IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SARA G. MAURER,

Plaintiff,

v.

RELIANCE STANDARD LIFE INSURANCE COMPANY; THE LAW OFFICES OF SARA G. MAURER LONG TERM DISABILITY PLAN,

Defendants
_____/

No. C 08-04109 MMC

ORDER DENYING PLAINTIFF'S MOTION FOR JUDGMENT; GRANTING DEFENDANT'S MOTION FOR JUDGMENT

Before the Court are cross-motions for judgment, filed, respectively, by plaintiff Sara Maurer ("Maurer") and defendants The Law Offices of Sara G. Maurer Long Term Disability Plan and Reliance Standard Life Insurance Company (collectively, "RSL"), each brought pursuant to Rule 52 of the Federal Rules of Civil Procedure. Having read and considered the parties' respective submissions in support of and in opposition to the cross-motions,[1] the Court rules as follows.[2]

[1] After the parties filed their respective replies, Maurer filed, on November 16, 2009, "Proposed Findings of Fact and Conclusions of Law in Opposition to Defendants' Cross-Motion for Judgment and in Support of Plaintiff's Motion for Judgment Under Rule 52, FRCP," and, on December 4, 2009, April 5, 2010, and March 9, 2011 respectively, three "Statement[s] of Recent Decision." RSL objects to each filing as untimely. RSL's objections are hereby overruled.

[2] On November 17, 2009, the Court took the matter under submission and vacated the hearing scheduled for November 20, 2009.

BACKGROUND

Maurer seeks relief under the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. § 1001 et seq., claiming RSL abused its discretion when it terminated Maurer's disability benefits. She seeks damages pursuant to 29 U.S.C. § 1132(a)(1)(B), and equitable relief pursuant to 29 U.S.C. § 1132(a)(3).

I. The Disability Policy

In 1996, the Law Offices of Sara G. Maurer purchased a group disability policy ("the Plan") issued by RSL. (See MAU00163.)[3] Maurer, an attorney, was covered by the Plan at all relevant times. The Plan provides benefits for policy-holders who become "totally disabled," defined as follows:

> "Totally Disabled" and "Total Disability" mean, that as a result of an Injury or Sickness:
>
> (1) during the Elimination Period, an Insured cannot perform each and every material duty of his/her regular occupation; and
>
> (2) for the first 36 months for which a Monthly Benefit is payable, an Insured cannot perform the material duties of his/her regular occupation;
>
> > (a) "Partially Disabled" and "Partial Disability" mean that as a result of an Injury or Sickness an Insured is capable of performing the material duties of his/her regular occupation on a part-time basis or some of the material duties on a full-time basis. An Insured who is Partially Disabled will be considered Totally Disabled, except during the Elimination Period; and
>
> (3) after a Monthly benefit has been paid for 36 months, an Insured cannot perform each and every material duty of any occupation. Any occupation is one that the Insured's education, training or experience will reasonably allow.

(MAU00168.)

Additionally, the Plan includes the following limitation with respect to benefits, commonly referred to as the "Mental/Nervous Limitation":

> Monthly Benefits for Total Disability caused by or contributed to by mental or nervous disorders . . . will not be payable beyond an aggregate lifetime maximum duration of twenty-four (24) months . . . .

[3] Unless otherwise noted, citations herein are to the record attached as Exhibit A to the Declaration of Horace W. Green, filed October 9, 2009.

. . .

> Mental or Nervous Disorders are defined to include disorders which are diagnosed to include a condition such as:
>
> (1) bipolar disorder (manic depressive syndrome);
> (2) schizophrenia;
> (3) delusional (paranoid) disorders;
> (4) psychotic disorders;
> (5) depressive disorders;
> (6) anxiety disorders;
> (7) somataform disorders (psychosomatic illness);
> (8) eating disorders; or
> (9) mental illness.

(MAU00178.)

II. Maurer's Disability Claim

Maurer filed a disability claim on December 30, 2002, stating she was unable to work as of October 23, 2002. (See MAU00156-57.) In her claim she cited "intense pain," arising from "cumulative" injuries, as the reason she was unable to work. Id. She ceased working based on the advice of her primary physician, Robert Hines, M.D. ("Dr. Hines"), a board-certified psychiatrist specializing in pain disorders, who had been treating Maurer since 2001. (See MAU00599, MAU00643, MAU00886.) At the time she stopped working, Maurer suffered from "chronic pain," as well as "bloating," "constipat[ion]," and "drench[ing] sweats." (See MAU0589.)

Maurer has a history of various injuries and maladies dating back to 1988, when she was involved in a skiing accident in which she suffered severe back trauma. (MAU00722.) In particular, she has "a past history of anemia" and "depression probably related to the illness," "psoriasis," "severe liver disease associated with the HELP syndrome," "[g]eneralized fibromyalgia," and "pre-eclampsia and then eclampsia," including "a diffuse bleed into all of her organs two days after the eclampsia and the delivery of her baby" that led to a "belie[f] that she would certainly die," but that she and her child survived. (See MAU00722, MAU00725.) She has been prescribed numerous medications to address the various physical and mental components of her disorders, and at the time she filed for disability benefits, she was taking Effexor, Wellbutrin, Zanaflex, Valium, Ambien,

Trazodone, Ketamine, Litoderm, and Protonix. (See MAU00638.) Maurer has been living with chronic pain since roughly 1998. (See MAU00127.)

