[Doc. No. 12]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
CAMDEN VICINAGE

GAIL A. CONNOR, Plaintiff, v. PNC CORP. AND AFFILIATES LONG TERM DISABILITY PLAN, Defendant.	Civil No. 09-1140 (NLH/AMD)

ORDER

Presently before the Court is a motion [Doc. No. 12] of Defendant PNC Bank Corp. and Affiliates Long Term Disability Plan seeking a protective order, pursuant to FED. R. CIV. P. 26(c), limiting the discovery served by Plaintiff, Gail A. Connor. At issue in this motion is the permissible scope of discovery in connection with Plaintiff's allegation that bias impacted the administration of her claim for long term disability benefits. The Court has considered the submissions of the parties, and decided this matter pursuant to FED. R. CIV. P. 78. For the reasons that follow, Defendant's motion is granted in part and denied in part.

Plaintiff filed her complaint pursuant to the Employee Retirement Income Security Act of 1974, as amended (hereinafter, "ERISA"), 29 U.S.C. § 1001, et seq., on March 12, 2009, and filed an amended complaint on April 30, 2009, seeking review of a

determination rendered by Defendant under the terms of an Employee Welfare Benefit Plan providing group long term disability benefits to employees of The PNC Financial Services Group, Inc.. The plan allegedly constitutes an Employee Welfare Benefit Plan as defined by 29 U.S.C. § 1002(1). (Am. Compl. [Doc. No. 3] ¶ 8.) Plaintiff alleges that she was employed by PNC Financial Services Group, Inc. as a branch manager at the Haddonfield, New Jersey office until October 11, 2006, when she purportedly became disabled as a result of Rhupus, a combination of rheumatoid arthritis and systemic lupus. (Id. at ¶¶ 9, 13.) Plaintiff contends that she was thereafter "unable to perform the material duties of her own occupation or of any gainful occupation for which she is reasonably fitted by training[,] education or experience." (Id. at ¶ 9.) Plaintiff avers that Defendant agreed that she was disabled and paid her long term disability benefits from October 2006 to October 2008. (Id. at ¶ 11.) However, by letter dated October 24, 2008, Defendant allegedly advised Plaintiff that it was terminating payment because Plaintiff's medical record purportedly did not contain "'specific details of any objective findings of systemic lupus'" and the record therefore purportedly did not "'contain sufficient findings subjectively or objectively that would support total disability.'" (Id. at ¶ 12.) Plaintiff alleges that she appealed Defendant's decision, citing the opinion of her physician, who had rendered rheumatologic care to Plaintiff for five years, that Plaintiff was not able to return to work. (Id. at ¶ 13.)

Plaintiff also allegedly annexed to her appeal a list of prescription medicines for Rhupus prescribed by her physician, and literature from the pharmaceutical manufacturers explaining the side effects of such medications. (Id. at ¶ 14.) Additionally, Plaintiff asserts that she submitted with her appeal a Decision and Order from the United States Social Security Administration finding her to be disabled and unable to work as a result of Rhupus. (Id. at ¶ 15.) Although the claim file purportedly "established that Plaintiff was disabled within the meaning of the aforesaid disability policy," Defendant denied Plaintiff's appeal. (Id. at ¶¶ 16, 20.) Plaintiff avers that Defendant's decision to deny further disability payments to Plaintiff lacked "substantial evidence," was "arbitrary and capricious," and was "in breach of its fiduciary obligation." (Id. at ¶ 20.) Plaintiff seeks payment of all disability benefits due as of November 2008 and for so long as Plaintiff remains disabled. (Id. at ¶ 23.)

