

FIFTH CIRCUIT JOINS OTHER FEDERAL CIRCUIT COURTS IN APPLYING DE NOVO STANDARD OF REVIEW TO CLAIM DENIALS BASED ON LEGAL INTERPRETATION AND FACTS

Hodgson Russ Employee Benefits Newsletter
April 27, 2018

Practices & Industries

Employee Benefits

When minor, Ariana M.'s, claim for partial hospitalization benefits to treat her eating disorder was denied, she sued, claiming that the health insurer, Humana, was not entitled to deference regarding the factual determination that her treatment was no longer medically necessary. The federal district court reviewing the health plan's administrative denial of Ariana's claim gave deference to Humana's factual determination that she was medically stable, and no longer required such intensive treatment. The full Fifth Circuit panel reversed the lower court's grant of summary judgment to Humana and overruled 27 years of precedent under *Pierre v. Conn. Gen. Life Ins. Co.*, 932 F.2d 1552 (5th Cir 1991), which applied a favorable abuse of discretion standard of review to a plan administrator's factual determinations. The Fifth Circuit now joins all other federal circuit courts in holding that the standard of review of a plan administrator's decision does not depend on whether the denial is based on grounds of legal interpretation or fact.

Under the U.S. Supreme Court's decision in *Firestone Tire & Rubber Co. v. Bruch*, a court reviewing the plan administrator's denial of a claim is limited to determining whether an abuse of discretion has occurred when plan contains a valid clause delegating discretionary authority to the plan administrator. In cases where no valid delegation of discretion is made in the plan document, circuit courts outside of the 5th Circuit have applied a uniform *de novo* standard of review for both legal and factual claim determinations. The *de novo* standard allows the court reviewing the claim to consider afresh the bases for a claim denial. In contrast, *Pierre* bifurcated the standard of review, applying a *de novo* standard to matters of plan interpretation, and an abuse of discretion standard to factual determinations. Under *Pierre*, the *de novo* standard of review never applied to a plan administrator's factual determinations, even in situations where the ERISA plan did not have a clause delegating discretionary authority.

Quoting the rock band Three Dog Night's 1969 hit, "One," the Fifth Circuit panel expressed that it no longer wished to be the sole circuit applying a bifurcated legal standard for ERISA plan claims: "Although sometimes there is virtue in being a

FIFTH CIRCUIT JOINS OTHER FEDERAL CIRCUIT COURTS IN APPLYING DE NOVO STANDARD OF REVIEW TO CLAIM DENIALS BASED ON LEGAL INTERPRETATION AND FACTS

lonely voice in the wilderness, in this instance we conclude that one really is the loneliest number.”

The en banc Fifth Circuit panel remanded the determination of whether Ariana’s treatment was medically necessary to the lower court to apply the *de novo* standard to the factual determination made by Humana. *Ariana M. v. Humana Health Plan of Texas, Inc.*, 884 F.3d 246 (5th Cir. 2018).

