

**NOT FOR PUBLICATION**

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

**FILED**

FEB 18 2009

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

VARDAN BABOUDJIAN,  
  
Plaintiff - Appellant,  
  
v.  
  
CONTINENTAL CASUALTY  
COMPANY; et al.,  
  
Defendants - Appellees.

No. 07-55491

D.C. No. CV-06-01624-DSF

MEMORANDUM\*

Appeal from the United States District Court  
for the Central District of California  
Dale S. Fischer, District Judge, Presiding

Argued and Submitted January 16, 2009  
Pasadena, California

Before: KOZINSKI, Chief Judge, TROTT and FISHER, Circuit Judges.

Former Farmers Insurance Group employee Vardan Baboudjian appeals the termination of benefits he received under Farmers' long-term disability insurance plan. The district court upheld the decision of the plan's administrators, Hartford Life, Inc. and the Hartford Life and Insurance Company ("Hartford"), to terminate

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

Baboudjian's benefits. We have jurisdiction over this ERISA-governed appeal under 28 U.S.C. § 1291, and we reverse and remand for further proceedings.

As the district court correctly held, we do not defer to the plan administrator's interpretation of the plan because it was not given discretion to construe the plan's terms. *Kearney v. Standard Ins. Co.*, 175 F.3d 1084, 1088 (9th Cir. 1999) (en banc). We review de novo the district court's construction of the plan's language, and in doing so resolve ambiguities in favor of the insured. *Babikian v. Paul Revere Life Ins. Co.*, 63 F.3d 837, 839–40 (9th Cir. 1995). We review the district court's findings of fact for clear error. *Saltarelli v. Bob Baker Group Med. Trust*, 35 F.3d 382, 384-85 (9th Cir. 1994).

The district court did not err with regard to its determinations on the effect of Baboudjian's Social Security disability benefits and Hartford's decision to reinvestigate the claim. The district court clearly erred, however, in its finding that Baboudjian failed to argue that he was disabled due to depression. Baboudjian informed Hartford of his psychiatric condition in a letter contesting Hartford's termination of benefits. Rather than requiring Baboudjian to file a separate claim for a mental disorder, Hartford treated Baboudjian's psychiatric claim as attendant to his cardiomyopathy claim, and rejected both claims in upholding its decision to terminate benefits. Baboudjian proceeded to argue before the district court, based

on the opinions of both his treating psychiatrist and Hartford's consulting psychiatrist, that it is depression, rather than somatoform disorder, that renders him disabled. Accordingly, the argument was fully preserved.

The district court further erred in holding that the Plan does not include mental disorders within its meaning of "disability." Nothing in the terms of the Plan completely excludes coverage for mental disorders. Accordingly, we remand to the district court for reconsideration of Baboudjian's disability claim as to his alleged mental health condition. *See Mongeluzo v. Baxter Travenol Long Term Disab. Benefit Plan*, 46 F.3d 938, 944 (9th Cir. 1995). We leave for the district court to determine in the first instance the extent of Baboudjian's mental health disability, the date on which such disability may have begun, and the duration for which the plan would allow him to receive benefits for such disability.

Finally, though the district court did not clearly err in its finding that Baboudjian was not entitled to disability benefits for his heart condition, we remand for the district court to reconsider that finding in light of *Saffon v. Wells Fargo & Co. Long Term Disability Plan*, 522 F.3d 863 (9th Cir. 2008). In doing so, the district court should avoid drawing any adverse inference from Dr. Lee's failure to respond to Hartford's communications prior to Baboudjian being informed of those communications. *See id.* at 873 & n.4.

**REVERSED and REMANDED.**