

**IN THE COURT OF APPEALS OF IOWA**

No. 0-598 / 10-0459  
Filed October 6, 2010

**KENNETH BRONNER,**  
Plaintiff-Appellant,

**vs.**

**SUN LIFE INSURANCE AND ANNUITY  
COMPANY OF NEW YORK,**  
a wholly-owned subsidiary of  
**SUN LIFE ASSURANCE COMPANY  
OF CANADA (U.S.),**  
Defendant-Appellee.

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Appeal from the Iowa District Court for Howard County, Margaret L. Lingreen, Judge.

Kenneth Bronner appeals the district court's grant of summary judgment in favor of Sun Life Insurance and Annuity Company of New York, contending his net monthly long-term disability benefits under the group insurance policy between his employer and Sun Life were improperly calculated. **AFFIRMED.**

Thomas C. Verhulst of Gallagher, Langlas & Gallagher, P.C., Waterloo, for appellant.

Sasha L. Monthei of Scheldrup, Blades, Schrock, Smith, and Aranza, P.C., Cedar Rapids, and Edna S. Bailey of Wilson, Elser, Moskowitz, Edelman & Dicker, L.L.P., Chicago, Illinois, for appellee.

Considered by Sackett, C.J., and Potterfield and Tabor, JJ.

**POTTERFIELD, J.**

Appellant Kenneth Bronner appeals the district court's grant of summary judgment in favor of Sun Life Insurance and Annuity Company of New York (Sun Life). Bronner contends Sun Life improperly calculated his monthly long-term disability benefits under the group insurance policy between his employer and Sun Life. Because the calculation was consistent with the policy terms and definitions, we affirm.

The long term disability insurance plan considered here is governed by the Employment Retirement Income Security Act (ERISA). See 29 U.S.C. § 1003. State district courts have concurrent jurisdiction with the federal courts to determine civil actions brought by a participant to enforce his rights under the terms of the plan. See 29 U.S.C. § 1132(a)(1)(B), (e)(1).

“When an ERISA plan grants the administrator ‘discretionary authority to determine eligibility for benefits or to construe the terms of the plan,’ courts review the administrator’s benefit decisions for an abuse of discretion.” *Khoury v. Group Health Plan, Inc.*, \_\_\_ F.3d \_\_\_, \_\_\_ (8th Cir. Aug. 10, 2010) (citation omitted). Based upon principles of trust law, the United States Supreme Court determined in *Metropolitan Life Insurance Co. v. Glenn*, 554 U.S. 105, \_\_\_, 128 S. Ct. 2343, 2350, 171 L. Ed. 2d 299, 309 (2008), that the abuse-of-discretion standard remains the appropriate standard to evaluate an ERISA fiduciary’s decision. That standard, however, requires a court “to determine lawfulness by taking account of several different, often case-specific, factors, reaching a result by weighing all together.” *Glenn*, 554 U.S. at \_\_\_, 128 S. Ct. at 2351, 171 L. Ed. 2d at 310. One such factor is the conflict of interest which arises when a plan

administrator “both determines whether an employee is eligible for benefits and pays benefits out of its own pocket.” *Id.* at \_\_\_\_, 128 S. Ct. at 2346, 171 L. Ed. 2d at 305. Thus, under *Glenn*, “courts must analyze the facts of the case at issue, taking into consideration not only the conflict of interest, but also other factors that might bear on whether the administrator abused its discretion.” *Chronister v. Unum Life Ins. Co. of Am.*, 563 F.3d 773, 775–76 (8th Cir. 2009) (reversing insurer’s decision to deny benefits as an abuse of discretion where there was a financial conflict of interest, a pattern of erroneous and arbitrary benefit denials, and a failure to follow its own claims-handling procedures).

We review the district court’s ruling on a motion for summary judgment for correction of errors at law. *Lobberecht v. Chendrasekhar*, 744 N.W.2d 104, 106 (Iowa 2008). Summary judgment is appropriate,

if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact, and that the moving party is entitled to a judgment as a matter of law.

Iowa R. Civ. P. 1.981(3). The evidence presented must be viewed in the light most favorable to the party opposing summary judgment. *Lobberecht*, 744 N.W.2d at 106.

