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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

THOMAS REDDICK,

Plaintiff,

v.

METROPOLITAN LIFE INSURANCE
COMPANY, et al.,

Defendant.

Case No.: 3:15-cv-02326-L-WVG

**ORDER (1) GRANTING IN PART
AND DENYING IN PART
PLAINTIFF'S MOTIONS [Docs. 40,
47] TO AUGMENT THE
ADMINISTRATIVE RECORD AND
(2) SETTING TRIAL DATES**

Pending before the Court is Plaintiff Thomas Reddick’s (“Reddick”) motions to augment the administrative record. The Court decides the matter on the papers submitted and without oral argument. See Civ. L. R. 7.1 (d)(1). For the reasons stated below, the Court **GRANTS IN PART** and **DENIES IN PART** Reddick’s motions.

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1 **I. BACKGROUND**

2 This case concerns the termination of Plaintiff Reddick’s long term disability
3 benefits. Reddick previously worked as a financial advisor for Morgan Stanley, a mostly
4 sedentary job that requires long hours of sitting and mental concentration. In March
5 2008, Reddick injured himself when he slipped and fell while performing yard work at
6 his home. As a result, Reddick underwent procedures including spinal surgery, epidural
7 steroid injections, and was placed on various medications that may affect his cognitive
8 abilities. Prior to sustaining this injury, Reddick enrolled in a long-term disability
9 insurance plan provided by his employer Morgan Stanley. Defendant Metropolitan Life
10 Insurance Company (“MetLife”) is both the insurer and administrator of this plan (“the
11 Plan”). Under the Plan, an insured is considered “disabled” (and therefore entitled to
12 benefits) if “due to Sickness or as a direct result of accidental injury: [the insured is]
13 receiving Appropriate Care and Treatment and complying with the requirements of such
14 treatment; [the insured is]: unable to earn more than 80% of [his] Predisability Earnings
15 at [his] Own Occupation from any employer in [his] Local Economy; and unable to
16 perform each of the material duties of [his] Own Occupation.” (AR 1947.)

17 Because of his injury, Reddick started drawing benefits on his MetLife policy in
18 2010. He continued to draw benefits through November 21, 2014, when MetLife
19 terminated his benefits. Prior to benefit termination, MetLife faxed a form (“the Form”
20 [Doc. 40-8 Ex. 1 p. 5]) to Dr. Mark A. Harris (“Dr. Harris”), one of Reddick’s treating
21 physicians. The Form asked Dr. Harris “[d]o you agree that [Reddick] has the functional
22 ability to return to work with or without accommodations [yes or no].” Before faxing it
23 back, Dr. Harris circled “yes” and “with” and wrote in “I believe RTW [return to work] is
24 an essential part of spine rehab although in this case likely with accommodations.”

25 MetLife notified Reddick of his benefit termination via letter. (Termination Letter
26 [AR 336–338].) In the Termination Letter, MetLife informed Reddick of his right to
27 appeal within 180 days and explained that he should submit evidence to support his
28 appeal. The Termination Letter did not notify Reddick of the Form filled out by Dr.

1 Harris, nor did MetLife otherwise inform Reddick of the Form’s existence prior to his
2 administrative appeal.

3 MetLife denied Reddick’s administrative appeal. (Appeal Denial [AR 11–17].) In
4 doing so, MetLife relied on a variety of medical and administrative opinions. (Id.) Of
5 special relevance to the present motions, MetLife relied on an administrative law judge’s
6 (“ALJ”) determination that Reddick was not sufficiently disabled to qualify for social
7 security disability benefits. (See [Doc. 42] 5:2–5.) This decision was vacated on an
8 appeal heard by Judge Moskowitz.