In connection with her ERISA claim, brought pursuant to 29 U.S.C. § 1132(a)(1)(B), Plaintiff served upon Defendant six interrogatories and two requests for production of documents. (Def.'s Mem. of Law in Supp. of its Mot. for Protective Order [Doc. No. 12-1] (hereinafter, "Def.'s Br."), Ex. A.) The interrogatories seek the number of medical opinions received by Sedgwick Claims Management Services (hereinafter, "Sedgwick")[1] from Dr. D. Dennis

1. Plaintiff alleges that "[t]he Plan Administrator is PNC Bank Corp. who had contracted with Sedgwick Claims Management Services, Inc. to manager [sic] and administers [sic] the Plan on

Payne and Dr. Tanya Lumpkin from 2005 to the present, the nature of the disability in each opinion provided to Sedgwick by these physicians, and the number of opinions each physician provided supporting a claim for disability payments. (Id.)

Defendant objects to Plaintiff's interrogatories on the ground that Plaintiff's discovery requests and attempts to expand the administrative record are prohibited by ERISA and "controlling law." (Def.'s Br. 2.) Defendant asserts that "conjecture or mere allegations of a conflict of interest or procedural bias are insufficient to overcome the strong presumption that the record is limited to that before the administrator[.] . . ." (Id. at 3.) Defendant further asserts that Plaintiff has not offered evidence of a procedural bias or conflict of interest that would justify discovery or expansion of the underlying administrative record. (Id. at 4.) Defendant also contends that the interrogatories are overly broad and unduly burdensome, are neither relevant nor likely to lead to the discovery of admissible evidence, and are not appropriately limited in temporal scope. (Id. at 8.) Defendant thus seeks a protective order relieving Defendant of having to respond to these interrogatories.

In response, Plaintiff asserts that in this action she seeks to prove that Defendant did not provide a full and fair review of her claim because its decision was purportedly influenced by a conflict of interest. (Mem. of Law in Opp. to Def.'s Mot. for a

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its behalf." (Am. Compl. [Doc. No. 3] ¶ 5.)

Protective Order [Doc. No. 14] (hereinafter, "Pl.'s Br.") 2.) Plaintiff contends that the purpose of her interrogatories was to determine the objectiveness of the two doctors who reviewed her claims by determining the number of times that they found in favor of the entity paying for their opinions and the number of times that they found in favor of the claimants. (Id. at 5.) Plaintiff states that Dr. Payne derives his income as a claims reviewer and has given opinions adverse to claimants on lupus, arthritis, Rhupus, and chronic fatigue syndrome. (Id. at 2.) Dr. Lumpkin, who reviewed Plaintiff's claim on appeal, is also allegedly employed by the same organization as Dr. Payne. (Id.) Plaintiff also notes that in the matter Engle v. Jefferson Pilot Financial Insurance Company, Civ. A. No. 08-240 (W.D. Pa. Sept. 28, 2009), Dr. Payne's opinion in a chronic fatigue long term disability case to support the denial of a claim was purportedly reversed by the district court. (Id. at 3.) Plaintiff contends that these circumstances raise a "reasonable suspicion" that a conflict of interest exists, which purportedly warrants the discovery sought pursuant to Plaintiff's interrogatories. (Id. at 2.) Further, Plaintiff asserts that the interrogatories will enable her to determine whether the physicians are purported experts in many fields, so that Plaintiff may "argue that it was unreasonable for the Plan Administrator to rely on their opinion over the Plaintiff's medical expert." (Id. at 5.)

Pursuant to Federal Rule of Civil Procedure 26(c), a court may

enter a protective order "to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense[.]" FED. R. CIV. P. 26(c)(1). Upon a showing of good cause, the Court may "forbid[] the disclosure or discovery," or may "forbid[] inquiry into certain matters, or limit[] the scope of disclosure or discovery to certain matters[.]" Id. The party seeking a protective order bears the burden of demonstrating that good cause exists to limit or foreclose discovery. Cipollone v. Liggett Group, Inc., 785 F.2d 1108, 1121 (3d Cir. 1986). In particular, the moving party must demonstrate a "particular need for protection." Id. "Broad allegations of harm, unsubstantiated by specific examples or articulated reasoning, do not satisfy the Rule 26(c) test." Id.

