

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MICHAEL W. LYNCH,

Plaintiff,

Hon. Ellen S. Carmody

v.

Case No. 1:07-cv-00308

FORT DEARBORN LIFE INSURANCE
COMPANY,

Defendant.

OPINION

This matter is before the Court on Plaintiff's Motion for Summary Judgment. (Dkt. #27). The Court notes that the Sixth Circuit in *Wilkins v. Baptist Healthcare Systems, Inc.*, 150 F.3d 609 (6th Cir. 1998) has held that summary judgment procedures are not appropriate in the adjudication of ERISA actions to recover benefits. *Id.* at 619. In keeping with *Wilkins*, the Court will evaluate the instant motion not as a motion for summary judgment but rather as a motion for entry of judgment seeking a reversal of the plan administrator's decision to deny Plaintiff long-term disability benefits. In its response (Dkt. #28) to Plaintiff's motion, defendant requests judgment on behalf of defendant. The parties were heard on November 7, 2007. For the reasons stated below, Plaintiff's motion is denied and judgment will be entered for Defendant.

As part of his previous employment as a stagehand, Plaintiff was provided long-term disability insurance through Defendant, Fort Dearborn Life Insurance Company. The policy in question provided two-tiered disability coverage. Plaintiff was entitled to disability payments for

the first twenty-four (24) months if he was unable to perform his work as a stagehand. However, after this initial period of benefits Plaintiff was entitled to disability payments only if he was unable to perform “any other occupation.” The specific policy language is as follows:

TOTAL DISABILITY or TOTALLY DISABLED means that during the elimination period and the next 24 months of disability you are:

1. unable to perform all of the material and substantial duties of your occupation on a full-time basis because of a disability:
 - a. caused by injury or sickness;
 - b. that started while you are insured under this coverage; and
2. after 24 months of benefits have been paid, you are unable to perform with reasonable continuity all of the material and substantial duties of your own or any other occupation for which you are or become reasonably fitted by training, education, experience, age and physical and mental capacity.

A June 2002 accident rendered Plaintiff unable to perform his duties as a stagehand, an issue neither party has ever disputed. Accordingly, Plaintiff was paid disability benefits under subsection (1) of the policy language quoted above. In September 2005, however, Defendant concluded that Plaintiff was no longer entitled to disability benefits because while he was unable to perform his previous work as a stagehand he was capable of performing some other occupation. Plaintiff brings the present action asserting that Defendant’s determination in this regard was arbitrary and capricious.

STANDARD OF REVIEW

The parties agree that the standard applicable to Plaintiff’s claim is the “arbitrary and capricious” standard of review, and the Court concurs. As is well recognized, the arbitrary and capricious standard “is the least demanding form of judicial review of administrative action.”

McDonald v. Western-Southern Life Ins. Co., 347 F.3d 161, 169 (6th Cir. 2003). Accordingly, if

Defendant can “offer a reasoned explanation, based on the evidence, for a particular outcome, that outcome is not arbitrary or capricious.” *Id. See also, Evans v. UnumProvident Corp.*, 434 F.3d 866 (6th Cir. 2006). The mere possibility that an alternative conclusion could be reached by the court or others does not provide a basis for reversing a claim decision that is premised upon a rational evaluation of the evidence. *Cochran v. Trans-General Life Ins. Co.*, 60 F.Supp.2d 693 (E.D.Mich.1999).

INVESTIGATIVE HISTORY

In June of 2004, after Fort Dearborn had taken responsibility for the first two years of benefits, Kristin Fielding, R.N., conducted a review of the medical records submitted by Plaintiff in support of his claim. (Tr. 488-92)¹. Fielding concluded that the medical records did not support Plaintiff’s cervical and lumbar radicular complaints and that the examination findings submitted suggested inconsistent diagnoses. (Tr. 492). Fielding concluded that additional information was needed to evaluate Plaintiff’s level of impairment and any corresponding work restrictions.