9 MetLife also relied on the opinion of an independent physician consultant (“IPC”).
10 In his report, the IPC concluded Reddick could lift up to 20lbs; sit for 8 hours in an 8-
11 hour work day provided he could change positions every 30 minutes; walk and stand;
12 bend, stoop, and twist occasionally; and reach overhead, waist level, and below the waist
13 without any restrictions. (AR 218.) Before stating this conclusion, the IPC’s report
14 referenced the ALJ’s vacated decision, stating “on December 27, 2013, an administrative
15 law judge denied disability and noted [Reddick] could lift and carry 10 pounds
16 frequently. The administrative law judge noted he could lift 20 pounds occasionally,
17 stand and walk for four out of eight hours a day, and sit for six out of eight hours a day.”
18 (AR 216–17.) The IPC further stated that his conclusions were “based on [Reddick’s]
19 history of chronic pain syndrome and previous surgery ... [as well as] the note from Dr.
20 Harris of June 5, 2014 [the Form], noting that return to work is an essential part of spine
21 rehabilitation.” (AR 219.)

22 Reddick subsequently appealed the denial of his disability benefits to this Court.
23 (See Compl. [Doc. 1].) Reddick now seeks to augment the administrative record with
24 three items. The first item is a letter from Dr. Harris. (The Letter [Doc. 40–8 Ex. 1 pp.
25 2–4].) In the Letter, Dr. Harris provides an in depth explanation of Mr. Reddick’s
26 physical condition, an opinion on Reddick’s disability status, and an explanation of what
27 he meant to communicate when he filled out the Form. (Id.) The second item is an
28 exhibit containing W2’s and earnings statements which Reddick claims are relevant to

1 determining his disability pay. (Earnings Records [Doc. 40–6 Ex. 4].) The third is a
2 summary judgment order in which Judge Moskowitz vacated the ALJ’s opinion and
3 remanded the case. (MSJ Order [Doc. 47–5 Ex. 1].) MetLife opposes the admission of
4 all of these exhibits. (See Opp’ns [Docs. 42, 48].)
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6 **II. LEGAL STANDARD**

7 Consistent with governing law¹, the parties have stipulated that the proper standard
8 of review for this ERISA governed improper denial of benefits claim is *de novo*. (See
9 Joint Stipulation [Doc. 31]; May 24, 2016 Order [Doc. 41].) Under this standard, the
10 Court’s duty is to determine whether a denial of ERISA governed benefits was proper.
11 *Abatie v. Alta Health & Life Ins. Co.*, 458 F.3d 955, 963 (9th Cir. 2006). In making this
12 determination, a Court should generally consider only materials that were a part of the
13 administrative record considered by the plan administrator. *Mongeluzo v. Baxter*
14 *Travenol Long Term Disability Ben. Plan*, 46 F.3d 938, 943–44 (9th Cir. 1995).
15 However, a district court, in its discretion, may consider evidence extrinsic to the
16 administrative record when necessary to conduct an adequate *de novo* review. *Id.* A
17 non-exhaustive list of circumstances in which extrinsic evidence can thus be “necessary”
18 include those involving (1) potential conflicts of interest presented where the
19 administrator is the payor and (2) relevant evidence that a claimant could not have
20 presented during the administrative review process. *Opeta v. Northwest Airlines Pension*
21 *Plan for Contract Emps*, 484 F.3d 1211, 1217 (9th Cir. 2007) (*quoting Quesinberry v.*
22 *Life Ins. Co. of N. Am.*, 987 F.2d 1017, 1025 (4th Cir. 1993).

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28 ¹ See *Opeta v. Northwest Airlines Pension Plan for Contract Emps*, 484 F.3d 1211, 1216 (9th Cir. 2007).

1 **III. DR. HARRIS' LETTER**

2 Reddick seeks to admit a letter from Dr. Harris in which Dr. Harris explains what
3 he meant when he filled out the Form stating that Reddick could return to work with
4 accommodation and that a return to work was essential to spine rehab. (The Letter.)

5 Because the Letter was not part of the administrative record, admission is proper only if
6 necessary to conduct an adequate de novo review. *Mongeluzo*, 46 F.3d at 943–44.

