

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

DAVID JANKOWSKI, M.D.,

Plaintiff,

Civil Action No. 18-CV-12850

vs.

HON. BERNARD A. FRIEDMAN

PROVIDENT LIFE AND ACCIDENT  
INSURANCE COMPANY,

Defendant.

**ORDER REQUIRING DEFENDANT TO DETERMINE  
THE RETURN IT EARNED ON PLAINTIFF'S WITHHELD BENEFITS**

This matter is presently before the Court on plaintiff's motion for prejudgment interest and attorney fees [docket entry 34].

Plaintiff brought this action under 29 U.S.C. § 1132(a)(1)(B) to challenge defendant's decision to stop paying him long-term disability benefits under an individual disability insurance policy. Defendant paid plaintiff benefits under this policy from August 2007 until December 2017, when "it determined . . . that Plaintiff no longer satisfied the Policy's conditions and requirements for benefits and therefore ended payment." Def.'s Ans. ¶ 15. Plaintiff challenged this decision on the grounds that he is disabled under the policy and therefore entitled to benefits.

In an opinion and order dated July 25, 2019, the Court granted plaintiff's motion for judgment and denied defendant's motion for judgment. The Court found that plaintiff's entitlement to benefits under the policy was plainly established by the wealth of medical evidence showing that plaintiff has been, and continues to be, physically and mentally unable to meet the demands of his previous occupation as an anesthesiologist. As the Court summarized in the final paragraph of its opinion,

the Court concludes that plaintiff has met his burden of proving by a preponderance of the evidence that he is totally disabled under the policy issued by defendant. Defendant's decision to stop paying benefits in 2017 violated its duty under the policy and was contrary to plaintiff's rights. Due to his OSA and chronic fatigue, plaintiff lacks the wakefulness and vigilance required of anesthesiologists; and due to his toe and lower back pain, he lacks the ability to stand and walk to the extent necessary. In addition to these impairments, which alone suffice to entitle him to benefits under the policy, plaintiff is also plainly disabled by his many "mind altering" prescription medications, which his treating physicians have repeatedly indicated make it unsafe for him to work as an anesthesiologist.

Op. and Order Granting Pl.'s Mot. for J. and Den. Def.'s Mot. for J., at 30 (PageID.10794).

In the instant motion, plaintiff seeks prejudgment interest and attorney fees. He seeks prejudgment interest on the benefits defendant wrongfully withheld during the 597-day period from the date defendant terminated the benefits (December 6, 2017) until the Court entered judgment in his favor (July 25, 2019). Such an award is permitted by the case law, which indicates that

"[T]he district court may [award pre-judgment interest] at its discretion in accordance with general equitable principles." *Rybarczyk v. TRW, Inc.*, 235 F.3d 975, 985 (6th Cir. 2000) (quoting *Ford v. Uniroyal*, 154 F.3d 613, 616 (6th Cir. 1998)). A proper determination of pre-judgment interest involves a consideration of various case-specific factors and competing interests to achieve a just result. While we have upheld awards of pre-judgment interest calculated pursuant to 28 U.S.C. § 1961, a mechanical application of the rate at the time of the award amounts to an abuse of discretion. *See Rybarczyk*, 235 F.3d at 985-87.

One purpose of an award of pre-judgment interest is to compensate plaintiffs for the "lost interest value of money wrongfully withheld." *Id.* at 985. Courts consider compensation for the "time value of the lost money as well as for the effects of inflation." *United States v. City of Warren*, 138 F.3d 1083, 1096 (6th Cir.1998). An award that fails to make the plaintiff whole due to an inadequate compensation for her lost use of money frustrates the purpose of ERISA's remedial scheme. This is also true of an award that is excessive. *See Ford*, 154 F.3d at 618. "Our court and others have ... upheld awards of pre-judgment interest that were tied to prevailing market rates, thus reflecting what the defendants would have had to

pay in order to borrow the money at issue.” *Rybarczyk*, 235 F.3d at 986.

An excessive pre-judgment interest award may contravene ERISA’s remedial goal of simply placing the plaintiff in the position he or she would have occupied but for the defendant’s wrongdoing. Similarly, an exceedingly low pre-judgment interest rate fails to make the plaintiff whole. *Ford*, 154 F.3d at 618. Accordingly, courts must strike a balance between making sure not to impose a punitive measure and allowing a Plan or Fund to “retain the interest it earned on funds wrongfully withheld would be to approve of unjust enrichment.” *Rybarczyk*, 235 F.3d at 985-86 (internal citation and quotation marks omitted).

\* \* \*

While district courts may fashion an award in their sound discretion, such an award must consider the case-specific factors such as, but not limited to: the remedial goal to place the plaintiff in the position that he or she would have occupied prior to the wrongdoing; the prevention of unjust enrichment on behalf of the wrongdoer; the lost interest value of money wrongly withheld; and the rate of inflation.

*Schumacher v. AK Steel Corp. Ret. Accumulation Pension Plan*, 711 F.3d 675, 685-86 (6th Cir. 2013).

In the present case, plaintiff asks that the Court calculate the prejudgment interest using Defendant’s actual rate of return,” Pl.’s Br. at 4, as was done in *Rybarczyk*. As the Sixth Circuit noted in that case, in affirming the district court’s calculation of prejudgment interest in this manner, “[u]sing the interest rate actually realized by [defendant] on the relevant funds seems an appropriate way of avoiding unjust enrichment.” 235 F.3d at 986.

The Court intends to award prejudgment interest in the amount plaintiff requests. Doing so does nothing more, and nothing less, than to compensate plaintiff for the lost use of the funds to which he was entitled and to prevent defendant from being unjustly enriched by the use of those funds during the 597-day period of time in question. The Court shall therefore require

defendant to determine the return it earned on the benefits it wrongfully withheld from plaintiff during this period and to inform the Court and plaintiff of this amount, and provide the Court and plaintiff with back-up documentation, within ten days of the date of this order.

SO ORDERED.

Dated: August 30, 2019  
Detroit, Michigan

s/Bernard A. Friedman  
BERNARD A. FRIEDMAN  
SENIOR UNITED STATES DISTRICT JUDGE