Hadar Meiri v. Hartford Life and Accident Insurance Company Doc. 40

United States District Court
Northern District of California

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

HADAR MEIRI,

Plaintiff,

v.

HARTFORD LIFE AND ACCIDENT INSURANCE COMPANY,

Defendant.

Case No. 16-cv-00103-JST

ORDER DENYING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT, GRANTING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT, AND DENYING MOTIONS TO STRIKE

Re: ECF Nos. 21, 24, 25

Before the Court are Plaintiff's and Defendant's cross-motions for Summary Judgment, as well as Defendant's and Plaintiff's motions to strike. ECF Nos. 21, 24, 25. The Court will grant Plaintiff's motion for summary judgment, deny Defendant's motion for summary judgment, and deny both motions to strike.

I. BACKGROUND

Plaintiff Hadar Meiri ("Meiri") brought this action under section 502(a)(1)(B) of the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. § 1132(a)(1)(B), seeking to recover long-term disability benefits under her Plan administered by Hartford Life and Accident Insurance Company ("Hartford"). ECF No. 1.

A. Meiri's Work History and Alleged Disability[1]

At the end of July 2014, Ms. Meiri was diagnosed with thyroid cancer. She was then the Vice President, Human Experience Strategy Director for MediaVest USA ("MediaVest"), where

[1] Meiri's doctors note that "[h]er history is significant for depression and anxiety for which she has been seen under psychiatric care." ECF No. 20-3 at 98. She takes medications for these conditions. Id. She does not, however, base her claim for disability on any mental health issues. See, e.g., ECF No. 20-1 at 10, ECF No. 20-2 at 40.

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she earned $165,000 annually. ECF No. 20-2 at 24-25. She has an M.B.A. and had worked until her cancer surgery. Id. at 25. Ms. Meiri also has a history of Hashimoto's Thyroiditis and hypothyroidism. ECF No. 20-3 at 97-98. Meiri's job at MediaVest required a "minimu[m] of 3 years of managing professional level employees[,] strong and proven strategic skills and the ability to apply them in the development of marketing/communications solutions[, and a] strong understanding of and ability to work w/ both qualitative and quantitate[v]e data." Id. at 24. On September 10, 2014 Meiri underwent a total thyroidectomy to address her thyroid cancer and her secondary diagnosis of Hashimoto Thyroiditis. ECF No. 24-2 at 34. She experienced fatigue and weakness after surgery. Id.

Meiri filed a claim for Short Term Disability (STD) benefits while recovering from the surgery. A December 4, 2014 medical review indicated she was "unable to work due to her reported brain fog, poor memory, fatigue, poor focus for 2-3 months until meds adjusted." It concluded it was "reasonable that her cognitive difficulty (typical for hypothyroid) would preclude job performance." ECF No. 20-2 at 49. Meiri's short term benefits were thus approved during her post-surgery recovery until February 15, 2015. ECF No. 35 at 6.

B. Meiri's Benefits Plan

1. Short Term Disability

Meiri received short-term disability benefits while she recovered from surgery, paid from September 17, 2014 until February 15, 2015, and her entitlement to those benefits is not in dispute. ECF No. 20-1 at 20, 27. Hartford informed Meiri on February 12, 2015 that it would begin investigating her eligibility for Long Term Disability benefits, and that "receipt of Short Term Disability benefits does not necessarily mean that you will be eligible to receive Long Term Disability benefits." Id. at 20.

2. Long Term Disability

Meiri's Long Term Disability ("LTD") Policy requires her to prove that throughout the 180-day Elimination Period ('EP"), from September 10, 2014 through March 10, 2015 and thereafter, her condition was so severe that she was precluded from performing the material and substantial duties of her occupation. See ECF No. 35 at 6; ECF No. 20-4 at 12-13. Meiri's Policy

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pays core benefits at 40% of an employee's prior monthly earnings, minus other income offsets, after a claimant has satisfied the 180-day Elimination Period ("EP"). ECF No. 20-4 at 6. "The Elimination Period begins on the day You become Disabled. It is a period of continuous Disability which must be satisfied before You are eligible to receive benefits from Us. You must be continuously Disabled through Your Elimination Period." Id. at 13. "Disability or Disabled means that You satisfy the Occupation Qualifier or the Earnings Qualifier as defined below." Id. at 12.

> Occupation Qualifier
>
> Disability means that during the Elimination Period and the following 36 months, Injury or Sickness causes physical or mental impairment to such a degree of severity that You are:
>
> 1) continuously unable to perform the Material and Substantial Duties of Your Regular Occupation; and
>
> 2) not Gainfully Employed.
>
> After the LTD Monthly Benefit has been payable for 36 months, Disability means that Injury or Sickness causes physical or mental impairment to such a degree of severity that You are:
>
> 1) continuously unable to engage in any occupation for which You are or become qualified by education, training or experience; and
>
> 2) not Gainfully Employed.

ECF No. 20-4 at 12. The Policy also limits benefits to 36 months for disability from a Mental Disorder of any type or a condition primarily manifested through Self-Reported Symptoms. Id. at 18. To prove disability, the claimant must provide the following:

> 1) The date Your Disability began;
>
> 2) The cause of Your Disability;
>
> 3) The prognosis of Your Disability;
>
> 4) Proof that You are receiving Appropriate and Regular Care for Your condition from a Doctor, who is someone other than You or a member of Your immediate family, whose speciality or expertise is the most appropriate for Your disabling condition(s) according to Generally Accepted Medical Practice.
>
> 5) Objective medical findings which support Your Disability. Objective medical findings include but are not limited to tests, procedures, or clinical examinations standardly accepted in the practice of medicine, for Your disabling condition(s).

> 6) The extent of Your Disability, including restrictions and limitations which are preventing You from performing Your Regular Occupation.
>
> 7) Appropriate documentation of Your Monthly Earnings. If applicable, regular monthly documentation of Your Disability Earnings.
>
> 8) If You were contributing to the premium cost, Your Employer must supply proof of Your appropriate payroll deductions.
>
> 9) The name and address of any Hospital or Health Care Facility where You have been treated for Your Disability.
>
> 10) If applicable, proof of incurred costs covered under other benefits included in the Policy.

ECF No. 20-4 at 24. The employee must provide a signed authorization to obtain necessary medical, financial, or other non-medical information to support the claim. Id.

The parties dispute whether Meiri has presented sufficient evidence to establish by a preponderance of the evidence that she qualified for long term benefits.

C. Medical Evidence

1. Dr. Mielke

Dr. Lynne Mielke, a board-certified psychiatrist and neurologist, began treating Meiri on June 12, 2014 and saw her every 2-4 weeks. ECF No. 20-3 at 271. Meiri notes that "Dr. Mielke is certified by the American Board of Psychiatry and Neurology and is an expert in hormone optimization." ECF No. 29 at 8.

