MacDonald v. Anthem Life Insurance Company Doc. 58 Att. 1

Plaintiff is disabled from Plaintiff's job and any other work, and Dr. Aliwalas does not expect a fundamental change in the future.

49. Dr. John H. Kalosis, Jr., American Medic of Charlotte County, PA, submitted medical records of an evaluation dated July 26, 2010, which states Dr. Kalosis' assessment of CRPS and Chiari malformation, and associated stress, anxiety and depression.

50. On August 4, 2010, Plaintiff was evaluated by Dr. Saeed Shahzad on referral from Dr. Kalosis, for left arm pain, and complex regional pain syndrome. Dr. Shahzad's report states:

> HISTORY OF PRESENT ILLNESS:
>
> ......The patient states her left arm has pain, she does not use it. She is disabled because of the pain and weakness of that arm. The patient states if she tries to use that arm it swells up, becomes red and very painful. The patient is on disability now. The patient denies pain in right upper or both lower extremities. The patient states once in a while she does feel some pain in neck. She is status post cervical fusion many years ago. The patient denies any difficulty with gait or balance. The patient denies any difficulty with sleep. The patient denies any dysarthria, diplopia or dysphagia.
>
> ASSESSMENT AND PLAN:
>
> ......
>
> Her left arm pain is under good control with medications, including amitriptyline, Flexeril, Xanax and hydrocodone p.r.n. Her headaches have improved. We will continue her Topamax 75 mg daily for prevention of headache episodes. The patient can continue to take her amitriptyline 25 mg one tablet at night. I will followup and see patient in three months.

Dr. Shah submitted an APS dated February 3, 2011, reflecting his opinion that Plaintiff is totally disabled from Plaintiff's job and any other work, and Dr. Shah does not expect

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a fundamental or marked change in the future. Dr. Shah treated Plaintiff on August 4, 2010, and November 22, 2010, with a next appointment scheduled on February 22, 2011. Dr. Shah prescribed medication to treat Plaintiff: amitriptyline, Flexeril, Xanax and hydrocodone. Dr. Shah states a DOT Class 5 physical impairment: severe limitation of functional capacity; incapable of minimum (sedentary) activity (75-100%). Dr. Shah further states a DOT Class 3 mental/nervous impairment: Patient is able to engage in only limited stress situations and engage in only limited interpersonal relations (moderate limitations), defining "stress" as "under stress from left arm pain". Dr. Shah indicates Plaintiff is unable to work from August 4, 2010 onward because of continuing pain and medication. As to Question 9, "Work Limitations," Dr. Shah indicates only: Other: Patient unable to work. Dr. Shah indicates that Plaintiff is not suitable for rehabilitation services, and did not recommend vocational counseling or retraining.

51. On April 5, 2011, Plaintiff saw Dr. Amy Mellor, Neurology Associates of Charlotte County, for a second opinion as to Complex Regional Pain Syndrome. Dr. Mellor's records state "current pain control satisfactory." Dr. Mellor observed edema in Plaintiff's left upper extremity. Dr. Mellor prescribed medication, and scheduled a follow up visit in three months. Plaintiff returned on July 12, 2011.

52. Dr. Mellor submitted an APS on September 16, 2011, which reflects treatment with medication for CRPS and depression/anxiety. Dr. Mellor states Plaintiff's Physical Impairment as a Class 5 DOT impairment: Severe limitation of functional capacity; incapable of minimum (sedentary) activity (75-100%). Dr. Mellor states a Class 3 mental/nervous impairment: Patient is able to engage in only limited stress situations and engage in only limited interpersonal relations (marked limitations), defining "stress" as "depression, anxiety over disability." Dr. Mellor states that Plaintiff is unable to perform Plaintiff's job or any other work, and Dr. Mellor does not expect a fundamental or marked change in the future. Dr. Mellor states Plaintiff is unable to

work from April 4, 2011 onward due to continuing pain. As to "work limitations," Dr. Mellor states only: Other: Unable to work. Dr. Mellor indicates Plaintiff is not a candidate for rehabilitation services, and does not recommend vocational counseling and/or retraining.

53. On August 29, 2011, Anthem Life advised of Plaintiff MacDonald that under the terms of Plan, beyond 24 months Plaintiff must be disabled not only from her own occupation but also from any occupation, and notified Plaintiff of the transition date was November 22, 2011. Defendant requested a completed Attending Physician Statement, a completed Claimant Questionnaire form, Medical records from all treating physicians from December 1, 2010 to present, a signed Authorization for Release of Information form, and a current resume or detailed work history summary. Plaintiff responded to Defendant's request by providing the requested documents.

