

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

LYNNE WENDEL,

Plaintiff,

vs.

LIFE INSURANCE COMPANY
OF NORTH AMERICA d/b/a CIGNA
GROUP INSURANCE

Serve:

Defendant.

Case No.: 4:20-cv-1921

COMPLAINT
EMPLOYEE RETIREMENT INCOME SECURITY ACT

COMES NOW Plaintiff Lynne Wendel, by and through undersigned counsel, pursuant to the Employee Retirement Income Security Act of 1974, as amended 29 U.S.C. §1001 *et seq.*, and for her cause of action against defendant Life Insurance Company of North America d/b/a Cigna Group Insurance (hereinafter “Cigna”), respectfully states the following:

1. Plaintiff Lynne Wendel (hereinafter “Mrs. Wendel”) brings this action against Defendant Cigna for damages caused by the Defendant’s breach of statutory, contractual, and fiduciary obligations and violations of the Employee Retirement Income Security Act of 1974, as amended 29 U.S.C. § 1001 *et. seq.* (“ERISA”).

2. This is an action brought pursuant to 29 U.S.C. §1132(e)(1) and 28 U.S.C. §1331. Under 29 U.S.C. §1132(f), the Court has jurisdiction without respect to the amount in controversy or the citizenship of the parties.

3. Venue is proper in this District pursuant to 29 U.S.C. §1132(e)(2), in that the subject employee welfare benefit plan and employee insurance program are administered in this District, the breaches of duty herein alleged occurred in this District, and Defendants reside or are found in this District.

Parties

4. Mrs. Wendel is an individual residing in Jefferson County, in the Eastern District of Missouri. Mrs. Wendel was an employee of the Dolan Company and is a vested participant in a Group Insurance Policy which provides an employee benefit plan within the meaning of 29 U.S.C. § 1132(a).

5. Mrs. Wendel has standing to bring this action as a beneficiary under 29 U.S.C. §1132(a).

6. Defendant Cigna provides coverage for certain employees of the Dolan Company under an employee welfare benefit plan (hereinafter “Plan”) within the meaning of 29 U.S.C. § 1002(1). Specifically, Cigna provides Long Term Disability benefits (hereinafter “LTD”), among other benefits for the Dolan Company.

7. Cigna is an insurance company incorporated in Pennsylvania and is doing business in Missouri under a license to do business as a Foreign Insurance Company.

8. Cigna administers and pays benefits under the terms of the LTD plan and is a fiduciary within the meaning of 29 U.S.C. §1002(21) and 1102.

9. The Dolan Company serves as the plan administrator and sponsor under the meaning of 29 U.S.C. § 1002(16).

COUNT I **WRONGFUL DENIAL OF BENEFITS PURSUANT TO 29 U.S.C § 1132 (a)(1)(b)**

10. Mrs. Wendel became disabled in 2015 and was forced to stop working due to righted sided breast cancer status post chemotherapy and radiation. Mrs. Wendel had post-operative issues with an axillary seroma requiring incision and drainage and ongoing issues with pain and weakness in her right upper extremity, including lymphedema.

11. Mrs. Wendel also suffers from chest pain, lifelong intractable chronic migraines, double vision, poor memory, fatigue, neuropathy in her feet and hands, vertigo, a frozen right shoulder, diabetes, major depression, post-traumatic stress disorder (PTSD) in relation to her breast cancer, seizures, rheumatoid arthritis, and secondary parkinsonism.

12. As a result of Mrs. Wendel's diagnoses and the resulting disability, Mrs. Wendel's treating physicians and psychiatrists have determined that Mrs. Wendel is unable to work.

13. Since 2016, Mrs. Wendel's conditions have worsened and have in no way improved.

14. At the time Mrs. Wendel was forced to stop working, she was an eligible employee under the Plan for her Long-Term Disability (LTD) benefits and Waiver of Premium benefits (WOP) for the diagnoses of breast cancer and her post-operative issues.

15. On April 18, 2017, Cigna determined that Mrs. Wendel was no longer qualified for her Waiver of Premium benefits.

16. On June 8, 2017, Mrs. Wendel filed an appeal for review of Cigna's adverse determination of her WOP benefits.

17. On September 17, 2019, Cigna further determined that Mrs. Wendel was no longer disabled and no longer qualified for her Long-Term Disability benefits under the Plan.

18. The adverse determination prompted Mrs. Wendel to file her second WOP appeal and her first LTD appeal on November 8, 2019.

19. In the review of her appeals, on May 20, 2020, Cigna upheld their adverse determinations of her WOP and LTD benefits, and Mrs. Wendel promptly filed her second appeal for her LTD benefits.

20. Her second appeal for her LTD benefits was denied on October 17, 2020.

21. In support of her appeals of Mrs. Wendel submitted extensive medical records dating from 2015 through 2020 from several physicians, which outlined the treatment and care Mrs. Wendel received and was receiving for her multiple conditions.

22. Throughout her treatment, she was given various physical restrictions and recommendations, including the use of a cane and roller to assist in ambulation.

23. Due to her neuropathy and seizure-like spells, Cigna's medical reviewers suggested that as a matter of safety, she followed standard seizure precautions, which included:

- a) no driving unless state laws are satisfied;
- b) no climbing and working around heights;
- c) no working in a water environment;
- d) no working around electronic mechanical hazards;
- e) can stand and walk up to four hours, no more than 30 minutes at a time;
- f) occasionally, lift and carry 20 pounds and frequently 10 pounds; and
- g) occasionally bend, stoop, kneel, crouch, and crawl.

24. Her physicians suggested further restrictions. Most recently, on June 3, 2019, Dr. Gregory Galakatos opined that Mrs. Wendel could only stand or walk occasionally for 0-2.5 hours a day and that she could only occasionally lift more than 10 pounds.

25. On August 26, 2020, Mrs. Wendel submitted to Cigna for review the results of a Functional Capacity Evaluation (FCE) that concluded that Mrs. Wendel met only the material handling demands for a light demand vocation.

26. The FCE explained that Mrs. Wendel was *not able* to safely perform sitting for long periods, standing for long periods, lifting and moving work required weights, and walking work required distances.

27. Cigna determined that Mrs. Wendel was able to perform sedentary level work, which as defined by the Dictionary of Occupational Titles and expanded upon by Cigna as work that involves sitting “most of the time.”

28. Since Mrs. Wendel cannot safely sit or stand for long periods of time, she does not meet the definitional criteria needed for sedentary level work.

29. Additionally, the FCE report further confirmed that Mrs. Wendel had diminished functional use of her upper extremities in work above the chest, shoulder, and head level, along with gait deficiencies.

30. Despite providing substantial evidence that she has been continuously totally disabled under the terms of the Plan, Cigna has denied, and continues to deny, Mrs. Wendel her LTD benefits since 2019 and her WOP benefits since 2017.

31. At all relevant times, Mrs. Wendel has been under the care of licensed medical doctors.

32. Mrs. Wendel has appealed all adverse benefit determinations and exhausted all available administrative remedies.

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