On December 22, 2014, Dr. Mielke noted that Meiri's "[e]nergy level has improved since just after surgery," and that she could "now walk 25 minutes without . . . causing exhaustion," but that she continued to have "poor memory." ECF No. 21-1 at 9. Hartford recorded in a report on January 27, 2016 that Dr. Mielke had noted in an Attending Physician Report that observations on January 7, 2015 and February 9, 2015 had shown "poor memory, fatigue, feelings of weakness and being overwhelmed, crying spells . . . psychomotor retardation and poor recall." ECF No. 20-2 at 49. On November 10, 2014, Dr. Mielke documented Meiri's self-reports of being fatigued, overwhelmed, and unable to keep up in conversations. ECF No. 20-3 at 277. In a report Hartford received January 28, 2015, Dr. Mielke stated "depression" as a secondary diagnosis, and wrote that there were "no physical restrictions – the issues are currently mental." ECF No. 20-1 at 29. Under "physical exam findings," Dr. Mielke wrote that Meiri had "psychomotor retardation +

poor recall." Id. Dr. Mielke noted that the treatment plan was "treat underlying infections and hormone deficiencies," and that Meiri "calls and emails several times daily." Id.

In an Attending Physician's Statement of Functionality from February 16, 2015, Dr. Mielke stated that Meiri had no physical restrictions and could sit for 8 hours at a time, stand for 2 hours at a time, and walk for 2 hours at a time. ECF No. 20-3 at 272. In response to the prompt "[e]xpected duration of any restriction(s) or limitation(s)," Dr. Mielke wrote "Unknown - this patient has not responded to any intervention so far." ECF No. 20-3 at 272. In response to the question "[d]oes the patient have a psychiatric/cognitive impairment," Dr. Mielke marked "yes" and elaborated: "Depression, poor memory, feeling easily overwhelmed. She would be unable to function in a work environment." Id.

By contrast, in a letter from Hartford on March 26, 2015, Dr. Mielke marked "no" in response to the question "do you feel her complaints of cognitive impairments are related to her thyroidectomy?" ECF No. 20-3 at 81.

Dr. Mielke also administered a CNS Vital Signs Report[2] to Meiri on April 6, 2015. ECF No. 20-3 at 82. Meiri scored in the 1st percentile in 10 categories, a percentile of zero in 3 categories, and the 37th percentile, 75th percentile, and 7th percentile in the remaining three categories, respectively. Id. In five categories, the test indicated that Meiri's results were possibly not valid scores. Id. Other of Meiri's test results were similarly poor. Id. at 82-84.

An October 28, 2014 report on Meiri's lab tests showed her TSH was low at .079, her

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[2] CNS Vital Signs (CNSVS) is a computerized neurocognitive test battery that was developed as a routine clinical screening instrument. It is comprised of seven tests: verbal and visual memory, finger tapping, symbol digit coding, the Stroop Test, a test of shifting attention and the continuous performance test. Because CNSVS is a battery of well-known neuropsychological tests, one should expect its psychometric properties to resemble those of the conventional tests upon which it is based . . . . [¶] Test-retest reliability (TRT) was evaluated in 99 [subjects] who took the battery on two separate occasions, separated, on the average, by 62 days; the results were comparable to those achieved by equivalent conventional and computerized tests. Concurrent validity studies in 180 subjects, normals and neuropsychiatric patients, indicate correlations that are comparable to the concurrent validity of similar tests.

C. Thomas Gualtieri, Lynda G. Johnson, Reliability and Validity of a Computerized Neurocognitive Test Battery, CNS Vital Signs, 21 Archives Clin. Neuropsychology (7) 623-643 (2006).

Thyroid Peroxidase (TPO) Ab were high at 244, and her Thyroglobulin Antibody was high at 11.3. Her Free T4 was slightly high at 1.8. ECF No. 20-3 at 294.

On May 27, 2015, Dr. Mielke wrote a letter to Hartford providing further explanation about her physician's statement. ECF No. 20-3 at 58. She wrote that she was not treating Meiri for depression, but that it "was one of her symptoms of hormone imbalance. Her primary diagnosis is hormone imbalance. Her symptoms are cognitive impairment (poor memory, easily overwhelmed and confused, difficult[y] focusing) and fatigue/weakness. For these reasons I made the statement on 2/18 that she is unable to return to work. Another correction (referencing correspondence from the Hartford, 3/26). She can sit for 8 hours but cannot walk for 2 hours all in one time. Secondly, with regard to the statement made on 3/26, her symptom onset and worsening is clearly temporally related to the thyroidectomy surgery. I have prescribed thyroid replacement and am still in the process of managing her levels and symptoms. I do not yet know why she is not responding well to treatment and is having symptoms of cognitive impairment. On 4/6/2015 I administered a neurocognitive assessment . . . which showed significant impairment." Id. (emphasis in original).

2. Dr. Liu

In Progress Notes on August 5, 2014, Dr. Chienying Liu, an endocrinologist, stated that Meiri had "many symptoms that I cannot completely explain from thyroid point of view." ECF No. 20-3 at 100. On September 26, 2014 Dr. Liu reported that Meiri "has continued to have the same symptoms as before surgery." ECF No. 20-3 at 124. Dr. Liu noted that "[e]quilibrium is established after 6 weeks," but that "test results will give me clues if I need to change [the doses of her medications] sooner." Id. The report again noted that Meiri had "many symptoms that I am not sure if related to thyroid status. An increased symptom load and decreased quality of life have been observed in euthyroid patients with TPO positive Hashimoto's thyroiditis. I encouraged her to focus on the positive aspect[s] of her life and that we have done what we could from thyroid point of view." Id. at 125. Dr. Liu stated that he "reviewed TSH target" with Meiri and he "recommend[ed] 0.1-0.5mlU/L" as Meiri underwent further monitoring. Id.

Dr. Liu stated on October 7, 2014 that she would be able to return to work without

restrictions on a full-time basis on November 1, 2014. ECF No. 24-2 at 34. On November 7, 2014, Dr. Liu noted that Meiri "continued to feel unwell." ECF No. 20-3 at 125. The progress notes included:

> She was [on] Synthroid at her last visit. Since then she has seen Dr. Mielke who put her on Naturethroid 45mg bid. She is thinking about taking compound T3 slow release + T4. She has been on Naturethroid for a week and has not been feeling better. She reports worsening memory since surgery. She has continued to have fatigue. She is also currently followed by psychiatry and she does not think her current symptoms are due to her depression. Her psychiatry is waiting for her hormones to be stabilized. Her lab results while on Synthroid showed TSH 0.075.