54. On September 30, 2011, Beth Szopinski, R.N., noted that the current available clinical records did not support the presence of a functional impairment:

> From at least 2010 there has been no objective assessment of left arm. No testing to confirm dx. There is no assessment of skin, no grip strength, no assessment of color, atrophy, or changes in hair and nail growth. EE states she is managing w/her pain meds. Per EE after activity her arms swells and gets red however there is no mention of any of these findings by any of the providers. EE performs household activities. EE is noted to have depression and anxiety/stress however there is no referral or treatment w/mental health provider. Available clinical does not provide objective assessment of deficit. There is subjective comment and lack of clinical assessment of left upper extremity. DCM might consider contact Dr. Mellor to ask what the objective assessment is and to obtain the actual notes not only the APS slips to see if an objective assessment can be provided. If no objective assessment documented and MD cannot verbalize objective findings, what is she predicating inability on?

55. On September 30, 2011, Anthem Life requested a prescription/release for a Functional Capacity Evaluation from Dr. Mellor.

56. Anthem Life referred Plaintiff for a Functional Capacity Evaluation (FCE), which was conducted on 10/18/2011 to determine Plaintiff's general abilities and limitations. The FCE was performed by Gabriel A. Weber, P.T/Cert. MDT.

57. The only listed defects in the FCE were "limited range of motion and strength in the left arm", "guarded left arm and hand movements", and "decreased left arm swing during ambulation."

58. On October 20, 2011, Nancy O'Reilly reviewed the FCE, but noted no handling or fingering was indicated in the testing performed; she requested an update from the provider.

59. On October 21, 2011, the provider responded to the request, pointing out information on pages 3 and 9, and further providing a corrected copy of the report.

60. On October 25, 2011, the provider responded that the information requested was not tested and not included in the FCE protocol.

61. Plaintiff was not rescheduled for additional testing as to handling and fingering.

62. On October 27, 2011, Nancy O'Reilly noted that the FCE states "light work" capacity, but the "own occupation" is "sedentary."

63. Nancy O'Reilly, M.S., CRC, CCM performed a Transferable Skills Assessment (TSA) and Labor Market Survey (LMS) on October 27, 2011. The TSA

states the following transferable skills:

> The ability to understand instructions and underlying concepts, and to reason and make judgments.
> The ability to understand the meaning of words and to use them effectively, comprehend language, understand the relationship between words and the understanding of words and understand the meaning of whole sentences.
> The ability to understand simple instructions.
> The ability to learn simple processes.
> The ability to perform the same task over and over again.
> The ability to set and meet standards.
> The ability for simple verbal and written communication.
> The ability to use a telephone.
> The ability and knowledge of how to observe and document observations.
> The ability to work effectively as a team member.

The TSA states:

> The file review and transferable skills assessment has demonstrated the presence of physical and mental capacity which would allow Mrs. MacDonald to perform other occupations as they exist in the national and her local economy.

In the TSA, Nancy O'Reilly identifies five examples of occupations that Plaintiff had the potential to perform, based on her education, work history and physical capacity. Two of those examples are classified as sedentary, and three are classified as light work:

Information Clerk

Hotel Clerk

Weight Reduction Specialist

Tanning Salon Attendant

Tourist Information Assistant

64. On November 8, 2011, Defendant Anthem Life determined that Plaintiff MacDonald was not disabled from any gainful occupation, and therefore LTD benefits were terminated effective November 22, 2011.

65. Plaintiff MacDonald appealed the decision terminating her claim in a letter of March 21, 2012.

66. Anthem Life acknowledged receipt of Plaintiff's request for review on March 30, 2012.

67. On appeal, Anthem Life scheduled an IME to be performed by Dr. Stuart B. Krost; Dr. Krost completed a Physical Capacities Assessment (PCA) form dated May 24, 2012, and furnished a separate IME report dated May 4, 2012.

68. In a letter of July 9, 2012, Defendant upheld its decision to terminate Plaintiff's benefits. Anthem Life acknowledged Plaintiff's functional restrictions and limitations as supported by the available clinical evidence:

> Capacity to perform light duty work as defined by the DOT
> Limited left upper extremity use
> No lifting more than 20 pounds on an occasional basis and 10 pounds on a repetitive basis with the right arm
> Avoid repetitive tasks above the shoulder level
> No restrictions for standing or sitting or use of foot controls.

