HARRIS V. LINCOLN NATIONAL LIFE INSURANCE CO.: ELEVENTH CIRCUIT HOLDS EVIDENCE OUTSIDE OF ADMINISTRATIVE RECORD MUST BE PERMITTED WHEN DETERMINING ELIGIBILITY OF LONG-TERM DISABILITY BENEFITS UNDER EMPLOYEE RETIREMENT INCOME SECURITY ACT

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In *Harris v. Lincoln National Life Insurance Co.*, the United States Court of Appeals for the Eleventh Circuit addressed whether courts hearing benefit disputes under the Employee Retirement Income Security Act ("ERISA") can or must limit their review to the information contained in the administrative record.[1]

Plaintiff Virgil Harris was insured by Lincoln National Life Insurance Company ("Lincoln") under a long-term disability plan.[2] This benefits plan gave no discretion to the plan administrator when reviewing Harris's eligibility.[3] A Lincoln Plan Administrator denied Harris's request for benefits, prompting Harris to file suit in the United States District Court for the Northern District of Georgia.[4]

Under ERISA, a district court merely determines whether the denial of benefits was arbitrary and capricious if the plan administrator had discretion in denying benefits.[5] That is, the district court determines whether there was a reasonable basis for the administrator's denial considering the evidence that was presented at the time.[6] However, where the administrator lacks discretion, the appropriate standard of review is *de novo*.[7] Because Lincoln lacked discretion when denying Harris's eligibility, the district court reviewed the issue *de novo*.[8] The district court denied Harris's efforts to introduce evidence outside of

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[1] 42 F.4th 1292, 1294–95 (11th Cir. 2022); *see* Employee Retirement Income Security Act § 502, 29 U.S.C. § 1132.

[2] *See Harris*, 42 F.4th at 1294.

[3] *Id.*

[4] *Id.*

[5] *Id.* (first citing Aetna Health, Inc. v. Davila, 542 U.S. 200, 210 (2004); and then citing Gilley v. Monsanto Co., Inc., 490 F.3d 848, 856 (11th Cir. 2007)).

[6] *Id.*

[7] *Id.*

[8] *Harris*, 42 F.4th at 1294.

the administrative record in the form of an affidavit and updated medical records and granted Lincoln's motion for judgment on the administrative record.[9]

On appeal, the Eleventh Circuit evaluated how the standard of review applied by the district court affects the admissibility of evidence not contained in the administrative record.[10] As noted, a court reviewing an administrator's decision under ERISA evaluates the decision under the arbitrary and capricious standard.[11] Therefore, additional evidence would be immaterial to the district court under this standard of review, as the court is concerned solely with what the administrator had access to prior to the denial.[12] Yet, when a plenary review is proper—because the administrator of a benefits plan lacks the discretion to determine eligibility—it is then the role of the district court to put itself in the shoes of the administrator and make a fresh benefits determination under a *de novo* review.[13]

Although it is clear when a district court should apply arbitrary and capricious or *de novo* review, it is less obvious how the differing standard applies to evidentiary rulings on considering evidence outside the scope of the administrative record.[14] This issue has created a circuit split, with certain circuits forbidding outside evidence,[15] some circuits allowing outside evidence in a limited set of circumstances,[16] and other circuits requiring the admission of relevant outside evidence.[17]

Some circuits require district courts to limit their review to evidence that exists within the administrative record.[18] The United States Court of Appeals for the Sixth Circuit has adopted this approach, relying on the legislative history of ERISA and the lack of congressional

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[9] *Id.*

[10] *Id.*

[11] *Id.* (defining "arbitrary and capricious" as lacking a reasonable basis).

[12] *Id.*

[13] *Id.* at 1296.

[14] *Harris*, 42 F.4th at 1294.

[15] *See, e.g.*, Perry v. Simplicity Eng'g, 900 F.2d 963, 966 (6th Cir. 1990); Ariana M. v. Humana Health Plan of Tex., Inc., 884 F.3d 246, 256 (5th Cir. 2018) (en banc).

[16] *See, e.g.*, Quesinberry v. Life Ins. Co. of N. Am., 987 F.2d 1017, 1026–27 (4th Cir. 1993) (en banc); Dorris v. Unum Life Ins. Co. of Am., 949 F.3d 297, 304 (7th Cir. 2020); Donatelli v. Home Ins. Co., 992 F.2d 763, 765 (8th Cir. 1993); Mongeluzo v. Baxter Travenol Long Term Disability Ben. Plan, 46 F.3d 938, 944 (9th Cir. 1995); Jewell v. Life Ins. Co. of N. Am., 508 F.3d 1303, 1308–09 (10th Cir. 2007).