Id. at 126. Dr. Liu noted that Meiri presented with fatigue and blurry vision at times. Id. She was also "[p]ositive for sleep disturbance and dysphoric mood. The patient is nervous/anxious" and she had "decreased memory." Id. at 127. Tests showed "positive TPO and Tg AB." Id.

Dr. Liu wrote:

> I cannot attribute her symptoms to hormonal status. She has not felt improvement on Naturethroid which has a lot of T3, now, or in the past. I do not think T3 is the issue. I also disagree with the statement that 'most people do not convert T4 to T3'. I have absolutely no experience in using the compounded T3 slow release. I explained to her that multiple randomized controlled studies have not shown T3 to have an added benefit although there may be a small subset [of] patients who had total thyroidectomy that may benefit. I cannot endorse Naturethroid or other desiccated thyroid hormone regimen as it has too much T3 that is not physiologic.

Id. at 127. Dr. Liu also wrote: "I reviewed that TPO antibody will persist for some time, as well as Tg antibody. Tg antibody should be done at the same lab to track progress and I expect the level to decline after surgery if without any widespread disease. Her levels have." Id. at 128.

On February 6, 2015, Dr. Liu saw Meiri once again. The doctor noted Meiri "continues to have 'no memory' and with severe cognition issues. She feels exhausted and has no energy." Id. at 129. The "Plan" stated that Meiri's "Tg antibody has decreased and this is reassuring. Her neck ultrasound findings are nonspecific . . . TSH is a bit low - this is the combination effect of T3 and T4. Her TSH responded well to both lthyroxine and T4/T3 combination. She did not feel better on Nature throid . . . Her symptoms may not be related to her thyroid." Id. at 131. None of Dr. Liu's notes address Meiri's ability to work.

On June 19, 2015, Dr. Liu remarked that Meiri had "not been working because of her worse mentation after surgery." ECF No. 21-1 at 91. Dr. Liu noted that, "[f]ollowing surgery, she

has continued to feel unwell, with memory loss, brain fog, feeling exhausted," and that "regimen has changed a few times." Id. Dr. Liu also reported Meiri's "TSH is quite suppressed," and "[h]er recent lab results continued to trend down." Id. In November 2015, Dr. Liu noted that "hyperthyroidism can impair[] cognitive function as noted by many of patients with Graves disease," but she "appear[ed] less unfocused today comparing to other visits." ECF No. 20-1 at 93. Dr. Liu wrote with regard to Meiri's Hashimoto's thyroiditis that "[s]he has many symptoms that I can not explain. I do not believe they are related to Hashimoto's thyroiditis directly. She is certainly at risk for other autoimmune disorders that may not be measures as easily as Hashimoto's thyroiditis." Id.

On January 22, 2016, Meiri reported to Dr. Liu that she was "feeling slightly better for the first time. She also reports weight loss of 5 lbs. She is only on T4 25mcg and lowered her T3 to 20mcg bid . . . Her recent test results showed TSH still suppressed[,] Tg AB levels have continued to trend down[,] ultrasound showed stability." Id. at 94.

3. Dr. Farshchian

In a March 12, 2015 report, Dr. Thalia Farshchian, a Naturopathic doctor, noted Meiri was there "to address memory issues." ECF No. 20-3 at 214. She wrote that Meiri reported "trouble keeping track of tasks and easily forgets information," that she "does not feel confident she is able to work at an appropriate level," and had "[d]rastic change in memory since thyroid surgery." Id. Dr. Farshchian noted "30 points on Mini Mental Status Exam" out of 30 and "Normal FOGS." Id. at 215. She also documented Meiri's self-reports of "drastic change in her ability to recall and stay on top of daily tasks." Id. "Her recent thyroid labs showed that she is medicated to the point her thyroid is too low and free T3 is too high. Her neuro exam was normal with the exception of a pupillary light reflex. Clinically, memory issues are very common with thyroid imbalance and her memory issues are likely a result of the stress of thyroid cancer and imbalanced thyroid hormone levels." Id. Dr. Farshchian did not comment on Meiri's ability to work.

4. Dr. Griffin

Meiri saw Dr. Jennifer Griffin on March 9, 2015. ECF No. 20-3 at 170. Meiri came "with a stack of lab reports from previous functional medicine and naturopathic work ups." Id. at 176.

Dr. Griffin noted that Meiri was "alert & oriented x 3. Cooperative. Comfortable." Id. at 178. Psychologically, she was "oriented x 3, memory intact. appropriate mood and affect, normal judgment and insight, normal speech." Id. Dr. Griffin noted however, that the exam was "brief today due to time dedicated to lab review, education and counseling." Id.

With regard to Meiri's fatigue, Dr. Griffin "[d]iscussed multiple possible causes and contributing factors including chronic viral infection, adrenal fatigue, thyroid hormone imbalance, [and] depression." Id. She "[d]iscussed a need for better nutrition and consistency of food intake to help support energy levels. Goal set for stabilizing blood glucose with adequate and balanced nutrition before her typical 4 pm energy drop." Id. She discussed starting Meiri on "1 gram fish oil daily for anti-inflammatory effects and mood support," and "[d]iscussed mind body tools to help with increased anxiety and tension." Id. at 178-79.

5. Dr. Draisin

On June 30, 2015, Dr. Jeff Draisin wrote a letter to Hartford explaining that he had "been working regularly as a cognitive functioning and fatigue consultant for Ms. Meiri since April 10, 2015. In this capacity [he] reviewed records of her other practitioners, including laboratory and diagnostic study results and . . . read the supportive documentation they [provided] in support of her disability claim." ECF No. 20-3 at 59. He states that he is "writing to express my medical opinion that she meets the conditions in your policy of disability - 'continuously unable to engage in the material and substantial duties of her regular occupation.' This disability is objectively defined in neurocognitive testing of 4/16/15 (indicating severe impairment in executive function parameters. It is equally supported by the ongoing surveillance of her symptoms by her managing practitioners, myself included." Id.

Meiri also includes in the record an August 18, 2015 letter from Dr. Draisin in response to questions from Hartford reviewer Dr. Kublaoui. ECF No. 21-1 at 6. Hartford states there is no evidence this letter was received and was not part of Meiri's original appeal. ECF No. 35 at 12, n.6. In the letter, Dr. Draisin responds "yes" to the question "[i]s there objective evidence (determined by testing) of cognitive impairment?" ECF No. 21-1 at 6. When asked the follow up question of whether he believed this was related to Meiri's thyroid disease, he replied "yes - firstly

timing of deficit is concurrent with thyroid disease. Secondly no other clear etiology. Thirdly not unusual thyroid replacement therapy is not infrequently linked in [illegible] - even with acceptable levels." Id.

