

# Circuits Split on Whether Risk of Relapse is a Disability

By Jessica Summers

Departing from precedent, a recent decision by the First Circuit Court of Appeals has posed new questions about the limits to the discretion wielded by plan administrators in interpreting and administering employee benefit plans.

In the case of *Colby v. Union Sec. Ins. Co. & Management Co. for Merrimack Anesthesia Associates Long Term Disability Plan* (decision available [here](#)), the First Circuit found that the administrator of an employee benefit plan exceeded its discretion when it denied an employee long term disability benefits on the grounds that the employee's risk of relapsing into substance abuse did not qualify as a disability. As recognized by the First Circuit, this decision is directly opposite to the Fourth Circuit's holding in a case with nearly identical facts just five years earlier (see *Stanford v. Continental Casualty Company*, available [here](#)). The discrepancy between these two opinions highlights the uncertainty surrounding the exercise of discretion by plan administrators and the subsequent importance of ensuring that employee benefit plans include clear language and exceptions.

The *Colby* and *Stanford* cases were brought by an anesthesiologist and a nurse anesthetists respectively, each of whom became addicted to Fentanyl, a powerful painkiller used in their practices. In both cases, the employees were covered by employee benefit plans which included long term disability benefits, but did not specify whether the risk of relapse qualified as a disability. Both plans were covered by the Employee Retirement Income Security Act (ERISA) and gave the plan administrator discretion to interpret and apply plans' terms. Each of the employees received disability payments for the periods during which they were in inpatient substance abuse treatment but thereafter were denied disability payments. Both brought suit asserting that their risk of relapse into addiction was a present disability that prevented them from performing their occupations.

In deciding these two cases, the First and Fourth Circuits both recognized that, when a plan vests its administrator with discretion to interpret and apply the plan's provisions, the administrator's decisions are accorded deference and only reviewed for abuse of discretion. Interestingly, because the plan in *Stanford* was administered and funded by the same party, the Fourth Circuit took extra care to scrutinize whether this conflict of interest impacted the administrator's decision.

Despite the additional scrutiny, the Fourth Circuit in *Stanford* concluded that the plan administrator had not abused its discretion in denying the benefits. In its decision, the court recognized that the question of whether the risk of addiction relapse constitutes a disability had been the subject of reasonable disagreement in the lower courts. That reasonable minds have disagreed on this issue was an important factor that led the court to determine that the administrator's decision was not an abuse of discretion.

The court distinguished between the risk of relapse of a physical condition which might be directly caused by one's job duties, and outside the control of the employee, and the risk of relapse of an addiction that might result from the availability of the drugs at the employee's job but is ultimately within the control of the employee. The court acknowledged that the outcome of its decision meant that if the employee continued to be addicted to drugs he could receive disability benefits, but that once he had entered recovery he could not. The court emphasized, however, that this did not encourage drug use because recovery allowed the employee to take advantage of opportunities that he did not have as an addict, even though, in this case, the employee could not return to his original position because of a revoked license.

Although the First Circuit recognized that its decision would create a split in the circuits, the court in the *Colby* case concluded that the plan administrator had abused its discretion in denying benefits. Like the Fourth Circuit did in *Stanford*, the First Circuit in *Colby* looked to whether, after leaving rehab, the employee's risk of relapse prevented her from performing the material duties of her regular occupation. The First Circuit found that the employee's exposure to Fentanyl if she returned to her job was likely to trigger the conditions of her addiction, and that for at least a period of time after leaving rehab, she could

not perform her job because of the significant risk of relapse. The court recognized that the risk of relapse might progressively diminish over time to the point that it would no longer be covered as a present disability, but declined to determine what this point would be since the focus of the case was whether risk relapse could ever be a disability.

Because of the absence of exclusionary language in the plan document, the court ultimately concluded that excluding the risk of relapse from the definition of disability was unreasonable. In its decision, the court emphasized that the discretion of an ERISA plan administrator is confined by the text and plain meaning of the plan document. The court rejected the administrator's argument that risk of relapse was excluded from the definition of disability by virtue of an unwritten textual exclusion, noting that this logic would effectively exclude from coverage the risk of relapse of any physical or mental disability.

The fact that two circuit courts applying the same standard of review to nearly identical sets of facts could reach completely opposite conclusions demonstrates just how difficult it is to determine the line at which a plan administrator's decision will be deemed unreasonable. In order to avoid placing the plan administrator in a difficult position that could ultimately lead to costly litigation, plan documents should include clear and detailed definitions and exclusions to guide the administration of the plan.