

Court Affirms Principle that Challenges to Benefits Determination Involving Mental Illness Limitation Require Specific, Concrete Evidence of Physical Factors

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In *Gill v. Unum Life Ins. Co. of Am.*, 2020 U.S. Dist. LEXIS 219416 (N.D. Cal. Nov. 23, 2020), a California federal court held that an ERISA claim administrator properly limited benefits to 24 months under the plan's mental illness limitation for a disability that included elements of mental illness and cognitive impairment.

Plaintiff Terrance Gill was insured under a group LTD policy issued by Unum Life Insurance Company of America ("Unum Life") to his employer, MUFG Union Bank, N.A. ("Union Bank"). The Unum Life policy limited benefits to 24 months for disability caused by a mental illness, which the policy defined, in part, as "a psychiatric or psychological condition."

Gill had a history of bipolar disorder, but that condition had been under control since 2000. But in August 2015, Gill submitted a claim for LTD benefits under the Union Bank plan, asserting that his mental health condition had deteriorated to the point where he could no longer perform the material duties of his occupation as a project manager for Union Bank. Gill's psychiatrist submitted an attending physician statement in support of the claim identifying a primary diagnosis of bipolar disorder, and opining that Gill "cannot perform the complex functions of his job due to high level of irritability and cognitive impairment."

After Unum Life approved Gill's claim based on the bipolar diagnosis, Gill returned to work full time. However, in August 2016 Gill again stopped working and subsequently submitted a second LTD claim that was based on his bipolar condition as well as a diagnosis of attention deficit hyperactivity disorder (ADHD). Unum Life again approved Gill's claim (in May 2017), and subsequently paid benefits to Gill for 24 months pursuant to the subject policy's mental illness limitation.

Gill appealed Unum Life's determination that his claim was subject to the 24-month limitation period, arguing that his primarily disabling condition of cognitive impairment was caused by physical, non-psychological factors. Gill based his contention on office visit notes from his psychiatrist, which were created *after* Unum Life's benefit determination. In those notes, the psychiatrist indicated that that cognitive impairment was Gill's "biggest problem" and that Gill likely suffered from organic brain damage. Gill also submitted records from a neurologist who examined Gill and concluded that Gill's cognitive impairment could not have been caused by his mental illness.

Unum Life upheld its determination that Gill's claim was subject to the mental illness limitation, based in part on the record reviews performed by three consultant psychiatrists who found no evidence to support the conclusion that Gill's cognitive impairment resulted from a physically-based, non-psychiatric illness or injury. Gill thereafter filed suit in federal court.

The court affirmed Unum Life's claim determination, holding that the preponderance of the evidence supported the conclusion that Gill's cognitive impairment was caused by his mental illness. Notably, the court expressed skepticism about the opinions offered by Gill's psychiatrist because, although he mentioned that Gill suffered from cognitive impairment as early as August 2015, the psychiatrist only indicated that the impairment might have a physical etiology *after* Gill was notified of the policy's mental illness limitation in May 2017. Further, the court stated that the other medical evidence submitted in support of Gill's claim was either "inconclusive" or "poorly supported," and summarized its decision as follows: "The Court concludes the weight of the evidence indicates Mr. Gill's cognitive impairment was a manifestation of his mental illness.... Accordingly, Mr. Gill is only entitled to twenty-four months of LTD benefits [under the Unum Life policy]."

The case demonstrates that a plaintiff claiming to be disabled from cognitive impairment that is not subject to a mental illness limited payment provision must provide specific, concrete evidence that the cognitive impairment was caused by a physical, non-psychiatric condition.

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