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Please use FIND to look at the applicable circuit court rule before citing this opinion. Second Circuit Rules § 0.23. (FIND CTA2 s 0.23.)

United States Court of Appeals,
Second Circuit.
William COURTER, Plaintiff-Appellant,

v.

FIRST UNUM LIFE INSURANCE COMPANY,
Defendant-Appellee.
No. 04-5975.

Dec. 14, 2004.

Background: Employee Retirement Income Security Act (ERISA) plan participant filed suit against plan administrator challenging termination of benefits under a long term disability insurance policy. The United States District Court for the Eastern District, Raymond J. [Dearie](#), J., granted insurer's motion for judgment on the record, and appeal was taken.

Holding: The Court of Appeals held that plan participant was disabled within meaning of plan, and thus plan administrator's termination of long term disability benefits was arbitrary and capricious. Reversed and remanded.

West Headnotes

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ERISA plan participant was disabled within meaning of plan, and thus plan administrator's termination of long term disability benefits was arbitrary and capricious, where participant suffered from HIV, suffered allergic reactions or HIV medications hampering his ability to treat the disease, and had also suffered at least one heart attack, hypertension, severe fatigue, and cardiac disease since administrator first judged him disabled. Employee Retirement Income Security Act of 1974, § 2 et seq., [29 U.S.C.A. § 1001](#) et seq.

*213 Appeal from a judgment of the United States District Court for the Eastern District of New York (Raymond J. [Dearie](#), Judge).

UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the judgment of said District Court be and hereby is REVERSED, and the cause is REMANDED to the District Court further proceedings, including the calculation of benefits due to plaintiff, consistent with this Order.

William Courter, Forest Hills, NY, for Appellant,
pro se.

[Christopher G. Brown](#) (Nicole E. Allen, on the brief), Begos & Horgan, LLP, Westport, CT, for Appellee.

PRESENT: [JON O. NEWMAN](#), [JOSÉ A. CABRANES](#) and [PETER W. HALL](#), Circuit Judges.

SUMMARY ORDER

Plaintiff William Courter appeals from a judgment filed by the District Court on September 3, 2004 implementing an August 30, 2004 Order granting the motion of defendant First UNUM Life Insurance Company ("First UNUM") for judgment on the administrative record. Plaintiff filed suit against defendant in the District Court on October 3, 2003, challenging defendant's termination of plaintiff's benefits under a long term disability ("LTD") insurance policy administered under the Employment Retirement Income Security Act of 1974 ("ERISA"), [29 U.S.C. § 1001](#) et seq.

*214 We assume the parties' familiarity with the underlying facts and procedural history.

Courter worked as a legal secretary for White &

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Case, LLP, and he acquired his LTD insurance through the law firm's group policy. Upon suffering a variety of disabling conditions including HIV, chronic sinusitis, and depression, Courter applied for benefits under the policy in April 2001, which First UNUM awarded on May 29, 2001. Over Courter's objection, First UNUM terminated plaintiff's benefits on June 27, 2002 upon determining that Courter's condition no longer met the LTD plan's definition of "disability." Courter filed various appeals within First UNUM's internal review system, all of which were denied. This suit followed.

When an ERISA plan's documents "confer upon a plan administrator the discretionary authority to determine eligibility, we will not disturb the administrator's ultimate conclusion unless it is 'arbitrary and capricious.'" *Fuller v. J.P. Morgan Chase & Co.*, 423 F.3d 104, 106 (2d Cir.2005) (internal quotation marks omitted). The District Court was "troubled" by defendant's denial of benefits but ultimately found that First UNUM's "actions were not arbitrary and capricious." We review the District Court's legal conclusions--such as a finding *vel non* of "arbitrary and capricious" action--*de novo*. See *Pulvers v. First UNUM Life Ins. Co.*, 210 F.3d 89, 92 (2d Cir.2000) ("[T]he District Court properly applied the arbitrary and capricious standard of review to the denial of ... benefits, and we shall do the same."). Unlike *Muller v. First Unum Life Ins. Co.*, 341 F.3d 119 (2d Cir.2003), in which the plan did not confer discretionary authority on the plan administrator and the district court's subsequent *de novo* review of the parties' submissions was deemed to be a bench trial requiring findings, the District Court here properly examined the administrative record under the "arbitrary and capricious" standard, did not conduct a bench trial, and was not obliged to make findings of fact. Upon review of the record, we conclude that defendant's termination of Courter's benefits was arbitrary and capricious.

According to plaintiff's physician, plaintiff is "absolutely incapable of any work related activity." Courter's allergic reactions to various HIV medications limit his ability to fight the disease, and the record before us reveals that he has also suffered at least one heart attack, hypertension, severe fatigue, and cardiac disease since First UNUM judged him disabled in May 2001. The progress of plaintiff's illness and the death of his father and roommate contributed to his depression, for which he took medication. More recently, plaintiff was diagnosed with Castleman's Disease. Defendant primarily argues that plaintiff was not disabled on the date First

UNUM terminated his benefits and that because he did not return to work at that time, any subsequent disabilities are not covered by the LTD policy. In addition, defendant argues that plaintiff's failure to produce certain medical records sought by defendant further justified First UNUM's decisions.

We conclude that while plaintiff may not have promptly provided every document First UNUM requested, substantial evidence available to defendant in June 2002 showed that Courter remained disabled when defendant decided to terminate his LTD benefits. Inasmuch as the record demonstrates that First UNUM acknowledged Courter's disability in May 2001 and was aware that he suffered from HIV, as well as that his allergic reactions to HIV medications hampered his ability to treat the disease, First UNUM had the burden of showing that Courter could actually return to work before it terminated his benefits *215 in June 2002. The record suggests that while some of plaintiff's symptoms may have shown improvement, there is much evidence of the persistence of plaintiff's chronic conditions during the internal appeals process. The evidence leads us to the firm conclusion that defendant's decision that plaintiff was no longer disabled was arbitrary and capricious.

In sum, the record shows that Courter was entitled to continued LTB benefits under the plan at the time of First UNUM's termination of his benefits.

The judgment of the District Court is REVERSED, and the cause is REMANDED to the District Court for further proceedings, including the calculation of benefits due to plaintiff, consistent with this Order.

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• [04-5975](#) (Docket) (Nov. 12, 2004)

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