As noted above, Maurer, in 2002, ceased her work as an attorney and filed for disability benefits on account of chronic neck and back pain. (See MAU00155.) She submitted her medical records to RSL, including extensive notes from her visits with Dr. Hines, as well as notes from another physician, James Gardner, M.D. ("Dr. Gardner"), who specialized in internal medicine (see, e.g., MAU00571-90, MAU00593-602). On June 26, 2003, after a review of the file by MaryAnn Lubrecht, R.N., who found support therein for fibromyalgia, with a "significant psych component to chronic pain," (see MAU00570), Maurer's claim was approved and RSL began paying her disability benefits, including payments covering the period after December 22, 2002 (see MAU00123).

In March 2004, RSL requested updated medical information from Dr. Hines. (See MAU00507.) Dr. Hines's records contained numerous references to Maurer's stress, anxiety, and depression, and included diagnoses of "bipolar diathesis", "Mood Disorder with Generalized Medical Condition;" "Generalized Anxiety Disorder;" and "Pain Disorder with Mixed Physical and Psychological features." (See, e.g., MAU00508, MAU00510, MAU00518, MAU00520, MAU00526-27, MAU00528, MAU00530, MAU00560, MAU00634.) Additionally, in Dr. Hines's opinion, Maurer's ability to mange her pain was adversely affected by "intercurrent stressors," including personal and family problems. (See MAU00642, MAU00648.) Based on Dr. Hines's updated records, RSL determined Maurer's claim warranted reevaluation. (See MAU00490.) Barbara Finnegan, R.N., a nurse consulting with RSL, suggested Maurer's file be evaluated by William Scott Hauptman, M.D. ("Dr. Hauptman"), a board-certified specialist in internal medicine and gastroenterology, in order to determine if the Mental/Nervous Limitation was applicable. (See id., MAU00478.) In September 2004, Dr. Hauptman reviewed Maurer's file and determined that "without the contribution of mental nervous illness, current medical records are consistent with the ability for full time sedentary work." (See MAU00486.)

In 2005, RSL requested and received further updates from Dr. Hines. (See

MAU01004.) Dr. Hines submitted an RSL "Attending Physician's Statement," which included his diagnosis that Maurer was suffering from a "mood disorder as a result of" her "severe multi-level [degenerative disc disease]" and resultant "chronic pain." (See MAU1006.) RSL thereafter directed Maurer to undergo an independent medical evaluation ("IME") for the purpose of determining whether "[w]ithout the contribution of mental nervous would [Maurer] be capable of work activity." (See MAU01002.) In October, 2005, Maurer met with Leslie Schofferman, M.D. ("Dr. Schofferman") a "Diplomate" of the American Board of Internal Medicine and the American Board of Pain Medicine, as well as a state-appointed Quality Medical Evaluator, who conducted the IME (See MAU00974-82.) Dr. Schofferman ultimately concurred with Dr. Hauptman's assessment, finding that " without the psychiatric elements, [Maurer] would be capable of work activity." (See MAU00981.)

In June, 2006, Maurer received word from the Social Security Administration ("SSA") that her claim for Social Security disability benefits was denied. (See MAU00217). The SSA determined that, although Maurer was experiencing "discomfort," the medical records showed she was "able to walk and move about" such that she was able to satisfactorily perform the duties of an attorney. (See MAU00218.) RSL received a copy of the SSA's report and requested updated medical information from Maurer. (See MAU00040, MAU00038.) RSL thereafter conducted another medical review, by I. Bergstorm, R.N., in which it found no change in Maurer's condition since the time of her IME with Dr. Schofferman. (See MAU00893.)

On November 3, 2006, RSL sent Maurer a letter, notifying her that it was terminating her benefits (see MAU00017-19). In the letter, RSL noted the Plan's requirement that, in order to continue to receive benefits after 36 months, an insured must be incapable of performing "each and every material duty of any occupation," which provision, RSL explained, was applicable to Maurer as of December 22, 2005; RSL further stated: "[Y]our physical limitations do not prevent a return to work in your normal occupation." (See MAU00017.) Additionally, RSL noted that any psychiatric condition preventing such a

return "would be subject to the maximum duration of 24 months." (See MAU00018.)[4]

Maurer objected to RSL's decision, contending RSL's determination as to the Maurer's ability to return to work was incorrect. (See MAU00015-16.) Dr. Hines submitted a letter on behalf of Maurer, stating that the "resultant emotional and social difficulties that have ensued from the patient's chronic pain and limitations," which he had described in his notes, were "not the fundamental basis of [Maurer's] disability." (See MAU00885.) RSL thereafter referred Maurer's claim to a pain management specialist, Suresh Mahawar, M.D. ("Dr. Mahawar"). (See MAU00873-81.) RSL made another payment of disability benefits to Maurer while her objection was pending. (See MAU00001.)

