**UNPUBLISHED**

**IN THE UNITED STATES DISTRICT COURT**
**FOR THE WESTERN DISTRICT OF VIRGINIA**
**ABINGDON DIVISION**

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| **MARIE HENSLEY,** | ) | |
| | ) | |
| Plaintiff, | ) | Case No. 1:01CV00122 |
| | ) | |
| v. | ) | **OPINION** |
| | ) | |
| **EASTMAN LONG-TERM DISABILITY PLAN,** | ) | By: James P. Jones |
| | ) | United States District Judge |
| | ) | |
| Defendant. | ) | |

*John M. Lamie, Browning, Lamie & Gifford, P.C., Abingdon, Virginia, for Plaintiff; Jackson S. White, Jr., The White Law Office, Abingdon, Virginia, Keith D. Frasier and Elizabeth S. Washko, Ogletree, Deakins, Nash, Smoak & Stewart, P.C., Nashville, Tennessee, and George O. Burpeau, III, Senior Counsel for Eastman Chemical Company, Kingsport, Tennessee, for Defendant.*

In this ERISA case, the plaintiff seeks benefits under the Eastman Long-Term Disability Plan, which were previously denied upon review of her claim by the plan administrator. Because I find that the plan administrator did not abuse its discretion in denying the plaintiff's claim, I will grant the defendant's motion for summary judgment.

## *I. Background.*

The plaintiff, Marie Hensley, was employed by Eastman Chemical Company ("Eastman") from 1977 through January 6, 1999, at which time she was approved for leave under the Family Medical Leave Act ("FMLA") due to a serious health condition. She never returned to work, and on May 20, 1999, Hensley filed a claim for long-term disability benefits through the Eastman Long Term-Disability Plan ("the Plan"). Metropolitan Life Insurance Company ("MetLife") is the claims administrator for the Plan and has "responsibility and discretionary authority for determining eligibility for disability benefits . . . ." (R. at 31.) As the Named ERISA Claim Review Fiduciary, MetLife also has the "responsibility and discretionary authority for providing the full and fair review of determinations concerning eligibility for Plan Benefits and the interpretation of Plan terms in connection with the appeal of Claims denied in whole or in part . . . ." (R. at 32.) If a claimant is determined to be disabled, MetLife pays the benefits using funds provided by Eastman.

Under the Plan, an eligible Eastman employee is considered disabled if she meets four criteria: (1) she is totally and continually unable to engage in gainful work as a result of her condition, (2) she remains under the care of a licensed physician who is treating the condition, (3) the condition has lasted twenty-six weeks or more, and (4) the condition did not result from participation in an insurrection, rebellion, riot, or

commission of a crime. Hensley's application for benefits was based on a number of medical conditions, including back pain, fibromyalgia, and depression. Upon consideration of the submitted documents, MetLife determined that Hensley was not disabled because there was no evidence that she was incapable of performing gainful work. Hensley appealed the decision and submitted additional psychological reports. MetLife assigned an independent examiner to review the claim. The independent examiner also concluded that Hensley was not disabled within the meaning of the Plan, for many of the same reasons identified in the first decision, and also because the medical reports regarding Hensley's depression were outside of the pertinent time frame. The plaintiff's attorney requested, on several occasions, a reconsideration of MetLife's decision and submitted additional records for review. However, he was advised that the plaintiff had no further right of appeal.

Hensley filed this action on September 11, 2001, requesting that the court order the defendant to pay long-term disability benefits to her under the Plan. Hensley's cause of action arises under the provisions of the Employee Retirement Income Security Act of 1974, 29 U.S.C.A. §§ 1001-1461 (West 1999 & Supp. 2001) ("ERISA"), and jurisdiction of this court exists pursuant to 29 U.S.C.A. § 1132(f). Both parties have filed and briefed a motion for summary judgment, and argument was heard on April 18, 2001. The case is now ripe for decision.

*II. Facts.*

Gary E. Bush, M.D., was Hensley's primary physician. The first visit documented in the claim file was on January 6, 1999. On that date, Hensley complained of increasing pain radiating down to her foot and pain in her lower lumbar spine. She reported that she had difficulty with walking, standing, sitting, or bending repeatedly. Dr. Bush completed an FMLA form for the plaintiff, indicating that she had a probable permanent disability that would incapacitate her indefinitely. He specifically noted that "[i]t appears that she is not going to be able to work," and restricted her to no prolonged standing or walking, repeated squatting, bending, pushing, pulling or carrying, or rotating shift work. (R. at 195.)

