

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Plaintiff,

v.

CIVIL NO.

Defendant.

RULE 16 CASE MANAGEMENT SCHEDULING ORDER
FOR WILKINS REVIEW OF E.R.I.S.A. ADMINISTRATIVE DENIAL OF BENEFITS

This case presents an administrative record denial of benefits review brought under the provisions of Employee Retirement Income Security Act of 1974 (E.R.I.S.A.). Proceedings for E.R.I.S.A. review must be conducted in accordance with the guidelines set forth in *Wilkins v. Baptist Healthcare Sys., Inc.*, 150 F.3d 609 (6th Cir. 1998).

Accordingly,

IT IS HEREBY ORDERED as follows:

MEETING AND AGREEMENT TO RESOLVE CASE PROCESSING ISSUES

Plaintiff's counsel must convene a meeting of the attorneys to meet, confer and attempt to agree on case processing issues as noted below, including procedural challenge, standard of review, and the content of the relevant administrative record.

STATEMENT REGARDING PROCEDURAL CHALLENGE IN ERISA CASE:

If Plaintiff intends to assert any procedural challenge to the administrative process, in order to preserve the objection Plaintiff must file, or before -----, a paper denoted "Statement of Procedural Challenge." The Statement must indicate how Plaintiff presents the complaint as asserting a legitimate, cognizable challenge to the administrator's decision (e.g., an alleged lack of due process afforded by the

administrator or an allegation of bias). Counsel must state with particularity the nature of the procedural challenge and the presently-known factual and legal bases to assert it.

In the event Plaintiff alleges a cognizable procedural challenge, the dates for filing the Statement Regarding Standard of Review and Motions for Judgment, *infra.*, will be deemed **vacated**. The court will ordinarily then convene a status/scheduling conference to consider any asserted need for limited discovery and to set other dates. In the event that Defendant disputes the existence of a cognizable procedural challenge or the need for discovery, the court will schedule briefing to resolve the threshold issue.

STATEMENT REGARDING STANDARD OF REVIEW:

On or before -----, if the parties have agreed on the standard, Plaintiff must file a “Joint Statement Regarding Standard of Review.”

In the event that the parties have not so agreed, on or before that same date, each party must simultaneously file a “Memorandum Supporting Standard of Review,” providing a reasoned analysis supporting *de novo* or arbitrary and capricious review.

ERISA REVIEW MOTION PRACTICE:

In the absence of any pending procedural challenge, dispositive motion practice will consist of the following **five steps**:

a) First: Plaintiff, on or before ----- must electronically file under seal with the Clerk of the Court a jointly agreed upon appendix consisting of the pertinent plan documents and the relevant portion of the administrative record.

b) Second: Plaintiff, on or before ----- must file “Plaintiff’s Motion for Judgment” accompanied by a brief, analyzing the issue(s) and specifically citing the evidentiary materials contained in the plan documents and the administrative record.

Plaintiff's brief in support must include Proposed Findings and Conclusions appended in a searchable format and consisting of separate, numbered paragraphs each of which states, reasonably concisely, a separate material fact or conclusion.³

c) Third: Defendant, on or before ----- must file "Defendant's Motion for Judgment" including a brief responding to Plaintiff's motion for judgment argument(s), and presenting any other arguments that may be appropriate. Defendant's Motion must include Proposed Findings and Conclusions in separately numbered paragraphs corresponding to Plaintiffs Proposed Findings and Conclusions, and adding whatever additional facts or conclusions needed.⁴

d) Fourth: Plaintiff, on or before -----, must file a "Reply to Defendant's Response" that responds to Defendant's argument for judgment and replies to Defendant's response.

e) Fifth: Defendant, on or before -----, *may* file an optional "Sur-Reply" in response to Plaintiff's reply.

MOTION FORMATTING AND OTHER GUIDELINES:

a) Chambers' copies of complex briefs. Chambers copies of complex motions accompanied by extensive briefs and numerous tabbed exhibits (typical in E.R.I.S.A. motions for judgment) should be provided not later than 48 hours after the motion is filed.

b) Binding: *avoid top-punching of chambers' copies.* Bind chambers'

³ Example: "Fact 12. Plaintiff was examined by Dr. Boddy on February 1, 2005, and was determined to be totally and permanently disabled."

⁴ Example: "Fact 11. Defendant agrees." "Fact 12. Defendant agrees in part, but asserts that the witness substantially amended this finding in a subsequent neurological examination on February 15, 2005 [see Administrative Record page 533, line 4]."

copies of briefs and appendices with a staple in the upper left corner unless more than about 25 pages are presented, in which case please bind in "book form" along the left margin.

c) Page limits and form of text. The "text" of a brief as discussed in Local Rule 7.1(d)(3) includes things such as the case summary and argument, but does not apply to the statement of facts, table of contents, index of authorities or Proposed Findings and Conclusions.

d) Footnotes. Footnotes should be single-spaced, but must be must be at least 12 point font.

HEARINGS.

The court will not generally hold a hearing on a ERISA motion for judgment, but may set a "hearing date." If so, it is not a guarantee that argument will be conducted; the motion may be decided on the brief alone.

IT IS SO ORDERED.

s/Robert H. Cleland
ROBERT H. CLELAND
UNITED STATES DISTRICT JUDGE

March 1, 2019

notice to: ALL COUNSEL OF RECORD