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United States Court of Appeals
Tenth Circuit

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ROBERT L. HOECKER
Clerk

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

TERESA LEE MYERS, for herself and as
next friend of Shannon Leljedal,

Plaintiff-Appellee,

V.

BOARD OF TRUSTEES, for the Rocky
Mountain UFCW Unions & Employers
Health Benefit Plan,

Defendant-Appellant.

No. 89-1079
(D.C. No. 87-C-1388)
(D. Colo.)

ORDER AND JUDGMENT*

Before LOGAN, MOORE, Circuit Judges, and THOMPSON,** Chief Judge.

****The Honorable Ralph G. Thompson, Chief Judge, United States District Court for the Western District of Oklahoma, sitting by designation.**

Defendant-appellant Board of Trustees for the Rocky Mountain
UFCW Unions & Employers Health Benefit Plan (Board) appeals from
the district court's grant of summary judgment to
plaintiff-appellee Teresa Lee Myers in her suit to recover health
benefits pursuant to section 1132(a)(1)(B) of the Employment

* This order and judgment has no precedential value and shall not be cited, or used by any court within the Tenth Circuit, except for purposes of establishing the doctrines of the law of the case, res judicata, or collateral estoppel. 10th Cir. R. 36.3.

Retirement Income Security Act (ERISA), 29 U.S.C. § 1001 et seq.
We affirm.

Facts

Unless otherwise noted, the following facts are undisputed by the parties:

The Rocky Mountain UFCW Unions and Employers Health Benefit Plan (Plan) is an employee welfare benefit plan as defined in ERISA § 3(1), 29 U.S.C. § 1002(1). The Plan, administered by the Board, is a self-insured health benefit plan created to receive contributions under a collective bargaining agreement between participating employers and local unions to provide health and disability benefits to participants.

Martin Leljedal was an eligible employee under the Plan at all times relevant here. On October 24, 1983, he married Myers, who was then pregnant. On February 10, 1984, Myers gave birth to a daughter, Shannon. Leljedal caused his name to be placed on the birth certificate as Shannon's father. Upon Leljedal's claim, the Plan paid for Shannon's birth expenses.

On August 27, 1984, Leljedal admitted Shannon to the hospital for treatment resulting from a fall. At or near that time, he signed Shannon's parental consent form and claims to have signed a document obligating him to pay for her medical expenses. Neither the hospital nor the Plan have located the latter document, however. The emergency department insurance form of the attending hospital lists Leljedal as the payment guarantor of Shannon's medical expenses.

Shannon remained hospitalized or otherwise under medical treatment until September 19, 1984. The cost for this hospitalization and treatment exceeded \$6,000.00. Leljedal submitted a claim to the Plan on behalf of Shannon to recover these medical expenses.

On August 29, 1984, while Shannon was hospitalized, a hearing was held in divorce proceedings between Leljedal and Myers. The Board claims that evidence presented at that hearing demonstrated that Leljedal was not Shannon's natural father. When Leljedal and Myers were divorced on October 5, 1984, approximately two weeks after the last of the medical expenses at issue here were incurred, the divorce decree included a finding that there were no children born as issue of the marriage. Leljedal and Myers acknowledge that this finding is correct and that Shannon is not Leljedal's daughter. Both also acknowledge that Leljedal was aware of his lack of paternity prior to his marriage to Myers.

On June 13, 1985, the Board denied Myers' claim for Shannon's medical expenses on the ground that Shannon was not a "Dependent" under the Plan. According to the parties' stipulation, the Plan defines a "Dependent" as "the Eligible Employee's unmarried children, including stepchildren, . . . provided that the child is dependent upon the Eligible Employee for support and maintenance and the Eligible Employee is legally responsible for payment of the incurred expenses. . . ."

Myers filed this action for herself and as next friend for Shannon on August 26, 1988. On cross-motions for summary judgment, Myers argued that Shannon qualified as a "Dependent"

under the Plan because, at the time the subject medical costs were incurred: (1) Leljedal was presumed to be Shannon's father under Colorado law; and (2) in the alternative, Shannon was eligible for Plan benefits as Leljedal's stepchild. The Board responded by arguing that Myers had failed to show that Leljedal was ever "legally responsible" for Shannon's expenses as required by the Plan. The Board also objected to Myers' motion on the ground that it included evidence that had not been submitted to the Board. Pursuant to this objection, the district court remanded the matter to the Board for reconsideration.

