

or indication the district court exceeded the bounds of permissible choice.

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Eleventh Circuit

Court Construes Pre-Existing-Condition Exclusion to Avoid Illusory Disability Coverage

In *Bradshaw v. Reliance Standard Life Ins. Co.*, 707 F. App'x 599 (11th Cir. 2017), the substantive ERISA issue on appeal was whether the district court's application of the following pre-existing-condition exclusion to bar long-term disability benefits was arbitrary and capricious:

PRE-EXISTING CONDITIONS: Benefits will not be paid for a Total Disability:

- (1) caused by;
- (2) contributed to by; or
- (3) resulting from

a Pre-existing Condition unless the Insured has been Actively at Work for one (1) full day following the end of twelve (12) consecutive months from the date he/she became an Insured.

The policy defined "Pre-existing Condition" as

any Sickness or Injury for which the Insured received medical Treatment, consultation, care or services, including diagnostic procedures, or took prescribed drugs or medicines, during the three (3) months immediately prior to the Insured's effective date of insurance.

The policy definition of "Sickness" "includes pregnancy"

Noting that a ruling based on an erroneous view of the law necessarily is arbitrary and capricious, the Eleventh Circuit reversed and remanded for an award of ERISA benefits. Essentially the court concluded that the district court's construction of the pre-existing-condition exclusion rendered the policy illusory during the first 12 months of its effectiveness.

Julissa Bradshaw's disability coverage became effective on May 1, 2013. At the time, she was several weeks pregnant and had no other pre-existing medical conditions. She experienced a healthy pregnancy until November 4, 2013, when her blood pressure was elevated and doctors diagnosed her with mild preeclampsia. Two days later, delivery

of the insured's healthy baby girl was induced because of the mild preeclampsia. There were no complications, and the insured was released from the hospital with stable blood pressure.

One week later, the insured sustained a cerebrovascular accident, *i.e.*, a massive stroke. The medical record identified hypertension as contributing to the stroke, and noted there was likely some residual deficit from her preeclamptic child birth.

Bradshaw submitted a claim for long-term disability benefits. There was no dispute that she was disabled. The dispute concerned whether her disability was caused by, contributed to by, or resulted from Sickness, which included pregnancy, during the three months immediately before the policy effective date. If it was, disability benefits were barred under the pre-existing-condition exclusion. The only timeframe the insurer was permitted to consider in evaluating the question was February 1, 2013, through May 1, 2013, the "look-back period."

Reliance's denial letter expressly noted Bradshaw's pregnancy through more than six months after the look-back period ended had been normal. But Reliance denied the claim because Bradshaw had received medical treatment, consultation, care or services or took prescribed drugs or medicines for pregnancy during the look-back period.

During the subsequent administrative appeal, a board certified obstetrician/gynecologist reviewed Bradshaw's medical records. The physician found no clinical evidence to suggest a neurovascular or hypertensive disorder, or preeclampsia, during the look-back period. He also noted that preeclampsia was not present, nor could it have been predicted, during the look-back period. But the doctor stated pregnancy is required for preeclampsia to develop, and that preeclampsia contributed to, if not caused, the insured's stroke.

Reliance upheld its denial after the administrative appeal. In the uphold letter, Reliance stated that preeclampsia is a condition related to pregnancy, that preeclampsia contributed to the stroke, and therefore the disability was caused by or a result of pregnancy, and therefore was excluded from coverage. Reliance acknowledged Bradshaw did not have preeclampsia, high blood pressure, or any symptoms of stroke during the look-back period. After Bradshaw filed suit, the district court entered summary judgment in favor of Reliance, concluding its denial of benefits because of the pre-existing-condition exclusion was not wrong and, even if it were, it was not unreasonable.

On appeal, Reliance submitted it had reasonably applied the pre-existing-condition exclusion because the insured had not been employed for a full year, was pregnant during the look-back period, and her pregnancy played a part in producing the stroke. Therefore, the pregnancy contributed to the stroke.

The Eleventh Circuit found Reliance’s interpretation of the pre-existing-condition clause and of the phrase “contributed to” to be unreasonable as a matter of law and contrary to the goals of ERISA. The court stated that the language of the policy, if strictly construed, would preclude coverage if any pre-existing health condition in some way—no matter how remote—might have contributed to the loss. Such a construction, the court reasoned, would require a claimant to be in perfect health at the time of obtaining the policy for it to provide any benefit during the succeeding 12 months, rendering the policy essentially meaningless for the first year of its effectiveness.

To avoid a construction of the policy that would render it illusory for the first 12 months, the Eleventh Circuit

effectively added language to the pre-existing-condition exclusion. Instead of “caused by; contributed to by; or resulting from a Pre-Existing Condition,” the court construed the exclusion to preclude coverage for only those losses “substantially caused by, substantially contributed to by, or substantially resulting from a pre-existing condition.” Based upon this construction, the court wrote that “it cannot fairly be said that Bradshaw’s healthy pregnancy substantially contributed to her disability, [and] Reliance Standard’s use of the pre-existing condition exclusion to deny Bradshaw benefits was unreasonable.”

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