As noted supra, Defendant's argument in support of a protective order is that discovery should not be permitted in this ERISA action because the Court's review should be limited to the underlying administrative record. ERISA "permits a person denied benefits under an employee benefit plan to challenge that denial in federal court." Metropolitan Life Ins. Co. v. Glenn, 554 U.S. 105, 128 S. Ct. 2343, 2346, 171 L. Ed. 2d 299 (2008). The "default standard of review" applicable to an ERISA benefit determination is de novo review. Dandridge v. Raytheon Co., No. Civ. A. 08-4793, 2010 WL 376598, at *2 (D.N.J. Jan. 26, 2010) (citing Firestone Tire & Rubber v. Bruch, 489 U.S. 101, 111, 109 S. Ct. 948, 103 L. Ed. 2d 80 (1989)). If the employee benefit plan grants discretion to the

administrator in rendering benefits determinations, however, the standard of review for an ERISA benefit determination is a deferential, or arbitrary and capricious, standard of review. Glenn, 128 S. Ct. at 2348 (citing Firestone Tire & Rubber, 489 U.S. at 111, 115, 109 S. Ct. 948, 103 L. Ed. 2d 80); Dandridge, 2010 WL 376598, at *2. Under the deferential standard of review, "the decision of a plan administrator should be upheld so long as it is not 'without reason, unsupported by substantial evidence, or erroneous as a matter of law.'" Dandridge, 2010 WL 376598, at *2 (citing Abnathya v. Hofmann-LaRoche, Inc., 2 F.3d 40, 45 (3d Cir. 1993)). However, in determining whether there was an abuse of discretion, the Court must consider whether the administrator had a conflict of interest that impacted the decision to deny benefits to the claimant. Firestone Tire & Rubber, 489 U.S. at 115, 109 S. Ct. 948, 103 L. Ed. 2d 80 ("[I]f a benefit plan gives discretion to an administrator or fiduciary who is operating under a conflict of interest, that conflict must be weighed as a 'facto[r] in determining whether there is an abuse of discretion.'")(internal citation omitted); see also Glenn, 128 S. Ct. at 2351 ("when judges review the lawfulness of benefit denials, they will often take account of several different considerations of which a conflict of interest is one.").

Conflicts of interest in ERISA cases are generally classified into two categories: structural conflicts and procedural conflicts. Kalp v. Life Ins. Co. of N. Am., No. Civ. A. 08-1005, 2009 WL

261189, at *3 (W.D. Pa. Feb. 4, 2009). "The structural inquiry focuses on the financial incentives created by the way the plan is organized, whereas the procedural inquiry focuses on how the administrator treated the particular claimant." Post v. Hartford Ins. Co., 501 F.3d 154, 162 (3d Cir. 2007), abrogated in part on other grounds by Doroshow v. Hartford Life & Accident Ins. Co., 574 F.3d 230, 233-34 (3d Cir. 2009). Therefore, a structural conflict of interest is created when a plan administrator both evaluates claims for benefits and pays benefit claims, or pays an independent insurance company to both evaluate claims and pay plan benefits. See Glenn, 128 S. Ct. at 2348-49. A procedural conflict of interest arises when there are irregularities in the process by which the administrator came to a decision on a particular claim. Post, 501 F.3d at 164. Such irregularities include "(1) reversal of position without additional medical evidence, (2) self-serving selectivity in the use and interpretation of physicians' reports, (3) disregarding staff recommendations that benefits be awarded; and (4) requesting a medical examination when all of the evidence indicates disability[.]" Id. at 164-65 (internal citations omitted).

