

UNITED STATES DISTRICT COURT

DISTRICT OF MAINE

TANYA LOWELL,)	
)	
Plaintiff)	
)	
v.)	Civil No. 03-244-P-S
)	
DRUMMOND, WOODSUM &)	
MACMAHON EMPLOYEE)	
MEDICAL PLAN, et al.,)	
)	
Defendants/)	
Third-Party Plaintiffs,)	
)	
v.)	
)	
MACHIGONNE, INC.,)	
)	
Third-Party Defendant)	

MEMORANDUM DECISION AND ORDER
ON DEFENDANTS' MOTIONS TO AMEND SCHEDULING ORDER

Defendants Drummond, Woodsum & MacMahon Employee Medical Plan (“Plan”) and Drummond, Woodsum & MacMahon, P.A. (“DWM”) (together, “Defendants”) and third-party defendant Machigonne, Inc. (“Machigonne”) move (via objections to the court’s Scheduling Order, *see* Docket No. 9) to limit discovery by plaintiff Tanya Lowell to (i) the content of the administrative record and (ii) the contractual relationship between Machigonne and the Defendants. *See* Third-Party Defendant Machigonne, Inc. Objection to Scheduling Order (“Machigonne Motion”) (Docket No. 11); Defendants’ Incorporation

of Objection to Scheduling Order (“Defendants’ Motion”) (Docket No. 12). For the following reasons, the motions are granted:

1. The final denial of benefits from which Lowell appeals takes the form of a June 4, 2003 letter from Machigonne. *See* Complaint (Docket No. 1) ¶¶ 21-22; *see also, e.g.*, Administrative Record (“Record”), filed in paper format by Machigonne on February 12, 2004, at 219. Lowell had requested pre-certification of Plan coverage of a surgical procedure (gastric bypass) as treatment for morbid obesity. *See, e.g.*, Record at 88-91. Lowell’s request was denied not on the basis of lack of medical necessity (a physician reviewer having opined that the documentation supported such a finding), *see, e.g., id.* at 164, but on the basis of Plan language excluding coverage for “[a]ny expense for weight reduction, nutritional or dietary counseling (except to the extent as provided herein); smoking clinics, sensitivity training, encounter groups, educational programs (except as provided herein); career counseling, and activities whose primary purposes are recreational and/or social,” *id.* at 219.

2. As this court has observed:

The district court in an ERISA benefits review case essentially acts as an appellate body. Courts review benefits decisions by plan administrators *de novo*, *unless* the benefits plan at issue grants the administrator discretion to make benefits decisions. If a plan grants that discretion, courts review the merits of a benefits determination only for “abuse of discretion,” or for arbitrariness and capriciousness. Likewise, if a plan grants the administrator discretion to interpret or construe the plan, courts review the interpretations only for abuse of discretion.

Liston v. UNUM Corp. Officer Severance Plan, 211 F. Supp.2d 222, 227 (D. Me. 2002), *aff’d*, 330 F.3d 19 (1st Cir. 2003) (citations and footnote omitted) (emphasis in original).

3. The Plan defines DWM as the “Plan Administrator” and Machigonne as the “Contract Administrator.” *See* Drummond Woodsum & MacMahon Employee Medical Plan Document (“Plan

Document”), Attachment 1 to Plaintiff’s Response to Objections to Scheduling Order (“Plaintiff’s Objection”) (Docket No. 15), at 2, 4.

4. As Lowell concedes, *see* Plaintiff’s Objection at 2-3, DWM (as Plan Administrator) had discretion to determine eligibility for benefits and to construe terms of the Plan, *see also, e.g.*, Plan Document at 2.

5. Lowell posits that inasmuch as (i) Machigonne denied her claim, and (ii) DWM did not (and could not, per relevant Plan language) delegate authority to Machigonne to do so, review of Machigonne’s decision must be *de novo* rather than deferential. *See* Plaintiff’s Objection at 2-7. Machigonne rejoins, *inter alia*, that it did not make the final claims-denial decision from which Lowell now appeals. *See* Third-Party Defendant Machigonne, Inc.’s Reply to Plaintiff’s Response to Objections to Scheduling Order (“Machigonne Reply”) (Docket No. 16) at 3-4. Rather, it argues, the Record reflects that DWM (via its chief operating officer Catherine Liston) actually made the final decision with advice and input from Machigonne. *See id.* I agree. The Record makes clear that (i) Machigonne looked to DWM for approval of the content of the June 4, 2003 denial letter, (ii) Liston, on behalf of DWM, reviewed one or more draft letters, raising questions and suggesting revisions, and (iii) Liston ultimately okayed Machigonne’s transmission of the final version of the letter to Lowell. *See* Record at 220-32. This action was consistent with Plan language directing participants to file appeals with the Contract Administrator (Machigonne), which would “present the participant with the final written decision,” but reserving to the Plan Administrator (DWM) “full authority to interpret this Plan, its provisions and regulations with regard to eligibility, coverage, benefit entitlement, benefit determination and general administrative matters.” Plan Document at 2, 40. Inasmuch as DWM (rather than Machigonne) made the final decision from which Lowell appeals, and

