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Client Alert

Know Your Rights: Representation During Administrative Review of an ERISA Claim is Key

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The Employee Retirement Income Security Act of 1974 (“ERISA”) controls the administration of private employee benefit plans that cover millions of U.S. employees. Welfare benefit plans, one subset of the plans covered by ERISA, provide any of a variety of benefits including medical, surgical, hospital, sickness, accident, disability, death, severance, and unemployment benefits. In order to obtain these benefits, an employee commonly needs to file a claim with the plan’s administrator. Pursuant to the terms of the plan, the employee’s claim is handled through an administrative review process. If the employee’s claim is denied, the plan will frequently require one or more mandatory administrative appeals before the employee may challenge the administrator’s denial in court.

A number of employees seeking benefits are not represented by an attorney during the administrative review process, possibly because the employee believes he will still be able to seek counsel to sue the administrator if his claim is denied. While an employee does have a presumptive right to an informed and independent review of his claim in federal court, the terms of the plan and the administrative review process may severely limit the scope of the court’s review. Accordingly, it is important for employees to seek representation early in the administrative review process to ensure that the employee’s rights are preserved. One way that an attorney will help preserve an employee’s rights is by making sure that all evidence favorable to the employee’s claim is submitted to the administrator during the administrative review process.

The submission of all favorable evidence, including affidavits from treating physicians and possibly other experts, during the administrative review process is important because, unlike most court proceedings, discovery and submission of evidence may be severely limited in ERISA cases. Under ERISA, a plan administrator is required to conduct a “full and fair review” of an employee’s claim, which requires the administrator to accept and consider all evidence submitted by the employee. All such evidence automatically becomes part of the administrative record. On the other hand, the federal district court has nearly complete discretion to refuse to admit evidence outside the administrative record. In *Patton v. MFS/Sun Life Fin. Dist., Inc.*, the Seventh Circuit Court of Appeals held that district courts should consider a number of factors when deciding whether to admit additional evidence including the necessity of the information for the court to make an informed and independent judgment, the quality of the administrative record, the nature of the additional evidence,

whether the administrator faced a conflict of interest, and whether the employee had the opportunity to submit the additional evidence during the administrative review process. These determinations are subjective and if the district court decides not to admit the additional evidence, it is difficult to have the court's decision overturned on appeal.

The language of the plan can further restrain the additional evidence a federal court may admit. If the plan clearly states benefits will only be paid if the administrator determines in its discretion that the employee is entitled to them, the federal courts will apply a more limited review of the employee's claim. In *Vallone v. CNA Fin. Corp.*, the Seventh Circuit Court of Appeals held this more limited review generally does not allow admission of evidence outside the administrative record. In *Semien v. Life Insurance Co. of North America*, the court indicated limited discovery may still be allowed if the employee makes specific allegations of misconduct or bias against the administrator, but emphasized that "this standard presents a high bar for individuals whose claims have been denied by a plan administrator with discretionary authority."

An ERISA plan's administrative review process can be complicated and involving an attorney early in the process can both increase an employee's chances of having his claim approved and ensure that the employee's critical evidence and rights are preserved for review in federal court.