The following undisputed facts appear in the record. Bronner, born in January 1943, was employed by GateHouse Media in advertising sales at the Cresco Times-Plain Dealer in November 2007. Bronner was a participant in GateHouse’s employee group disability plan, which provided short-term and long-term disability benefits. The plan was insured by an employee group insurance policy provided by Sun Life. In Section I, the Sun Life policy notes that

“under the 1983 amendments to the Federal Social Security Act,” the “Normal Retirement Age” for a person born in 1943 is age sixty-six.

Bronner’s last day working was November 30 as he suffered a stroke on December 1, 2007. Bronner received short-term disability benefits from December 1, 2007, through February 29, 2008.

On February 9, 2008, Bronner submitted a claim for long-term disability benefits.

For purposes of long-term disability insurance, the policy defines the following pertinent terms:

**Elimination Period** means a period of continuous days of Total or Partial Disability for which no LTD [Long Term Disability] Benefit is payable. The Elimination Period is shown in Section I, Schedule of Benefits and begins on the first day of Total or Partial Disability [“90 days, or the end of the Employee’s Short Term Disability Maximum Benefit Period, whichever is later.”].

...  
**Total Disability or Totally Disabled** means during the Elimination Period and the next 24 months, the Employee, because of Injury or Sickness, is unable to perform the Material and Substantial Duties of his Own Occupation. . . .

...  
 To qualify for benefits, the Employee must satisfy the Elimination Period with the required number of days of Total Disability, Partial Disability or a combination of days of Total and Partial Disability.

**Total Monthly Earnings** means the Employee’s average monthly earnings from the W-2 form (the box which reflects wages, tips, and other compensation) received from the Employer for the prior calendar year immediately prior to the first date Total or Partial Disability begins, or the average monthly earnings for the period of employment if no W-2 has been received.

The box on Bronner’s 2006 W-2 form which reflects wages, tips, and other compensation contains the figure “32991.75.” The policy provides:

To determine the Total Disability Benefit:

1. Take the lesser of:

- a. the Employee's Total Monthly Earnings multiplied by the Benefit Percentage (shown in Section I, Schedule of Benefits)[“60% of Total Monthly Earnings”]; then
  - b. The Maximum Monthly Benefit [\$12,500]; then
2. Subtract Other Income Benefits from the amount determined in Step 1.

....

**Other Income Benefits**

Other Income Benefits are those benefits provided or available to the Employee while a Long Term Disability Benefit is payable. These Other Income Benefits, other than retirement benefits, must be provided as a result of the same Total or Partial Disability payable under this Policy. Other Income Benefits include:

- ....
6. The disability or retirement benefits under the United States Social Security Act, . . . .

If an Employee's Total or Partial Disability begins after Social Security Normal Retirement Age, Social Security Retirement Benefits will not be offset if, prior to his Total or Partial Disability, he was already receiving Social Security Retirement Benefits.

On March 4, 2008, Bronner received a letter from the Social Security Administration informing him he was “entitled to monthly retirement benefits beginning February 2008.” The letter indicated an initial payment of \$1186 and a monthly retirement benefit of \$1089.

Sun Life approved Bronner's claim on June 11, 2008, effective March 1, 2008.<sup>1</sup> Sun Life informed Bronner his net monthly long term disability benefits were \$560.59, calculated as follows:

Basic Monthly Earnings	\$2,749.31
<i>*Based on your previous year W2</i>	
Monthly Gross Benefits at 60%	\$1,649.59
Less (other income):	- \$1,089.00
<i>Social Security Retirement</i>	
Net Monthly Benefit:	\$560.59

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<sup>1</sup> The delay in approving his claim was described in a letter from Sun Life to the Iowa Insurance Division as being the result of an “oversight.” Because we conclude Bronner's benefits were calculated pursuant to the terms of the policy, we find Bronner's allegations of procedural irregularity have little weight in our analysis.

Bronner contested two aspects of the calculations: (1) the amount used for basic monthly earnings, contending it should be 1/12 of his gross earnings of \$37,238.76, which included the value of benefits selected under the employer's cafeteria plan and (2) with no deduction for monthly social security retirement benefits. Sun Life rejected both contentions. In addition, Sun Life received documentation that Bronner was entitled to \$1242<sup>2</sup> monthly Social Security benefits beginning May 2008, because he qualified for a higher Social Security disability benefit than his retirement benefits. Sun Life then recalculated with the newer "Other Income" deduction and determined that as of May 2008, Bronner's net long-term disability monthly benefit under its policy was \$407.59.

On March 31, 2009, Bronner filed suit against Sun Life asserting breach of an insurance contract. Cross-motions for summary judgment were submitted prior to trial. The district court granted summary judgment in favor of Sun Life and Bronner appeals.