Hensley returned to Dr. Bush's office on January 15, and asked that he add restrictions to her FMLA form, specifically, an inability to sit and use her upper extremities. Dr. Bush refused to change the form because her diagnosis of L5 radiculopathy does not affect the upper extremities. In his Attending Physician's Statement of Functional Capacity ("Physician's Statement"), submitted as part of Hensley's disability claim form, Dr. Bush indicated that while Hensley would be unable to return to her occupation at Eastman, she was not totally disabled from all work.

James B. Phillips, M.D., treated Hensley for her physical complaints beginning in 1989. An X ray and MRI showed some degenerative changes but revealed no

evidence of nerve root compression. Hensley reported to Dr. Phillips that her pain would get worse with strenuous work activity and she would have to lie down for several hours. Dr. Phillips noted that Hensley's history of bunion formation limited her ability to stand and walk for prolonged periods. In October 1998, he diagnosed Hensley with cervical lumbar spondylosis with chronic pain, and prescribed medication to improve her symptoms. On January 18, 1999, he stated that he was "unable to find any serious underlying orthopaedic problems." (R. at 144.) He concluded in a February 20, 2002, letter to plaintiff's counsel that:

> I think the patient's work limitations are primarily confined to what she can symptomatically tolerate. At this point in time and over the last two years she has been unable to tolerate an 8-hour day, 5 days a week work day. I think that light activity, if she can tolerate it, is not unreasonable in the future though I do not think she can tolerate it for the length of time required for an 8-hour day at this point in time primarily because of her increase in symptoms. Her restrictions are primarily based upon her symptoms rather than the severity of her underlying objectively demonstrable pathology from an orthopaedic standpoint.

(R. at 79.)

Dr. Phillips also completed a Medical Assessment of Ability to Do Work-Related Activities (Physical) form in which he determined that Hensley was capable of frequently lifting ten pounds and occasionally lifting twenty-five pounds, and standing, walking, or sitting for one or two hours without interruption, for a total of six hours. He also found that she is limited in her ability to climb, stoop, kneel, balance,

crouch, crawl, reach, handle, feel, push, and pull. He prepared a Physician's Statement in which he indicated that Hensley would be unable to tolerate a return to any gainful employment.

Hensley visited William M. Platt, M.D., on February 2, 1999. Dr. Platt prepared a letter to Dr. Bush, stating that he didn't "see any objective data that would lead [him] to believe that Ms. Hensley is unable to perform work in some capacity." (R. at 174.) He also noted that her depression and the incentive for secondary gain were likely playing a role in her symptomatology. He listed "symptom magnification" as part of his assessment and stated that there was "no clear objective physical deficit or examination findings that would indicate absolute disability." (R. at 180.)

William M. Bell, III, M.D., examined Hensley in March and May 1999. In his notes from her March visit, Dr. Bell stated that he could not explain Hensley's chronic pain. Hensley told him that she left work on January 6 due to pain in her back and feet. He also reported that Hensley had recently experienced a "flare up of depression" and that "she has resolved herself that she is just unable to work at this point." (R. at 136.) She told him that her legs are numb and tingle, her back hurts every day, and she cries often. In May, he noted that she was sleeping better and was more animated. She told him that since leaving her employment, her stress level had decreased and that she experienced some pain relief on her current medication. On June 17, 1999, he

completed a Physician's Statement, stating that Hensley had some limitation in her ability to sit, stand, walk, climb, withstand unusual positions, reach forward and overhead, push, pull, and twist. He also concluded that she could only lift up to fifteen pounds occasionally. Most importantly, he evaluated Hensley as totally disabled for her occupation, but was uncertain as to whether she was totally disabled for any occupation.

Marie Hensley began seeing LaDonna Carey, a licensed psychological examiner, in May 1999. Carey provided a summary of Hensley's treatment to MetLife, in which she listed Hensley's symptoms and concluded that the plaintiff suffers from major depressive episode, moderate to severe, and panic disorder without agoraphobia. She stated that "[d]ue to the severity of Ms. Hensley's symptoms, she does appear unable to work but certainly willing and desiring to return to work if ever possible." (R. at 151.) In her Physician's Statement, she indicated that she was unsure of whether the plaintiff was totally disabled for her occupation or any occupation.