In June 2005, Plaintiff’s treating physician, Dr. Naylor, reported that Plaintiff suffered from extremely severe functional limitations. (Tr. 85, 131-33). A medical consultant employed by Defendant concluded that the objective medical record did not support the degree of limitations articulated by Dr. Naylor. Accordingly, Defendant (while still continuing to pay Plaintiff disability benefits) began to more closely investigate Plaintiff’s condition. Defendant’s investigation was quite thorough and deliberate.

¹ The Court will cite to the Administrative Record as Tr. ____.

On June 13, 2005, Donna Chamoff, R.N., Defendant's medical consultant, reviewed Plaintiff's medical records to ascertain whether the restrictions imposed by Dr. Naylor were supported. (Tr. 123-26). Chamoff concluded that there was not sufficient objective data to support Plaintiff's claim of total functional impairment due to chronic back and neck pain. (Tr. 126).

As a result of Chamoff's review, Defendant conducted surveillance of Plaintiff's daily activities from July 7-10, 2005. (Tr. 1930-31). After reviewing additional information including the surveillance video, Chamoff concluded that the objective medical records and other data did not support Plaintiff's claimed level of functional impairment. (Tr. 1272). Chamoff offered to provide Dr. Naylor, Plaintiff's treating physician, with a copy of the surveillance video and to discuss the new information to see if this had any impact on Dr. Naylor's opinions. Ultimately Dr. Naylor's staff advised that Dr. Naylor was declining the invitation to discuss the new data and advised that Dr. Naylor did not intend to submit any additional information. (Tr. 1242).

As noted, Defendant employed an investigator who performed surveillance on Plaintiff for three days in July 2005. The investigator's report is included in the administrative record. (Tr. 19-31). Defendant has also submitted (as part of the administrative record) a DVD recording of the investigator's observations of Plaintiff. While the DVD is approximately 20 minutes in length, it is comprised of what appear to be identical two 10 minute segments. Nonetheless, as this video reveals (and as the investigator details in his report) the investigator observed Plaintiff engaging in a wide variety of activities which are contrary to the limitations articulated by Dr. Naylor, and appears to demonstrate that Plaintiff is capable of performing an occupation. In fact,

this video demonstrates that Plaintiff was engaged in an occupation, that is, participating in management of a brewery and small restaurant he had purchased.²

Much of the video surveillance occurred at the Boyne River Brewing Company. While Plaintiff initially denied any active involvement with the brewery, Defendant's investigation revealed that Plaintiff was, in fact, the owner of the Boyne River Brewing Company. (Tr. 285-87). Plaintiff now acknowledges that he was the President of the Brewery. (Dkt. #27 at 3). While, as noted, perhaps somewhat exaggerated by Defendant, the activities observed on the surveillance video support Defendant's position that Plaintiff was, in fact, performing some work activities in his capacity as owner/operator of the Boyne River Brewing Company. It also supports Defendant's contention that Plaintiff was not disabled to the degree stated by Dr. Naylor.

Defendant continued to investigate Plaintiff's condition while paying him benefits. Ruby MacDonald, C.R.C., C.D.M.S., C.C.M., a vocational consultant, provided additional review and assessment. (Tr. 1230-35). On September 13, 2005, the vocational consultant concluded that Plaintiff would be able to return to the labor market in a gainful capacity. (Tr. 1235).

Defendant advised Plaintiff of its decision that he did not qualify for total disability benefits and the rationale for its conclusion on September 22, 2005. (Tr. 1210-14). Plaintiff was also invited to provide any additional information he believed to be relevant to this decision.

Defendant then gave the new information from Plaintiff, along with Plaintiff's voluminous records to date, to Dr. Thomas Reeder, a physician board certified in internal

² While the Court does not interpret the surveillance as expansively as Defendant, it clearly reflects on Plaintiff's credibility. Because many of Plaintiff's difficulties are self-reported with minimum objective findings, doubts about Plaintiff's credibility seem highly relevant to Defendant's determination.

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