

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

DEC 6 2024

FOR THE NINTH CIRCUIT

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

KANDICE GRAY,

Plaintiff - Appellant,

v.

UNITED OF OMAHA LIFE INSURANCE
COMPANY,

Defendant - Appellee.

No. 24-700

D.C. No.

2:23-cv-00630-MCS-PLA

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Mark C. Scarsi, District Judge, Presiding

Submitted December 4, 2024**
Pasadena, California

Before: GOULD, CLIFTON, and SANCHEZ, Circuit Judges.

Plaintiff-Appellant Kandice Gray (“Gray”) appeals the district court’s judgment in favor of Defendant-Appellee United of Omaha Life Insurance Company (“United”). The district court held that Gray was not entitled to

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

additional short-term disability (“STD”) or long-term disability (“LTD”) benefits under her Group STD Plan (“STD Plan”) and Group LTD Plan (“LTD Plan”) (collectively, “Plans”), which are governed by the Employee Retirement Income Security Act of 1974 (“ERISA”). 29 U.S.C. §§ 1001–1461. We have jurisdiction to review this appeal under 28 U.S.C. § 1291, and we affirm.

1. Gray applied for STD benefits claiming that as of August 9, 2021 she was unable to perform her duties as a supervisor and mental health therapist due to “back pains, sharp pains in arms/hands.” Gray’s former employer described Gray’s job as having a “light” strength demand, meaning that it required “20 pounds maximum lifting with frequent lift/carry up to 10 pounds” and either “significant walking/standing” or “mostly sitting” with “push/pull on arm or leg controls.”

2. Gray’s physicians, Paul Guidry, M.D. (“Dr. Guidry”) and Corey L. Cook, D.C. (“Dr. Cook”), submitted Attending Physician’s Statements (“APS”) in support of Gray’s STD claim, and both listed a diagnosis of “lumbar radiculopathy.” Dr. Guidry’s APS stated that Gray “can’t lift[,], push[,], pull[,], carry [greater than] 5 [pounds]” and “can’t sit stand without pain & spasms.” As a treatment plan, he stated, “Meds Heat Rest.” Dr. Cook stated that Gray had symptoms of “moderate to severe pain + tenderness, spasm.” As to Gray’s functional limitations and abilities, Dr. Cook claimed that Gray could not do any

work functions; was unable to sit, stand, or walk more than one hour in an eight-hour workday; and was unable to lift, push, or carry five to ten pounds. Dr. Cook stated that he expected a fundamental change in Gray's condition within four months, and as a treatment plan, he provided "Heat/Ice, Rest, Stretching."

3. Gray received STD benefits from August 9, 2021 through September 12, 2021 after United reviewed the information contained in the APS forms. United informed Gray, however, that the continuation of her benefits would depend upon her submission of additional clinical findings supporting her disability. On September 12, 2021, United stopped paying STD benefits but continued to review Gray's claim and requested updated medical records. On March 25, 2022, following independent reviews of Gray's records by medical consultants, United notified Gray that her STD claim would be denied. Gray appealed United's STD denial and simultaneously submitted a claim for LTD benefits. On July 26, 2022, United informed Gray that it would not approve LTD benefits. Following Gray's second appeal, United's decision as to both benefits denials remained unchanged.

4. Gray then filed suit in the district court alleging that United erred in holding that she was not entitled to additional disability benefits. The district court held a bench trial and issued a judgment holding that Gray was not entitled to further disability benefits under the Plans.

5. The district court’s findings of fact are reviewed under the clearly erroneous standard and conclusions of law are reviewed *de novo*. *Pannebecker v. Liberty Life Assurance Co. of Boston*, 542 F.3d 1213, 1217 (9th Cir. 2008). Under the *de novo* standard of review, we “determine[] in the first instance if the claimant has adequately established that he or she is disabled under the terms of the plan.” *Muniz v. Amec Constr. Mgmt., Inc.*, 623 F.3d 1290, 1295–96 (9th Cir. 2010). Because review is *de novo*, United’s handling of the claim has little to no bearing on our analysis, and we “examine[] the administrative record without deference to the administrator’s conclusions to determine whether the administrator erred in denying benefits.” *Collier v. Lincoln Life Assurance Co. of Bos.*, 53 F.4th 1180, 1182 (9th Cir. 2022).

6. “[T]he claimant has the burden of proving by a preponderance of the evidence that [s]he was disabled under the terms of the plan.” *Armani v. Nw. Mut. Life Ins. Co.*, 840 F.3d 1159, 1163 (9th Cir. 2016). Gray has not met this burden. Gray only submitted four doctors’ appointment records to United while her disability claims were under review: an appointment with Dr. Guidry on August 9, 2021, and appointments with Dr. Cook on October 7, 2021, December 6, 2021, and February 8, 2022. There was no showing that these two doctors had specialties relevant to the diagnosis of lumbar radiculopathy such as an orthopedic, neurology, or pain management specialty. The medical findings are too thin and dependent on

Gray’s subjective reporting to be given substantial weight. *See Jordan v. Northrop Grumman Corp. Welfare Benefit Plan*, 370 F.3d 869, 880 (9th Cir. 2004) (explaining that the conclusory diagnosis of a non-expert treating physician did not necessarily overcome objective and subjective indications that the claimant’s pain did not prevent her from working.). Further, Gray “failed to respond” to United’s “repeated reasonable requests for details.” *Id.* Because Gray had only a short treatment history with her two physicians, and we do not accord special weight to treating physicians, the opinions of the orthopedic surgeons United enlisted to review Gray’s medical file are given more weight because these orthopedic surgeons have relevant “expertise [that] the treating physician[s] lack[.]” *See Black & Decker Disability Plan v. Nord*, 538 U.S. 822, 832 (2003). And the orthopedic surgeons provided detailed reports to substantiate their determinations that Gray was not disabled.

7. Gray relies on Dr. Guidry’s October 27, 2022 letter summarizing an MRI done at an unspecified date as objective evidence of her disability, but the letter was sent to United only after United had already closed Gray’s administrative appeals for her STD and LTD claims. Absent exceptional circumstances that make the evidence necessary, we generally do not consider evidence that was not before the plan administrator when the claim was determined. *See Opeta v. Northwest Airlines Pension Plan for Contract Employees*, 484 F.3d 1211, 1217 (9th Cir.

2007). Gray had many opportunities to submit additional medical records while her claims were still under review with United, and there are no exceptional circumstances that necessitate considering Dr. Guidry's letter now.

AFFIRMED.