6. Hartford's Notes

On November 20, 2014, "Veronica" from Dr. Mielke's office called Hartford to "advise they put depression on her aps as one of her dr but clmt and dr want to keep the thyroid dx only as she has another claim for her depression and they are only tx'ing her for her thyroid. she is going to resend the aps with the depression dx taken off." ECF No. 20-1 at 10.

On April 1, 2015, Meiri called Hartford "to adv that DR Mielke called her about our requests, and that diagnosis also noted depression which she states that is an error. clmt states that she wants it to be known that she is not being trated for any depression and not the reasons she isn't able to do her work. clmt states wants us to understand and clarify that mental health is not a reason she is unable to work has nothing to do with her and not her dx. she states depression is not a dx for her. she states was put by mistake by one of Dr. Mielke staff and corrected previously. clmt states that dx should be her thyroid issues, fatigue, memory, adrenal issues, cognitive issues." ECF No. 20-2 at 40. She told Hartford that her therapist is "just a support system and has no relevance to this claim and her cognitive impairment." Id. at 41.

Meiri points to Hartford's Summary Detail Report[s] from January 27, 2016 to indicate that her condition worsened after surgery. ECF No. 21 at 9. Those notes, however, indicate that they are documenting Meiri's subjective complaints as reported in a phone interview. See ECF No. 20-2 at 69-70. Hartford's file notes from a February 17, 2015 call indicate that Meiri stated "cognitively she is not there, cannot remember things, cannot keep up with conversations, feels that when lots of info that is over 30-45 min long will get blurry vision, and foggy and gets really exhausted and cannot process it, she has to process data and do presentations . . . right now the memory thing is very difficult[] and processing information." Id. at 70. She stated she could walk no longer than 15-20 mins. Id. Meiri also called Hartford on March 30, 2015 and told them that her cognitive impairment was important, that it was "hard for her to walk more than 5-10 min as she is exhausted," and it was "hard for her to think because she is so exhausted." Id. at 42.

7. Dr. Meikle Peer Review

Dr. A. Wayne Meikle ("Dr. Wayne")[3] prepared a peer review report of Meiri's medical records on April 14, 2015. ECF No. 20-3 at 64. He found that Meiri "was on replacement doses of thyroid hormone, and was very nearly very well controlled . . . her free T-4 was 1.48, which was within normal limits." Id. Other tests were also normal. In addition, "[h]er complete blood count was within normal limits," but "her lipid panel was borderline abnormal." Id. He stated that Meiri had "applied for long-term disability benefits based on thyroid imbalance and adrenal fatigue, which is not a diagnosis that is considered valid." Id. at 65. He noted that Meiri's "thyroid function was near normal on October 30, 2014." Id.

Dr. Wayne spoke with Dr. Jennifer Griffin, one of Meiri's attending physicians, on April 6, 2015. Id. Dr. Griffin had seen Meiri twice. She stated that while Meiri "had some anxiety and some depression . . . she felt that her cognitive function was normal, and she did not find any evidence that the patient was not functionally capable of conducting her work on a full-time basis without restrictions." Id. Dr. Wayne also spoke with Dr. Farshchian at 3:30 p.m. on April 6, 2015. She reported that "[s]he did a thorough examination and found no abnormalities, but she did feel that the patient had fatigue and needed a rest, but she found no functional disabilities, restrictions, or limitations." Id.

Dr. Wayne concluded that Meiri's medical records "indicate that she has no physical limitations, and therefore, could work unrestricted eight hours a day, five days a week." Id. at 66. His answers to the other questions presented to him supported this same conclusion. Id.

Meiri takes issue with Dr. Wayne's notes regarding his phone calls with her doctors. Id. at 43. She states that Dr. Farshchian wrote to her in an email, "that is actually not what I said. I said that at this time you are not able to properly function at work full-time. With proper treatment, that could be re-evaluated in the future." Id. Dr. Griffin also emailed with Meiri and said "When I spoke briefly to the physician who called from the insurance company on 4/14, I told him I had

[3] This case involves two physicians with almost identical last names. Dr. Lynne Mielke is Plaintiff's primary care provider, and Dr. Wayne Meikle is Hartford's medical consultant. The Court refers to Dr. Wayne Meikle as "Dr. Wayne" to avoid confusion. No disrespect is intended.

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not determined the cause of your cognitive concerns and that I had only seen you twice at that point. I relayed that you were seeing me for fatigue and cognitive complaints, but I could not relay a cause or an opinion regarding your ability to work at that point. If you recall, when you asked me about disability at your first visit, I stated I wasn't comfortable confirming a need for disability at that point." Id. at 43.

In an addendum on April 20, 2015, Dr. Wayne wrote that there was "no additional information that affects the previous recommendations. Evidence is lacking that neuro cognitive inability to function affects her work and cognitive impairment is not documented as related to thyroidectomy and thyroid hormone replacement." ECF No. 20-3 at 68.

8. Dr. Kublaoui Peer Review

Dr. Bassil Kublaoui's review, completed August 13, 2015, noted thyroid function tests as follows: 9/26/2014 TSH (thyroid stimulating hormone) 0.47 (0.45-4.12), FT4 18 (10-18). 01/27/2015 TSH of .1, FT4 .82 (.82-1.77), FT3 of 2.6 (2-4.4). 01/29/2015 TSH of 0.09 with a FT4 of 11. ECF No. 20-2 at 163. It states that Meiri's endocrinologist "notes that her TSH and FT4 had responded well to thyroid hormone replacement with both Synthroid and nature thyroid and that he believes that her cognitive symptoms may not be related to her thyroid. On 02/06/2015 no changes were made in her thyroid hormone regimen." Id. The report indicates that a March 9, 2015 "note from Dr. Griffin indicates that he was on levothyroxine plus slow release compounded T3. Her fatigue is reported to have gradually worsened over two years despite thyroid hormone supplementation. It notes that the fatigue had multiple causes including a chronic viral infection, adrenal fatigue, thyroid hormone imbalance and depression. The office visit notes report forgetfulness and difficulty paying attention. She has a long history of anxiety and depression on Lexapro for four years, with a history of abuse from her father . . . An adrenal evaluation was ordered with salivary cortisol and DHEA which was normal." Id.

Dr. Kublaoui was not able to establish contact with Meiri's attending physicians after several attempts. He then faxed them questions about Meiri but received no responses. ECF No. 20-2 at 164. He did reach Dr. DeFilippis, a co-reviewer. Id. Dr. DeFilippis indicated that the cognitive tests needed to be redone, and Dr. Kublaoui informed Dr. Filippis that Meiri's endocrine

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evaluations were normal. Id.