Lowell has conceded that DWM possessed discretion to construe Plan terms, her complaint implicates the “abuse of discretion,” rather than the *de novo*, standard of review.¹

6. Lowell argues that, even under an abuse-of-discretion standard, she should be allowed to explore through discovery how the exclusionary Plan language in question was developed and how it has been applied. *See* Plaintiff’s Objection at 9. As Lowell observes, the First Circuit has acknowledged that treatment of other beneficiaries “could . . . be substantively relevant to the question whether the . . . construction and application of the plan [in a particular instance] was reasonable.” *Id.* (quoting *Liston*, 330 F.3d at 25). However, as the Defendants suggest, *see* Defendants’ Reply at 10-11, the First Circuit qualified this statement, noting: “Of course, the issue [of treatment of others] should be raised in the first instance during the claims process,” *Liston*, 330 F.3d at 25. Inasmuch as appears, Lowell did not raise these discovery issues during the claims process. *See, e.g.*, Record at 185-93 (letter dated April 11, 2003 from plaintiff’s counsel Christopher C. Taintor to Machigonne). In any event, the Defendants proffer evidence that, to the knowledge of Jerrol Crouter, president of DWM, no other Plan participant has ever filed a claim for payment of expenses for a gastric-bypass procedure for the purpose of weight reduction, and Machigonne has never before denied a claim based on the exclusion in issue (Exclusion No. 11). *See* Affidavit of Jerrol Crouter, Attachment 1 to Defendants’ Reply, ¶ 11.² Thus, no useful purpose would be

¹ The Defendants – who take the position that Machigonne was the final decision-maker – point out that Machigonne made the interim claims-denial decisions on its own, *see* Defendants’ Reply to Plaintiff’s Response to Objections to Scheduling Order (“Defendants’ Reply”) (Docket No. 17) at 7 n.3; however, that is not determinative, *see, e.g., Terry v. Bayer Corp.*, 145 F.3d 28, 36 (1st Cir. 1998) (noting, in ERISA benefits-denial case, that in keeping with requirement that claimant exhaust internal remedies, court’s task is to examine final benefits decision, not intermediate step in internal-review process).

² Moreover, while authorities cited by Lowell support the appropriateness, at least in some circumstances, in an abuse-of-discretion context of discovery concerning the manner in which Plan language has been applied, they do not support the appropriateness of discovery in that context concerning the manner in which Plan language was developed. *See* Plaintiff’s Objection at 9; *Chevron Chem. Co. v. Oil, Chem. & Atomic Workers Local Union 4-447*, 47 F.3d 139, 145 (5th Cir. 1995) (noting that analysis of whether a plan administrator’s interpretation of a plan is legally correct entails (continued...))

served in permitting such discovery. *See, e.g., Liston*, 330 F.3d at 25 (“Whether discovery was warranted depends in part on if and in what respect *it matters* whether others were better treated than [the claimant], and this is not a question that has a neat mechanical answer.”) (emphasis in original).

For these reasons, the motions of the Defendants and Machigonne to modify the Scheduling Order are granted, and discovery by Lowell is limited to (i) the content of the administrative record and (ii) the contractual relationship between Machigonne and the Defendants.

So ordered.

Dated this 4th day of March, 2004.

David M. Cohen
United States Magistrate Judge

Plaintiff

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consideration of “1) whether the administrator has given the plan a uniform construction; 2) whether the administrator’s interpretation is consistent with a fair reading of the plan; and 3) whether different interpretations of the plan will result in unanticipated costs.”); *Doyle v. Nationwide Ins. Cos. & Affiliates Employee Health Care Plan*, 240 F. Supp.2d 328, 345-46 (E.D. Pa. 2003) (setting forth five-factor test of reasonableness of a plan administrator’s interpretation of plan language: “(1) whether the interpretation is consistent with the goals of the Plan; (2) whether it renders any language in the Plan meaningless or inconsistent; (3) whether it conflicts with the substantive or procedural requirements of the ERISA statute; (4) whether the [relevant entities have] interpreted the provision at issue consistently; and (5) whether the interpretation is contrary to the clear language of the Plan.”) (citations and internal quotation marks omitted).

V.

Defendant

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