

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

CATHLEEN KENNEDY,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Case No.: 1:13-CV-1103
	)	
THE LILLY EXTENDED DISABILITY	)	
PLAN,	)	
	)	
Defendant.	)	

**COMPLAINT**

The Plaintiff, Cathleen Kennedy, by and through the undersigned counsel, Bridget O’Ryan, files this Complaint against The Lilly Extended Disability Plan, and as cause therefore states as follows:

**I. JURISDICTION AND VENUE**

1. This action arises under the Employee Retirement Income Security Act of 1974 (“ERISA”), 29 U.S.C. §1001. The Court has jurisdiction of this case pursuant to 28 U.S.C. §1331, in that this action arises under the laws of the United States. Specifically, Cathleen Kennedy brings this action to enforce her rights under ERISA as authorized by 29 U.S.C. §1132.
2. Cathleen Kennedy is a resident of Fishers, Indiana and a citizen of the State of Indiana.
3. The Lilly Extended Disability Plan (“Extended Disability Plan”) is an employee benefit plan administered in the Southern District of Indiana.

4. As an employee of Eli Lilly, Ms. Kennedy is a participant of the Extended Disability Plan. Ms. Kennedy also enrolled in and paid for the Extended Disability Leave PLUS benefit program which pays additional disability benefits above the amount paid under the Extended Disability Plan.
5. The Extended Disability Plan promises to pay disability benefits to employees of Eli Lilly and Company if they are unable to work due to sickness or injury for an extended period of time.
7. Venue in the Southern District of Indiana is appropriate by virtue of the Extended Disability Plan being administered in this District.

## **II. FACTUAL ALLEGATIONS**

8. Cathleen Kennedy was high level employee at Eli Lilly as an Executive Director of Human Resources.
9. Ms. Kennedy held this position until she became disabled in January 2008 as a result of severe chronic fibromyalgia and major depression.
10. As a consequence of her deteriorating condition, Ms. Kennedy was forced to leave her position at Eli Lilly. Ms. Kennedy stopped working in December 2007 with an effective last date of work of January 6, 2008, after using vacation time.
11. Ms. Kennedy applied and was approved for disability benefits under the Extended Disability Plan. The Employee Benefits Committee approved her application for Extended Disability benefits on February 13, 2009 with an effective date of May 1, 2009.

12. Ms. Kennedy's disability benefits under the Extended Disability Plan were wrongfully terminated on November 1, 2012 with an effective date of December 1, 2012.
13. The Extended Disability Plan governing Ms. Kennedy's claim defines "Disability" as "the inability of an Employee to engage, for remuneration or profit, in any occupation commensurate with the Employee's education, training, and experience, provided that the inability results from an illness or accidental bodily injury that requires the Employee to continue to be under the regular care of a Licensed Physician."
14. This definition of Disability was utilized by the Defendant in the November 1, 2012 termination letter.
15. This definition of Disability is the proper definition for the Court to utilize in adjudicating this claim.
16. Cathleen Kennedy's medical condition prevents her from performing any occupation commensurate with her education, training and experience.
17. When terminating Ms. Kennedy's benefits, the Defendant failed to prove that Ms. Kennedy's condition had improved.
18. The Defendant utilized a bogus medical examination to terminate the claim.
19. The Defendant did not have a job description of Ms. Kennedy's occupation in her claim file when they terminated Ms. Kennedy's claim.
20. Ms. Kennedy appealed the improper termination of her benefits. Her appeal was denied by the Lilly Employee Benefits Committee on April 2, 2013.

21. The Employee Benefits Committee utilized a new definition of Disability when denying the appeal.
22. The definition of Disability utilized by the Employee Benefits Committee in denying the appeal was not the same definition of Disability utilized in the termination letter of November 1, 2012.
23. It was improper for the Employee Benefits Committee to utilize a definition of Disability that was different than the standard utilized to terminate the claim.
24. It was improper for the Employee Benefits Committee to utilize a new definition of Disability because the Extended Disability Plan has not been properly amended to include a new definition of Disability.
25. It was improper for the Employee Benefits Committee to utilize a new definition of Disability because the participants of the Extended Disability Plan have not been properly notified of an amendment to the Extended Disability Plan which creates a new definition of Disability.
26. Ms. Kennedy was denied a full and fair review of her claim in part because the Employee Benefits Committee subjected her claim to a new definition of Disability when reviewing her claim on appeal.
27. Ms. Kennedy has provided significant medical evidence of her disability, including support from her rheumatologist who has advised that Ms. Kennedy is disabled from performing any occupation.

28. Despite proof that she remains totally disabled, the Defendant refuses to reinstate Ms. Kennedy's extended disability benefits claim.

### **III. CLAIM FOR RELIEF**

#### **WRONGFUL TERMINATION OF EMPLOYEE BENEFITS**

29. Paragraphs 1-28 are hereby realleged and incorporated herein by reference.
30. From January 2008 when Cathleen Kennedy was forced to leave active employment until the present, Ms. Kennedy has remained unable to engage, for remuneration or profit, in any occupation commensurate with her education, training and experience.
31. Ms. Kennedy provided the Defendant with ample medical evidence to verify her disability under the Extended Disability Plan and Extended Disability PLUS Plan.
32. The Defendant has intentionally and without reasonable justification terminated Ms. Kennedy's extended disability benefits, and PLUS benefits, as well as other employee benefits that Ms. Kennedy is entitled to as a disabled Lilly employee in violation of the Extended Disability Plan, PLUS Plan and ERISA.

WHEREFORE, the Plaintiff, Cathleen Kennedy, requests that this Honorable Court enter Judgment:

- A. Finding that Cathleen Kennedy is entitled to extended disability benefits, and extended disability benefits PLUS and order the Defendant to pay the past due benefits.

- B. Finding that Cathleen Kennedy is entitled to extended disability benefits and order the Defendant to pay for future monthly benefits as they become due.
- C. Awarding the Plaintiff interest on the amount of back benefits which remain unpaid.
- D. Awarding the Plaintiff reasonable reimbursement for attorneys' fees and costs incurred as a result of the Defendant's wrongful termination of benefits.
- E. Awarding all other relief as may be just and appropriate including reinstatement of health insurance benefits and all other employee benefits that were wrongfully terminated with the termination of her extended disability benefits.

Respectfully Submitted,

s/ Bridget O'Ryan  
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