Dr. Mahawar, who is board-certified in pain management, conducted a peer review of Maurer's medical records, and concluded Maurer was not physically totally disabled.[5] (See MAU00877.) Dr. Mahawar expressly disagreed with Dr. Hines's "recommendation for her total inability to work." (See MAU00876.) RSL interpreted Dr. Mahawar's report as a determination that Maurer was physically capable of performing sedentary work. (See MAU00869.) On March 5, 2007, RSL claims examiner Joan McErlane ("McErlane") advised Maurer that she no longer was eligible for benefits. (See MAU00741.) McErlane also informed Maurer of her right to appeal the denial. (See id.)

In April 2007, Maurer filed an appeal, with which she submitted her medical records from a board-certified rheumatologist, Joan Campagna, M.D. ("Dr. Campagna"). (See MAU00728, MAU00721-26.) Dr. Campagna's report included diagnoses of psoriatic arthritis, sciatica, generalized fibromyalgia, and gastroesophageal reflux disease ("GERD"), and noted evidence of spondylitis. (See MAU00725-26.) According to Dr. Campagna, Maurer was "completely disabled from psoriatic arthritis." (See MAU00691.)

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[4] As discussed above, RSL began paying Maurer disability benefits for the period after December 22, 2002, more than 24 months prior to the November 3, 2006 termination of Maurer's benefits

[5] Additionally, Dr. Mahawar found Maurer was not suffering from a "significant psychiatric impairment. (See MAU00877.) Dr. Mahawar noted, however, that he was "not an expert" in the field of psychiatry, and that "a qualified psychologist or psychiatrist could render a final opinion in this regard." (See id.)

After receiving Dr. Campagna's assessment, RSL arranged a second IME. (See MAU00685.) Maurer was evaluated by Neal S. Birnbaum, M.D. ("Dr. Birnbaum"), a board-certified rheumatologist and "Fellow" of the American College of Physicians, who performed a physical examination of Maurer (see MAU00781) and reported that he "could not confirm [Dr. Campagna's] diagnoses based upon the available records and [his] own examination" (see MAU00782). Dr. Birnbaum further reported that he "did not find purely physical reasons for [Maurer's] claim of disabling pain," explaining that "[t]here clearly is a significant element of psychiatric dysfunction in terms of both anxiety and depression." (See MAU00782.) In Dr. Birnbaum's opinion, Maurer's "symptoms are primarily related to chronic pain and psychiatric dysfunction rather than inflammatory disease." (See MAU00783.)

RSL's appeals department then referred Maurer's file for a vocational assessment. (See MAU00772.) The reviewing specialist determined Maurer was physically capable of performing a variety of occupations, including attorney, adjudicator, contract clerk, legal investigator, and consultant. (See MAU00769.)

On November 5, 2007, a year after her benefits were initially terminated, RSL notified Maurer by letter that her appeal was denied (see MAU00660), and that the denial was final and unappealable (see MAU00669). The letter, which comprised eleven pages, outlined in detail the reasons for the denial of Maurer's claim, and set out RSL's conclusion that "in the absence of [Maurer's] significant psychiatric component, [her] physical status would not preclude work function" and that RSL did not have "satisfactory proof of [Maurer's] claimed physical inability to perform some of the material duties of any sedentary occupation." (See MAU00667, MAU000669 (emphasis in original).) In reaching that conclusion, RSL relied upon the opinions of Drs. Hauptman, Schofferman, Mahawar, and Birnbaum, and explained why it had not relied on the opinions of Drs. Hines and Campagna. (See MAU00660-69.)

LEGAL STANDARD

The standard of review applicable to a plan administrator's denial of ERISA benefits

is dependent upon the terms of the benefit plan. Firestone Tire & Rubber Co. v. Bruch, 489 U.S. 101, 115 (1989). If "the benefit plan gives the administrator or fiduciary discretionary authority to determine eligibility for benefits or to construe the terms of the plan," an abuse of discretion standard is applied; otherwise, the denial is reviewed de novo. Id. Here, the parties agree that the benefit plan provides RSL discretionary authority, and consequently, an abuse of discretion standard is applicable.[6]

An "inherent conflict" of interest exists, however, where, as here, "a plan administrator both administers the plan and funds it." Abatie v. Alta Health & Life Ins. Co., 458 F.3d 955, 967 (9th Cir. 2006).[7] "[I]f a benefit plan gives discretion to an administrator or fiduciary who is operating under a conflict of interest, that conflict must be weighed as a factor in determining whether there is an abuse of discretion." Firestone, 489 U.S. at 115 (internal quotes omitted). An inherent, or "structural," conflict, "should prove more important (perhaps of great importance) where circumstances suggest a higher likelihood that it affected the benefits decision, including, but not limited to, cases where an insurance company administrator has a history of biased claims administration," and "should prove less important (perhaps to the vanishing point) where the administrator has taken active steps to reduce potential bias and to promote accuracy, for example, by walling off claims administrators from those interested in firm finances, or by imposing management checks that penalize inaccurate decisionmaking irrespective of whom the inaccuracy benefits." See Metropolitan Life Insurance Co. v. Glenn, 554 U.S. 105, 117 (2008). As the Ninth

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[6] The Plan expressly provides that RSL "has the discretionary authority to interpret the Plan and the insurance policy and to determine eligibility of benefits" and that "[d]ecisions by [RSL] shall be complete, final and binding on all parties." (See MAU00171.)

