METROPOLITAN LIFE v. GLENN.

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ERISA allows a participant or beneficiary whose claim for benefits under an employee benefit plan has been denied to appeal the denial in federal court after exhausting all administrative remedies. Often the entity that administers the plan, such as the employer or an insurance company has the authority to both determine an individual's eligibility for plan benefits and pays benefits from its own pocket In *Metropolitan Life Insurance Company v. Glenn*, 461 F.3d 660 (6th Cir. 2006), *aff'd*.128 S.Ct. 2343(U.S, 6/19/08), the U.S. Supreme Court considered whether an insurance company plan administrator of an ERISA long-term disability (LTD) plan that both evaluates and pays claims for the employer has a conflict of interest that courts must consider in reviewing denials of benefit claims. The Court concluded that this dual role did create a conflict of interest.

MetLife addressed two questions that were left unanswered in *Firestone Tire & Rubber Co. v. Bruch* 489 U. S. 101 (1988). *Firestone* mentions that conflicts of interest as one factor to be taken into account in judicial review. The unanswered questions were:

(1) what constitutes a conflict of interest?; and

(2) when there is a conflict, how should a court to take it into account in reviewing a plan administrator's denial of benefits?

With respect to point (1) above, *MetLife* identifies the situation where either an employer or an insurance company serves both as plan administrator with authority to interpret the plan and rule on benefit claims as well as the payor of benefits as a conflict of interest situation. The Court addressed point (2) by holding that a conflict of interest is one of several factors that a court should consider in reviewing benefit denials.

Under the facts, Ms. Glenn filed a claim for LTD benefits under her employer's disability plan, which MetLife both funded and administered for Sears, Roebuck &Company. In denying her claim, the Court found that the administrator had abused its discretion by ignoring the fact that the Social Security Administration (SSA) already had determined that she was totally and permanently disabled and that MetLife had offset its initial 24-month benefit award by her Social Security disability benefit. In fact, they assisted her in getting an layer who presented her case to SSA. The initial award was based on the standard of her inability to perform her current job; however, the subsequent determination used the more stringent Social Security standard of being unable to perform any gainful employment). The SSA concluded that Ms. Glenn's cardiac condition, which made her chronically fatigued, among other symptoms, rendered her unable to perform any gainful employment, the same standard that applied to her eligibility for the second stage of benefits under the LTD plan. Thus, MetLife had been inconsistent in ignoring the SSA's finding of total and permanent disability, the trial held. The trial court also found that MetLife had ignored written statements from Ms. Glenn's physician stating that she was totally and permanently disabled, and instead relied on a physical capacity assessment form stating that she could perform sedentary work.

Justice Breyer's opinion for the majority held that, where an employer or insurance company both funds and administers an employee benefit plan, there is an inherent conflict of interest that courts must consider in determining whether the plan administrator abused its discretion in denying a benefit claim. The Court stated that employers or insurers with dual roles have a conflict in their fiduciary interests, which could cause them to deny borderline claims that otherwise might be granted, since the funds to pay the claim will come from their own pockets. The Court noted that an employer's conflict might even extend to its selection of an insurance company as plan administrator, since it might favor insurers with lower rates over those with highly accurate claims processing, violating the employer's ERISA fiduciary duty to act solely in the interests of plan participants and beneficiaries.

In affirming the Sixth Circuit decision, the Supreme Court ruled that courts must take such conflicts and potential conflicts into account on a case-by-case basis, taking into account all of the surrounding facts and circumstance, as one factor in determining whether a plan administrator abused its discretion in denying a claim. The Court, citing *Firestone*, analogized to trust law, which provides generally that a conflict of interest can be a tie-breaker when other factors are closely balanced. Without providing much detail on its application, *MetLife* indicates that courts should use a sliding scale in determining how much weight should be accorded the conflict of interest factor, i.e., conflicts become more important when circumstances indicate a higher likelihood that they affected the plan administrator's decision. Conversely, if a plan administrator can show that it has taken steps to reduce potential bias and to promote accuracy, the conflict factor becomes less important and, depending on the circumstances, may even be accorded no weight at all.

With respect to the standard of review that applies in a conflicts situation, the Court reiterated the *Firestone* standard, i.e., that the question should be whether the plan administrator has abused its discretion in making the claims decision, as opposed to *de novo* review of the claim, so long as the plan documents grant the plan administrator the discretionary authority to administer and interpret the plan's provision. Without this type of language, however, a court could find that the claimant is entitled to *de novo* review. The Court did not, however, create special burden-of-proof rules, or other special procedural or evidentiary rules addressing the evaluator/payor conflict.

Chief Justice Roberts, concurring in part, stated that he preferred a standard that would consider a conflict of interest only where there is evidence that the benefits denial was motivated or affected by the plan administrator's conflict, noting that the conflict in *Glenn* was inherent in the structure of many ERISA plans, potentially opening the gates for a torrent of litigation. Justice Roberts stated that it should be the plan administrator's actual motivation that matters in reviewing benefits decisions, as opposed to the mere presence of this type of conflict. He indicated that there should be evidence that the plan administrator's decision was influenced by the conflict of interest before using the conflict as a factor. The Chief Justice stated that the *de novo* review was appropriate in this particular case because there was evidence that MetLife had applied inconsistent standards and has not considered certain medical evidence that was presented. He stated that this, i.e., the apparent effect of the conflict of interest upon the plan administrator's decision-making process, that should trigger *de novo* review, rather than the mere presence of a conflict.

Agreeing with the Chief Justice, a partial concurrence and partial dissent by Justices Scalia and Thomas stated that

> "Common sense confirms that a trustee's conflict of interest is irrelevant to determining the substantive reasonableness of his decision. A reasonable decision is reasonable whether or not the person who makes it has a conflict,"

The majority opinion, however, as indicated above, concluded that the conflict itself was a factor to be taken into account, although it provided little guidance on the amount of weight that should be given an administrator/payor conflict, nor did it indicate that a conflict should be treated as a factor in cases involving other types of conflicts that could affect a plan administrator's decision.

Significantly, the Court did not state that a conflict generated *de novo* review, retaining the *Firestone* standard. Thus, in *Glenn*, a divided Court partially answered the two questions left open by *Firestone*, but it may have raised more questions than it answered.