Dr. Kublaoui noted he was "limit[ing] [his] evaluation to her endocrine conditions," and stated "[h]er thyroid hormone levels are in a desirable range for someone with a history of thyroid cancer with a TSH at around 0.1. She has had normal FT4 and FT3 levels since her thyroidectomy. From an endocrinologic standpoint, there are no restrictions or limitations on her activities." Id. at 165. While he "defer[red] the cognitive impairment questions to the clinical psychologist," he did say "that although untreated hypothyroidism can result in cognitive impairment, appropriately treated hypothyroidism does not result in cognitive impairment. For the dates in question the claimant's thyroid function tests were normal. Therefore, her adequately treated hypothyroidism did not result in cognitive impairment." Id. He concluded that, in his opinion, "the claimant does maintain the functional capability to consistently perform work duties for eight hours per day 40 hours per week on a sustained basis. The claimant has fatigue of unclear etiology which does not seem to limit her capacity to perform work duties." Id.

On August 17, 2015, Hartford received a response from Dr. Meilke to Dr. Kublaoui's questions. ECF No. 20-2 at 179. Dr. Mielke stated there was objective evidence of cognitive impairment, because "we performed a CNS vital signs computerized cognitive test and the patient scored very poorly." Id. Dr. Mielke also stated that she "[did] not know if her cognitive dysfunction is exclusively from her thyroid condition. However her mental abilities declined substantially after her thyroidectomy." Id. In an addendum on August 21, 2015, Dr. Kublaoui stated the new information from Dr. Mielke did not change the prior determination that there was no evidence that cognitive dysfunction was related to Meiri's thyroid or causing impairment. Id. at 167.

9. Dr. DeFilippis Peer Review

Dr. Nick DeFilippis also completed a review of Meiri's file on August 13, 2017. ECF No. 20-3 at 7. He noted that Dr. Mielke's January 27, 2014 report had noted Meiri "did not have physical restrictions, and her issues were mental. She said the claimant would not be able to return to work for six months." Id. at 9. Dr. Filippis noted that the CNS test administered by Dr. Mielke "would need to be followed up on with a more complete cognitive evaluation with effort

and validity measures." Id. at 10.

Dr. DeFilippis noted that Dr. Draisin, who "is in the same practice with Dr. Griffin and reportedly took over the claimant's care on 04/10/2015," explained that Meiri had "cognitive testing on 04/16/2015 that indicated severe impairments. He said he felt the claimant met the requirements in her disability policy for 'total disability.'" Id. at 10. Dr. Draisin saw Meiri "the day before" Dr. DeFilippis spoke to him on July 29, 2015. Id. at 11. Dr. Draisin reported Meiri "had significant concentration and focusing issues." Id. He thought "she ha[d] cognitive problems, and he pointed to the computerized testing that was administered by Dr. Mielke. He said the claimant looks really impaired. He said the claimant had 'emotions' about her issues, but she was not floridly depressed. He said the claimant had a brain dysfunction. Dr. Draisin said the claimant would not be able to work." Id. at 11. He was using holistic and other techniques, and predicted Meiri's recovery would be "slow and occur over six to ten months." Id. at 11. He did not, however, "place any restrictions or limitations on the claimant's daily activities." Id.

Dr. DeFilippis also spoke to Dr. Mielke, who stated on July 28, 2015 that she had last seen Meiri in May of 2015 and was not sure she would be back. She said "she did not know the cause of [Meiri's] problems," that "she believed the claimant, and her overall condition had worsened since she had thyroid surgery. She said the claimant had a low level of depression." Id. at 11. Dr. Mielke said "she did not know what was wrong with the claimant, but she did not think the claimant could work," that "she was trying to balance the claimant's thyroid levels and was having difficulty doing that," that "the claimant's mother had a similar problem," and that Meiri "did not look [as] impaired" as "the computerized test results showed." Id. at 11. Meiri had "reported she had trouble understanding how to take the test, and [Dr. Mielke] though the test needed to be repeated." Id.

Dr. Farshchian told Dr. DeFilippis that she last saw Meiri on April 8, 2015 and that "the memory problem would interfere with the demands of any job, and she did observe the problem." Id. at 11-12. She stated in an August 6, 2015 letter that Meiri's "difficulty with memory is likely due to not having the correct thyroid dosing and the stress of going through cancer treatment." Id. at 17. Dr. Farshchian stated that she had observed Meiri's stated problems "both in clinical visits

and in supportive lab work." Id.

Dr. DeFilippis shared with his co-reviewer, Dr. Kublaoui, that from his perspective "the records did not identify evidence of validly determined cognitive issues. Although the claimant appears to be impaired to treatment providers, the only assessment of her cognition is the computerized test given by Dr. Mielke, and that appears to be invalid." Id. at 12. While Meiri "might have mild levels of anxiety and depression," those conditions were "not determined to be causing functional impairments for her." Id.

10. Social Security Administration Determination[4]

Examiner Caroline Salvador-Moses, Psy.D., performed an evaluation of Meiri on March 10, 2016. ECF No. 21-1 at 107. She reviewed Meiri's Sutter Health Hospital medical records, a letter from Dr. Mielke, and a letter from Dr. Draisin. Id. She performed a complete mental status evaluation and psychological testing as ordered, a "Wechsler Adult Intelligence Scale - Fourth Edition (WAIS-IV), a "Wechsler Memory Scale - Fourth Edition (WMS-IV)" test, and "Trails A & B." Id. Under "presenting problems," Salvador-Moses wrote that Meiri "suffered thyroid cancer and has resultant cognitive impairment and physical fatigue. She has accompanying anxiety." Id.

Under "medical history," Salvador-Moses wrote that Meiri "has hormone imbalance which causes cognitive impairment, fatigue, and weakness . . . [s]he receives treatment from a cognitive functioning and fatigue consultant who wrote a letter stating that it was his medical opinion that

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[4] This Court follows those courts that have considered Social Security decisions rendered after the final internal plan appeal "because [they] constitute[] additional evidence that the [plaintiff] could not have presented in the administrative process." See Randall v. Met. Life Ins. Co., Case No. 15-cv-04343-JST, 2017 WL 476404, at *18; see also Oldoerp v. Wells Fargo & CompanyLong Term Disability Plan, No. C 08-05278 RS, 2013 WL 6000587, at *2 (N.D. Cal. Nov. 12, 2013) ("While MetLife was unable to review the SSDI award before Oldoerp's claim was closed in June 2008, the SSA's determination, which was apparently based on an in-person evaluation and a review of medical records, could shed new light on Oldoerp's condition during the relevant time period . . . . [W] here the after-arising SSDI decision helped the court assess whether the claimant suffered from some limitation on her ability to work, Oldoerp's SSDI evidence potentially bears on whether she experienced functional limitations after February 13, 2008 – and thus whether MetLife was correct to deny her claim."). The Court considers all of Meiri's medical evidence included in the record in order "to enable the full exercise of an informed and independent judgment." Mongeluzo v. Baxter Travenol Long Term Disability Benefit Plan, 46 F.3d 938, 943 (9th Cir. 1995). Defendant's motion to strike evidence outside of the administrative record is denied. ECF No. 25.

she meets the conditions of disability, meaning she is unable to engage in the material and substantial duties of a regular occupation. The disability was subjectively defined in neurocognitive testing in April 2015, indicating severe impairment in executive function parameters." Id. at 108.