[7] In support of its opposition, RSL submitted an affidavit setting forth RSL's procedures with respect to separation of claims evaluation and payment of benefits (see Aff. of Peter Sailor), to which Maurer has filed an objection and motion to strike based in part on RSL's failure to disclose such affiant as a possible witness, pursuant to Rule 37(c)(1) of the Federal Rules of Civil Procedure. The objection is sustained and the motion to strike is hereby GRANTED. RSL's structural conflict was known from the outset of the litigation and the relevance of the recently-disclosed evidence to such issue is not dependent on any particular argument made by Maurer in the course of the proceedings thereafter.

Circuit observed in Abatie:

> The level of skepticism with which a court views a conflicted administrator's decision may be low if a structural conflict of interest is unaccompanied, for example, by any evidence of malice, of self-dealing, or of a parsimonious claims-granting history. A court may weigh a conflict more heavily if, for example, the administrator provides inconsistent reasons for denial; fails adequately to investigate a claim or ask the plaintiff for necessary evidence; fails to credit a claimant's reliable evidence; or has repeatedly denied benefits to deserving participants by interpreting plan terms incorrectly or by making decisions against the weight of evidence in the record.

Abatie, 458 F.3d at 968-69 (internal citations omitted).

Here, Maurer contends the Court should apply a high level of skepticism to RSL's decision.[8] In support thereof, Maurer points primarily to RSL's continued use of Dr. Mahawar and Dr. Hauptman, citing cases in which their impartiality has been questioned. Recently, the Ninth Circuit had occasion to address RSL's use of Dr. Hauptman, see Gunn v. Reliance Standard Life Ins. Co., 399 F. App'x 147, 154-55 (9th Cir. 2010) (mem.), finding that, "[a]lthough it is appropriate to consider Dr. Hauptman's longstanding relationship with [RSL] in weighing the degree of any conflict of interest attached to his opinion, that relationship alone does not mandate a finding that [RSL] should have completely disregarded his opinion." Id. at 155 (noting "[t]he fact that [RSL] ultimately accepted the opinions of Drs. Orfuss [a neurologist who examined Gunn at RSL's request] and Hauptman in regard to whether Gunn's multiple sclerosis symptoms were sufficient in themselves to result in total disability is not sufficient to show bias"). Here, similarly, RSL's reliance on Drs. Mahawar and Hauptman is, without more, insufficient to support application of the high level of skepticism Maurer contends is appropriate, particularly given RSL's additional reliance on the opinions of Drs. Schofferman and Birnbaum, both of whom personally examined Maurer, as well as on the records provided by Dr. Hines, Maurer's treating physician.

Maurer identifies no evidence of "malice" or "self-dealing" by RSL, or of a

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[8] Maurer requests the Court take judicial notice of three exhibits: a Form 8-K filed by Delphi Financial Group (Supp. Decl. of Rebecca Grey, Ex. C), RSL's Annual Statement for 2007 (id. at Ex. D), and an article published in the Daily Journal (id. at Ex. E). No objection has been filed. Accordingly, the request is granted.

"parsimonious claims-granting history." See Abatie, 458 F.3d at 968-69. Although Maurer disagrees with RSL's ultimate determination, Maurer has not shown RSL failed to conduct an adequate investigation as to her claim, and, indeed, RSL made an additional payment of disability benefits to Maurer after its initial termination letter. During the course of its investigation, RSL had four specialists review Maurer's claim, each of whom arrived at a determination consistent with that of the others,[9] and it did not arbitrarily ignore contrary medical evidence.

In light of the above circumstances and findings, the Court will apply an abuse of discretion review tempered by a moderate degree of skepticism.

DISCUSSION

The issue presented by the instant case is whether RSL abused its discretion when it determined Maurer was not entitled to disability benefits after 36 months of such payments. In particular, the Court must determine: (1) whether RSL reasonably interpreted the phrase "mental disorder" as used in the Mental/Nervous Limitation; (2) whether the RSL reasonably interpreted the phrase "caused or contributed to by" as used in the Mental/Nervous Limitation; (3) whether RSL reasonably interpreted the phrase "each and every" as used in the definition of "Total Disability"; and (4) whether, under the policy as properly construed, RSL abused its discretion in finding Maurer was not totally disabled.

I. Mental/Nervous Limitation

A. "Mental Disorder"

As noted, the Mental/Nervous Limitation provides that a disability "caused or

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[9] Maurer argues that RSL engaged in "post-hoc rationales" for its denial of benefits, by relying, "for the first time in litigation," on the Social Security Administration's denial of Maurer's claim and by identifying Maurer's ability to engage in sedentary activity. (See Reply 2:20-4:13.) RSL does not contend, however, that its decision to terminate Maurer's benefits was based on the Social Security Administration's decision (see Defs.' Cross-Mot. at 32:2-6), and, in its final termination letter, RSL expressly cited Maurer's ability to engage in sedentary activity as a reason for the termination of her benefits (see MAU00664). Moreover, RSL was consistent in providing its reason for terminating Maurer's benefits, stating in its initial letter of November 2006 its finding that Maurer's physical limitations did not preclude her return to her "normal occupation," which was sedentary, and citing in addition the preclusion of continued benefits after 36 months as well as the Mental/Nervous Limitation's 24-month cap on benefits. (See MAU00017.)

contributed to by" a "mental or nervous disorder" is covered by the Plan for a maximum duration of 24 months. (See MAU00178.) Maurer's first argument is that the term "mental disorder" should not be interpreted to include "psychological factors which arise from [or] exacerbate the underlying medical condition," and that RSL abused its discretion by interpreting the Limitation to include such factors. (See Pl.'s Mot. at 22:17-19.) In that regard, Maurer argues that the term "mental disorder" is ambiguous. See Lang v. Long-Term Disability Plan of Sponsor Applied Remote Tech., Inc., 125 F.3d 794, 799 (9th Cir. 1997) (holding "mental disorder" presents "almost classic ambiguity" in that "it could reasonably refer either to illnesses with non-physical causes, or to illnesses with physical causes, but exhibiting both physical and non-physical symptoms"). Relying on the doctrine of contra proferentem, Maurer further argues any such ambiguous term must be interpreted against RSL. See id. (holding, under "doctrine of contra proferentem," ambiguities in insurance contracts "are construed against the insurance company"; adopting interpretation of "mental disorder" advanced by claimant).

Although Maurer is correct that the term "mental disorder" is ambiguous, her reliance on the doctrine of contra proferentem is unavailing, as "[t]he rule applies in interpreting ambiguous terms in an ERISA-covered plan except where the plan: (1) grants the administrator discretion to construe its terms, (2) is the result of a collective-bargaining agreement, or (3) is self-funded." See Blankenship v. Liberty Life Assurance Co. of Boston, 486 F.3d 620, 625 (9th Cir. 2007) (emphasis added); see also Lang, 125 F.3d at 799 (reviewing denial of benefits de novo where plan's "decision was affected by self-interest"; applying contra proferentem but noting: "If we were according Standard's interpretation the deference ordinarily due an administrator vested with discretion to interpret the plan, we would have to uphold Standard's interpretation as reasonable"); Patterson v. Hughes Aircraft Co., 11 F.3d 948, 951 (9th Cir. 1993) (applying contra proferentem in context of de

novo review).[10]

Here, the Plan expressly provides RSL"discretionary authority to interpret the Plan and the insurance policy" (see MAU00171), and, as discussed above, Maurer has not made a showing sufficient to warrant a high degree of skepticism or de novo review. Consequently, the rule of contra proferentem does not apply, and RSL's interpretation of the Plan will govern unless it "conflicts with the plain language of the [P]lan." See Winters v. Costco Wholesale Corp., 49 F.3d 550, 553-54 (9th Cir. 1995) (rejecting application of contra proferentem where plan granted plan fiduciary discretion to interpret; noting court's "inquiry is not into whose interpretation of the plan document is most persuasive, but whether the plan administrator's interpretation is unreasonable" (internal quotation and citation omitted)); see also Glotzer v. Metro. Life Ins. Co., 1 F. App'x 740, 743 (9th Cir. 2001) (rejecting application of contra proferentem where "abuse of discretion was the proper standard of review under the terms of the plan, and [plaintiff] presented no evidence of a serious conflict of interest").

No such conflict with the language of the Plan has been shown. In particular, the Plan does not specify that a "mental disorder" must arise independent of a physical disorder. (See MAU00178.) Rather, the term is used without any limitation.

Accordingly, RSL did not abuse its discretion in interpreting the Limitation to include all mental disorders, whether resulting from, arising independent of, or causing any physical disorder.

B. "Caused By or Contributed to By"

As noted, the Mental/Nervous Limitation applies to a claimant's "Total Disability caused by or contributed to by mental or nervous disorders." (See MAU00178.) Maurer argues that the phrase "caused by or contributed to by" is ambiguous, that such language

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[10] Although the Patterson court found the plan at issue therein "grant[ed] the plan administrator power to determine eligibility," there is no finding that the plan granted discretionary authority to interpret the plan's terms. See id. at 949, 950; see also Glotzer, 1 F. App'x at 743 (describing Patterson as applying "an overall de novo review of the plan administrator's decision").

should be interpreted to apply only to disabilities that result solely from a mental disorder, and that RSL abused its discretion in interpreting the Limitation to cover disabilities resulting from a combination of mental and physical disorders.

Contrary to Maurer's argument, the phrase "caused by or contributed to by" is not ambiguous. By the inclusion of the words "or contributed to by," the Plan clearly states that a mental disorder need not be the sole cause of a total disability for the limitation to apply. See Gunn v. Reliance Standard Life Ins. Co., 592 F. Supp. 2d 1251, 1261 (C.D. Cal. 2008) ("[A]dding the phrase 'or contributed to by' to 'caused by'. . . eliminated as a possible interpretation that the policy limitation applied only when the inability to work is solely the result of [a mental disorder].") overruled on other grounds, 399 F. App'x at 151 (noting defendant's interpretation of "limitation for mental and nervous disorders does not conflict with the [p]lan terms and is reasonable"). As long as a mental disorder is a component of a claimant's overall disability, and a claimant would not be disabled but for the contribution of such mental disorder, the Limitation is applicable. See Michaels v. Equitable Life Assur. Society, 305 F. App'x 896, 903-04 (3rd Cir. 2009) (holding, where "a disabled claimant suffer[s] from both mental and physical conditions, neither of which [is] independently debilitating under the [p]lan, and the combined effect of those conditions render[s] the claimant totally disabled," claimant not entitled to benefits under plan providing two-year cap for disability "caused to any extent by a mental condition"; distinguishing situation where "physical disability [is] independently sufficient to render [claimant] totally disabled" (emphasis added)).

In sum, RSL was not unreasonable in interpreting the Limitation as it did.[11] Accordingly, to be eligible for continued benefits under the Plan, Maurer must show she is disabled solely as a result of a physical disability, without any contribution from any mental disorder from which she may suffer."

[11] Moreover, even if the term "caused by or contributed to by" were ambiguous, RSL, as discussed above, had the discretion to interpret the Limitation, and RSL's interpretation does not conflict with the plain language thereof

II. "Totally Disabled"/"Total Disability"

Maurer's third contention is that RSL misinterpreted the term "Total Disability" as used in the Plan and thus abused its discretion in finding she was not totally disabled. Under the Plan, after a claimant has received benefits for a period of 36 months, "Total Disability" means the "Insured cannot perform each and every material duty of any occupation." (See MAU00168.) Maurer reads this provision to mean that a claimant is totally disabled if the claimant can perform some, but not all, material duties of an occupation. Conversely, RSL interprets the provision to mean that if a claimant can perform even one material duty of an occupation, the claimant is not totally disabled.

In McClure v. Life Ins. Co. of North America, 84 F.3d 1129 (9th Cir. 1996), the Ninth Circuit considered an ERISA plan that required the claimant to be unable to perform "every duty of his occupation." See id. at 1133. The Ninth Circuit found the provision to be ambiguous, noting the word "every" is "sometimes equivalent to 'all,' and sometimes equivalent to 'each.'" See id. at 1134 (emphasis omitted). Courts that have considered the term "each and every," however, have interpreted such language in the same manner as RSL does here. See Carr v. Reliance Standard Life Ins. Co., 363 F.3d 604, 607 (6th Cir. 2003) (interpreting "each and every duty" to mean "[i]f a claimant can perform even one material duty of his regular occupation . . . he is not totally disabled"); Gallagher v. Reliance Standard Life Ins. Co., 305 F.3d 264, 270, 275 (4th Cir. 2002) (interpreting provision using "each and every"; concluding "[b]ecause [claimant] could perform certain occupational duties . . . [claimant] has not submitted objectively satisfactory evidence that he was unable to perform each and every material duty of his occupation").

Additionally, the language of the Plan, when viewed as a whole, supports RSL's interpretation. The Plan includes a definition of "partial" disability. Specifically, for the first 36 months for which benefits are payable, a claimant is considered "partially disabled" if he/she can perform "some of the material duties [of his/her regular occupation] on a full-time basis." (See MAU00168.) It follows that a claimant who is able to perform some material duties cannot be "totally disabled," because such claimant is, by definition, partially

disabled.[12] See Tippett v. Reliance Standard Life Ins. Co., 457 F.3d 1227, 1237 (11th Cir. 2006) (holding "if the insured can perform some, but not all, of the duties of his occupation . . . he is partially disabled; therefore, he is not totally disabled within the meaning of the plan").

In sum, RSL's interpretation of the term "each and every" is reasonable and does not conflict with the plain language of the Plan. Accordingly, to be eligible for continued benefits under the Plan, Maurer must show she can perform none of the material duties of any occupation commensurate with her education, training or experience.[13]

III. Denial of Benefits

The final issue before the Court is whether, in light of its interpretation of the Plan, RSL abused its discretion by finding Maurer's physical disorders alone, excluding any contributing mental disorder were not sufficient to render her totally disabled. As discussed above, to qualify as "Totally Disabled" after receiving disability payments for 36 months, Maurer must show she is unable to perform any of the material duties of "any occupation." (See MAU00168.) "Any occupation," in turn, is defined under the Plan as "one that the Insured's education, training or experience will reasonably allow." (Id.) RSL determined that Maurer had not met her burden of showing she is physically unable to perform all material duties of the occupations of attorney, arbitrator, adjuster, investigator, consultant, or claims examiner.[14] Maurer contends RSL abused its discretion by "cherry-picking" evidence

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[12] Although the Plan provides that '[a]n Insured who is Partially Disabled will be considered Totally Disabled" (see MAU00168), that provision applies only to the "first 36 months" for which benefits are payable (see id.).

[13] In her reply brief Maurer states such "definition of disability flies in the face of decades of California law" and argues that ERISA does not preempt state laws regarding insurance contract interpretation. (Pl.'s Reply at 25.) "While ERISA's 'savings' clause exempts from preemption any law of any state which regulates insurance, state laws of insurance policy interpretation do not qualify for the saving[s] clause exception and are preempted." See McClure, 84 F.3d at 1133 (internal quotation and citation omitted).

[14] In making this determination, RSL relied on the Department of Labor's Dictionary of Occupational Titles ("DOT"). The DOT is "widely and routinely used to define 'occupations.'" Dionida v. Reliance Standard Life Ins. Co., 50 F. Supp. 2d 934, 939 n. 4 (N.D. Cal. 1999). Although Maurer contends the DOT is outdated, she provides no evidence suggesting the DOT's description of the duties of these occupations is no longer

from her medical records and not adequately crediting evidence from her treating physicians. (See Pl.'s Reply at 27.)

Conflicting medical testimony often arises in ERISA disputes. See Jordan v. Northrup Grumman Corp. Welfare Benefit Plan, 370 F.3d 869, 880 (9th Cir. 2004) (noting "conflicting reports . . . is typical of the evidence used in disability determinations"). Here, on the one hand, Dr. Campagna found Maurer to be totally physically disabled. (See MAU00691.) Conversely, Drs. Hauptman, Mahawar, Schofferman, and Birnbaum all found Maurer's physical disorders alone did not render her totally disabled. (See MAU00486, MAU00783, MAU00877, MAU00981.) Further, Dr. Hines's conclusion that Maurer's "resultant emotional and social difficulties" were "not the fundamental basis of [Maurer's] disability" (see MAU00885), implicitly concedes such "emotional difficulties" nevertheless contribute to Maurer's disability.[15]

To determine whether an administrator abused its discretion in light of conflicting testimony, a court must weigh several factors, including: (1) the existence of a conflict of interest; (2) the "quality and quantity of the medical evidence"; (3) "whether the plan administrator subjected the claimant to an in-person medical evaluation or relied instead on a paper review of the claimant's existing medical records"; (4) "whether the administrator provided its independent experts with all of the relevant evidence"; and (5) "whether the administrator considered a contrary SSA disability determination." See Montour, 588 F.3d

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accurate.

[15] Indeed , Dr. Hine's notes are replete with references to Maurer's mental condition, as exemplified in the following entries:

> October 10, 2003: "Her chief complaint is ongoing depression" (MAU00532);
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> November 3, 2003: "She is often late for places and feels this is part of her overall bad and increasing depression" (MAU00526); and
>
> September 14, 2006: "It is increasingly apparent that dynamics in the relationship at home are serving to fuel the patient's difficulty in following through with a regular routine for her overall health emotionally and physically" (MAU00865).

at 630 (internal quotation and citation omitted). Courts resolving ERISA disputes, however, need not "accord special deference to the opinions of treating physicians." Black & Decker Disability Plan v. Nord, 538 U.S. 822, 831 (2003). Nor does ERISA "impose a heightened burden of explanation on administrators" when their final determination is contrary to the opinion of a treating physician. Id. A treating physician's opinion may not be "arbitrarily" ignored, but it carries no special weight. Id. at 834.

Having weighed the above-referenced factors, the Court finds RSL did not abuse its discretion in determining Maurer was not totally disabled by reason of a physical disorder. In so finding, the Court, as discussed above, has reviewed such determination applying a moderate degree of skepticism.

First, with respect to the "quality and quantity of the medical evidence," the Court finds RSL's determination was based on medical evidence of sufficient quality and quantity. As noted, Drs. Hauptman, Schofferman, Mahawar, and Birnbaum, all board-certified specialists in areas of practice relevant to Maurer's medical condition, considered Maurer's medical record, including reported pain, medication, and physical activity,[16] and arrived, in each instance, at the conclusion that Maurer was not physically totally disabled as defined in the Plan. Dr. Schofferman conducted an IME in which he thoroughly examined Maurer's range of motion, reflexes, and sensitivity to pain, and found, "without the psychiatric elements, [Maurer] would be capable of work activity." (See MAU00981; see also MAU00977 (discussing Maurer's vocational history as attorney).) Consistent therewith, Dr. Mahawar conducted a peer review of Maurer's file and found "[Maurer] should have been capable of working in [a] sedentary occupation[,] primarily in sitting position." (See

[16] The record shows that at various times while on disability leave Maurer traveled, volunteered to lift children into Santa's lap, ice skated, swam, and regularly exercised. (See, e.g., MAU00417, MAU00449, MAU00457, MAU00521, MAU00543, MAU00568, MAU00576, MAU00577, MAU00581, MAU00865, MAU00900). Although the exercise routine was at the suggestion of Maurer's doctor and the travel and volunteering often resulted in increased pain (see, e.g., MAU00387, MAU00521, MAU00577, MAU00581), none of the above-listed activities is so different in nature from those she claims an inability to perform, specifically, an inability to "sit/stand/walk/keyboard" (see MAU01007), as to render them irrelevant to RSL's determination that Maurer could perform at least one material duty of an occupation for which she is qualified.

MAU00877.) Similarly, Dr. Birnbaum, after an IME involving flexibility and strength testing, concluded: "I do not find purely physical reasons for the patient's claim of disabling pain." (See MAU00783.)[17] Moreover, even assuming some bias on the part of Dr. Hauptman and/or Dr. Mahawar, there is no evidence of bias on the part of the other two physicians.

Further, as noted, RSL did not conduct a purely paper review of Maurer's claim. Drs. Schofferman and Birnbaum both conducted independent, "in-person medical evaluations" of Maurer before determining she was physically capable of some work activity. See Montour, 588 F.3d at 630.

Nor is there anything in the record that indicates RSL failed to provide relevant evidence to any of the independent experts, and Maurer does not contend RSL failed to do so.[18]

Next, RSL did not ignore a contrary SSA finding. Indeed, there was no contrary finding to ignore because the SSA likewise found Maurer physically capable of working.

Finally, contrary to Maurer's assertion, RSL did not arbitrarily ignore evidence from Maurer's treating physician, nor did it rely only on "cherry-picked" evidence. Rather, RSL's

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[17] Maurer argues that by concentrating on "physical reasons" for disability, Dr. Birnbaum improperly required "objective" evidence to establish the presence or absence of fibromyalgia. (See Pl.'s Reply at 12:20-21); Salaomaa v. Honda Long Term Disability Plan, No. 08-55426, 2011 WL 768070, at *10 (9th Cir. Mar. 7, 2011) (finding plan's termination of disability claim for fibromyalgia due to lack of objective evidence of condition was abuse of discretion). According to Maurer's physician Dr. Campagna, however, Maurer was not disabled from fibromyalgia, but, rather, was "completely disabled from psoriatic arthritis." (See MAU00691.) Maurer submits no authority that "psoriatic arthritis" is a condition for which objective evidence is unavailable, and, indeed, argues in her brief that the condition "causes inflammation" and "swelling," both objectively measurable symptoms. (See Pl.'s Mot. at 2 n.2.) Moreover, Dr. Birnbaum agreed Maurer's pain was "consistent with the previous diagnosis of fibromyalgia," and did not criticize that diagnosis. (See MAU00782.) When read in context, Dr. Birnbaum's reference to "physical reasons" is not a reference to objectively measurable symptoms, but to a condition not caused by or contributed to by a mental or nervous disorder.

[18] Although Dr. Schofferman noted that the medical records provided for his review were "incomplete" in that it did not contain "anatomical data in the form of x-rays or MRI scans of the neck and low back which are the dominant residual pain generators historically" (see MAU00979), Maurer does not argue that RSL possessed such records and failed to provide them to Dr. Schofferman. Indeed, the only x-rays and MRI scans referenced by the parties were taken after October 26, 2005, the date on which Dr. Schofferman submitted his report. (See MAU0701; MAU00836; MAU00892; MAU00974.)

reliance on Dr. Hines's diagnoses of "Pain Disorder with Mixed Physical and Psychological features," "Mood Disorder with General Medical Condition," and "Generalized Anxiety Disorder" (see MAU00634) was reasonable.[19] Dr. Hines's opinion in that regard was consistent with the opinions of Drs. Hauptman, Schofferman, and Birnbaum (see MAU00487, MAU00782, MAU00981), and was supported by findings reflected in his records (see, e.g., MAU00526, MAU00532, MAU00552, MAU00865). As discussed above, under a reasonable interpretation of the Mental/Nervous Limitation, RSL properly excluded these psychiatric components of Maurer's disability in determining Maurer's eligibility for continued benefits.

Although RSL did not accept Dr. Hines's opinion in full, its reasons for not doing so were made clear in its letter to Maurer. In particular, RSL concluded that the opinions of Drs. Schofferman, Hauptman, Mahawar, and Birnbaum were more credible than the opinions of Drs. Hines and Campagna because Dr. Hines's "opinion concerning [Maurer's] 'physical limitations and difficulties" [was] not supported by the results of actual objective studies and examination findings" (see MAU00663 (citing Dr. Birnbaum's conclusion)) and "the consensus of the independent physicians is that in the absence of [Maurer's] significant psychiatric component, [Maurer's] physical status would not preclude work function" (see MAU00667); see also Jordan, 370 F.3d at 880 (holding "reasonable people can disagree on whether [plaintiff] was 'disabled' for purposes of the ERISA plan[;] [b]ecause that is so, the administrator cannot be characterized as acting arbitrarily in taking the view that [plaintiff] was not"). Such determinations, i.e., reasoned determinations based on the opinions of doctors who disagree with a treating physician, do not constitute inappropriate cherry-picking. See Black & Decker, 538 U.S. at 831, 834 (holding treating physician's

[19] Maurer argues the above-described diagnoses was contained in an "office note prepared by a nurse practitioner." (See Pl.'s Reply at 7 n.3.) Although the note is signed by "Lisa Elvin, RN, NP," and not by Dr. Hines (see MAU00635), such record also states Elvin was "Medically Supervised" by Dr. Hines (see id.). Maurer fails to show why RSL could not reasonably rely on such record as an accurate statement of Dr. Hine's diagnoses, particularly where Dr. Hines did not disavow such diagnoses in his November 30, 2006 letter in support of Maurer's objection to RSL's denial of benefits.

opinion may not be ignored "arbitrarily," but is not entitled to "special deference").

CONCLUSION

For the foregoing reasons, the Court finds RSL's termination of Maurer's benefits was not an abuse of discretion.

Accordingly, RSL's Cross-Motion for Judgment is GRANTED and Maurer's Motion for Judgment is hereby DENIED.

IT IS SO ORDERED.

Dated: March 31, 2011

MAXINE M. CHESNEY
United States District Judge