

Remand Order Constitutes Sufficient Degree of Success on the Merits to Justify Attorneys' Fees Award

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In *Fisher v. Aetna Life Ins. Co.*, 2020 U.S. Dist. LEXIS 184024 (S.D.N.Y. Oct. 5, 2020), the court held that a remand order requiring the claim administrator to reassess its denial of benefits constituted a sufficient degree of success on the merits to justify a fee award under ERISA's fee-shifting provision.

The case involved a dispute over a denied claim for medical benefits. Jacqueline Fisher received health insurance coverage through an ERISA-governed benefits plan insured by a policy issued by Aetna (the "Policy"). Over the course of 2015, Fisher made monthly purchases of Effexor, a brand name anti-depressant, and submitted claims to Aetna for reimbursement under the Policy. Fisher contested several of Aetna's adverse benefits determinations concerning her Effexor purchases under the Policy's cost-sharing system. She filed suit after exhausting her administrative remedies.

In March 2017, the court concluded that Aetna's denial of these benefits was arbitrary and capricious and remanded the matter to Aetna for further consideration. On remand, Aetna determined that three of its original four claim determinations were correct, but reversed its decision on the fourth issue, resulting in reimbursement to Fisher in the amount of \$64.32. Not satisfied with the outcome, Fisher sued again.

The court entered summary judgment against Fisher on her new claims. Fisher moved for reconsideration and also sought attorneys' fees under ERISA's fee shifting provision, 29 U.S.C. Section 1132(g). In opposing these requests, Aetna argued that Fisher was merely looking to get a second bite of the apple and that fees were not warranted because any success she achieved in the matter was purely procedural.

The court agreed with Aetna on the first issue, but sided with Fisher on her attorneys' fees claim. In doing so, the court held that a remand to the plan administrator without more (a "remand simpliciter") was enough to constitute some degree of success on the merits sufficient to give the court discretion in awarding attorney's fees under the U.S. Supreme Court's decision in *Hardt v. Reliance Standard Life Insurance Co.*, 560 U.S. 242, 253, 130 S.

Ct. 2149, 176 L. Ed. 2d 998 (2010). The court was persuaded by the First Circuit’s reasoning in *Gross v. Sun Life Assur. Co. of Can.*, 763 F.3d 73, 78 (2014), that there are two positive outcomes inherent in a remand order: “(1) finding that the administrative assessment of the claim was in some way deficient, and (2) the plaintiff’s renewed opportunity to obtain benefits or compensation.” If the court determines that the plaintiff achieved some degree of success on the merits, then it has full discretion to award attorneys’ fees without further inquiry, although not required to do so.

The court noted that in exercising its discretion on whether to award attorneys’ fees, a court may review five additional factors, as set forth in *Chambless v. Masters, Mates & Pilots Pension Plan*, 815 F.2d 869, 871 (2d Cir. 1987): “(1) the degree of the offending party’s culpability or bad faith, (2) the ability of the offending party to satisfy an award of attorneys’ fees, (3) whether an award of fees would deter other persons from acting similarly under like circumstances, (4) the relative merits of the parties’ positions, and (5) whether the action conferred a common benefit on a group of pension plan participants.” While none of these factors is dispositive, the degree of culpability and relative merits of the parties’ positions weigh heavily. In applying the *Chambless* factors to the facts of *Fisher*, the court determined that an award of attorneys’ fees was appropriate, albeit in a fraction of the amount sought by Fisher, following a reasonableness analysis.

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