After reviewing the new evidence, as well as all of the legal documents filed in the district court, the Board again denied payment of Shannon's medical expenses. The parties then filed renewed cross-motions for summary judgment. On January 6, 1989, the district court entered summary judgment for Myers, holding that she was entitled to judgment as a matter of law because the Board's decision to deny Shannon benefits was "arbitrary, capricious and not based on substantial evidence." Order at 5. In particular, the court found that Leljedal was legally responsible for Shannon's medical expenses at the time they were incurred and that he had assumed responsibility for that obligation. Id. After awarding Myers prejudgment interest and reasonable attorneys' fees and costs, the district court entered final judgment on March 15, 1989. This appeal followed.

Discussion

A. Standard of Review

We must affirm a grant of summary judgment if there are no genuine issues as to any material fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c). In this case, as described above, the material facts are undisputed. Accordingly, we must affirm the district court's judgment if we agree with its determination that Myers was entitled as a matter of law to recover health benefits on behalf of Shannon.

Under the law as it existed at the time the district court ruled, Myers was only entitled to the claimed benefits if she could show that the Board's denial of these benefits was arbitrary or capricious, not supported by substantial evidence or erroneous as a matter of law. Peckham v. Board of Trustees of Int'l Bhd. of Painters & Allied Trades Union, 653 F.2d 424, 426 (10th Cir. 1981). Approximately six weeks after the district court entered judgment, however, the Supreme Court rejected this standard, deciding instead that "a denial of benefits challenged under [29 U.S.C.] § 1132(a)(1)(B) is to be reviewed under a de novo standard unless the benefit plan gives the administrator or fiduciary discretionary authority to determine eligibility for benefits or to construe the terms of the plan." Firestone Tire & Rubber Co. v. Bruch, ___ U.S. ___, 109 S. Ct. 948, 956 (1989). If the plan does grant the administrator the necessary discretionary authority, then the administrator's decision is reviewed under the abuse of discretion standard. See id. at 955,

956; see also Boyd v. Trustees of the United Mine Workers Health & Retirement Funds, 873 F.2d 57, 59 (4th Cir. 1989)(applying abuse of discretion standard); Lowry v. Bankers Life & Casualty Retirement Plan, 871 F.2d 522, 525 (5th Cir.)(same), cert. denied, 110 S. Ct. 152 (1989); but see Guy v. Southeastern Iron Workers' Welfare Fund, 877 F.2d 37, 38 (11th Cir. 1989)(continuing to apply arbitrary and capricious standard); Bali v. Blue Cross & Blue Shield Ass'n, 873 F.2d 1043, 1048 (7th Cir. 1989)(same). The initial issue before this court, therefore, is the proper standard for reviewing the Board's determination under the new Firestone test.

According to the Rocky Mountain UFCW Unions & Employers Health Benefit Plan Trust Agreement (Trust Agreement),¹ the Board has "full and complete authority and control over the Plan," Trust Agreement at § 7.2, including authority to "[d]etermine the right of any person to a benefit," id. at § 7.2(b), "[t]o determine, from time to time, who shall be . . . eligible for benefits under the Plan," id. at § 7.3(b), and "[t]o construe and interpret the Agreement and any group insurance policy." Id. at § 7.3(h). These provisions grant the Board the necessary discretionary authority to determine eligibility for benefits under the Plan. Accordingly, the Board's denial of benefits to Shannon must be sustained unless we find that the Board abused its discretion in finding that Shannon was not eligible for Plan benefits.² We will

¹ This document was added to the appellate record on the Board's post-Firestone motion to supplement the record.

² Even if we were to follow the Seventh and Eleventh Circuits
(continued on next page)

only find such an abuse of discretion if we have a definite and firm conviction that the Board made a clear error in judgment or exceeded the bounds of permissible choice in denying these benefits. See United States v. Ortiz, 804 F.2d 1161, 1164 n.2 (10th Cir. 1986).

B. Eligibility Determination

Even under this deferential standard of review, we hold that the Board acted improperly in denying Shannon benefits. The Plan expressly provides that Leljedal's "unmarried children, including a stepchild," are eligible for the Plan's health benefits so long as Leljedal is "legally responsible for payment of the incurred expense." Doc. 5 at ¶ 9. As the Board acknowledges in its reply brief, this eligibility determination depends on conditions as they existed at the time Shannon was injured or her medical expenses were incurred.³ See Reply Brief of Defendant-Appellant

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in applying the arbitrary and capricious standard in this situation, see Guy, 877 F.2d at 38; Bali, 873 F.2d at 1048, the result in this case would be unchanged.

