[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT
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No. 18-13173
Non-Argument Calendar
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D.C. Docket No. 9:17-cv-80281-RLR

THERESA E. PEER,

Plaintiff - Appellant,

versus

LIBERTY LIFE ASSURANCE COMPANY OF BOSTON,

Defendant - Appellee.

_____

Appeal from the United States District Court
for the Southern District of Florida
_____

(February 8, 2019)

Before WILLIAM PRYOR, NEWSOM, and GRANT, Circuit Judges.

PER CURIAM:

Theresa Peer filed suit against Liberty Life Assurance seeking life-insurance benefits under her employee welfare benefit plan, which is governed by the Employee Retirement Income Security Act of 1974. 29 U.S.C. § 1001, *et seq*. Specifically, she sought both (1) a ruling enforcing the plan's Waiver of Premium provision—which permits a covered person who becomes "Totally Disabled" while insured to remain eligible for coverage without paying premiums—and (2) a declaration that she had provided sufficient information to Liberty to be deemed Totally Disabled as defined by the terms of her plan. After Peer filed suit, Liberty administratively reversed its earlier denial of Peer's claim for her Waiver of Premium benefit. Liberty approved the waiver and reinstated Peer's policy benefits retroactively such that there was no gap in coverage. In response to Liberty's motion for summary judgment, the district court dismissed as moot Peer's Waiver of Premium claim and, having done so, denied Peer's motion.

Peer then filed an amended complaint asserting two counts, one of which merely restated the Waiver of Premium claim that the district court had already held to be moot, and the other of which sought an "adjudication as to whether and how [Liberty] will handle her waiver of premium requests in the future." After dismissing the first count as controlled by its earlier decision, the district court then granted Liberty judgment on the pleadings on the second count. It held that Peer's

request for declaratory relief regarding a future-benefits determination did not

present a live case or controversy and called for an advisory opinion.

Peer now appeals both the district court's rejection of her Waiver of

Premium claim as moot and that court's determination that her declaratory-

judgment claim regarding future premiums did not present a live case or

controversy.

We first address the denial of Peer's Waiver of Premium claim.[1] Peer states

in her complaint—and reiterates on appeal—that she seeks a determination of life-

insurance coverage pursuant to the plan's Waiver of Premium provision. But as

the district court correctly held, the claim is moot because Liberty reversed its

initial adverse benefits determination and reinstated Peer's coverage. Accordingly,

Peer has already received the relief that she seeks, and "there is no further relief

that the Court can award [Peer] on her claim for an award of the Waiver of

Premium benefit." *See Pakovich v. Verizon LTD Plan*, 653 F.3d 488, 492 (7th Cir.

2011) (holding that "[Plaintiff's] benefit claim became moot when the Plan paid it

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[1] Having concluded that Peer's Waiver of Premium claim was moot, the district court proceeded
to deny Liberty's motion for summary judgment. We review the denial of a motion for summary
judgment—if deemed appealable following a final judgment—for an abuse of discretion. *See
Wilson v. Attaway*, 757 F.2d 1227, 1235 n.1 (11th Cir. 1985). We review *de novo* the issues of
mootness and standing. *See Bochese v. Town of Ponce Inlet*, 405 F.3d 964, 975 (11th Cir. 2005)
(citation omitted); *Troiano v. Supervisor of Elections in Palm Beach Cty.*, 382 F.3d 1276, 1282
(11th Cir. 2004) (citation omitted).

in full"). The district court did not err in denying Peer's Waiver of Premium

claim; she had already received the benefit retroactively without a gap in coverage.

Peer next contends that the district court improperly dismissed—as failing to

present a live case or controversy—her request for a declaration of future benefits

under 29 U.S.C. § 1132(a)(1)(B) (providing that a beneficiary may bring a civil

action "to clarify [her] rights to future benefits"). She contends that *Lamuth v.*

Hartford Life & Accident Insurance Co. supports the position that receipt of plan

benefits does not moot a claim for a declaration of future benefits. 30 F. Supp. 3d

1036 (W.D. Wash. 2014). In *Lamuth*, the plaintiff sought "a declaration as to

when she was first disabled … so as to avoid further conflict with regard to the

Pre-existing Conditions Limitation."[2] *Id.* at 1047. Peer's argument is different;

rather than seeking a post-administrative-review determination of when *past*

coverage was triggered, however, Peer requests a declaration as to her *future*

eligibility. Before that claim ripens, Peer must first be deemed *not* "Totally

Disabled" and that decision must then be administratively reviewed by Liberty.

See Heimeshoff v. Hartford Life Acc. Ins. Co., 571 U.S. 99, 105 (2013) ("A

participant's cause of action under ERISA … does not accrue until the plan issues

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[2] In *Lamuth*, the claimant sought "a declaratory ruling as to when she first became disabled under the Policy" because the insurer "continu[ally] … reverse[d] its position on th[e] issue" through the administrative review process and subsequent litigation. 30 F. Supp. 3d at 1038. The claimant there requested a declaration on a claim "that had been exhausted and repeatedly subject to dispute." *Id.* at 1046. Peer, by contrast, seeks a declaration as to her future eligibility.

a final denial."). Absent an adverse benefits determination, there is no ripe claim

before us. As the district court observed, we "fail[] to see … how the Court may

adjudicate [Peer's] disability status in the future."

Finally, Peer asserts that "[t]he district court abused its discretion in failing

to apply judicial estoppel" to bar Liberty's contention that the case-or-controversy

requirement precludes declaratory relief under 29 U.S.C. § 1132(a)(1)(B).

"[D]istrict court[s] may apply judicial estoppel when a two-part test is satisfied."

Slater v. United States Steel Corp., 871 F.3d 1174, 1180 (11th Cir. 2017) (en

banc). Specifically, judicial estoppel may be appropriate when the party against

whom the doctrine is applied (1) has taken an inconsistent position from one staked

out in a separate proceeding and (2) "intended to make a mockery of the judicial

system." *Id.* In *Sand-Smith v. Liberty Life Assurance Co. of Boston*, Peer claims,

Liberty removed a case from state to federal court when the claimant sought a

judicial declaration regarding an ERISA plan on the ground that the suit presented

a federal question over which the federal court had jurisdiction. *See* 2017 WL

4169430, at *2 (D. Mont. Sept. 20, 2017). Liberty's acknowledgment that a

declaratory judgment regarding the ERISA plan in that case presented a justiciable

controversy does not trigger judicial estoppel here. Liberty has never contended

that all requests for judicial declarations are justiciable. Rather, it has consistently

argued that declarations are proper under ERISA so long as there is a live case or

controversy between the parties. Whereas the claimant in *Sand-Smith* had suffered

an adverse benefits determination, *see id.*, Peer has not.[3] Moreover, and in any

event, we find no indication that Liberty is intending to make a mockery of the

judicial system. Peer's judicial estoppel claim fails on both prongs.

      We **AFFIRM** the judgment of the district court.

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[3] The same reasoning holds for the second case presented by Peer: In *Vaccaro v. Liberty Life Assurance Co. of Boston*, the claimant appealed her benefits classification. The remainder of the case was mooted when Liberty determined the claimant was disabled and awarded past-due benefits. *See Vaccaro v. Liberty Life Assurance Co. of Boston*, 2017 WL 5564910 (N.D. Cal., Nov. 20, 2017).