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**United States District Court
Central District of California**

BERTHA CAMPOS,

Plaintiff,

v.

RELIANCE STANDARD LIFE
INSURANCE COMPANY; WHM, LLC;
and DOES 1 through 10, inclusive,

Defendants.

Case № 2:15-cv-08304-ODW (GJSx)

**FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

This is an action under the Employee Retirement Income Security Act to recover long-term disability benefits. On October 17, 2016, the parties lodged the record of the underlying administrative proceeding with the Court. On April 10, 2017, the Court conducted a bench trial, after which the Court took the matter under submission. Based on the Administrative Record, the briefs submitted by the parties, and the argument of counsel at the trial of this matter, the Court issues the following findings of fact and conclusions of law.

I. FINDINGS OF FACT

1. On or about May 5, 2008, Defendant WHM, LLC (“WHM”) hired Plaintiff Bertha Campos as a full-time employee.

1 2. Defendant Reliance Standard Life Insurance Company (“Reliance”)
2 issued a group long-term disability policy, policy number VPL 300459 (the “LTD
3 Plan”), to WHM.

4 3. At all relevant times during Plaintiff’s employment with WHM, Plaintiff
5 was enrolled in the LTD Plan.

6 4. The LTD Plan terms provide that “[a] person is eligible for insurance
7 under this Policy if he/she: (1) is a member of an Eligible Class . . .; and (2) has
8 completed the Waiting Period . . .”

9 5. The LTD Plan terms define “Eligible Class[]” as follows: “Each active,
10 Full-time Employee earning an annual salary of at least \$15,000 except any person
11 employed on a temporary or seasonal basis.”

12 6. The LTD Plan terms define “actively at work” and “active at work” as
13 follows: “‘Actively at Work’ and ‘Active Work’ mean actually performing on a Full-
14 time basis the material duties pertaining to his/her job in the place where[,] and the
15 manner in which[,] the job is normally performed. This includes approved time off
16 such as vacation, jury duty and funeral leave, but does not include time off as a result
17 of an Injury or Sickness.”

18 7. The LTD Plan terms define “full-time” as follows: “‘Full-time’ means
19 working for you for a minimum of 30 hours during a person’s regular work week.”

20 8. The LTD Plan terms do not expressly define “regular work week.”

21 9. On April 11, 2013, Plaintiff was working as a banquet server for WHM
22 when she fell and injured herself.

23 10. On November 21, 2013, Plaintiff submitted to Reliance a claim for
24 benefits under the LTD Plan.

25 11. On April 7, 2014, Reliance sent a letter to Plaintiff that appeared to deny
26 Plaintiff’s claim. The letter did not explicitly state that Reliance denied her claim, but
27 it cited language from the LTD Plan terms regarding the full-time requirement for
28 coverage. The letter then stated: “We regret our decision could not be more favorable.

1 Our determination has been based on the information contained in your file and the
2 policy provisions applicable to your claim.”

3 12. On April 9, 2014, Plaintiff called Reliance to inquire about the status of
4 her claim, at which time a Reliance representative informed Plaintiff that Reliance had
5 denied her claim. According to Reliance’s written notes from the call, Reliance
6 advised Plaintiff that her “claim [was] not denied due to medical not supporting [*sic*],
7 just due to not meeting [full time] hours policy definition.”

8 13. On September 17, 2014, Plaintiff appealed the denial of her claim.

9 14. On January 13, 2015, Reliance sent a letter to Plaintiff denying her
10 appeal. Reliance stated in the letter that it had reviewed Plaintiff’s payroll information
11 for the eight pay periods (16 weeks) preceding Plaintiff’s accident. Reliance included
12 the following table regarding the amount of time Plaintiff worked during those pay
13 periods:

14

Period Ending	Hours Worked	Total Hours
12/26/2012	30.5 Regular time; 8 Vacation hours	38.50
1/9/2013	23 Regular time; 8 Vacation hours	31
1/23/2013	61 Regular time; 16 Vacation hours¹	77
2/6/2013	49 Regular time	49
2/20/2013	68.75 Regular time	68.75
3/6/2013	49.75 Regular time	49.75
3/20/2013	72.50 Regular time	72.50
4/3/2013	33 Regular time; 24 Vacation hours	57

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25 15. Reliance stated in its January 13 letter that during those eight pay-

26 _____
27 ¹ Although Reliance stated that eight of these hours were “sick” hours, this appears to be a typo.
28 The record discloses that the 8 “sick” hours were actually “vacation” hours, and Reliance included it
in the total eligible hours in the third column.

