



## Alerts

### Ninth Circuit Affirms District Court May Consider Social Security Administration Ruling That Was Not Before the Plan Administrator

February 25, 2021

*The LHD/ERISA Advisor*

***This alert was featured in the March 2021 edition of The LHD/ERISA Advisor***

In *Perez v. Lincoln Nat'l Life Ins. Co.*, 2021 U.S. App. LEXIS 1495 (9th Cir. Jan. 20, 2021), the Ninth Circuit held that a district court reviewing a denial of disability benefits under ERISA may consider a Social Security Administration ruling that was not part of the administrative record.

Plaintiff Alicia Perez was covered under a group LTD plan provided by her employer, GEP Administrative Services and administered by Lincoln National Life Insurance Company ("Lincoln"). Perez made a claim for benefits under the plan in October 2015, claiming she was unable to perform her sedentary occupation as a payroll analyst due to severe pain, dizziness and inability to concentrate. Perez's medical records confirmed a history of abdominal pain, rectal bleeding, swelling and inflammation of the colon, colon polyps, and colitis.

Lincoln tentatively approved Perez's claim in August 2016 and asked for additional medical records. Upon further review, including a physician peer review, Lincoln terminated Perez's benefits in November 2016, concluding that the medical records did not support a finding of total disability because Perez retained the ability to perform her sedentary occupation. Lincoln upheld its determination after two levels of appeal in July 2018 and Perez challenged the determination in federal court.

The district court conducted a *de novo* review and upheld Lincoln's determination. In so ruling the court stated that the medical records showed Perez suffered from a medical condition that impaired her to some degree. Perez, however, failed to carry her burden to establish total disability under the subject ERISA plan.

In addition to evidence in the administrative record, the court gave weight to a February 2019 decision from an administrative law judge ("ALJ") denying Perez's claim for Social Security Disability Insurance benefits. That decision, issued seven months after Lincoln's final denial, found that Perez's subjective reports of pain and inability to work were internally inconsistent and lacking in credibility. The district court judge relied on this report, in part, to question the veracity of a written narrative submitted by Perez. Recognizing that the ALJ decision was not binding, the district court nevertheless stated that it was

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"especially reticent to consider Perez's narrative due to evidence that she may not be a credible witness." The district court relied on *Nagy v. Grp. Long Term Disability Plan for Employees of Oracle Am., Inc.*, 183 F. Supp. 3d 1015, 1025 (N.D. Cal. 2016), *aff'd*, 739 F. App'x 366 (9th Cir. 2018) as authority for the proposition that a court may consider an ALJ decision in an ERISA disability case which did not appear in the administrative record.

On appeal, the Ninth Circuit upheld every aspect of the district court's ruling. With respect to the ALJ decision, the court affirmed that a district court conducting *de novo* review may consider evidence that was not before the plan administrator.

"Here, the district court did not abuse its discretion by considering certain adverse credibility determinations from Perez's social security decision because, as we have previously explained, such a decision 'could not have [been] presented in the administrative process' and could be 'particularly important evidence in ERISA cases.'" (Quoting *Nagy*, 739 F. App'x at 367).

The *Perez* case illustrates that defendant plan administrators, particularly in the Ninth Circuit, should consider introducing ALJ decisions in ERISA actions, where appropriate, even where those decisions are not part of the administrative record.

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