

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ADMINISTRATIVE LAW COURT

RECEIVED

Deborah Brooks Durden, Administrative Law Judge

JAN 31 2019

SC Court of Appeals

Docket No. 16-ALJ-30-0293-AP

L'Tonya Scott,Appellant,

v.

South Carolina Public Employee Benefit Authority,
Employee Insurance Program,..... Respondent.

RESPONSE TO PETITION FOR REHEARING

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INTRODUCTION AND PROCEDURAL HISTORY

This matter involves an appeal by L'Tonya Scott ("Appellant") of Respondent South Carolina Public Employee Benefit Authority, Employee Insurance Program's ("Respondent") decision to deny her long-term disability ("LTD") claim under the State of South Carolina Basic Long Term Disability Income Benefit Plan (the "Plan"). The South Carolina Administrative Law Court ("ALC") affirmed Respondent's decision on March 16, 2017. On January 4, 2019, this Court entered its decision affirming the Administrative Law Court's decision. On or about January 16, 2019, Appellant filed a Petition for Rehearing.

ARGUMENT

Appellant's Petition for Rehearing repeats, almost verbatim the primary argument set forth in Appellant's Final Brief. Presumably, the Court has thoroughly reviewed and considered Appellant's argument, and further consideration of the argument is not necessary. However, in the event that the Court wishes to reconsider Appellant's argument, Respondent responds to Appellant's Petition for Rehearing as set forth below.

- I. Respondent Is Not Required To Give Any Deference To The Social Security Administration's Award Of Benefits Under The Federal Social Security Law And There Is No Evidence That Respondent Did Not Properly Consider The Award of Benefits.

In the Petition for Rehearing, Appellant repeats her argument that Respondent was required to consider the Social Security Administration's ("SSA") award of disability benefits to Appellant. As she has done in all of her prior briefing, Appellant ignores the facts that (1) there is no evidence that Respondent did not consider the SSA's award; and (2) the only information Appellant provided to Respondent about the SSA's award of disability benefits was a two-page Notice of Decision that provided no substantive

information about Appellant's alleged medical conditions. Contrary to Appellant's repeated assertions that the Notice of Decision "constituted substantial and reliable evidence," the Notice of Decision provided no substantive evidence regarding Appellant's alleged disabling medical conditions.

In making the decision to close Appellant's long-term disability ("LTD") claim, Respondent considered all of the medical records and related documents Appellant and her attorney submitted to Respondent. In its final decision, Respondent devoted more than twelve single spaced pages to discussing Appellant's medical history. Importantly, the length of Respondent's review of Appellant's medical history was necessitated by two factors. First, Standard Insurance Company ("Standard"), the third-party administrator for the Plan, did a very thorough job of obtaining medical records from all of the health care providers that Appellant identified during the claims process. Specifically, from September 2012 through December 2012, Standard made no fewer than eleven requests for records to Appellant's treating health care providers. See R. pp. 183, 184, 253, 225, 237, 238, 239, 240, 264, 241, 242. Second, from September 2013 through June 2015, Appellant's attorney submitted medical records and related documents to Standard and Respondent no fewer than eight times. See R. pp. 154, 155, 177, 178, 179, 180, 181, 182.

After Appellant's attorney appealed to Respondent, Respondent, on November 17, 2014, sent Appellant's attorney an explanation of the appeals process, which stated in relevant part as follows: "If you have any additional information you believe is relevant to your claim, please submit it in writing **within thirty (30) days** of the date of this letter" R. p. 159. (Emphasis in original). The explanation later stated, "you have the right to submit within (30) days of this letter any written information you want the Committee to

consider when reviewing your claim.” R. p. 160. Notably, Respondent actually allowed Appellant and her attorney more than seven months to submit any additional information Appellant wished in support of her appeal.