1 periods, Plaintiff “infrequently worked over 30 hours per week,” and that she “only
2 worked ‘full-time’ as defined by your Policy, during three (3) pay periods.”

3 16. Reliance’s January 13 letter further stated: “[W]hile we understand that
4 you were considered a full-time employee for purposes of certain benefits only
5 available to full-time employees, the Policy has a specific definition of ‘Full-time’
6 which must be satisfied in order for your LTD claim to have been approved. We
7 further understand that you paid premiums for this benefit, and this decision does not
8 imply that you are never eligible for LTD benefits. However, for this particular claim,
9 you did not work sufficient hours during the many weeks leading up to the date you
10 became injured, on April 11, 2013, in order for your claim to be approved.”

11 17. Plaintiff worked an average of 31 hours per week during the six pay
12 periods preceding her accident.

13 18. In a letter to Reliance dated June 23, 2015, Plaintiff stated in part: “Prior
14 to and during my employment your company continued to deduct monies for monthly
15 policy coverage fully aware my employer was not providing me with the minimal 30
16 hours per week, but was giving these hours to other non-full time employees.”

17 19. Reliance argues that the LTD Plan has a 180-day Elimination Period
18 during which no benefit is payable.

19 20. Reliance argues that the LTD Plan terms contain a “Regular Occupation”
20 and an “Any Occupation” definition of “Total Disability.”

21 21. Reliance argues that during the “Regular Occupation” period, the LTD
22 Plan terms provide, in part: “‘Totally Disabled’ and ‘Total Disability’ mean, that as a
23 result of an Injury or Sickness: (1) during the Elimination Period and for the first 24
24 months for which a Monthly Benefit is payable, an Insured cannot perform the
25 substantial and material duties of his/her Regular Occupation.”

26 22. Reliance argues that the LTD Plan terms define “Regular Occupation” as
27 “the occupation the Insured is routinely performing when Total Disability begins. We
28 will look at the Insured’s occupation as it is normally performed in the national

1 economy, and not the unique duties performed for a specific employer or in a specific
2 locale.”

3 23. Reliance argues that with regard to the “Any Occupation” period, the
4 LTD Plan terms provides: “‘Totally Disabled’ and ‘Total Disability’ mean, that as a
5 result of an Injury or Sickness: . . . (2) after a Monthly Benefit has been paid for 24
6 months, an Insured cannot perform the material duties of Any Occupation. We
7 consider the Insured Totally Disabled if due to an Injury or Sickness he or she is
8 capable of only performing the material duties on a part-time basis or part of the
9 material duties on a Full-time basis.”

10 24. Reliance argues that the LTD Plan terms define “Any Occupation” as “an
11 occupation normally performed in the national economy for which an Insured is
12 reasonably suited based upon his/her education, training or experience.”

13 25. Reliance argues that the LTD Plan terms include a 24-month pay
14 limitation for certain Total Disabilities “caused by or contributed to [by]
15 musculoskeletal and connective tissue disorders of the neck and back.”

16 26. The only basis on which Reliance denied Plaintiff’s claim is that Plaintiff
17 did not work a minimum of 30 hours in a “regular work week” as required by the LTD
18 Plan terms.

19 27. WHM provided payroll information to Reliance so that Reliance could
20 determine whether Plaintiff was a full time employee under the LTD Plan. However,
21 WHM was not otherwise involved in determining Plaintiff’s eligibility for benefits
22 under the LTD Plan.

23 **II. CONCLUSIONS OF LAW**

24 1. Under the Employee Retirement Income Security Act (“ERISA”), a
25 participant in an ERISA-governed welfare benefit plan may bring a civil action “to
26 recover benefits due to him under the terms of his plan, to enforce his rights under the
27 terms of the plan, or to clarify his rights to future benefits under the terms of the plan.”
28 29 U.S.C. § 1132(a)(1)(B).