[17] *See, e.g.*, Luby v. Teamsters Health, Welfare, & Pension Tr. Funds, 944 F.2d 1176, 1184 (3d Cir. 1991); Doe v. United States, 821 F.2d 694, 697–98 (D.C. Cir. 1987).

[18] *See Harris*, 42 F.4th at 1294.

intent for federal district courts to exceed the bounds of the administrative record to support this holding.[19]

Circuits that look more favorably to the admission of evidence outside the administrative record sit in the middle of the circuit split.[20] In these circuits, the scope of the district court's record is limited to what was presented to the administrator, with the ability to present additional evidence upon a showing of appropriate cause.[21] The United States Court of Appeals for the Fourth Circuit defines the appropriate cause for admission of additional evidence to occur when such is "necessary for the resolution of the benefit claim."[22] This approach attempts to ameliorate two issues concerning circuits in the United States: (1) the fear that allowing unlimited access to outside evidence would result in district courts becoming pseudo plan administrators[23] and (2) the fact that *de novo* review must be treated differently in some manner other than an arbitrary and capricious review.[24]

The final approach within the circuit split allows all extrinsic evidence relevant to the review of a benefits plan to be considered.[25] Circuits that have adopted this approach rely on the fact that inherent in *de novo* review is the principle that all relevant evidence should be considered in order to successfully deliver an independent review.[26] *De novo* does not require the court to give any deference to the administrator's decision and treats it as a fresh review of the issue.[27]

The principles inherent in *de novo* review have led the Eleventh Circuit to rest on this end of the circuit split.[28] The Eleventh Circuit's

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[19] *Id.* (citing *Perry*, 900 F.2d at 966). The Sixth Circuit states that allowing federal district courts to review evidence outside the administrative record would allow them to act as pseudo plan administrators. *See Perry*, 900 F.2d at 966.

[20] *Harris*, 42 F.4th at 1295.

[21] *Id.* (first citing *Quesinberry*, 987 F.2d at 1026–27; then citing *Dorris*, 949 F.3d at 304; then citing *Donatelli*, 992 F.2d at 765; *Mongeluzo*, 46 F.3d at 944; and then citing *Jewell*, 508 F.3d at 1308–09).

[22] *Id.* at 1295 (quoting *Quesinberry*, 987 F.2d at 1026–27).

[23] *Id.* (citing Donatelli v. Home Ins. Co., 992 F.3d 763, 765 (8th Cir. 1993) ("[T]o keep district courts from becoming substitute plan administrators, the district court should not exercise [its] discretion [to admit extra-record evidence] absent good cause to do so.")).

[24] *Id.* (citing *Mongeluzo*, 46 F.3d at 944). The good cause requirement does not permit the allowance of additional evidence solely because the offering party came upon the evidence after the plan administrator made the determination. *Mongeluzo*, 46 F.3d at 944.

[25] *Harris*, 42 F.4th at 1295.

[26] *Id.* (first citing Luby v. Teamsters Health, Welfare, & Pension Tr. Funds, 944 F.2d 1176, 1184 (3d Cir. 1991); and then citing Doe v. United States, 821 F.2d 694, 697–98 (D.C. Cir. 1987)).

[27] *Id.* (citing *Doe*, 821 F.2d at 697–98).

[28] *Id.*

preference of permitting evidence that was not initially provided to the administrator for a benefits review extends back to 1989 and the court's decision in *Moon v. American Home Assurance Co*.[29] The court later affirmed its ruling in *Kirwan v. Marriott Corp.*[30] The preference of permitting evidence is grounded in the principle that *de novo* review does not impose restrictions on the district court and requires no deference to previous decisions.[31] *De novo* review within the realm of ERISA, therefore, allows parties to offer evidence outside the scope of the administrative record.[32]

Limitations on *Moon* and *Kirwan*, the Eleventh Circuit's leading precedent on this issue, would occur only if the rulings were abrogated by the United States Supreme Court or overruled by the Eleventh Circuit sitting en banc.[33] Neither scenario has occurred; therefore, both cases remain binding precedent on the district courts within the Eleventh Circuit.[34] Accordingly, when a decision to deny benefits is reviewed *de novo*, district courts within the Eleventh Circuit must allow additional evidence outside the scope of the administrative record to be admitted into evidence.[35]