In this case, the parties appear to agree that the applicable standard of review is the arbitrary and capricious standard. (See Def.'s Br. 2; Pl.'s Br. 7.)[2] When reviewing a claim under the

2. The Court notes that Defendant submitted in connection with this motion a service agreement between The PNC Financial Services Group, Inc. and Sedgwick which defines the services

arbitrary and capricious standard, the record is generally limited to the administrative record that was before the claims administrator. Dandridge, 2010 WL 376598, at *2 ("The Third Circuit has consistently held that a court's review of a claim for benefits under the arbitrary and capricious standard is 'limited to that evidence that was before the administrator when it made the decision being reviewed.'") (citations omitted). However, information relating to a conflict of interest of the plan administrator may not be derived from the administrative record. See Carberry v. Metropolitan Life Ins. Co., No. Civ. A. 09-2512, 2010 WL 1435543, at *3 (D. Colo. Apr. 9, 2010). Thus, even when reviewing an ERISA claim under the arbitrary and capricious standard, as set forth below courts have permitted a plaintiff limited discovery to determine the extent of the conflict of interest.

When a plaintiff alleges a structural conflict of interest, courts have relied upon the United States Supreme Court's decision in Metropolitan Life Ins. Co. v. Glenn to permit discovery into the extent to which the conflict affected the plan administrator's decision. See, e.g., Dandridge, 2010 WL 376598, at *4-5; Bird v. GTX, Inc., No. Civ. A. 08-2852, 2009 WL 3839478, at *2 (W.D. Tenn.

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provided by Sedgwick. This document, which is Exhibit D to Defendant's motion, was filed under seal; however, Defendant did not file a motion to seal the document in accordance with Local Civil Rule 5.3(c). Defendant is directed to file a motion to seal by July 21, 2010. If a formal motion to seal is not filed by July 21, 2010, the Court will enter an Order directing the unsealing of Exhibit D.

Nov. 13, 2009) ("[A] conflict of interest exists and limited discovery as to the conflict is warranted."). In Glenn, the Supreme Court concluded that the dual role of a plan administrator in both evaluating and paying claims constitutes a conflict of interest that should be weighed as a factor in a district court's determination of whether the plan administrator abused its discretion in denying a claim for benefits. See Glenn, 128 S. Ct. at 2346. Although Glenn does not directly address whether discovery is permissible in ERISA actions, the Supreme Court "strongly implies in its decision that some discovery is available to ERISA plaintiffs to the extent that such plaintiffs find themselves faced with such a per se conflict of interest." Mullins v. Prudential Ins. Co. of Am., No. Civ. A. 3:09-371, 2010 WL 1802044, at *7 (W.D. Ky. Apr. 30, 2010). In this district, one court has concluded that "Glenn supports limited discovery directed to the issue of a *structural* conflict of interest" so that the reviewing court has the ability to determine whether an administrator's decision is arbitrary and capricious. See Dandridge, 2010 WL 376598, at *5 (emphasis in original). Specifically, the court in Dandridge found that "discovery beyond the administrative record is permissible if such discovery is directed toward uncovering the extent to which a structural conflict record has morphed into an actual conflict that could have influenced the administrator's discretionary decision." Id. In so finding, the court in Dandridge noted the language in Glenn that

rejected "special evidentiary and procedural rules" when evaluating conflicts of interest. Id. But see Weiss v. First Unum Life Ins. Co., No. Civ. A. 02-4249, 2008 WL 5188857, at *4 (D.N.J. Dec. 10, 2008) (in affirming magistrate judge's denial of discovery concerning ERISA claim, court concluded that Glenn did not alter law concerning discovery in ERISA actions).

When a plaintiff alleges a procedural conflict of interest, courts have also permitted limited discovery, although the Supreme Court's decision in Glenn does not address the issue. See, e.g., Dandridge, 2010 WL 376598, at *5 (noting that Third Circuit suggested in non-precedential opinion that discovery is permissible in ERISA case when plaintiff alleges procedural conflicts of interest)(citing Gardner v. Unum Life Ins. Co., 354 Fed. Appx. 642, 648 n.4 (3d Cir. Dec. 4, 2009)); Delso v. Tr. of Ret. Plan for the Hourly Employees of Merck & Co., Inc., No. 04-3009, 2006 WL 3000199, at *4 (D.N.J. Oct. 20, 2006) (permitting discovery where question was raised as to whether administrative review was tainted by "'potential biases and conflicts of interest' or 'a pattern of inconsistent benefit decisions.'") (internal quotation omitted). The issue when a plaintiff alleges a procedural conflict of interest is "whether such discovery is automatic or what constitutes a sufficient basis to expand the administrative record." Dandridge, 2010 WL 376598, at *5. The court in Dandridge determined that "some discovery into alleged procedural irregularities is permitted in ERISA cases, but only when the party