Sharon J. Hughson, Ph.D., evaluated the plaintiff on August 12, 1999. She observed that Hensley exhibited some pain behavior during the interview, but that her gait was normal. She noted that Hensley denied having difficulty relating to other people either socially or at work. Dr. Hughson also reported that Hensley manages the family money, does a little shopping, cooks, vacuums, and performs other light

household chores. Dr. Hughson conducted the MMPI-2 test, but noted that the results were unlikely to provide useful information because Hensley was too guarded and attempted to present an overly positive self-image, thus affecting the validity of the test. Dr. Hughson diagnosed pain disorder associated with psychological factors and a general medical condition, and major depressive disorder, recurrent, mild. She also completed a Medical Assessment of Ability to Do Work-Related Activities (Mental) form, in which she gave Hensley "fair" to "very good" scores in most categories, with a "poor" rating for her ability to deal with work stresses and demonstrate reliability.

A letter to the plaintiff's attorney from Russell D. McKnight, M.D., on June 20, 2000, noted that Hensley suffers from depression associated with chronic pain syndrome and multiple medical problems which combine to render her incapable of work. He opined that Hensley's medical and psychiatric impairments existed from January 6, 1999, or before. On October 19, 1999, Dr. McKnight prepared a psychiatric report in which he stated that Hensley first experienced depression in 1986 due to the stress of shift work. She told him that her depression had resurfaced in February 1999, shortly after leaving Eastman. She complained of fatigue, loss of energy, loss of interest, nervousness, insomnia, and anxiety attacks. Dr. McKnight diagnosed her with anxiety depression with insomnia secondary to chronic pain, chronic fatigue syndrome, major affective disorder, chronic depression, and anxiety attacks. He listed her GAF

as 40 to 45[1] and recommended that she be referred into psychiatric service. He also prepared a Medical Assessment (Mental) form, giving her "fair" scores in most categories, but rating her as having "poor" ability to relate to co-workers, deal with the public, deal with work stresses, maintain attention and concentration, and understand complex job instructions.

During its first review of Hensley's claim, MetLife reviewed records from Drs. Bush, Platt, Bell, and Phillips, and Ms. Carey. All of the submitted documentation was also reviewed by a MetLife staff physician, Jefrey D. Lieberman, M.D., who concluded that Hensley should be able to perform the duties of her occupation. In its letter denying Hensley's claim, dated November 1, 1999, MetLife set forth several reasons for its decision. It noted that Dr. Bush had reported that Hensley was not totally disabled from any occupation and that she was not severely limited in her ability to sit, stand, and walk. The tests performed by Dr. Bush indicated only mild degenerative changes in her spine. Dr. Bush had specifically refused the plaintiff's request to list an inability to sit and use upper extremities on Hensley's disability form. Dr. Bell's

[1] The global assessment of functioning ("GAF") scale is a method of considering psychological, social and occupational function on a hypothetical continuum of mental health. The GAF scale ranges from 0 to 100, with serious impairment in functioning at a score below 50, moderate difficulty in functioning at 60 and below, some difficulty in functioning at 70 and below, and no more than slight impairment in functioning at 80 and below. Superior functioning is represented by 100. *See* American Psychiatric Ass'n, *Diagnostic and Statistical Manual of Mental Disorders* 32 (4th ed. 1994). According to Dr. Dubner, a score of 50 indicates "serious symptoms associated with serious impairment in social and occupational functioning." (R. at 197.)

assessment also listed few limitations and Dr. Platt had reported that there was no objective data to support Hensley's alleged inability to perform work in some capacity. Dr. Platt had also believed that the possibility of secondary gain could be fueling Hensley's complaints. MetLife stated that Hensley's conditions had existed for a period of time prior to her last day of work, and that Hensley's "decision to pursue disability was [her] personal choice rather than due to any medical condition which would preclude [her] from working in [her] own or any other occupation." (R. at 129.)

A second review was undertaken by MetLife upon appeal by Hensley, and a letter affirming the previous denial of her claim was prepared on February 22, 2000. MetLife cited many of the same reasons for its decision; however, it further addressed Hensley's symptoms of depression, noting that because she did not begin sessions with her therapist until several months after she left her employment, the therapist could not assess Hensley's condition during the relevant time frame. Similarly, MetLife insisted that it could not consider Dr. McKnight's evaluation on October 19, 1999 because he was in no position to determine her psychological condition as of the time she stopped working. MetLife also cited the fact that Hensley's physical conditions had existed for several years, during which time she had continued to work at Eastman.

