UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND

CHAMBERS OF
PAUL W. GRIMM
UNITED STATES DISTRICT JUDGE

6500 CHERRYWOOD LANE
GREENBELT, MARYLAND 20770
(301) 344-0670
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September 5, 2019

RE: *Chughtai v. Metropolitan Life Ins. Co*., PWG-19-cv-848

LETTER ORDER

Dear Counsel:

This letter order memorializes the August 30, 2019 conference call regarding Plaintiff's request for extra-record discovery, ECF No. 21, which the parties briefed by letter prior to the call, ECF Nos. 24, 28. I granted the request as follows: Discovery will be limited to interrogatories and will encompass the following: (1) hourly compensation and total compensation for Dr. Goldman and Dr. Schroeder between 2011 and 2016; (2) total number of disability claims Metropolitan Life Insurance Company ("MetLife") processed under that plan during that same period; (3) breakdown of each of the two doctors' recommendations during that period (how many recommended denials and how many recommended payments); and (4) breakdown of MetLife's decisions in response to those recommendations (how many times did MetLife deny after a recommended denial, and how many times did it pay after a recommended payment). MetLife will have thirty days to respond to the interrogatories. The parties will jointly propose a revised briefing schedule in light of this ruling. What follows is a more detailed analysis of the issue.

The general rule in ERISA cases is that judicial review of plan administrator decisions is limited to the evidence presented to the plan administrator at the time of decision, i.e., the administrative record. *See Reidy v. Unum Life Ins. Co. of Am.*, No. PX-16-2926, 2017 WL 6368659, at *2 (D. Md. Dec. 13, 2017) (citing *Helton v. AT&T Inc.*, 709 F.3d 343, 352 (4th Cir. 2013)). Yet, in *Metropolitan Life Insurance Co. v. Glenn*, 554 U.S. 105 (2008), the Supreme Court "held that a plan administrator that both evaluates and pays claims for benefits operates under a conflict of interest, and that courts must consider any such conflict as a 'factor' in determining whether an administrator abused its discretion." *Clark v. Unum Life Ins. Co. of Am.*, 799 F. Supp. 2d 527, 531 (D. Md. 2011) (discussing *Glenn*). While *Glenn* did not directly address a party's right to discovery in ERISA cases, courts have inferred from its holding that extra-record discovery may be warranted under some circumstances.

For example, in *Clark*, this Court held that extra-record discovery is available in ERISA cases "when an administrator has a structural conflict of interest and information not contained in the record is necessary to enable the court to determine the likelihood that the conflict influenced the particular benefits decision at issue." 799 F. Supp. 2d at 533. The Court cautioned, though, that giving ERISA plaintiffs "carte blanche" to pursue conflict-of-interest discovery could threaten to hijack the case, shifting the emphasis "toward exhaustive scrutiny of the general fairness of the administrator's business practices." *Id.* Therefore, judges should first "carefully scrutinize the

relevance and necessity of Plaintiff's proposed extra-record discovery . . . by determining whether or not the administrative record contains enough information to allow the court to properly weigh Defendant's admitted conflict of interest." *Id.* If, and only if, the court "determines that additional information is needed, then discovery will be allowed to proceed on the specific issue of the effect of Defendant's conflict on its benefits decision in th[e] case." *Id.*

In *Achorn v. Prudential Insurance Company of America*, the plaintiff sought to discovery information about Prudential's reliance on two medical review or referral firms that worked on her case. No. 08-125-JAW, 2008 WL 4427159, at *5 (D. Me. Sept. 25, 2008). The magistrate judge granted her request, explaining:

> In its fiduciary capacity as a claims administrator, Prudential has an obligation to seek out objective assistance when it decides that a referral for a file review or an independent medical examination is needed. ... How these firms go about developing and maintaining networks of physicians or other medical experts in order to serve *their* customers is therefore very relevant to the existence of procedural bias.

Id. at *6. The judge then ordered Prudential to disclose information about the compensation paid to the firms; the number of claims Prudential administered under the disability plan at issue; how many of those claims resulted in a referral to one of the firms; how many of those claims in turn resulted in a recommendation for denial or termination of benefits; and how many of those claims actually were denied. *Id.*

In other cases, courts have denied the plaintiffs' request for extra-record discovery. *See, e.g.*, *Reidy*, 2017 WL 6368659, at *2-3; *Griffin v. Hartford Life & Accident Ins. Co.*, No. 16-24, 2016 WL 8794470, at *3-4 (W.D. Va. Sept. 27, 2016); *Lockard v. Unum Life Ins. Co. of Am.*, No. 15-21, 2015 WL 4730089, at *4-5 (N.D.W.V. Aug. 10, 2015); *Patel v. United of Omaha Life Ins. Co.*, No. DKC 12-880, 2012 WL 2370129, at *3 (D. Md. June 21, 2012). As a general matter, these cases do not state that extra-record discovery never is available; they state that it is available only if the plaintiff "demonstrate[s] that evidence outside the administrative record is necessary to allow the court to adequately assess [the defendant's] conflict of interest." *Griffin*, 2016 WL 8794470, at *2 (citation omitted) (citing *Lockard*, 2015 WL 4730089, at *4).

Here, Defendant MetLife acknowledges that it "acts under a structural conflict of interest because it is the funder of the Plan's benefits and the claims administrator for the Plan." Def.'s Opp'n 2, ECF No. 24. It further acknowledges that "[l]imited discovery may be appropriate under certain conditions to determine the significance of a conflict," *id.*, but insists that those conditions are not present here.

Plaintiff alleges that the 758-page administrative record contains only about 34 pages of "actual MetLife analysis." Pl.'s Reply 1, ECF No. 28. She then argues that the physicians' reviews were "poorly reasoned" and failed to take account of various indications that Plaintiff was unable to work. *Id.* at 1, 3. She contends: "The only reason that satisfactorily explains MetLife's behavior is it allowed conflict of interest to impact its benefits decision." *Id.* at 3. In support of this assertion, she alleges that the physicians who worked on Plaintiff's case did not conduct examinations, but merely reviewed files. She also singles out two of those physicians, Drs. Goldman and Schroeder, as potentially suspect. With regard to Dr. Goldman, she alleges that federal courts have repeatedly reversed denials that had been based at least in part on his opinions, and that the Sixth Circuit once characterized one of his opinions as "factually and analytically

problematic." *Id.* As for Dr. Schroeder, she alleges that he stated in a 2006 deposition that he worked exclusively for insurance companies in disability cases, spent just one hour on the case at hand, and that he did not know whether the records he reviewed were complete. *Id.*

Plaintiff has met her burden of establishing that the administrative record does not provide sufficient evidence to address her assertion that MetLife's decision was affected by bias. *See Kane v. UPS Pension Plan Bd. of Trustees*, No. RDB-11-03719, 2012 WL 5869307, at *4 (D. Md. Nov. 19, 2012). On that basis, I approve Plaintiff's request for extra-record discovery.

Although informal, this is an Order of the Court and shall be docketed as such.

Sincerely,

/S/
Paul W. Grimm
United States District Judge