seeking discovery has made at least some minimal showing of bias or irregularity that could have impacted the administration of the claim." Id. at *6. Mere "evanescent allegations" or "bald allegation[s] of wrongdoing or alleged bias" are insufficient to obtain discovery into procedural conflicts. See id.

In the present case, Plaintiff alleges that Dr. Payne and Dr. Lumpkin had personal conflicts of interest that call into question their evaluation of Plaintiff's claim. Specifically, Plaintiff contends that these physicians have a financial incentive to deny claims, because they rely upon income from benefit determinations. (Pl.'s Br. 2.) Neither party addresses whether this alleged conflict constitutes a structural or a procedural conflict of interest. The Court construes Plaintiff's assertion of bias as an allegation of a structural conflict of interest. Although the conflict of interest here is not the same as the conflict identified in Glenn,[3] where a plan administrator paid an independent insurance company to both evaluate claims and pay plan benefits, see Glenn, 128 S. Ct. at 2348-49, Glenn recognized that conflicts of interest "vary in kind and in degree of seriousness."

3. In this case, Defendant asserts that the plan is funded through an "actuarially-determined trust" and that "[b]enefits are paid from the pre-established trust, not from the general assets of PNC." (Def.'s Br. 6.) Plaintiff does not dispute this assertion. However, the conflict alleged by Plaintiff here does not involve a conflict created because the same entity both evaluates and pays claims. Rather, Plaintiff argues that the third parties who review claims for Sedgwick may have a conflict of interest if they have a financial incentive to deny claims. (Pl.'s Br. 7.)

Id. at 2351. The Supreme Court noted in Glenn that an employer's conflict extends to its selection of an insurance company to administer a benefits plan because the employer "may be more interested in an insurance company with low rates than in one with accurate claims processing." Id. at 2350. Similarly, here, financial incentives, rather than accurate decision-making, may influence the conclusion of the outside medical professionals who participate in coverage decisions on behalf of Defendant, thereby aligning this alleged conflict as akin to a structural conflict.

Other courts have concluded that a structural conflict exists where the plaintiffs allege that physicians who reviewed their claims had a financial incentive to deny claims. For example, in McGahey v. Harvard Univ. Flexible Benefits Plan, 260 F.R.D. 10, 12 (D. Mass. 2009), three experts performed independent medical examinations of the plaintiff and rendered opinions that were "diametrically opposed" to the opinions of the plaintiff's treating physicians. The court characterized the conflict of interest as a structural conflict and noted that a factor for consideration in deciding whether to permit discovery "in light of Glenn" was whether the plan administrator relied on the opinion of independent experts and, if so, "'the extent to which these experts were in fact truly independent[.]" Id. at 11, 12. The court permitted limited discovery, requiring the defendant to produce for a three year period the total number of independent medical examination reports it commissioned from the three allegedly biased physicians,