1 2. “A denial of benefits challenged under § 1132(a)(1)(B) is to be reviewed
2 under a de novo standard unless the benefit plan gives the administrator or fiduciary
3 discretionary authority to determine eligibility for benefits or to construe the terms of
4 the plan.” *Firestone Tire & Rubber Co. v. Bruch*, 489 U.S. 101, 115 (1989). The
5 parties to this action have stipulated, and the Court has ordered, that Reliance’s denial
6 of Plaintiff’s claim shall be reviewed *de novo*. (ECF Nos. 26–27.)

7 3. Under a *de novo* standard of review, the Court interprets the terms of an
8 ERISA-governed benefit plan “in an ordinary and popular sense as would a person of
9 average intelligence and experience.” *Evans v. Safeco Life Ins. Co.*, 916 F.2d 1437,
10 1441 (9th Cir. 1990) (internal brackets and quotation marks omitted). However,
11 “[a]mbiguities in the Plan are to be resolved in [the participant’s] favor.” *Patterson v.*
12 *Hughes Aircraft Co.*, 11 F.3d 948, 950 (9th Cir. 1993) (citing *Kunin v. Benefit Trust*
13 *Life Ins. Co.*, 910 F.2d 534, 537 (9th Cir. 1990)).

14 4. Despite Reliance’s argument to the contrary, there is ambiguity in how to
15 determine a “regular work week” under the LTD Plan. The LTD Plan terms do not
16 expressly define what constitutes a “regular work week.” Moreover, the dictionary
17 definition of the word “regular” is of no help in determining a method for calculating
18 a regular work week. *See Regular*, Merriam-Webster’s Dictionary,
19 <https://www.merriam-webster.com/dictionary/regular> (last visited April 10, 2017)
20 (defining “regular” in part as “recurring, attending, or functioning at fixed, uniform, or
21 normal intervals”). Reliance’s decision to look at the preceding eight pay periods to
22 determine Plaintiff’s “regular work week” is, at best, only one of several permissible
23 ways to determine a “regular work week.”

24 5. Because the term “regular work week” is ambiguous, and because
25 ambiguities must be construed where possible in favor of coverage, the Court will
26 consider Plaintiff to have met the full-time requirement if she can provide a
27 reasonable calculation method that establishes that she worked in excess of 30 hours
28 in a “regular work week” prior to her injury.

1 6. Plaintiff points out that she worked an average of 31 hours per week over
2 the six pay periods before her accident. The Court concludes that averaging the
3 number of hours worked over a particular period reasonably reflects the number of
4 hours that an employee “regularly” works. Indeed, because Plaintiff had a widely-
5 varying work schedule work (due to the fact that her work was event-based), the
6 average is likely a *more* accurate reflection of Plaintiff’s “regular” work week than
7 doing a week-to-week comparison of hours worked. The Court also concludes that six
8 pay periods (as opposed to eight) is a large enough sample size to reasonably reflect
9 what her “regular work week” was prior to the injury. Finally, this calculation method
10 does not contradict any explicit terms of the LTD Plan. Thus, based on Plaintiff’s
11 calculation, the Court concludes that Plaintiff worked “a minimum of 30 hours during
12 [her] regular work week” as defined by the LTD Plan.

13 7. Reliance repeatedly points to Plaintiff’s complaint following the denial of
14 her appeal that “[her] employer was not providing [her] with the minimal 30 hours per
15 week.” This statement does not compel a different result. First, Plaintiff’s statement,
16 when read in context, is not a concession that Reliance correctly concluded that she is
17 not a full-time employee under the LTD Plan. Rather, Plaintiff is simply pointing out
18 that she was unable to work more hours than she had because WHM did not schedule
19 her for more work. Second, her statement does not change the number of hours she
20 actually worked before her accident; indeed, the dispositive question—which is solely
21 a legal question—is whether the hours she worked renders her a full-time employee
22 under the LTD Plan. And as Reliance does not make any estoppel or waiver argument
23 based on Plaintiff’s statement, it does not affect the Court’s analysis regarding
24 whether or not the hours that she worked qualify her as a full-time employee under the
25 LTD Plan.