Seven months after Respondent provided the explanation of Appellant’s appeal rights, Appellant’s attorney submitted the SSA’s two-page Notice of Decision. The Notice of Decision stated that Appellant’s Social Security disability claim had been approved. R. pp. 156-57. The Notice of Decision referenced an “enclosed fully favorable decision”; however, Appellant’s attorney chose to not submit the actual decision to Respondent. Importantly, the Notice of Decision is devoid of (1) any discussion of Appellant’s medical history; (2) the rationale for the SSA’s decision; or (3) any medical records or other evidence the SSA considered. See R. pp. 156-57.

In summary, the Notice of Decision informed Respondent of one thing – the SSA approved Appellant’s Social Security disability claim. It provides no other substantive or probative information, yet in her Final Brief, Appellant argued that Respondent’s decision to close her LTD claim should be reversed because Respondent did not discuss the Notice of Decision in its final decision.

In significant disproportion to the Notice of Decision’s substantive value, Appellant argues that Respondent “had a duty to at least consider her award of Social Security Disability benefits, as such constituted substantial and reliable evidence.” Petition for Rehearing, p. 6. However, Appellant can identify no evidence that Respondent did not consider the Notice of Decision.

Respondent acknowledges that the Notice of Decision did inform Respondent that Appellant’s Social Security disability claim had been approved, but the Notice of Decision

provided no other evidence of anything.¹ On the other hand, Respondent considered hundreds of pages of contemporaneous medical records and opinions that actually addressed Appellant's medical condition and lack of related limitations and restrictions. With minimal exceptions, those medical records supported Respondent's decision to close Appellant's claim.

As set forth in Respondent's Final Brief, the ALC has squarely and unequivocally addressed the relevance of SSA determinations on multiple occasions in appeals involving the Plan. In *Eaddy v. South Carolina Public Employee Benefit Authority, Employee Insurance Program*, No. 15-ALJ-30-0561 at p. 7 (S.C. Admin. Law Judge Div. 2016), the ALC held that Eaddy's "Social Security disability claim and its current posture has (sic) no bearing on the case before this Court. The essential question in this appeal is whether substantial evidence supports the decision of the Appeals Committee, which found Appellant" was not disabled.

Similarly, in *Baker v. South Carolina Budget and Control Board, Employee Insurance Program*, No. 10-ALJ-11-0351 at p. 13 (S.C. Admin. Law Judge Div. 2011), the ALC held as follows:

Appellant asserts that the decision of the SSA to grant her disability is relevant in this claim, as the standard of awarding benefits in a SSA case is much greater. I disagree. Appellant cites *Mitchell v. Schweiker*, 699 F.2d 185 (4th Cir. 1983) and the federal regulation that requires the SSA to apply the treating physician rule when making decisions on SSDI claims. The federal social security law has no bearing on the State of South Carolina's LTD Plan. As set forth above, the Plan is established pursuant to S.C. Code Ann. § 1-11-710(C), which states that claims for benefits under the Plan "must be resolved by procedures established by the [Budget and Control

¹ In her brief to the ALC, Appellant used only one sentence to describe this "substantial and reliable evidence." Specifically, Appellant stated, "[O]n December 29, 2014 Appellant was approved for Social Security Disability benefits." R. p. 39. This statement succinctly captures the substantive value of the Notice of Decision.

Board] which shall constitute the exclusive remedy for these claims . . .” Pursuant to the discretion provided by this enabling legislation and the discretionary language in the Plan itself, [PEBA] chose not to apply the treating physician rule. (Emphasis added).

The lack of substantive evidence provided by the SSA’s Notice of Decision was highlighted again in Appellant’s Petition for Rehearing. Citing *Colter v. South Carolina Budget and Control Board, South Carolina Retirement Systems*, No. 08-ALJ-0551-CC (S.C. Admin. Law Judge Div. 2009), Appellant points out that the South Carolina Retirement Systems (“SCRS”) approved the plaintiff’s state retirement disability claim based upon “an award of Social Security Disability benefits.” Petition for Rehearing, p. 3. However, Appellant has misconstrued the language of the ALC’s Order of Dismissal in *Colter*. The portion of the *Colter* Order of Dismissal that Appellant quotes clearly states that SCRS did not rely on an SSA Notice of Decision; rather, SCRS relied on the same medical records that the SSA relied on in making a disability determination. This contrasts sharply with the present case in which Appellant has not identified any medical record that Respondent failed to consider.²

