

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

PLAINTIFF,

Case No. XX-cv-XXXXX
Honorable Gershwin A. Drain

v.

DEFENDANT(S).

_____ /

DEADLINE SUMMARY

Administrative Record (filed under seal) due: _____

Procedural Challenges due: _____

Cross motions for judgment due: _____

Responses due: _____

Hearing date to be set after motions are filed.

**CASE MANAGEMENT SCHEDULING ORDER FOR REVIEW OF ERISA
ADMINISTRATIVE DENIAL OF BENEFITS**

Upon review the court has determined that this appears to be a claim for benefits under the Employee Retirement Income Security Act (ERISA), 29 U.S.C. § 1001 *et seq.* An answer has been filed by the defendant in the above matter on _____, therefore,

IT IS HEREBY ORDERED:

1. ERISA ADMINISTRATIVE DENIAL OF BENEFITS REVIEW REQUIREMENTS:

Proceedings in this case must be conducted in accordance with the guidelines set forth by the United States Court of Appeals for the Sixth Circuit in Wilkins v. Baptist Healthcare Sys., Inc., 150

F.3d 609, 619 (6th Cir. 1998):

A) As to the merits of the action, the district should conduct a de novo (or arbitrary and capricious, as appropriate) review based solely upon the administrative record, and render findings of fact and conclusions of law accordingly. The district 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.

B) 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 the administrator's part. This also means that any pre-hearing discovery at the district court level should be limited to such procedural challenges.

C) The summary judgment procedures set forth in Rule 56 of the Federal Rules of Civil Procedure are inapposite to ERISA actions and thus should not be utilized in their disposition.

2. AGREEMENT TO RESOLVE 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 various case processing issues noted herein. Such meeting may, in the discretion of counsel, be by telephone if all purposes of this order can be effectively dealt with thereby.

3. ERISA REVIEW MOTION PRACTICE:

In the event that neither party asserts a procedural challenge, motion practice will consist of the following four steps:

A) Defendant shall file for the parties an agreed-upon joint appendix consisting of all pertinent plan documents and the administrative record, under seal, and provide an

electronic (disc) Judge's copy by _____.

- B) Procedural challenges due on or before _____.
- C) Plaintiff and Defendant, on or before _____, will file a "Motion for Judgment" including a brief, arguing to either reverse or affirm the administrator's decision as the case may be. The brief must analyze the evidentiary materials contained in the plan documents and the administrative record. Parties must also attach to the brief a document to be produced both on paper and on computer diskette containing proposed findings of fact and proposed conclusions of law in separately numbered paragraphs.
- D) Plaintiff and Defendant, on or before _____, will file "Response to Motion for Judgment" including a brief that responds to the arguments contained in the motion for judgment. The brief must analyze the evidentiary materials contained in the plan documents and the administrative record.

Hearings: The parties will be advised by the court of a hearing date.

SO ORDERED.

Dated:

/s/ _____
GERSHWIN A. DRAIN
United States District Judge

<p style="text-align: center;">CERTIFICATE OF SERVICE</p> <p style="text-align: center;">Copies of this Order were served upon attorneys of record on _____, by electronic and/or ordinary mail.</p> <p style="text-align: center;">/s/ Teresa McGovern Deputy Clerk</p>
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