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At the age of 43, Charlene Polan was forced by chronic depression to leave her job at MetPath, (now known as Quest Diagnostics Inc.). For two years after she stopped working, she received disability benefits as a participant in her employer's group policy with Metropolitan Life Insurance Company (Metlife). But benefits were terminated after 24 months and her long-term disability claims were denied.

Dr. Polan, a physician, charged that she was the victim of discrimination by her employer and by the insurance company since individuals with physical disabilities were not limited to two years of coverage. In fact, their coverage can continue until the disability ceases, or until the age of 65. After administrative proceedings, a federal lawsuit and litigation and appeals on New York's three state judicial levels, the case known as Matter of Charlene Polan v. The State of New York Insurance Department, is over. Dr. Polan is out of court and out of luck. And so, it appears, are others suffering from a mental disability.

While two intermediate appellate judges did dissent they were outvoted by the majority of their court. In their separate opinion, which has no binding effect, the dissenters found that distinguishing between types of disabilities could only be allowed if supported by statistics. That is, the limitation would have to be based on "sound actuarial principles." Still, despite efforts by Dr. Polan's lawyer, no court ever ordered an evidentiary hearing with expert witnesses on the question of whether there is a statistical or actuarial basis to treat medical and physical disabilities differently.

The New York Court of Appeals, the state's highest court, agreed with all the other courts that heard this case, that although the insurance policy that imposed a limitation on disabilities caused by "mental and nervous disorders or diseases," (unless the individual was hospitalized), provided greater coverage for physical disabilities than for mental disabilities, it was not discriminatory. New York insurance law, the judges found unanimously, requires that the employer offer everyone the same policy without making a distinction between the benefits available to disabled and non-disabled employees, but does permit a distinction between the physically disabled and mentally disabled. In other words, everyone is offered the same plan and the same limitations even though the effect on different categories of employees or patients will be different according to the ailments presented. For purposes of disability insurance (this case does not deal with other insurance issues such as medical coverage), it is now clear that it is lawful for patients with mental illness to be provided with lesser benefits than those with

disabling physical ailments, as long as everybody was offered the same terms.

Ruling that state law had not been violated, the Court of Appeals judges who have the final word, adopted the analysis of federal courts that the American With Disabilities Act was not violated either. The opinion borrowed language from a federal case involving a similar limitation on mental disability benefits, "[this] may or may not be an enlightened way to do things, but it is not discriminatory in the usual sense of the term," and "the ADA does not mandate equality between individuals with different disabilities."

A decision in Dr. Polan's favor "would upset long standing industry practices," wrote Judge Susan Read, for the entire Court of Appeals bench, citing a similar case involving the Staten Island Savings Bank. "The historic and nearly universal practice inherent in the insurance industry is to provide different benefits for different disabilities."

Judge Read added, "Because an interpretation that... affords the parity of benefits sought by petitioner would require far-reaching changes in the way the insurance industry does business... we are reluctant to infer such a mandate for radical change in the absence of a clearer legislative command."

Charlene Polan's legal saga, which began in 1994, ended ten years later in 2004; she continues to be disabled. She was represented throughout the litigation by Stein & Schonfeld partner, Robert L. Schonfeld, a member of the Mental Disability Committee of the Association of the Bar of the City of New York. The Department of Insurance was represented by the Office of the Attorney General.

Emily Jane Goodman is a New York State Supreme Court Justice