziano ignored the fact that Mr. Aitken was claiming a partial, rather than total, disability.
>
> 75. In their evaluation, Aetna and Ms. Clifton ignored Aitken's ability to perform the non-exertional requirements of his Own Occupation -- namely, his inability to deal with stressful and pressure-filled

> situations, and his inability to travel frequently by airplane.
>
> 76. Aetna and Ms. Clifton also ignored the opinions of Plaintiff's vocational expert, Dr. Kincaid -- who concluded that stress and travel are prominent in the Group CFO position and that, from a vocational perspective, Aitken is totally disabled from his Own Occupation.

(Compl., ¶¶ 40, 56, 68, 71, 75-76). To be sure, these assertions give little insight into how the plaintiff's submissions were ignored. Nevertheless, because they do suggest that there were some procedural irregularities here, and because Aetna is allegedly structurally conflicted, at least some discovery is appropriate.[5]

Discovery in ERISA cases is generally limited because of "the significant ERISA policy interests of minimizing costs of claim disputes and ensuring prompt claims-resolution procedures." Durham, 890 F. Supp. 2d at 397 (quoting Locher v. Unum Life Insurance Co. of America, 389 F.3d 288, 295 (2d Cir. 2004)). The plaintiff suggests that Aetna may have ignored his complaints and his doctors' opinions, and he presents some insight into the alleged procedural errors. Therefore, discovery shall be limited to document requests and interrogatories relating to the nature of the decision and whether it ignored those opinions and complaints.

[5] Additionally, the defendant has conceded that some discovery is warranted. (Kelley Letter at 4).

The plaintiff may later request additional discovery if he can make a stronger showing that Aetna ignored his submissions.

Conclusion

For the reasons discussed above, the plaintiff's request for limited discovery outside the administrative record is granted in part. Specifically, the plaintiff may propound document requests and interrogatories limited to the issue of whether, during the determination of benefits, Aetna disregarded his doctors and experts or his own complaints. In addition, Aetna shall provide the administrative record to the plaintiff.

SO ORDERED.

James C. Francis IV

JAMES C. FRANCIS IV
UNITED STATES MAGISTRATE JUDGE

Dated: New York, New York
January 19, 2017

Copies transmitted via ECF this date to:

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