7 Broadly speaking, Reddick argues the Letter is necessary because (1) MetLife based their
8 denial of benefits decision, at least in part, on the Form; (2) the Form is ambiguous; and
9 (3) The Letter shows that Metlife resolved the ambiguity in a manner that is inconsistent
10 with the actual opinion Dr. Harris intended to communicate when he filled out the Form.

11 In support of this argument, Reddick cites to *Williams v. Sun Life Assurance Co. of*
12 *Canada*, 2009 WL 604942 (C.D. Cal. 2009). In *Williams*, ERISA claimant Williams
13 appealed the denial of her benefits. In denying Williams' administrative appeal,
14 Defendant Sun Live, the insurer and claims administrator, relied on the opinion of a
15 doctor who reviewed Williams' medical records and prepared a report essentially stating
16 that she was not medically disabled from returning to her work. In reaching this
17 conclusion, the reviewing doctor relied on a form that Sun Live created and sent to
18 Williams' attending physician. The form listed three categories of activity: stand / walk,
19 sit, and drive. Next to each activity were boxes for the attending physician to check off,
20 indicating how much, if any, of the activity she believed Williams could undertake in a
21 given day. Williams' attending physician checked "1-4 hours" for stand/walk, "1-3
22 hours" for sit, and "1-3 hours" for drive. In so doing, the attending physician meant to
23 communicate her opinion that Williams could intermittently sit for a total of 1-3 hours in
24 a day, whether driving or doing something else while seated. However, the reviewing
25 doctor hired by Sun Live added the maximum number under sit with the maximum
26 number under drive and concluded that Williams could sit for six hours in a given day
27 and therefore was not disabled from performing her work.

1 In appealing the denial of her claim to the district court, Williams sought to
2 augment the administrative record with a declaration from her attending physician
3 explaining that Sun Live interpreted the form her attending physician filled out in a
4 manner inconsistent with the information her attending physician intended to
5 communicate. The court granted Williams' motion to augment, emphasizing that (1) the
6 form was ambiguous; (2) Sun Live created the ambiguity in drafting the form; (3) Sun
7 Live, as both insurer and claims administrator, resolved the ambiguity in a manner that
8 financially benefitted it but harmed Williams. Plaintiff urges that, because this case is on
9 all fours with *Williams*, the Court should reach the same conclusion here.

10 The Court agrees. Like in *Williams*, the Form at issue here is ambiguous. In very
11 broad fashion, it asks: "Do you agree that Mr. Reddick has the functional ability to return
12 to work with or without accommodation? [yes or no?]." (the Form.) The Form provides
13 absolutely no information as to what type of work Reddick can do or how many hours in
14 a week he could do it. Further, by indicating Dr. Harris' belief that a return to work
15 would be helpful to an ongoing spine rehabilitation process and would likely require
16 accommodations, the Form does not seem to imply a belief that Reddick was physically
17 able to make a near complete return to work. Metlife could have easily cleared up this
18 ambiguity by following up with Dr. Harris.² But, Metlife did not.

19 Also like in *Williams*, there is a risk of conflict of interest presented by the fact that
20 MetLife operates as both insurer and administrator. This concern is magnified by the fact
21 that MetLife, instead of following up with Dr. Harris, seemingly resolved the ambiguity
22 in a financially self-serving manner detrimental to the interests of the insured. Further,
23 Metlife did not notify Reddick of the Form when they invited him to present information
24 relevant to his administrative appeal of the initial denial of his benefits, thus denying him
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27 ² The Court notes that MetLife complains of difficulty experienced in communicating with Dr. Harris.
28 However, the facts show that MetLife learned that sending a fax was the most efficient method of
communicating with Dr. Harris and they successfully contacted Dr. Harris with the first fax they sent
him. There is no reason to believe a second fax would have gone unreturned.

1 the opportunity to come forward with this clarifying evidence earlier. Such
2 circumstances clearly favor augmentation of the administrative record. *See Opeta*, 484
3 F.3d at 1217 (internal quotations omitted).