26 8. Reliance also argues that Plaintiff is not entitled to benefits for several
27 additional reasons. First, Reliance argues that Plaintiff was not entitled to any benefits
28 during the Elimination Period and 24-month “Regular Occupation” period because she

1 could still perform her “regular occupation” following her accident. However, despite
2 the fact that this defense was available to Reliance at the time of both Plaintiff’s initial
3 claim and at the time of Plaintiff’s appeal, Reliance did not base its denial of her claim
4 on this issue. It is well established in the Ninth Circuit that the failure to assert a
5 defense to coverage during the administrative proceeding is a bar to raising that
6 defense during the subsequent civil action. *See, e.g., Mitchell v. CB Richard Ellis*
7 *Long Term Disability Plan*, 611 F.3d 1192, 1199 n.2 (9th Cir. 2010); *Harlick v. Blue*
8 *Shield of Cal.*, 686 F.3d 699, 720 (9th Cir. 2012). The Court therefore rejects this
9 argument.

10 9. Second, Reliance argues that Plaintiff is not entitled to benefits during the
11 “Any Occupation” period. Because Plaintiff’s claim was denied before the “Any
12 Occupation” period commenced, Reliance could not have made any determination as
13 to this issue during the administrative process. Thus, the Court concludes that
14 Reliance did not waive this argument by not asserting it. The Court therefore remands
15 the matter to the plan administrator to make an initial determination on this issue.

16 10. Reliance also argues that the Court should remand the matter to the plan
17 administrator to determine whether the 24-month pay limitation for musculoskeletal
18 and connective tissue disorders applies to Plaintiff’s injury. Again, because Plaintiff’s
19 claims were denied before the 24-month pay limitation would have kicked in, this
20 issue was not ripe for determination during the administrative process. Thus, the
21 Court concludes that Reliance did not waive this argument by not asserting it. The
22 Court therefore remands the matter to the plan administrator to make an initial
23 determination on this issue.

24 11. A party is generally not a proper defendant to an action under 29 U.S.C.
25 § 1132(a)(1)(B) where “it had nothing to do with denying [the claimant’s] claim for
26 increased benefits” and is not responsible for paying benefits. *See Cyr v. Reliance*
27 *Standard Life Ins. Co.*, 642 F.3d 1202, 1207 (9th Cir. 2011).

28 12. Here, Plaintiff pursues two alternative theories as to why the Reliance’s

1 decision was wrong. First, Plaintiff argues she is a “full time” employee under the
2 LTD Plan because she worked an average of 31 hours per week in the six weeks
3 preceding her accident. Second, she argues that because Plaintiff paid premiums for
4 the LTD Plan while she was employed by WHM, Defendants either waived or are
5 estopped from asserting the argument that Plaintiff is ineligible for benefits. With
6 respect to the first theory of liability, WHM is not a proper defendant because WHM
7 had no involvement in determining whether the hours Plaintiff worked qualified her
8 for benefits under the LTD Plan terms (and because WHM is not responsible for
9 paying benefits). While it is a closer question whether WHM is a proper defendant
10 under the second theory, that theory is moot in light of the Court’s ruling. The Court
11 therefore concludes that dismissal of Plaintiff’s claims against WHM is appropriate.

12 **III. CONCLUSION**

13 For the reasons discussed above, the Court concludes as follows:

- 14 1. Plaintiff worked “a minimum of 30 hours during [her] regular work
15 week” as defined by the LTD Plan;
- 16 2. Reliance waived any argument that Plaintiff was not entitled to benefits
17 because she did not meet the definition of “Totally Disabled” during the “Regular
18 Occupation” period;
- 19 3. Remand to the Plan administrator is appropriate for a determination
20 whether Plaintiff was totally disabled under the “Any Occupation” period, whether the
21 24-month pay limitation for musculoskeletal and connective tissue disorders applies to
22 Plaintiff’s injury, and to make other determinations as necessary that are not
23 inconsistent with this decision;
- 24 4. WHM should be dismissed from this lawsuit without prejudice.

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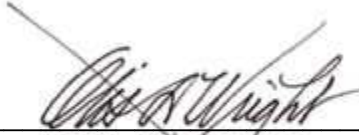
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1 The Court **ORDERS** the parties to submit a proposed judgment to the Court
2 within seven days of the date of this Order.

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4 **IT IS SO ORDERED.**

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6 April 12, 2017

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10 **OTIS D. WRIGHT, II**
11 **UNITED STATES DISTRICT JUDGE**

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