With regard to her psychiatric history, Salvador-Moses wrote that Meiri "has symptoms of anxiety and depression with fear, worry, preoccupation, and feelings of overwhelm. Her cognitive impairment, memory loss, and physical fatigue resulting from her cancer lead to her depression. Medical records indicate that claimant had doctor visits for poor concentration, focus, decreased memory and cognitive function, ongoing fatigue plus a variety of somatic dysfunctions. She experienced ongoing adjustments to the changes and its significant impact. She received counseling sessions to ascertain status of her adaptations and appreciating the challenges of being off of routine activities. Records from Developmental Spectrums - Optimal Health Spectrums indicate that claimant experiences cognitive impairment with poor memory, is easily overwhelmed, and has problems focusing." Id. She again mentioned the neurocognitive exam, noted Meiri "is prescribed Celexa and receives therapy for her adjustment issues," "experienced physical abuse and had nightmares and received EMDR treatment for the traumas," and "is prescribed Celexa and Lexapro." Id.

In a section on "activities of daily living," Salvador-Moses wrote that Meiri "reported that she struggles in being able to complete tasks of daily living. She is very easily fatigued and her concentration and memory are poor. She tries to exercise but tires easily." Id. While Meiri "was friendly during the evaluation," she also "appeared depressed, anxious, and irritable, and her affect was constricted." Id. Her "[t]hought process was adequately linear. Thought content contained preoccupations and worries and frustrations regarding her condition." Id. She "showed poor memory and recall as evidenced by the results of the testing," but Salvador-Moses did not note anything else in the memory and recall section. Id. at 109. With regard to her "insight and judgment," Meiri "demonstrated impaired understanding of her illness and the need for treatment. Claimant demonstrated impaired ability to make realistic plans and anticipate the consequences of actions." Id. Salvador-Moses did not elaborate.

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Salvador-Moses considered the results of the tests she administered valid, and Meiri "appeared to put forth her best effort in doing well on the various subtests." Id. Meiri scored "low average" or "borderline" in all categories of the Wechsler Adult Intelligence Scale. Id. She scored very poorly on the Weschsler Memory Scale, with results indicating "her ability to learn and recall new auditory and visual information is severely impaired." Id. Results of the Trails tests "indicate[d] that her planning, set shifting, sequential abilities, and mental flexibility are severely impaired with both simple tasks and more complex tasks." Id. at 110. Meiri's "DSM-5 Diagnoses" were listed as "Neurocognitive Disorder, Mild," "Unspecified Anxiety Disorder," and "Unspecified Depressive Disorder." Id.

Under "diagnostic impressions," Salvador-Moses wrote that Meiri "presents with symptoms of depression and anxiety as a result of her medical conditions and decline in functioning. Neurocognitive disorder was assigned due to her impaired memory and cognitive functioning resulting from her illness. Symptoms cause distress and lead to clinically significant impairment in various areas of functioning." Id.

Salvador-Moses included a statement that the purpose of her evaluation "was to provide diagnostic and clinical impressions, and evaluate the claimant's current level of work-related abilities from an emotional and cognitive, not medical, standpoint." Id. Moreover, the evaluation was "limited in scope," "based on only one session of client contact," background information was "limited and primarily provided by the claimant and other listed sources," and "[c]orroboration of self-reported history [was] recommended." Id.

With that in mind, Salvador-Moses concluded that "[p]sychomotor retardation was evident," and Meiri had severe impairments in her abilities on various skills required to adequately function in a work environment. Id. at 11. Meiri is also "unable to manage her own funds independently." Id.

II. LEGAL STANDARD

A. Summary Judgment

Summary judgment is proper when a "movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a).

“A party asserting that a fact cannot be or is genuinely disputed must support the assertion by” citing to depositions, documents, affidavits, or other materials. Fed. R. Civ. P. 56(c)(1)(A). A party also may show that such materials “do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact.” Fed. R. Civ. P. 56(c)(1)(B). An issue is “genuine” only if there is sufficient evidence for a reasonable fact-finder to find for the non-moving party. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248–49 (1986). A fact is “material” if the fact may affect the outcome of the case. Id. at 248. Where the party moving for summary judgment would not bear the burden of proof at trial, that party bears the initial burden of either producing evidence that negates an essential element of the non-moving party's claim, or showing that the non-moving party does not have enough evidence of an essential element to carry its ultimate burden of persuasion at trial. If the moving party satisfies its initial burden of production, then the non-moving party must produce admissible evidence to show that a genuine issue of material fact exists. See Nissan Fire & Marine Ins. Co. v. Fritz Cos., 210 F.3d 1099, 1102–03 (9th Cir. 2000). The non-moving party must “identify with reasonable particularity the evidence that precludes summary judgment.” Keenan v. Allan, 91 F.3d 1275, 1279 (9th Cir. 1996).

“In ERISA cases, as is the usual rule, the existence of a material factual dispute precludes summary judgment.” Sabatino v. Liberty Life Assur. Co. of Boston, 286 F. Supp. 2d 1222, 1229 (N.D. Cal. 2003) (citing Tremain v. Bell Indus., Inc., 196 F.3d 970, 978 (9th Cir. 1999)). To evaluate Plaintiff's claim, the Court will conduct a bench trial pursuant to Federal Rule of Civil Procedure 52 based on the administrative record and such other evidence as the Court admits. Caplan v. CAN Financial Corp., 544 F.Supp.2d 984, 990 (N.D. Cal. 2008) (“Under Rule 52, the court conducts what is essentially a bench trial on the record, evaluating the persuasiveness of conflicting testimony and deciding which is more likely true.”) (citing Kearney, 175 F.3d at 1094-95).

