

No. 19-11798-K

In the
United States Court of Appeals
for the Eleventh Circuit

KIA KAVIANI, D.M.D.,
Plaintiff-Appellee

v.

RELIANCE STANDARD LIFE INSURANCE COMPANY,
Defendant-Appellant

**On Appeal from the United States District Court
for the Middle District of Florida**

BRIEF OF DEFENDANT-APPELLANT

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Kia Kaviani v. Reliance Standard Life Ins

**CERTIFICATE OF INTERESTED PERSONS AND
CORPORATE DISCLOSURE STATEMENT**

Appellant Reliance Standard Life Insurance Company certifies that the following persons and entities have an interest in the outcome of this appeal:

- Bachrach, Joshua, Attorney for Defendant/Appellant
- Dabdoub, Edward, Attorney for Plaintiff/Appellee
- Kaviani, Kia, Plaintiff/Appellant
- Mendoza, Carlos E., U.S. District Judge
- Reliance Standard Life Insurance Company, Defendant/Appellant
- Sox, Carter Meader, Attorney for Plaintiff/Appellee
- Strasius, Anthony P., Attorney for Defendant/Appellant
- Suarez, Tanya, Attorney for Defendant/Appellant
- Tokio Marine Holdings, Inc. (TKOMY), parent corporation of Reliance
- Wilson Elser Moskowitz Edelman & Dicker LLP – Attorneys for Defendant/Appellant

/s/ Joshua Bachrach
Joshua Bachrach
Counsel for Appellant

STATEMENT REGARDING ORAL ARGUMENT

Defendant-Appellant Reliance Standard Life Insurance Company respectfully requests the opportunity to present oral argument in this appeal. This case involves several important issues related to review under the Employee Retirement Income Security Act of 1974 (ERISA). Based on the size of the administrative record and the issues involved in this appeal, it is believed that oral argument will be of assistance to the Court.

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STATEMENT OF JURISDICTION

The district court had federal question jurisdiction over the dispute based on 28 U.S.C. § 1331 and 29 U.S.C. § 1132(e), as the action involves a claim under the ERISA statute. The Court of Appeals has jurisdiction over this appeal under 28 U.S.C. § 1291 because this appeal is from a final judgment by the district court entered on April 30, 2019. Doc. 47. A timely notice of appeal was filed on May 8, 2019. Doc. 48.

STATEMENT OF THE ISSUES

1. In *Blankenship v. Metropolitan Life Ins. Co.*, the Eleventh Circuit held that the size of the potential claim by itself is not enough to be a dispositive factor.¹ Did the district court in this case conclude, contrary to *Blankenship*, that “Defendant’s financial incentive to deny the claim clouded Defendant’s judgment”?

2. According to the district court, “Defendant’s denial came down to the conclusion that Plaintiff was lying.” Elsewhere, the court said that Reliance Standard was “insinuating that Plaintiff is simply malingering to cheat the system.” Was it fair or proper to characterize the claim denial in this manner when Reliance

¹ 644 F.3d 1350, 1367 (11th Cir. 2011).

Standard was only exercising its discretion when it concluded that the claimant did not sustain his burden of proof?²

3. Dr. Kaviani did not seek any medical treatment for nearly two years before he abruptly stopped working, he refused to undergo recommended treatment, electrodiagnostic testing was negative and did not support his claimed symptoms and both an in-person examination and separate medical review concluded that he was not impaired from working as a Dentist. Can the denial of the benefits be considered arbitrary and capricious under these facts?³

STATEMENT OF THE CASE

A. Factual Background

Reliance Standard is the insurer of the group long term disability policy under which Kia Kaviani, D.M.D. is claiming benefits. Doc. 24, AR 1. For Kaviani's claim, the policy defines "Total Disability" in relevant part as: "during the Elimination Period and thereafter an Insured cannot perform the substantial and material duties of his/her Regular Occupation." Doc. 24, AR 10. The "Elimination Period" is defined as 180 *consecutive days* of Total Disability.

² See, *Glazer v. Reliance Standard Life Ins. Co.*, 524 F.3d 1241, 1247 (11th Cir. 2008) (holding that the claimant bears the burden to prove that he is disabled).

³ *Blankenship*, 644 F.3d at 1356 ("We see nothing in the record that would lead us to conclude that [defendant] did not act reasonably in relying on the independent medical opinions or in crediting those opinions over the opinions of [the claimant]'s doctors").

The balance of this brief has been omitted for this sample.
For a complete version of this brief, please contact our office.

Thank you.