4 MetLife presents several arguments in opposition. First, Metlife argues that the
5 Letter is not necessary because, apart from the Form, the voluminous Administrative
6 Record contains more than enough other information upon which to sustain MetLife’s
7 decision to terminate benefits. The problem with this argument is that, regardless of how
8 many other records or evidence may tend to support MetLife’s determination, the fact
9 remains that MetLife appears to have placed special emphasis on the Form Dr. Harris
10 filled out.

11 Specifically, in its letter to Reddick notifying him of the denial of his appeal,
12 MetLife repeatedly references a report prepared by an Independent Physician Consultant
13 (“IPC”). (AR 13–17.) In his report, the IPC concluded Reddick could lift up to 20lbs;
14 sit for 8 hours in an 8 hour work day provided he could change positions every 30
15 minutes; walk and stand; bend, stoop, and twist occasionally; and reach overhead, reach
16 waist level, and reach below the waist without any restrictions. (AR 218.) The IPC
17 further stated that this conclusion was “based on [Reddick’s] history of chronic pain
18 syndrome and previous surgery ... [as well as] the note from Dr. Harris of June 5, 2014
19 [the Form], noting that return to work is an essential part of spine rehabilitation.” (AR
20 219.)

21 Thus, the IPC’s conclusions, which seem to have heavily informed MetLife’s
22 denial decision, appear to stem in large part from the Form prepared by Dr. Harris.
23 Because that form was ambiguous, the IPC’s reliance upon it, as well as MetLife’s denial
24 citing the IPC report, seem potentially problematic. Furthermore, (1) admission of the
25 letter would provide no further information than would have likely been gleaned from
26 MetLife properly following up with Dr. Harris to resolve the ambiguity of the Form, and,
27 (2) because Dr. Harris is an attending physician, his opinions would seem highly relevant
28 to a determination of whether Reddick was disabled per the policy definition. Therefore,

1 to properly scrutinize MetLife's decision *de novo*, the Court finds it necessary to exercise
2 its discretion to admit the Letter clarifying the ambiguity of the Form. Accordingly, the
3 Court **GRANTS** Reddick's motion as to Dr. Harris' Letter.

4 5 **IV. REDDICK'S EARNINGS RECORDS**

6 Reddick also seeks to augment the administrative record with various earnings
7 records [Doc. 40–6, Ex. 4] that he claims demonstrate MetLife improperly calculated the
8 amount of benefits owed to him under the policy. Though not briefed as such, the Court
9 sees two issues presented by this request: (1) the admissibility of earnings statements to
10 show the inadequacy of any pre-termination benefits payments and (2) admissibility for
11 purposes of calculating damages stemming from post-termination non-payment of
12 benefits, assuming liability is found. As to the first issue, the Court **DENIES** Reddick's
13 motion. Reddick never raised the issue of improper benefits calculation in the
14 administrative context with MetLife and therefore has not yet exhausted his
15 administrative remedies regarding pre-termination benefits payments. *See Saffle v. Sierra*
16 *Pacific Power Co. Bargaining Unit for Long Term Disability Income Plan.*, 85 F.3d 455,
17 460 (9th Cir. 1996).

18 As to the second issue, the Court **GRANTS** Plaintiff's motion. If the Court finds
19 that MetLife's denial of benefits was improper and the issue of damages need not be
20 remanded, Reddick's earnings records would be necessary.