B. ERISA Standard of Review

“ERISA was enacted ‘to promote the interests of employees and their beneficiaries in employee benefit plans,’ and ‘to protect contractually defined benefits.’” Firestone Tire & Rubber

Co. v. Bruch, 489 U.S. 101, 113 (1989) (internal citations omitted). ERISA "permits a person denied benefits under an employee benefit plan to challenge that denial in federal court." Metropolitan Life Ins. Co. v. Glenn, 554 U.S. 105, 108 (2008). "ERISA's civil-enforcement provision . . . allows a claimant 'to recover benefits due to him under the terms of his plan [and] to enforce his rights under the terms of the plan.'" Muniz v. Amec Const. Mgmt., Inc., 623 F.3d 1290, 1294 (9th Cir. 2010) (quoting 29 U.S.C. § 1132(a)(1)(B)).

"[A] denial of benefits challenged under § 1132(a)(1)(B) is to be reviewed under a de novo standard unless the benefit plan gives the administrator or fiduciary discretionary authority to determine eligibility for benefits or to construe the terms of the plan." Firestone, 489 U.S. at 115. In this case, the parties have stipulated, and the Court has ordered, that de novo review is appropriate. See ECF No. 32. Under de novo review, "the court simply proceeds to evaluate whether the plan administrator correctly or incorrectly denied benefits with no deference given to the administrator's decision." Abatie v. Alta Health & Life Ins. Co., 458 F.3 955, 963 (9th Cir. 2006) (en banc).

The Court determines whether Meiri "was entitled to benefits based on the evidence in the administrative record and 'other evidence as might be admissible under the restrictive rule of Mongeluzo.'" Opeta v. NW Airlines Pension Plan for Contract Emps., 484 F.3d 1211, 1217 (9th Cir. 2009) (quoting Kearney, 175 F.3d at 1094). Under the Mongeluzo rule, a Court may only consider extrinsic evidence under certain limited circumstances. Id. (citing Mongeluzo v. Baxter Travenol Long Term Disability Benefit Plan, 46 F.3d 938, 943-44 (9th Cir. 1995)). Ninth Circuit has "cited with approval the rule . . . that the district court should exercise its discretion to consider evidence outside of the administrative record 'only when circumstances clearly establish that additional evidence is necessary to conduct an adequate de novo review of the benefit decision.'" Id. (internal citations omitted) (emphasis in original).

"When a district court reviews de novo a plan administrator's determination of a claimant's right to recover long term disability benefits, the claimant has the burden of proving by a preponderance of the evidence that [she] was disabled under the terms of the plan." Armani v. Northwestern Mutual Life Ins. Co., 840 F.3d 1159, 1162-63 (9th Cir. 2016) (citing Muniz, 623

F.3d at 1294). "[A] diagnosis . . . alone does not automatically amount to a finding that a claimant is disabled; the claimant must also establish that [her] condition renders [her] unable to perform an essential function of [her] job." Arko v. Hartford Life and Accident Ins. Co., ––– Fed. Appx. –––, 2016 WL 7422946, at *1 (9th Cir. Dec. 23, 2016) (citing Jordan v. Northrop Grumman Corp. Welfare Benefit Plan, 370 F.3d 869, 880 (9th Cir. 2004), overruled on other grounds as recognized by Salomaa v. Honda Long Term Disability Plan, 642 F.3d 666, 673-74, 678 n.33 (9th Cir. 2011)).

III. DISCUSSION

Meiri seeks recovery of LTD benefits under the Plan. ECF No. 21. Defendant seeks summary judgment in its favor on the basis that Meiri is not entitled to any of the benefits she seeks in this action because the Plan administrator's decision to deny Meiri's claim was correct under de novo review, and because Meiri cannot prove by a preponderance of the evidence that she was disabled. ECF No. 24.

The Court concludes that Meiri has met her burden of proving disability under the plan because the consensus of her treating doctors is that her cognitive impairment prevents her from engaging in any occupation for which she is qualified. The Court first looks to the opinions of Meiri's treating physicians, all of whom either clearly supported her disability or expressed no opinion on her ability to work. Several of Meiri's attending doctors explicitly and repeatedly stated that she was cognitively impaired and could not work.[5]

Dr. Mielke wrote in her Attending Physician's Statement of Functionality on February 16, 2015 that while Meiri had no physical restrictions, she had "not responded to any intervention so far" and "would be unable to function in a work environment." ECF No. 20-3 at 272. Dr. Mielke later told Dr. DeFilippis that "she did not think the claimant could work," that "she was trying to balance the claimant's thyroid levels and was having difficulty doing that," and that "the claimant's mother had a similar problem." ECF No. 20-3 at 11.

[5] To the extent Meiri's motion to strike rests on objections to attacks on her doctors' credentials, the motion is denied as moot. ECF No. 30. The Court places no reliance on Hartford's Exhibit 24 or on any legal conclusions in the Cowan Declaration, Dr. Draisin's records are included in the record and relevant upon de novo review, and the Court disregards any statements requiring knowledge in Cowan's Declaration. Id. at 2-3.

In a March 12, 2015 report, Dr. Farshchian stated that "[c]linically, memory issues are very common with thyroid imbalance and her memory issues are likely a result of the stress of thyroid cancer and imbalanced thyroid hormone levels." ECF No. 20-3 at 214. Dr. Farshchian told Dr. DeFilippis that she saw Meiri on April 8, 2015, and that "the memory problems would interfere with the demands of any job, and she did observe the problem." ECF No. 20-3 at 11-12. She had observed Meiri's problems "both in clinical visits and in supportive lab work." Id.

Dr. Mielke reiterated on May 27, 2015 that she had stated Meiri was unable to work, and that "her symptom onset and worsening is clearly temporally related to the thyroidectomy surgery." ECF No. 20-3 at 58. She noted she was "still in the process of managing her levels and symptoms" of thyroid replacement, and she did "not yet know why she is not responding well to treatment and is having symptoms of cognitive impairment." Id.

On June 30, 2015, Dr. Draisin wrote to Hartford stating he wrote "to express my medical opinion that she meets the conditions in your policy of disability - 'continuously unable to engage in the material and substantial duties of her regular occupation.'" ECF No. 20-3 at 59. While he relied in part on the cognitive testing done by Dr. Mielke, he felt Meiri's disability was "equally supported by the ongoing surveillance of her symptoms by her managing practitioners, myself included." Id. Dr. Draisin also saw Meiri the day before Hartford's paper reviewer spoke to him, on July 29, 2015. ECF No. 20-3 at 11. He said Meiri "looks really impaired," and that she "would not be able to work." Id. While Hartford disputes whether the letter was ever received, Dr. Draisin reitered on August 18, 2015 that there was "objective evidence (determined by testing) of cognitive impairment," and that it was related to Meiri's thyroid disease based on timing "concurrent with thyroid disease . . . no other clear etiology [and] not unusual thyroid replacement therapy is not infrequently linked in [illegible] – even with acceptable levels." ECF No. 21-1 at 6. In November 2015, Dr. Liu noted that "hyperthyroidism can impair[] cognitive function as noted by many of my patients with Graves disease." ECF No. 20-1 at 93.