On March 23, 2000, and again on August 4, 2000, Hensley requested another review of her claim and submitted additional documents on her behalf. MetLife refused

to accept the information contained in Dr. Phillips' February 10, 2000, report, stating that it was contradicted by the facts. Specifically, Dr. Phillips had reported that Hensley had been unable to work an eight-hour day for the past two years; however, her employment records indicated that she continued to work eight-hour shifts without rest each workday until January 6, 1999.

## *III. Analysis.*

The court's standard in reviewing the decision to deny the plaintiff long-term disability benefits is very deferential. If the Plan gives the administrator discretionary authority to determine eligibility for benefits or to construe the terms of the Plan, the administrator's denial must be reviewed for abuse of discretion. *See Firestone Tire & Rubber Co. v. Bruch*, 489 U.S. 101, 111, 115 (1989); *Boyd v. Trustees of United Mine Workers Health & Retirement Funds*, 873 F.2d 57, 59 (4th Cir.1989). Under this standard, the claim administrator's "decision will not be disturbed if it is reasonable, even if this court would have come to a different conclusion independently." *Ellis v. Metro. Life Ins. Co.*, 126 F.3d 228, 232 (4th Cir.1997). Such a decision is reasonable if it "is the result of a deliberate, principled reasoning process and if it is supported by substantial evidence." *Brogan v. Holland*, 105 F.3d 158, 161 (4th Cir. 1997) (internal quotations omitted). "'Substantial evidence . . . is evidence which a reasoning mind

would accept as sufficient to support a particular conclusion . . . [and] consists of more than a mere scintilla of evidence but may be somewhat less than a preponderance.'" *LeFebre v. Westinghouse Elec. Corp.*, 747 F.2d 197, 208 (4th Cir.1984) (quoting *Laws v. Celebrezze*, 368 F.2d 640, 642 (4th Cir.1966)).

The service agreement between Eastman and MetLife gives MetLife "responsibility and discretionary authority" for determining disability claims and reviewing those decisions upon appeal by the claimant. Thus, the abuse of discretion standard would apply. However, the plaintiff argues that a modified abuse of discretion standard should be utilized in this case because Eastman funded the Plan and retained authority to terminate its service agreement with MetLife with thirty days notice, thus providing incentive for MetLife to deny claims in order to curry favor with Eastman and thereby avoid cancellation of the agreement, which would impact MetLife financially. Although it is true that a fiduciary's conflict of interest may serve to reduce the deference afforded to the decision of the fiduciary, *see Booth v. Wal-Mart Stores, Inc.*, 201 F.3d 335, 343 n.2 (4th Cir. 2000), any such conflict in this case is highly speculative. Even assuming a less deferential standard in my review, *see Ellis*, 126 F.3d at 233 ("The more incentive for the administrator or fiduciary to benefit itself by a certain interpretation of benefit eligibility . . . the more objectively reasonable [its] decision must be and the more substantial the evidence must be to support it."), I find

that MetLife acted reasonably in making its decision, which was supported by substantial evidence.

The record establishes several facts that would reasonably lead to a decision to deny Hensley's claim. First, Hensley's primary physician, Dr. Bush, indicated on Hensley's claim form that she could be gainfully employed at some occupation. Second, Dr. Phillips noted that Hensley's limitations were based on her symptomatology rather than any serious underlying medical condition. His statement that she had been unable to tolerate an eight-hour day for the past two years was clearly incorrect based upon her work history. Third, Dr. Platt believed that Hensley was exaggerating her symptoms and could find no medical reason why she could not perform work in some capacity. Fourth, Dr. Bell could not state with certainty whether Hensley was incapable of performing any occupation, and he noted that her depression did not "flare up" until well after her last day on the job. Fifth, all of Hensley's psychological reports were prepared based upon evaluations that occurred several months after the relevant time period for disability determination. Although some of the reports indicated that Hensley may have experienced depressive episodes prior to her final date of employment at Eastman, the doctors' notes also report that the depression resurfaced and became worse in February 1999, well after the time frame in question.

Based on this evidence, I find that MetLife's decision to deny Hensley benefits under the Plan was reasonable and well-supported by the medical documentation available at the time of the review.

*IV. Conclusion.*

For the foregoing reasons, the defendant's motion for summary judgment will be granted.

An appropriate final judgment will be entered.

DATED: April 23, 2002

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United States District Judge