
No. 96-2755

Shawsy Jones, *
 *
 Appellee, * Appeal from the United States
 * District Court for the Eastern
 v. * District of Missouri.
 *
 General American Life * **[UNPUBLISHED]**
 Insurance Company, *
 *
 Appellant. *

Submitted: January 17, 1997

Filed: February 13, 1997

Before MURPHY, Circuit Judge, JOHN R. GIBSON, Senior Circuit Judge,
and KYLE,¹ District Judge.

PER CURIAM.

Shawsy Jones ("Jones") appeals from the district court's² order upholding General American Life Insurance Company's ("General American") decision to deny her claim for total disability benefits under an employee benefit plan it administered.

Jones raises two arguments on appeal. She alleges that the district court erred in affirming General American's decision as it was not supported by substantial evidence. She also argues, for the

¹The Honorable Richard H. Kyle, United States District Judge for the District of Minnesota, sitting by designation.

²The Honorable E. Richard Webber, United States District Judge for the Eastern District of Missouri.

first time, that the district court applied an incorrect standard of review. While the district court applied a deferential standard

of review to General American's determination because the benefit plan granted administrator discretion, see Donaho v. FMC Corp., 74 F.3d 894, 898 (8th Cir. 1996), Jones contends the court should have utilized a higher standard of review due to an alleged conflict of interest between General American's "profit motive" and Jones' "entitlement to benefits." See Buttram v. Central States S.E. & S.W. Health & Welfare Fund, 76 F.3d 896, 900, n.6 (8th Cir. 1996) (noting that when conflict of interest exists, "the resulting decision may be accorded stricter scrutiny").

An appellant must adhere to the theory upon which the case was tried below, and we will "refuse to consider a question which is raised for the first time on appeal and which was never presented to, or passed upon by the trial court." Ludwig v. Marion Labs., 465 F.2d 114, 116 (8th Cir. 1972); see also Kirk v. St. Joseph Stock Yards Co., 206 F.2d 283, 287 (8th Cir. 1953). Jones' argument regarding the proper standard of review was not raised in the district court, and thus we will not consider it here.

We have reviewed de novo the district court's application of the deferential standard of review of General American's determination. See Bolling v. Eli Lilly & Co., 990 F.2d 1028, 1029 (8th Cir. 1993). We find that the district court, in a thorough and well-reasoned opinion, properly concluded that General American's decision was supported by substantial evidence. Accordingly, the judgment of the district court is affirmed. See 8th Cir. R. 47B.

A true copy.

ATTEST:

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT