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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

SHELLEY PROOF,	)	
	)	
Plaintiff,	)	2:09-cv-002237-GEB-DAD
	)	
v.	)	<u>ORDER DENYING DEFENDANT'S</u>
	)	<u>MOTION FOR SUMMARY JUDGMENT</u>
INTEL CORPORATION LONG TERM	)	<u>AND REMANDING PLAINTIFF'S</u>
DISABILITY PLAN,	)	<u>CLAIM FOR LONG TERM DISABILITY</u>
	)	<u>BENEFITS TO THE CLAIMS</u>
Defendant.	)	<u>ADMINISTRATOR</u>
_____	)	

Defendant Intel Corporation Long Term Disability Plan ("Defendant") seeks summary judgment on Plaintiff's claim for long term disability ("LTD") benefits, to which Plaintiff alleges she is entitled under the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1132 (a) (1) (b) ("ERISA"). However, the summary judgment record reveals that Plaintiff prevails on an issue even though Plaintiff is not a movant. "Even when a party has not cross moved for summary judgment, the Court may enter summary judgment in its favor if[, as here,] the other party has had a 'full and fair opportunity to ventilate the issues involved in the matter.'" Manyak v. Blackrock, Inc., 2010 WL 1927733, at \*3 (W.D. Wash. 2010) (ERISA case) (quoting Cool Fuel, Inc. v. Connett, 685 F.2d 309, 312 (9th Cir. 1982)).



1 in October 2008, "a few months" before her short-term disability  
2 benefits were scheduled to expire. (SUF ¶ 14.) The Packet explained  
3 the LTD Plan, provided information regarding the Plan, including Plan  
4 definitions of "Disability" and "Objective Medical Findings", and  
5 requested Plaintiff to complete and return the forms included with the  
6 LTD Packet. (Id. ¶ 15.)

7 Under the Plan terms, disability is defined as "any illness  
8 or injury that is substantiated by Objective Medical Findings and  
9 which renders a Participant incapable of performing work." (SUF ¶ 4;  
10 Administrative Record ("AR") 0001.) The Plan defines an "Objective  
11 Medical Finding" as "a measurable, independently-observable  
12 abnormality which is evidenced by one or more standard medical  
13 diagnostic procedures . . . that support the presence of a disability  
14 or indicate a functional limitation." (AR 0004.)

15 Plaintiff returned the forms included in the LTD Packet on  
16 October 18, 2008. Plaintiff wrote under the section in the forms  
17 entitled "Duties You Now Cannot Perform": "Due to the nausea,  
18 vomiting, and weakness attributed to my disability, I am no longer  
19 able to perform any job duties." (AR 0268.) Plaintiff also  
20 identified in her response Doctors Mark Redor, Amar Al-Juburi, and Lin  
21 Soe as her treating physicians. (SUF ¶ 22; AR 0270.) Aetna requested  
22 and received medical records from these physicians. (SUF ¶ 27.)  
23 Before receiving the requested medical records, Aetna sent Plaintiff a  
24 letter dated November 19, 2008 in which Aetna denied her claim because  
25 "there [were] no objective medical findings to substantiate [her]  
26 inability to perform her own occupation." (AR 0055.) Plaintiff's  
27 physician Dr. Redor submitted to Aetna his Attending Physician  
28 Statement form on November 17, 2009. (SUF ¶ 21.) Dr. Redor listed on

1 this form "diabetic gastroparesis" as Plaintiff's "primary diagnosis"  
2 and attached reports of two gastric emptying studies dated November  
3 13, 2006 and May 8, 2008, and two esophagogastroduodenoscopies dated  
4 February 1, 2007 and May 16, 2008. (AR 544-554.) Dr. Redor also  
5 listed Plaintiff's symptoms as "chronic nausea and vomiting" and  
6 checked the box "No ability to work." (Id. 0545.) Aetna again  
7 rejected Plaintiff's claim for LTD benefits in a letter dated November  
8 26, 2008, stating "please refer to the initial denial letter." (AR  
9 0057.)

10 Aetna sent Plaintiff's medical records to Aetna Review  
11 Consulting Services ("ARCS") on December 26, 2008, for review by a  
12 specialist in gastroenterology. (SUF ¶ 28.) ARCS referred the  
13 records to Doctor Jack Cohen, "an independent physician certified by  
14 the American Board of Gastroenterology." (Id. ¶ 29.) Dr. Cohen  
15 reviewed the medical records and conducted a peer-to-peer consultation  
16 with Dr. Redor, during which Dr. Redor stated Plaintiff had  
17 gastroparesis and "that the limiting factor in [Plaintiff's] returning  
18 to work was nausea." (AR 0163.) However, Dr. Cohen stated in his  
19 "Physician Review" form that Dr. Redor "agrees that [nausea] is a  
20 totally subjective symptom." (AR 0163.) Dr. Cohen also noted that  
21 Plaintiff "has not lost any weight," "has no electrolyte  
22 abnormalities, and she shows no signs of malnutrition." (AR 0164.)  
23 Dr. Cohen concluded "[t]he objective medical findings do not  
24 substantiate that the claimant is unable to perform the duties of her  
25 own occupation." (AR 0165; SUF ¶ 30.)

26 Aetna relied upon Dr. Cohen's review and notified Plaintiff  
27 that her application for LTD benefits had been denied in a letter  
28 dated January 14, 2009, which stated:

1 The review of your file indicated that there are no  
2 objective medical findings to substantiate your  
3 inability to perform your own occupation. You[r]  
4 diagnosis of gastroparesis is secondary to your  
5 [Insulin-Dependent Diabetes Mellitus]. You  
6 indicate symptoms of constant nausea with  
7 intermittent vomiting. Despite this diagnosis, you  
8 have maintained your weight. You have not had any  
9 problems with electrolyte imbalance or dehydration.  
10 Laboratory data failed to reveal any nutritional  
11 deficits secondary to your nausea and vomiting.  
12 Your symptomatology is not of an intensity or  
13 severity that it would impact upon your performing  
14 job related activities of a light physical demand  
15 rating.

16 Additionally, we contacted Dr. Redor to discuss  
17 your case. Dr. Redor indicated that the limiting  
18 factor in your returning to work was nausea. Dr.  
19 Redor agreed that this is a totally subjective  
20 symptom. Dr. Redor also agreed that despite that  
21 gastroparesis, nausea and intermittent vomiting you  
22 have not lost any weight. You have no electrolyte  
23 abnormalities and show no signs of malnutrition.

24 It is again our determination that to date, your  
25 file does not include objective medical findings to  
26 substantiate you are incapable of performing work  
27 on a full time basis at this point or in the  
28 future. Under the terms of your contract objective  
29 medical findings do not include physicians'  
30 opinions or other third party opinions based on the  
31 acceptance of subjective complaints.

32 (AR 0059.)

33 Plaintiff appealed Aetna's denial of her LTD benefits claim  
34 on February 19, 2009. (SUF ¶ 34.) The Appeal was assigned to Ana  
35 Molina ("Molina"), a Senior Appeal Specialist. Molina sent  
36 Plaintiff's medical records to ARCS for review by a gastroenterologist  
37 and an endocrinologist in March 2009. The Appeal Committee completed  
38 its review of Plaintiff's appeal on April 24, 2009, and notified  
39 Plaintiff in a letter dated April 24, 2009 that "the original decision  
40 to deny LTD benefits, effective 1/1/09, has been upheld." (AR 0062;  
41 SUF ¶ 45.)

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## II. Analysis

Plaintiff argues Defendant abused its discretion by interpreting the Plan to require objective evidence of Plaintiff's symptoms, and consequently failed to consider Plaintiff's disabling symptoms of fatigue, nausea, and vomiting. Further, Plaintiff argues Defendant's failure to consider this evidence resulted in Defendant's failure to "explain why the conditions and symptoms which it admits [Plaintiff] suffers from are insufficient to demonstrate [she is incapable of working]." (Opp'n 17:10-11.) Defendant argues it properly interpreted the pertinent Plan language by requiring "[Plaintiff's] underlying condition **and** her inability to perform work . . . be manifested by Objective Medical Findings." (Mot. 4:23-25 (emphasis added).)

"Under abuse of discretion . . . review, [a Plan Administrator] err[s] by interpreting the Plan in a way that contradict[s] the Plan's plain language." Brown v. S. Cal. IBEW-NECA Trust Funds, 588 F.3d 1000, 1004 (9th Cir. 2009). "[T]erms in an ERISA plan should be interpreted in an ordinary and popular sense as would a [person] of average intelligence and experience." Richardson v. Pension of Bethlehem Steel Corp., 112 F.3d 982, 985 (9th Cir. 1997) (quotations omitted). "Each provision in an agreement should be construed consistently with the entire document such that no provision is rendered nugatory." Id. "Despite the deference owed to administrators of plans . . ., [the] application of plan provisions clearly in conflict with the plain language of the plan [] should be found to be arbitrary and capricious." Hancock v. Montgomery Ward Long Term Disability Trust, 787 F.2d 1302, 1307 (9th Cir. 1986).

1           Since the Plan states "Disability shall mean any illness or  
2 injury **that is** substantiated by Objective Medical Findings **and which**  
3 renders a Participant incapable of performing work," (AR 0001  
4 (emphasis added)) "Plaintiff's burden here encompasses two distinct  
5 prongs." Alvis v. AT & T Integrated Disability Serv. Ctr., 2009 WL  
6 1026030, at \*11 (E.D. Cal. 2009). Specifically, to establish  
7 disability under the terms of the Plan, Plaintiff was required to show  
8 she has (1) an illness or injury substantiated by objective medical  
9 findings, and (2) the illness or injury renders her incapable of  
10 performing work. See Friedrich v. Intel Corp., 181 F.3d 1105, 1112  
11 n.7 (9th Cir. 1999) (analyzing a nearly identical definition of  
12 "Disability" by using a bifurcated, two-pronged approach and  
13 concluding that the district court did not err "in finding that  
14 [Plaintiff] presented objective medical findings of disability," **and**  
15 **also** did not err in finding that Plaintiff "suffers from an illness  
16 that renders him incapable of working").

17           Defendant's counsel conceded at the hearing on the motion  
18 that Plaintiff provided sufficient objective medical findings of an  
19 illness--the gastric emptying exams and esophagogastroduodenoscopies--  
20 to substantiate the existence of her gastroparesis. But Defendant  
21 argues Plaintiff's inability to work has not been substantiated by  
22 objective medical findings because her symptoms of fatigue, nausea,  
23 and vomiting are subjective. However, the Plan language does not  
24 require Plaintiff to prove her inability to work by objective  
25 evidence; rather, the existence of her illness must be substantiated  
26 by objective medical findings, and she has to prove that this illness  
27 renders her incapable of working. Therefore, the Plan does not  
28 prohibit Plaintiff from satisfying the second prong of her disability

1 inquiry by her own report of subjective symptoms or her physician's  
2 report that her subjective symptom of the illness renders her  
3 incapable of working. Dr. Redor states in his attending physician  
4 Statement in the response to the inquiry about Plaintiff's  
5 "Abilities/Limitations": "No ability to work" and indicates this  
6 conclusion is substantiated by the objective medical findings  
7 Defendant concedes exist. (AR 0545.) However, Defendant denied  
8 Plaintiff's claim for LTD benefits because it found those symptoms  
9 were not substantiated by objective medical findings. "A plan  
10 administrator cannot exclude a claim for lack of objective medical  
11 evidence unless the objective medical evidence standard was made  
12 clear, plain and conspicuous enough in the policy to negate layman  
13 plaintiff's objectively reasonable expectations of coverage." Moody  
14 v. Liberty Life Assurance Co. of Boston, 595 F. Supp. 2d 1090, 1098  
15 (N.D. Cal. 2009) (internal citations and quotations omitted).

16 Further, Defendant did not explain why Plaintiff's symptoms  
17 were insufficient to qualify her for LTD benefits. Insurers "abuse  
18 their discretion if they render decisions without any explanation  
19 . . . ." Johnson v. W. Conference of Teamsters Pension Trust Fund,  
20 879 F.2d 651, 654 (9th Cir. 1989). ERISA requires "'a meaningful  
21 dialogue' between claims administrator and beneficiary" "in a manner  
22 calculated to be understood by the claimant." Saffon v. Wells Fargo &  
23 Co. Long Term Disability Plan, 522 F.3d 863, 870 (9th Cir. 2008).  
24 Here, the final denial letter dated January 14, 2008 states: "Dr.  
25 Redor indicated that the limiting factor in your returning to work was  
26 nausea. Dr. Redor agreed that this is a totally subjective symptom."  
27 (AR 0059.) However, Defendant did not explain to Plaintiff why her  
28 nausea--which Dr. Redor characterized as a "major symptom" of



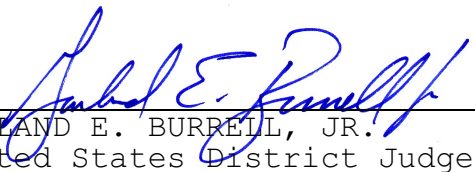
1 Plaintiff's gastroparesis occurring "daily" and which was accompanied  
2 by vomiting and weakness--did not render her incapable of working.  
3 Further, Defendant failed to "engage Dr. [Redor's] contrary assertion"  
4 that Plaintiff's subjective symptoms of her gastroparesis prevented  
5 her from working. Saffon, 522 F.3d at 870. In addition, none of  
6 Defendant's letters sufficiently explain why it concluded Plaintiff  
7 was not disabled; rather, Defendant simply mentions symptoms Plaintiff  
8 was not experiencing--for example, weight loss and dehydration--  
9 without explaining why the presence of those symptoms was required as  
10 substantiation of Plaintiff's disability claim.

11           Since Defendant erred in interpreting the plain language of  
12 the Plan, and in doing so, failed to show how it considered the  
13 subjective evidence Plaintiff submitted in support of her LTD benefits  
14 claim, Defendant abused its discretion in denying Plaintiff's claim.  
15 Therefore, Plaintiff's claim for LTD benefits is remanded "for a  
16 redetermination by the claims administrator" under the proper standard  
17 in the Plan. Hoskins v. Metro. Life Ins. Co., 551 F. Supp. 2d 942,  
18 946-947 (D. Ariz. 2008) (remanding plaintiff's claim for LTD benefits  
19 and "tak[ing] no position on the ultimate issue whether benefits  
20 should be awarded"); see also Gallo v. Amoco Corp., 102 F.3d 918, 923  
21 (7th Cir. 1996) (stating that the "remedy when a court or agency fails  
22 to make adequate findings or to explain its grounds adequately is to  
23 send the case back to the tribunal for further findings or explanation  
24 . . . unless the case is so clear cut that it would be unreasonable  
25 for the plan administrator to deny the application for benefits on any  
26 ground"); Beaver v. Bank of the West Welfare Benefits Plan, 2010 WL  
27 1030464, at \*11 (N.D. Cal. 2010) ("ERISA affords the court a wide  
28 range of remedial powers, including the power to return a benefits

1 claim to a plan administrator for consideration of additional medical  
2 evidence.").

3 This case shall be closed.

4 Dated: August 11, 2010

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7 GARLAND E. BURRELL, JR.  
8 United States District Judge  
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