The decisions of the SSA have no bearing on Respondent’s decisions under the Plan. Appellant essentially argues that Respondent should substitute the SSA’s discretion for its own discretion when considering Plan claims. Taking this reasoning to its logical conclusion would result in the federal regulatory scheme of the SSA’s disability benefit program replacing the terms and conditions of the Plan which were established pursuant

² Appellant’s Petition for Rehearing concludes with two page long quotations from cases involving LTD plans governed by ERISA. As set forth in detail in Respondent’s Final Brief, the Plan is governed by S.C. Code Ann. § 1-11-710(C), not ERISA. Therefore, cases interpreting and applying ERISA have no binding effect on or applicability to appeals to the ALC involving claims under the Plan. See Respondent’s Final Brief, pp. 17-20.

to a specific statutory mandate of the General Assembly. Accepting Appellant's argument would result in a bizarre situation in which Respondent and the ALC would have no role in the adjudication of Appellant's claim under the Plan. Rather, Appellant would qualify for LTD benefits under the Plan because her Social Security disability claim was approved. Such a result is clearly inconsistent with Section 1-11-710(C) and the terms of the Plan.

The General Assembly has delegated to the Budget and Control Board the responsibility to establish and maintain self-insured plans for employees of the State. The Plan at issue in this case is such a plan. Section 1-11-710(C) unequivocally states that "claims for benefits" under such a plan "must be resolved by procedures established by the" Budget and Control Board. Moreover, pursuant to this legislative mandate, the Budget and Control Board, through the language of the Plan, has delegated to Respondent, not the SSA, "full and exclusive authority to control and manage the Plan, to administer claims, and to interpret the Plan and resolve all questions arising in the administration, interpretation, and application of the Plan." R. p. 145.

Neither the enabling legislation for the Plan nor the Plan itself instructs Respondent to give extra or binding weight to the SSA's decision with respect to a Social Security disability claim. To the contrary, Respondent is bound to interpret and apply the terms of the Plan, not the terms of the federal Social Security scheme.

Finally, from a practical standpoint, the fact that the Notice of Decision is not mentioned in Respondent's final decision does not in any way support a conclusion that Respondent did not consider or take notice of the SSA's decision. Rather, it simply means that the Notice of Decision was not mentioned in Respondent's final decision, probably

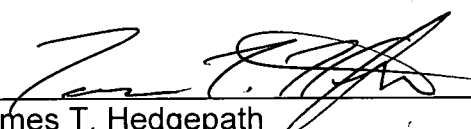
because it provided no substantive information related to Appellant's claim under the Plan.

CONCLUSION

For all of the foregoing reasons, Respondent respectfully requests that the Court deny Appellant's Petition for Rehearing.

Respectfully submitted,

January 28, 2019



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PROOF OF SERVICE

I certify that I have served Respondent's Response to Petition for Rehearing on L'Tonya Scott by depositing a copy of same in the United States Mail, postage prepaid, on January 28, 2019, addressed to her attorney of record, M. Leila Louzri, Esquire, Foster Law Firm, LLC, Post Office Box 2123, Greenville, South Carolina 29602.



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January 28, 2019

Jenny Abbott Kitchings, Clerk of Court
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SC Court of Appeals

Re: *L'Tonya Scott v. South Carolina Public Employee Benefit Authority, Employee Insurance Program*
Docket No. 16-ALJ-30-0293-AP

Dear Ms. Kitchings:

Charleston
Charlotte
Columbia
Greensboro
Greenville
Hilton Head
Myrtle Beach
Raleigh

Enclosed for filing with the Court are the original and six (6) copies of Respondent's Response to Petition for Rehearing, as well as the Proof of Service in the above-referenced matter. Please return a clocked copy of each document to me in the enclosed envelope.

If I can be of further assistance, please do not hesitate to contact me.

Sincerely,



James T. Hedgepath

JTH:gb
Enclosures

cc: M. Leila Louzri, Esquire – (w/encl., via U.S. Mail)