

MAR 11 2008

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

CARLEEN HALLSTEAD,

Plaintiff - Appellant,

v.

LIBERTY LIFE ASSURANCE
COMPANY OF BOSTON, a corporation,

Defendant - Appellee.

No. 06-55755

D.C. No. CV-05-00735-DOC

MEMORANDUM *

Appeal from the United States District Court
for the Central District of California
David O. Carter, District Judge, Presiding

Argued and Submitted February 8, 2008
Pasadena, California

Before: PREGERSON, ARCHER **, and WARDLAW, Circuit Judges.

Carleen Hallstead appeals the district court's grant of summary judgment in favor of defendant Liberty Life Assurance Company of Boston ("Liberty Life").

We have jurisdiction pursuant to 28 U.S.C. § 1291, and we reverse.

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The Honorable Glenn L. Archer, Jr., Senior United States Circuit Judge for the Federal Circuit, sitting by designation.

“Federal courts have authority to require plan participants to exhaust available administrative remedies before bringing an action under ERISA, and as a matter of sound policy they should usually do so.” *Smith v. Ret. Fund Trust of Plumbing, Heating and Piping Indus. of S. Cal.*, 857 F.2d 587, 591 (9th Cir. 1988) (internal quotation marks omitted). The district court erred in concluding that, based on the undisputed record, Ms. Hallstead failed to exhaust her administrative remedies.

On October 19, 2004, Liberty Life sent Ms. Hallstead a letter terminating her disability benefits. The letter stated that, if Ms. Hallstead wished to appeal, within 180 days she must request review and state the reasons why she felt her claim should not have been denied. On December 10, 2004, after Ms. Hallstead provided Liberty Life with written notification that she intended to appeal, Liberty Life responded: “We have received your request for a review of the recent claims determination on your Long Term disability benefits. We ask that you please submit any medical and/or vocational information that *you feel* supports your position and we will review your file” (emphasis added). Ms. Hallstead had previously provided all of her medical records to Liberty Life, and its consulting physician had requested and received recent medical records from her treating physician. Although Ms. Hallstead never provided the statement required by the

October 19 letter, she reasonably relied on the permissive language in Liberty Life's subsequent December 10 letter when she chose not to provide Liberty Life with any further information. Liberty Life's position that Ms. Hallstead failed to exhaust her remedies collapses upon its own contradictory instructions to Ms. Hallstead and is belied by its internal records. Therefore, Ms. Hallstead exhausted her administrative remedies and may proceed with her suit.

REVERSED and REMANDED.