the raw number of claims that each of the doctors recommended be denied, and the raw number of claims that each of the doctors recommended be allowed. In Almeida v. Hartford Life & Accident Insurance Co., No. Civ. A. 09-01556, 2010 WL 743520, at *2 (D. Colo. Mar. 2, 2010), the plaintiff sought information concerning "third party independent medical reviewers and professionals," including the number of reviews performed by these individuals, the average fee earned for the reviews, the determinations on the claims reviewed, gross monetary compensation, and amounts paid for the review of the plaintiff's file. Although the court did not expressly conclude that the alleged conflict of interest was structural, the court cited Glenn in finding that the discovery was permissible. Id. The defendant had argued that the relevant inquiry is whether the conflict of interest affected the plan administrator's decision, and not the potential conflicts of third party consultants and medical professionals, but the court in Almeida rejected this argument, stating that "the extent of any alleged conflict of interest could be shown by how Defendant instructs third party consultants, doctors and reviewers and/or whether Defendant provides incentives to them." Id. at *3. See also Zalkin v. Coventry Health Care of Nebraska, Inc., No. Civ. A. 8:09-96, 2010 WL 1665260, at *1, *3 (D. Neb. Apr. 22, 2010) (court affirmed magistrate judge's order permitting plaintiff to serve limited discovery concerning possible structural conflicts of interest, including inquiry about independence and qualifications

of reviewing physicians); Carberry, 2010 WL 1435543, at *1, *3 (where plaintiff sought discovery into financial incentives of outside medical professionals who reviewed plaintiff's claim or participated in coverage decision, court cited Glenn in permitting discovery into annual compensation received from plan administrator by reviewing doctors and number of cases referred to them by plan administrator, noting that "evidence of bias or a conflict because the doctor is paid more for reviews indicating no disability, or conducts an unreasonably large number of reviews, or his reviews are unreasonably brief, or he depends on MetLife for virtually all of his annual income, may be uncovered only by extra-record discovery.").

Here, the Court notes Defendant's assertion that there was no conflict because the physicians were employed by an independent third party and because Sedgwick, who made the benefits determination, "was compensated the same regardless of whether a benefit claim was approved or denied." (Def.'s Br. 5, 6.) However, Plaintiff alleges in the complaint that the determination that she is not entitled to disability benefits is inconsistent with the diagnosis of Plaintiff's treating physician and the determination of the Social Security Administration that Plaintiff is disabled. (Am. Compl. [Doc. No. 3] ¶¶ 17-19.) In light of these allegations of inconsistent determinations, "some further inquiry is warranted" into whether the physicians had a conflict of interest that impacted the benefits determination. McGahey, 260

F.R.D. at 12. Moreover, even were the Court to characterize the alleged conflict as a procedural conflict of interest, the Court finds that Plaintiff's assertion of bias is not merely conclusory. Given the factual allegations of inconsistent determinations described above, Plaintiff has a good faith basis to allege the presence of bias to warrant some discovery.

The Court must next determine the scope of permissible discovery into the conflict issue. The broad discovery permitted under Rule 26 of the Federal Rules of Civil Procedure is circumscribed in light of the deferential standard of review in this ERISA action. However, in determining the appropriate scope, Rule 26 provides a general framework and guideline. In this regard, Rule 26(b)(1) provides that parties may "obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense[.] . . . " FED. R. CIV. P. 26(b)(1). The Court may also permit for "good cause" discovery of matters that are "relevant to the subject matter involved in the action." Id.[4] "Relevant information need not be admissible at the trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence." Id.; see also Nestle Foods Corp. v. Aetna Cas. & Sur. Co., 135 F.R.D. 101, 104 (D.N.J. 1990) ("[I]t is important to distinguish the right to obtain information by

4. However, as stated in Dandridge, Glenn did not "open[] the door to full-blown discovery in all ERISA benefit cases, or that it entirely overrule[d] pre-existing Third Circuit law on the proper scope of discovery." Dandridge, 2010 WL 376598, at *5.

discovery from the right to use it at trial.").