Bronner argues the district court failed to consider Sun Life's inherent conflict of interest in reviewing Sun Life's determination of the monthly disability benefits due him. He bases this claim on the language of the summary judgment ruling in which the court stated that it "can weigh the conflict of interest as a factor" rather than it "must" weigh the conflict. Even if we assume the district court misstated the standard in *Glenn*, the court correctly concluded Sun Life did not abuse its discretion in calculating the monthly disability benefit pursuant to the policy terms. Giving full weight to the claimed conflict of interest factor, we

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<sup>2</sup> The disability entitlement was \$1242.30. Sun Life apparently rounded down to \$1242 in its calculation.

find Sun Life calculated Bronner's monthly benefit in faithful adherence to the unambiguous terms of its policy.

Bronner argues that his benefit should be calculated using his "gross earnings" (\$37,238.76). This argument ignores the language of the policy, which we cannot do. The policy specifically states that the long-term disability benefit is calculated by subtracting "Other Income" from the lesser of "Total Monthly Earnings" or "Maximum Monthly Benefit." The policy defines "Total Monthly Earnings" as "the Employee's average monthly earnings *from the W-2 form (the box which reflects wages, tips, and other compensation)* received from the Employer for the prior calendar year immediately prior to the first date Total or Partial Disability begins." (Emphasis added.) Although Sun Life's calculation first was based on information from Bronner's employer other than his W-2, there is no dispute that the figure Sun Life used was the same amount included on his W-2 in the box for annual "wages, tips and other compensation." That box contains the figure \$32,991.75,<sup>3</sup> which when divided by twelve (the number of months) yields \$1649.59. Sun Life did not abuse its discretion in calculating Bronner's benefit in accordance with the definitions in its policy.

The long-term disability benefit calculation required the deduction of "Other Income," which includes "the disability or retirement benefits under the United States Social Security Act." Bronner argues that Sun Life "unreasonably"

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<sup>3</sup> This interpretation is not contrary to federal tax law. See 26 U.S.C. § 3121(a)(5)(G) (providing that benefits received by most employees under a cafeteria plan are not considered wages); *cf. Lee v. Employment Dep't*, 190 P.3d 453, 455 (Or. Ct. App. 2008) (affirming employment board's determination that moneys withheld from the claimant's wages and paid into the cafeteria plan for health insurance were not included in claimant's wages for purposes of determining his unemployment benefit).

offset his monthly retirement benefits. He asserts that he was receiving retirement benefits prior to his disability and he is therefore exempt from the deduction under the exception stated in the policy. Sun Life disagreed. We find no abuse of discretion in Sun Life's interpretation.

The policy exemption states: "If an Employee's Total or Partial Disability begins after Social Security Normal Retirement Age, Social Security Retirement Benefits will not be offset if, prior to his Total or Partial Disability, he was already receiving Social Security Retirement Benefits." Bronner argues he was entitled to social security retirement benefits on his sixty-fifth birthday<sup>4</sup> and thus was "already receiving Social Security Retirement Benefits prior to his disability." This argument ignores the first clause of the exemption completely: "If an Employee's Total or Partial Disability begins after Social Security Normal Retirement Age . . . ." For a person born in 1943, the policy defines "Normal Retirement Age" as sixty-six. There is no dispute that Bronner's disability began when he suffered his stroke in 2007, before he was sixty-six.

The district court did not err in concluding Bronner's long-term disability benefit was accurately calculated pursuant to the terms of the Sun Life insurance policy. Sun Life did not abuse its discretion in determining Bronner's long-term disability benefit, and we therefore affirm the grant of summary judgment in its favor.

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<sup>4</sup> Bronner argues he became eligible for Social Security retirement benefits on his sixty-fifth birthday on January 29, 2008. While one is entitled to begin receiving partial social security benefits at the age of sixty-two, see 42 U.S.C. § 402, full retirement is not reached until later, depending upon the year in which one is born. See 42 U.S.C. § 414. The Sun Life policy appears to equate the age at which one qualifies for full retirement benefits with "Normal Retirement Age."



Sun Life asks that we award appellate attorney fees pursuant to 29 U.S.C. § 1132(g) (providing in part, “the court in its discretion may allow a reasonable attorney’s fee” in an ERISA action). We decline to award appellate attorney fees.

Costs are assessed to Bronner.

**AFFIRMED.**