

NITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BCO-113-E

No. 23-2431

ELAINE LEWIS

v.

HARTFORD LIFE & ACCIDENT INSURANCE COMPANY,
Appellant

(E.D. Pa. No. 2-21-cv-01438)

Present: KRAUSE, PORTER and CHUNG, Circuit Judges

1. Clerk's Submission for Possible Dismissal due to Jurisdictional Defect;
2. Response by Appellee to Jurisdictional Defect;
3. Response by Appellant to Jurisdictional Defect;
4. Response Memorandum regarding Defendant Appellant's Brief in Support of Appellate Jurisdiction or in the alternative, Petition for Writ of Mandamus by District Court Judge Michael M. Baylson to court order;
5. Response filed by Appellee to Court Order.

Respectfully,
Clerk/kr

ORDER

The Court is in receipt of Hartford Life & Accident Insurance Company's brief in support of appellate jurisdiction, or, in the alternative, petition for writ of mandamus, which we have construed as the latter. ECF No. 17; *see Nascone v. Spudnuts, Inc.*, 735 F.2d 763, 773 (3d Cir. 1984). Having carefully reviewed Hartford's petition, the above-referenced responses, and the administrative record, Appellant's petition is DENIED.

As the District Court explained, “this case involves unusual circumstances.” ECF No. 18 (District Ct. Br.) at 6. Lewis suffers from fibromyalgia, a condition characterized by subjective pain, *id.* at 8–9 (citing *Brown v. Cont’l Cas. Co.*, 348 F. Supp. 2d 358, 360 (E.D. Pa. 2004)), and Hartford denied Lewis’s claim without ordering an in-person examination, relying instead on record review, *id.* at 3. Given these facts, the District Court was “considering ordering . . . a remand” to the plan administrator—with the “additional possible instruction that an in-person examination from a pain specialist be ordered” for Lewis—on the ground that Hartford abused its discretion. Order re Parties’ Motions for Summary Judgment at 2, *Lewis v. Hartford Life & Accident Ins. Co.*, No. 21-cv-01438 (E.D. Pa. May 4, 2023), ECF No. 44; *see Miller v. Am. Airlines, Inc.*, 632 F.3d 837, 856 (3d Cir. 2011) (“In a situation where benefits are improperly denied at the outset, it is appropriate to remand to the administrator for full consideration of whether the claimant is disabled.”); *Lavino v. Metro. Life Ins. Co.*, No. 08-cv-02910, 2010 WL 234817, at *12 (C.D. Cal. Jan. 13, 2010) (“Though the lack of an in-person examination is not determinative, it is a relevant consideration, especially with respect to conditions that are not susceptible to objective verification, such as fibromyalgia.” (citation omitted)).

Before entering its order, the District Court thought it necessary to appoint an independent medical expert, later reappointed as a special master, to supplement the record on whether Hartford had abused its discretion and to “prove or disprove the existence of [a] conflict of interest and its effects . . . on Hartford’s assessment of [Lewis’s] benefit claim.” District Ct. Br. at 7 (quotation marks omitted). The Court correctly recognized the potential for structural conflict where an insurer “both determines eligibility for benefits and pays for benefits,” *id.*; *see Noga v. Fulton Fin. Corp. Emp. Benefit Plan*, 19 F.4th 264, 267, 276 (3d Cir. 2021), and it correctly noted that “reliance on a non-examining physician’s opinion premised on a records review alone is suspect and [can] suggest[] that the insurer is looking for a reason to deny benefits,” *Morgan v. Prudential Ins. Co. of Am.*, 755 F. Supp. 2d 639, 647 (E.D. Pa. 2010). In addition, the Court correctly stated that ERISA’s record rule, which limits “judicial review of an ERISA fiduciary’s discretionary adverse benefit decision . . . to the information contained in the administrative record,” contains an exception for evidence related to “a structural conflict of interest or its severity.” *Noga*, 19 F.4th at 271, 273–74; *see* District Ct. Br. 5–6.

As Hartford points out, however, appointing a special master in this situation is highly unusual, ECF No. 13 (Hartford Br.) at 18–19, and the District Court itself acknowledges that it “did not follow . . . black letter Third Circuit precedent when adjudicating disability claims of this nature,” District Ct. Br. 12 (quotation marks omitted). Indeed, because the structural-conflict exception to ERISA’s record rule is “narrow and does not allow supplementation of the record with information related to the claim or the review process,” *Noga*, 19 F.4th at 274; *see, e.g., Post v. Hartford Ins. Co.*, 501 F.3d 154, 168–69 (3d Cir. 2007), *abrogated on other grounds by Miller*, 632 F.3d 837, it is not clear

what insight the special master here could add to an evaluation of structural conflict. Hartford therefore asks us to vacate the District Court's orders related to the independent medical expert via a writ of mandamus. Hartford Br. 17, 24–25.

We decline to do so at this time. Mandamus is “an extraordinary form of relief,” and it need not be invoked when alternative means of resolution are available. *In re Kensington Int'l Ltd.*, 353 F.3d 211, 219 (3d Cir. 2003). Here, the District Court has indicated it appointed a special master primarily to reinforce the Court's determination that Hartford has a structural conflict and has abused its discretion, making a remand appropriate. But the Court's explanation for the appointment makes clear that a court could reasonably conclude such remand was warranted on the basis of the existing administrative record,¹ without incurring the delay and cost associated with the appointment of a special master. Because the District Court has indicated that, in this circumstance, it “could . . . and would . . . remand[] back to Hartford” for “full consideration of whether the claimant is disabled,” *see* District Ct. Br. 6 & n.3 (quoting *Miller*, 632 F.3d at 856), and we have no reason to doubt it will do so promptly on remand, the “extraordinary” remedy of mandamus is not warranted here, *Kensington*, 353 F.3d at 219.²

Accordingly, Appellant's brief, construed as a petition for mandamus relief, is DENIED, and insofar as the action before us constitutes an attempted appeal of a collateral order, the appeal is dismissed. Any further challenge on the basis of the matter addressed in this order may be addressed in a subsequent appeal, if any, of the District Court's final decision.

By the Court,



s/ Cheryl Ann Krause
Circuit Judge

Dated: October 26, 2023

Sb/cc: All Counsel of Record A True Copy:

A handwritten signature in cursive script that reads "Patricia S. Dodszeit".

Patricia S. Dodszeit, Clerk
Certified Order Issued in Lieu of Mandate

¹ We take no position on whether Hartford actually abused its discretion in this case.

² To the extent the District Court is concerned that Hartford will, on remand, appoint “new doctors who Hartford ha[s] reason to believe [will] favor the insurer rather than [Lewis],” District Ct. Br. 12, it will have an opportunity to review that aspect of the record in any subsequent appeal.