³ Because the Plan document is not included in the case record, we have not been able to confirm this basic eligibility standard. The point is essentially uncontested by the parties, however, and is consistent with the general rule in other benefits programs that dependency determinations are made at or before the date of the event giving rise to the benefits claim. See, e.g., McBride v. Industrial Comm'n, 97 Colo. 166, 49 P.2d 386, 388 (1935)(dependents' eligibility for death benefits under worker's compensation statute fixed at date of worker's injury); Falcon Drilling Co. v. Thompson, 634 P.2d 723, 727 (Okla. 1981)(dependency status determined by conditions preceding worker's death); 20 C.F.R. § 404.361-.365 (1988)(child's eligibility for social security benefits determined according to conditions existing at the time of the insured's death or disability).

Board of Trustees for the Rocky Mountain UFCW Unions & Employers Health Benefit Plan at 13, 14. It is undisputed that during this time period, Leljedal was deemed to be Shannon's natural father pursuant to Colorado statute, see Colo. Rev. Stat. § 19-4-105 (1989 Supp.),⁴ and hence was "legally responsible" for her maintenance and care as a matter of Colorado law. See McQuade v. McQuade, 145 Colo. 218, 358 P.2d 470, 472 (1960). Accordingly, the Board abused its discretion in finding that Shannon was not an eligible dependent under the Plan during the time she was hospitalized. See United States v. Ortiz, 804 F.2d at 1164 n.2. (abuse of discretion occurs when decisionmaker exceeded the bounds of permissible choice in the circumstances).

The Board challenges this conclusion on two grounds. First, it contends that evidence presented at the August 29, 1984, divorce hearing, which occurred early in Shannon's hospitalization, presented sufficient "clear and convincing evidence" of Leljedal's lack of paternity to rebut the statutory presumption and justify the Board's denial of benefits. As the statute expressly states, however, the presumption is only rebutted upon entry of a court decree establishing paternity of the child by another man. Colo. Rev. Stat. § 19-4-105(2)(1989

⁴ This statute provides in pertinent part:

(1) A man is presumed to be the natural father of a child if:

(a) He and the child's natural mother are or have been married to each other and the child is born during the marriage,

Supp.).⁵ No such decree was entered in this case until October 5, 1984, two weeks after Shannon was released from the hospital. Thus, at the time all of the medical expenses at issue here were incurred, Leljedal was still presumed to be Shannon's natural father and was thus legally responsible for her medical costs.

The Board next argues more generally that Leljedal's knowledge that Shannon was not his child, coupled with the judicial decree declaring this fact, together justified its finding that Shannon was not eligible for health benefits under the Plan. Leljedal's actual knowledge of his lack of paternity, however, does not change the fact that in the eyes of the law, he was Shannon's natural father and was legally responsible for her care at the time the subject medical expenses were incurred. Colo. Rev. Stat. § 19-4-105. The Board has also failed to provide us, and we have been unable to locate, any authority supporting the Board's apparent claim that a judicial finding of nonpaternity may be applied retroactively to strip a child of support or other benefits which he or she received or was legally entitled to receive while the statutory presumption was in place. In fact, such a rule would be inconsistent with the very foundation of the statutory presumption, which is to protect the innocent child from the potentially dire consequences of its situation, even at the risk of imposing support obligations on someone other than the

⁵ The statute states in pertinent part: "A presumption under this section may be rebutted in an appropriate action only by clear and convincing evidence. . . . the presumption is rebutted by a court decree establishing paternity of the child by another man."

child's natural father. See Lanford v. Lanford, 151 Colo. 211, 377 P.2d 115, 116 (1962); People in Interest of S.L.H., 736 P.2d 1226, 1227-1228 (Colo. App. 1986).

Accordingly, we find that the Board abused its discretion in ignoring Colorado's statutory presumption of paternity as it applied to Shannon at the time the subject medical expenses were incurred. Because we affirm the district court's grant of summary judgment on this basis, we do not reach Myers' additional arguments concerning Shannon's eligibility for benefits as Leljedal's stepchild or as a result of Leljedal's actions in admitting her to the hospital.

The judgment of the United States District Court for the District of Colorado is AFFIRMED.

ENTERED FOR THE COURT
PER CURIAM