

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

XXX,

Plaintiff,

v

YYY,

Defendant.

CIVIL ACTION NO. XX-XXXXX

HON. PAUL D. BORMAN

[SAMPLE] SCHEDULING ORDER FOR ERISA ACTION

Because this matter is an ERISA denial of benefits action, the proceedings will be conducted in accordance with the guidelines set forth by the Sixth Circuit in *Wilkins v. Baptist Healthcare System, Inc.*, 150 F.3d 609 (6th Cir. 1998):

- As to the merits of the action, the district court should conduct a review based solely upon the administrative record, and render findings of fact and conclusions of law accordingly. The district court may consider the parties' arguments concerning the proper analysis of the evidentiary materials contained in the administrative record, but may not admit or consider any evidence not presented to the administrator.
- The district court may consider evidence outside of the administrative record only if that evidence is offered in support of a procedural challenge to the administrator's decision, such as an alleged lack of due process afforded by the administrator or alleged bias on its part. This also means that any prehearing discovery at the district court level should be limited to such procedural challenges.
- For the reasons set forth above, the summary judgment procedures set forth in Federal Rule of Civil Procedure 56 are inapposite to ERISA actions and thus should not be utilized in their disposition.

Counsel are thus directed to comply with the following instructions:

1. Resolution of Case Processing Issues

Plaintiff's counsel must convene a meeting of all attorneys, as soon as can practically be done, to discuss and attempt to resolve the case processing issues noted in this Scheduling Order.

Such meeting may, in the discretion of counsel, be by telephone if all purposes of this Order can be effectively dealt with through such means.

2. Statement Regarding Procedural Challenge

On or before *3 weeks after date of this order* each party shall file a pleading titled “Statement of Procedural Challenge in ERISA Case” or “Statement of *No* Procedural Challenge in ERISA Case” as appropriate. A statement asserting a procedural challenge must indicate whether the party asserts a procedural challenge to the administrator’s decision, such as an alleged lack of due process afforded by the administrator or alleged bias, and must indicate the nature of the procedural challenge.

In the event there is such a procedural challenge, the date for filing the Statement Regarding Standard of Review and Cross Motions set forth in paragraphs 3 and 5 below shall be deemed adjourned and the Court will set a conference to determine whether permitting limited discovery is appropriate.

3. Standard of Review

On or before *1 month after date of this order* the parties shall file a statement as to the appropriate standard of review in this case. If the parties agree as to the applicable standard, they may file a stipulation to that effect in lieu of separate statements.

4. Administrative Record

On or before *3 weeks after date of this order* the defendant shall serve a copy of the administrative record upon counsel for the plaintiff. If the administrative record does not include the employee benefits plan and summary plan description, the defendant must obtain those documents and include them with the service package.

5. Cross Motions

On or before *4 months after date of this order* the parties each shall file their cross motion and brief to reverse or affirm the administrator's decision. With the motion, (1) the parties shall file a joint appendix consisting of all pertinent plan documents and the administrative record; and (2) the parties shall each file their respective motion and brief to reverse or affirm the administrator's decision. The briefs shall analyze the evidentiary materials contained in the plan documents and the administrative record. Responsive briefs may be filed on or before 1 month after motions deadline. Reply briefs may be filed 2 weeks after the deadline for responsive briefs.

6. Formatting and Filing Guidelines

All filings must comply with the requirements of the Eastern District of Michigan Local Rules regarding format and filing of papers. E.D. Mich. L.R. 5.1, 7.1. A single, **bound** courtesy copy must be delivered to chambers at the time of e-filing and must bear the e-file stamp at the top of each page. DO NOT bind the courtesy copy with a top hole-punch binder.

7. Hearing Date

Once motions are filed, the Court will schedule a hearing date.