



ERISA Claimant Retains Burden of Proof For Establishing Disability Under a De Novo Standard of Review

The question of who has the burden of proof can often decide the outcome of litigation. Given its importance, it is common to see litigants attempt to shift that burden to the opposing side in order to secure a tactical advantage. Recently, in *Muniz v. Amec Construction Management Inc.*, ___ F.3d ___, 2010 WL 4227877 (Decided October 27, 2010), the Ninth Circuit Court of Appeals addressed the question of whether the burden of proof can be shifted in an ERISA disability case. In *Muniz*, a claimant diagnosed with HIV applied for benefits through his employer's long-term disability plan (the "Plan"). Benefits were approved and paid for the first 24 months. However, as is common with many benefit plans, after 24 months the definition of disability changed. In order to qualify under the Plan, the claimant must be unable to perform all the essential duties of **any** occupation. As a result, the Plan terminated his benefits.

At trial, the parties agreed that the standard of review was *de novo* since the Plan did not grant discretion to the claims administrator. Accordingly, the district court placed the initial burden upon Muniz as the claimant to show that he was entitled to benefits under the terms of the plan. Muniz submitted evidence to the court from his primary physician, Dr. Towner, who concluded that Muniz was totally disabled from performing any occupation. This, argued Muniz, was sufficient to shift the burden of proof to the Plan to demonstrate that its claim decision was justified. However, the Ninth Circuit disagreed. Drawing from decisions in the Eleventh and Eighth Circuits, the Appellate Court concluded that the claimant retained the burden of proving that he was entitled to benefit even in light of the proffered evidence.

As concluded by other circuit courts which have addressed the question, when the court reviews a plan administrator's decision under the *de novo* standard of review, the burden of proof is placed on the claimant. See, e.g., *Horton v. Reliance Standard Life Ins. Co.*, 141 F.3d 1038, 1040 (11th SCir. 1998) ("A plaintiff suing under [29 U.S.C. § 1132(a) (1)(B)] bears the burden of proving his entitlement to contractual benefits."); *Farley v. Benefit Trust Life Ins. Co.*, 979 F.2d 653, 658 (8th Cir. 1992) ("[W]e agree that it was [the claimant's] burden to show that he was entitled to the 'benefits . . . under the terms of his plan.' ") (omission in original) (quoting 29 U.S.C. § 1332(a)(1)(B))."

In addition, the Ninth Circuit recognized that Muniz could cite to no precedent where a court conducting a *de novo* review shifted the burden of proof to the claim administrator. The case law cited by Muniz in support of his argument all dealt with cases where the standard of review was abuse of discretion. In those situations, the court focused on whether the Plan abused its discretion in denying benefits. However, under a *de novo* review, that analysis is irrelevant to the issue of whether the claimant was entitled to benefits. Similarly, case law that supports burden shifting under an abuse of discretion framework would be irrelevant where the standard of review is *de novo*.

Since Muniz could not provide any precedent in support, he retained the burden of proof. The court did note that if the standard of review was abuse of discretion, the burden would shift to the insurer to prove that its actions were not tainted by the structural conflict of interest that results when it review and decides entitlement to benefits and also is the funding source.

Further, the court addressed Muniz's argument that once a claimant proves he or she is totally disabled, the burden shifts to the insurer to show an change in condition:

Muniz argues that the district court committed clear error in its analysis because his medical records did not show a change in his condition over the years he was covered by the CGLIC plan. As noted above, the fact that the claimant was initially found disabled under the terms of the plan may be considered evidence of the claimant's disability, but as the Eighth Circuit stated in *McOsker v. Paul Revere Life Insurance Co.*, “[w]e are not suggesting that paying benefits operates forever as an estoppel so that an insurer can never change its mind.” 279 F.3d 586, 589 (8th Cir.2002). Muniz did not provide sufficient evidence to demonstrate that the district court committed clear error in its analysis of the record

After all of the evidence for and against Muniz's position was balanced against each other, the end result as determined by the district court was that Muniz failed to prove that he was entitled to benefits. Ultimately, it is not clear whether Muniz would have won his case even if he did not have the burden of proof. However, this holding creates an additional obstacle for all future claimants and confirms that in the Ninth Circuit, claimants retains the burden of proof for establishing entitlement to benefits under a *de novo* standard of review.



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