The Court finds that Interrogatories 1, 3, 4, and 6 propounded by Plaintiff in this case are narrowly tailored to the conflict issue and seek information relevant to issues in the case. Plaintiff seeks to determine the number of medical opinions that Dr. Payne and Dr. Lumpkin have rendered to Sedgwick and the number of those opinions that supported the claim for benefits. Such statistical information, the Court finds, is relevant to whether the medical professionals are "disinterested arbiters," and the District Court may consider this factor in reviewing Defendant's decision to deny long term disability benefits to Plaintiff. See Scotti v. Prudential Welfare Benefits Plan, No. Civ. A. 08-3339, 2009 WL 2243959, at *3 (D.N.J. July 23, 2009) ("[I]n making benefits determinations, Prudential relies upon the professional opinions of independent doctors, which are selected through third-party agencies. . . . However, bearing the knowledge that their client stood to gain by disputing Plaintiff's asserted medical condition, these doctors were not entirely disinterested arbiters. Accordingly, the Court will remain mindful that some small but nontrivial bias may have influenced Defendants' decision to deny long-term disability benefits to Plaintiff."). See also McGahey, 260 F.R.D. at 12 (court required defendant to produce for three year period total number of independent medical examination reports it commissioned from three allegedly biased physicians, raw number of claims that each doctor recommended be denied, and raw number of

claims each doctor recommended be allowed); Carberry, 2010 WL 1435543, at *3 (court permitted discovery of the annual compensation received from plan administrator by each reviewing doctor and number of cases referred to them by plan administrator).

Interrogatories 2 and 5, which seek the nature of disability in each claim reviewed by Dr. Payne and Dr. Lumpkin, purportedly relate to the qualifications of these experts to render an opinion on Rhupus. Plaintiff asserts that such information is necessary because if Dr. Payne and Dr. Lumpkin "purport to be experts in too many fields, Plaintiff should be able then to argue, that it was unreasonable for the Plan Administrator to rely on their opinion over the Plaintiff's medical expert." (Pl.'s Br. 5.) The Court finds that the information sought by Plaintiff here -- that is, information concerning whether Dr. Payne and Dr. Lumpkin opine on various types of unrelated medical conditions -- constitutes relevant discovery on the issue of bias toward denial of benefit claims.

Because the Court finds that Plaintiff's interrogatories seek relevant information, the Court also addresses Defendant's assertion that it will be unduly burdened by responding to Plaintiff's discovery request. Defendant provides no support by way of affidavit or certification for the burden argument. Defendant's conclusory allegation of burden fails to demonstrate that the discovery requests are unduly burdensome and thus fails to demonstrate good cause for a protective order as required by FED.

R. CIV. P. 26(c). See Cipollone, 785 F.2d at 1121 (broad allegations of harm do not satisfy the good cause standard for protective order).

The Court also notes Defendant's assertion that the interrogatories are not limited to a relevant time period. (Def.'s Br. 8.) The interrogatories at issue seek information from January 2005 to the present. (See id. at 1.) Neither party addresses the appropriate temporal scope of discovery concerning the alleged bias of physicians who review benefits claims. The Court finds the relevant time period to include 2005 to the date on which each physician rendered an opinion concerning Plaintiff's claim.[5]

CONSEQUENTLY, for the reasons set forth above and for good cause shown:

IT IS on this 29th day of June 2010,

ORDERED that Defendant's motion for a protective order shall be, and is hereby, **GRANTED IN PART** and **DENIED IN PART**; and it is further

ORDERED that Defendant shall respond to Plaintiff's First Set of Interrogatories, limited to the temporal scope set forth above, in accordance with the Federal Rules of Civil Procedure by no later than **July 30, 2010**; and it is further

ORDERED that Defendant shall file a motion to seal Exhibit D

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5. Dr. Payne's opinion is set forth in a report dated October 6, 2008, attached as Exhibit 1 to Plaintiff's motion, and Dr. Lumpkin's opinion is set forth in a report dated February 10, 2009, attached as Exhibit 2 to Plaintiff's motion.

to Defendant's motion in accordance with Local Civil Rule 5.3(c) by no later than **July 21, 2010.**

s/ Ann Marie Donio
ANN MARIE DONIO
UNITED STATES MAGISTRATE JUDGE

cc: Hon. Noel L. Hillman