While some of her symptoms may be of unclear etiology, all of Meiri's doctors note that she has them. "The Ninth Circuit has repeatedly held that 'the lack of objective physical findings' is insufficient to justify denial of disability benefits." Eisner v. The Prudential Ins. Co. of Am., 10

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F.Supp.3d 1104, 1114 (N.D. Cal. 2014) (quoting Salomaa v. Honda Long Term Disability Plan, 642 F.3d 666, 669 (9th Cir. 2011)). At least one of Meiri's doctors noted that even acceptable thyroid replacement levels can be linked to problematic symptoms. ECF No. 21-1 at 6. None of her doctors suggest that Meiri is capable of working, and most opine that she cannot. Compare Randall, 2017 WL 476404, at *18 ("[Plaintiff's] treating physicians . . . clearly indicated she should return to work. They did not conclude that she was totally disabled or could not perform the essential functions of her job."). For instance, although Dr. Liu stated that a direct connection between Meiri's symptoms and her thyroid was "unclear," she never questioned whether Meiri was actually having symptoms. See, e.g., ECF No. 20-1 at 93. While Dr. Liu originally predicted on October 7, 2014 that Meiri would be able to return to work without restrictions on a full-time basis on November 1, 2014, ECF No. 24-2 at 34, she also noted on November 7, 2014 that Meiri "continued to feel unwell," ECF No. 20-3 at 125. In contrast to cases where doctors affirmatively do not support a patient's disability, Hartford has not presented evidence from after November 1, 2014 that Dr. Liu encouraged Meiri to return to work or documented a belief that she could work. Dr. Griffin also did not state that Meiri could work, but rather indicated she was not "comfortable confirming a need for disability at that point [after only two visits]." ECF No. 20-3 at 43.

Despite some notable issues, the evidence of cognitive testing in the record also supports Meiri's position. Meiri admits that there were problems with her CNS test, conceding that "[t]he record indicates that Meiri failed to understand the directions of some of the tests and did not complete the testing correctly, leading to a small number of invalid testing results." ECF No. 21 at 11, n.4. Moreover, Dr. Mielke stated to Dr. DeFilippis that the test should be redone. Meiri also had testing done in support of her Social Security application, however, and those tests also showed she was quite impaired. ECF No. 21-1 at 107. The validity of those tests is not in question, and the Court concludes they are persuasive evidence of disability.

Moreover, Hartford's internal independent medical reviews suffer from several deficiencies that require the Court to afford them less weight than Plaintiff's medical evidence. Most importantly, as in Salomaa, none of Hartford's consultants examined Plaintiff—although

they could have. While Hartford was not required to base its decision solely on the records from Plaintiff's treating physicians, courts routinely weigh such records more heavily than they do reports and file reviews from paid consultants who never examine the claimant or talk to the claimant's treating physicians. See, e.g., Salomaa, 642 F.3d at 676; Minton v. Deloitte & Touche USA LLP Plan, 631 F.Supp.2d 1213, 1219–20 (N.D.Cal.2009); Heinrich v. Prudential Ins. Co. of Am., No. 04–cv–02943–JF, 2005 WL 1868179, at *8 (N.D. Cal. July 29, 2005). Here, Hartford's reviewers did speak with Meiri's physicians, who reported that "the claimant appears to be impaired to treatment providers." ECF No. 20-3 at 12. Dr. DeFilippis discounted the opinions that Meiri could not work, however, because "the only assessment of her cognition is the computerized test" which he considered invalid. Id. Dr. DeFilippis's review is conclusory and overemphasizes the CNS test while deemphasizing the clinical observations of Meiri's physicians. Dr. Kublaoui's report engages in circular reasoning and conclusorily states that "although untreated hypothyroidism can result in cognitive impairment, appropriately treated hypothyroidism does not result in cognitive impairment." ECF No. 21-1 at 6. He stated that the "claimant's thyroid function tests were normal" despite Meiri's doctors reporting they were still experimenting with her medications, and seemingly discounted the possibility that Meiri's cognitive symptoms could be the result of multiple causes.

Finally, Meiri correctly notes that "[s]imply being able to" sit for 8 hours and having sedentary functional capabilities "does not necessarily enable one to work" in an occupation that requires "careful thought and concentration." Sabatino v. Liberty Life Assurance Co. of Bos., 286 F. Supp. 2d 1222, 1231 (N.D. Cal. 2003). Meiri's well-paid role as the Vice President, Human Experience Strategy Director for MediaVest USA ("MediaVest") clearly required her to engage in careful thought and interaction with others in the work place. Her job required a "minimu[m] of 3 years of managing professional level employees[,] strong and proven strategic skills and the ability to apply them in the development of marketing/communications solutions[, and a] strong understanding of and ability to work w/ both qualitative and quantitate[v]e data." ECF No. 20-2 at 24. Meiri's physicians indicated that her poor memory, unfocused demeanor, and other cognitive difficulties would prevent her from meeting the demands of her occupation. The Court concludes

Meiri has proven by a preponderance of the evidence that she is disabled under the terms of her Hartford Policy.

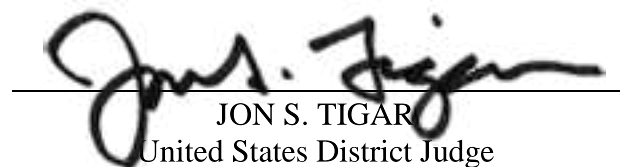
CONCLUSION

The Court grants Plaintiff's Motion for Summary Judgment and denies Defendant's Motion for Summary Judgment. Both motions to strike are denied. The Court hereby orders Plaintiff to provide Defendant with a form of proposed judgment by August 4, 2017. Defendant will then have five court days from the receipt of the proposed judgment to either approve it as to form or object to it. If Defendant approves the proposed judgment, Plaintiff shall file the proposed judgment with Defendant's counsel's signature, indicating Defendant's approval. If Defendant objects, Plaintiff shall file the proposed judgment along with Defendant's objections, which are not to exceed five pages. Plaintiff may also file a response to Defendant's objections, which response shall not exceed five pages. That filing is due five court days after Defendant's objections are due.

If Defendant neither approves the form of order nor serves objections on Plaintiff, the Court will sign the proposed judgment in the form provided by Plaintiff.

IT IS SO ORDERED.

Dated: July 24, 2017



JON S. TIGAR
United States District Judge