The district court in *Harris* based its decision to exclude post-denial evidence on previous Eleventh Circuit cases where the Eleventh Circuit upheld the exclusion.[36] Although exclusion was proper in those cases, the Eleventh Circuit determined the cases were distinguishable as they concerned plans that permitted discretion by the administrator and were thus reviewed under the arbitrary and capricious standard.[37] Although that is a seemingly insignificant distinction, it makes a critical difference considering the fact that the standard of review in ERISA cases is dispositive of evidentiary rulings.[38] Accordingly, the Eleventh Circuit held that the district court erred in denying the admission of evidence outside the scope of the administrative record.[39]

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[29] 888 F.2d 86 (11th Cir. 1989); *see Harris*, 42 F.4th at 1295.

[30] 10 F.3d 784, 789 (11th Cir. 1994).

[31] *Harris*, 42 F.4th at 1295–96.

[32] *Id.* at 1296 (citing Shaw v. Conn. Gen. Life Ins. Co., 353 F.3d 1276, 1284 n.6 (11th Cir. 2003)).

[33] *Id.* (citing United States v. Sneed, 600 F.3d 1326, 1332 (11th Cir. 2010)).

[34] *Id.*

[35] *Id.*

[36] *Id.*; *see* Glazer v. Reliance Standard Life Ins. Co., 524 F.3d 1241, 1246 (11th Cir. 2008); *see* Blankenship v. Metro. Life Ins. Co., 644 F.3d 1350, 1354 (11th Cir. 2011).

[37] *Harris*, 42 F.4th at 1296.

[38] *Id.*

[39] *Id.*

Lincoln made three arguments in support of the district court's grant of summary judgment to affirm the denial of long-term benefits: (1) that *Moon* and *Kirwan* were overruled by a line of case law in the Eleventh Circuit that led to the development of a multi-step approach to the denial of benefits under ERISA,[40] (2) the existence of the circuit split to argue that even where additional evidence may be permitted, other circuits require a good faith basis for admission, and such should be the case here,[41] and (3) even under plenary review, the denial of benefits was proper when the administrative record is taken into account, regardless of whether the additional evidence was considered.[42] The Eleventh Circuit rejected all of these arguments.[43]

Accordingly, the Eleventh Circuit reversed the district court's ruling in favor of Lincoln and remanded the case for further proceedings.[44] The court solidified its position that extrinsic evidence should be permitted on *de novo* review of an ERISA benefits plan.[45]

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[40] *Id.*; *see, e.g.*, *Williams v. BellSouth Telecomms., Inc.*, 373 F.3d 1132, 1137–38 (11th Cir. 2004). The Eleventh Circuit dismissed this argument, explaining that the approach does not apply in cases where review is *de novo* and that the multi-step approach has no impact on the validity and binding authority of *Moon* and *Kirwan*. *Harris*, 42 F.4th at 1297. Even if the approach did contradict *Moon* and *Kirwan* and create an intra-circuit split on this issue, the court must follow the ruling of the earliest case. *Id.* As *Moon* and *Kirwan* pre-date the multi-step approach, the case thereby displaces the analytical approach. *Id.*

[41] *Id.* at 1296. Although a circuit split does exist, the court considered the split irrelevant because (1) the rulings of other circuits are not binding on the Eleventh Circuit, (2) the Eleventh Circuit has never addressed nor required a good faith basis when approaching the admissibility of evidence, and (3) the district court did not cite a lack of good faith for its denial and rather stated broadly that extrinsic evidence was generally not permissible. *Id.* at 1297.

[42] *Id.* Lincoln argued that the district court erred when it failed to comply with the rulings of *Moon* and *Kirwan* and denied the admission of extrinsic evidence. *Harris*, 42 F.4th at 1297. However, the Eleventh Circuit noted that claiming that such an error would in turn have no overall effect on the judgment would require a harmless error argument, one which Lincoln never raised at the district court level. *Id.* Accordingly, as Lincoln failed to make this argument initially, the Eleventh Circuit was without jurisdiction to consider this legal argument. *Id.* While an appellate court has the discretion to conduct a harmless error review *sua sponte*, the Eleventh Circuit elected to forgo this analysis without the requisite briefing from the parties. *Id.*

[43] *Id.*

[44] *Id.* at 1298.

[45] *Harris*, 42 F.4th at 1298.