21 22 **V. SUMMARY JUDGMENT ORDER**

23 Reddick also seeks to admit a summary judgment order issued by Judge
24 Moskowitz. In February 2011, Reddick applied for social security disability benefits.
25 The ALJ who heard his claim concluded Reddick was not disabled per social security
26 standards. The ALJ's decision is a part of the administrative record and MetLife placed
27 some reliance upon it in concluding that Reddick was not disabled per the Plan's
28 standards. (See [Doc. 42] 5:2–5 (MetLife stating it relied in part on the ALJ's findings);

1 AR 215–6 (IPC indicating he reviewed the ALJ’s findings in preparing his report).)
2 Reddick appealed the ALJ’s decision to the district court. In a summary judgment order
3 issued after the ERISA administrative record closed, Judge Moskowitz vacated the ALJ’s
4 decision and remanded the case for proper consideration. Specifically, Judge Moskowitz
5 found two faults with the ALJ’s decision. First, the ALJ violated the treating physician
6 rule by rejecting the opinion of a treating physician in favor of a non-treating physician’s
7 contradicting opinion without providing specific and legitimate reasons, supported by
8 substantial evidence in the record, for doing so. Second, the ALJ erred by not including
9 in the hypothetical posed to the vocational expert the ALJ’s finding that Reddick suffered
10 from mild mental impairment as a result of the medications he takes.

11 The main argument that MetLife presents in opposition to the admission of this
12 order is that it is not relevant (or necessary) because it relies entirely on a principle that
13 has no application to ERISA appeals: the treating physician rule. The main problem with
14 this argument is that it ignores a substantial portion of the MSJ Order. As explained
15 above, Judge Moskowitz found that the ALJ erred both by (1) violating the treating
16 physician rule and (2) by not properly taking account of Reddick’s mild mental
17 restrictions. The ALJ’s failure to consider Reddick’s mild mental restrictions certainly
18 would tend to suggest that the ALJ might have erred in concluding Reddick was not
19 disabled per social security standards. In turn, this would tend to suggest that MetLife, in
20 determining that Reddick was not disabled per Plan standards, erred in placing reliance
21 on the ALJ’s potentially flawed conclusion.

22 Furthermore, as it stands, the administrative record contains the ALJ’s finding that
23 Reddick is not disabled per social security standards. MetLife has already cited to the
24 ALJ’s finding to support its conclusion that Reddick was not disabled per Plan standards.
25 (See [Doc. 42] 5:2–5.) If the Court does not admit the MSJ Order, MetLife, at trial, could
26 again cite to the ALJ’s opinion to support its benefits denial decision and Reddick would
27 be unable to counter with the fact that Judge Moskowitz found the ALJ’s opinion to be
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1 flawed. To avoid such unfairness, the Court finds it necessary to have the MSJ on file.

2 Accordingly, the Court **GRANTS** Reddick's motion as to it.

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1 **VI. CONCLUSION AND ORDER**

2 For the foregoing reasons, the Court **GRANTS IN PART** and **DENIES IN PART**
3 Reddick's motions as follows.

- 4 • The Administrative Record is augmented with the following:
- 5 ○ Dr. Harris' Letter [Doc. 40-8 Ex. 1 pp. 2-4].
 - 6 ○ Reddick's W2's and earnings statements [Doc. 40-6 Ex. 4] for the sole
7 purpose of determining damages, if any, stemming from post-termination
8 non-payment of benefits.
 - 9 ○ Judge Moskowitz's order granting summary judgment, vacating the ALJ's
10 decision, and remanding the case [Doc. 47-5 Ex. 1], as well as the
11 associated Judgment [Doc. 47-5 Ex. 2].

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13 It is further ordered that:

- 14 ○ On or before **April 24, 2017**, the parties shall file their respective opening
15 trial briefs.
- 16 ○ On or before **May 12, 2017**, the parties shall file their respective responding
17 trial briefs.
- 18 ○ Trial is scheduled before the undersigned on **June 6, 2017, at 9:00 a.m.**
- 19 ○ On or before **June 13, 2017**, the parties shall file proposed findings of fact
20 and conclusions of law.
- 21 ○ The parties shall not file a brief in excess of 25 pages.
- 22 ○ A post trial settlement conference before a magistrate judge may be held
23 within 30 days of verdict in the case.

24 **IT IS SO ORDERED.**

25 Dated: March 23, 2017

26 
27 Hon. M. James Lorenz
28 United States District Judge