69. The DOT defines light work:

> Light Work - exerting up to 20 pounds of force occasionally, and/or up to 10 pounds of force frequently, and/or a negligible amount of force constantly (Constantly: activity or condition exists 2/3 or more of the time) to move objects. Physical demand requirements are in excess of those for Sedentary Work. Even though weight lifted may be only a negligible

> amount, a job should be rated Light Work: (1) when it requires walking or standing to a significant degree; or (2) when it requires sitting most of the time but entails pushing and/or pulling of arm or leg controls; and/or (3) when the job requires working at a production rate pace entailing constant pushing and/or pulling of materials even though the weight of those materials is negligible. NOTE: The constant stress and strain of maintaining a production rate pace, especially in an industrial setting, can be and is physically demanding of a worker even though the amount of force exerted is negligible.

70. On appeal, Plaintiff provided additional medical information, photographs of the severe swelling in her left hand, and articles related to CRPS.

71. In the IME report, Dr. Stuart B. Krost states:

> IMPRESSION:
>
> ...... The patient has progressively developed reactive myofascial spasm on the cervical region related to the left. The patient has clinical signs and symptoms of a reflex sympathetic dystrophy of the left upper extremity. The patient is status post cervical fusion with post-procedural improvement. My observation of the claimant were consistent with the physical examination and medical records.
>
> Patient has significant limitations of the left arm for lifting and carrying objects or fine coordination tasks. She has capacity to work light duty tasks based on FCE. She would best be fitted for a job that limits left upper extremity use. This would limit her exacerbations and missed days of work for medical care. I would recommend no lifting more than 20 lbs. on a occasional basis and 10 lbs. on a repetitive basis for the right arm (dominant arm). There are no restrictions for standing or sitting or use of foot controls. I would recommend avoiding repetitive tasks above the shoulder level. Within these restrictions she can return to an eight-hour workday.

Dr. Krost's IME Report incorporates the FCE dated October 18, 2011.

___ Dr. Krost's Physical Capacities Assessment of May 24, 2012 states:

> **Never** use left hand to handle (seizing, holding, grasping, or turning with the hands); **never** use left hand to finger (picking, pinching, or otherwise working primarily with fingers; also includes keyboarding); **never** use left hand to feel (noting attributes of objects by touching with skin); Could not use left hand to perform a simple grasp, firm grasp or fine manipulation.

In the PCA, Dr. Krost estimates Plaintiff's abilities as to lifting and carrying, climbing, balance, stooping, kneeling, crouching, crawling, immediate reach, reach above shoulders, handling, fingering and feeling. Dr. Krost states that Plaintiff can perform repetitive actions with right upper extremity only; Plaintiff can "simple grasp" with her right hand, but not left hand, can "firm grasp" with her right hand, but not left hand, and can perform "fine manipulation" with her right hand, but not left hand. Dr. Krost further states Plaintiff cannot return to her former occupation, but can return to work full-time according to the restrictions defined above [in the PCA form].

72. Dr. Krost specified different restrictions in the PCA compared with the restrictions and limitations previously used to perform the October 27, 2011 TSA. That TSA was based only on the following restrictions:

> Limited range of motion and strength in left arm
> Guarded left arm and hand movements
> Decreased left arm swing during ambulation

73. On May 22, 2014, Kelly Tillotson, Sr. Appeals Specialist, Custom Disability Solutions, recommended to Kristie Woods, Quality Management Specialist/Appeal Coordinator, that Plaintiff be referred to independent vocational specialist for TSA/LMS, since Wellpoint already completed a TSA/LMS.

74. On May 24, 2012, Kristie Woods referred Plaintiff's appeal Wright Rehabilitation Services for an "any occupation" analysis based on the restrictions/limitations in the IME report of Dr. Krost.

75. A new TSA was never performed; on June 15, 2012, Wright Rehabilitation Services performed only a second LMS, based on the restrictions in the FCE of October 18, 2011. The LMS states:

> The following listing is not intended to be all-inclusive nor is it put forth that any individual listing for the identified occupations would be appropriate for Mrs. MacDonald. The following are examples of occupations that Mrs. MacDonald has the potential to perform Based on her education, work history and physical capacity. The identified occupations are performed at the sedentary physical demand level can be expected to exist within approximately a 50-mile radius of Mrs. MacDonald's home in North Port, FL.

76. Information Clerk positions were not found in the targeted area.

77. The position of Hotel Clerk described in the second LMS includes tasks that may be done by computer, or may be done manually. The 4Points Sheraton lists "basic computer skills/mouse" among its requirements.

78. The position of Weight Reduction Specialist includes "entering data on client record" but does not specify by what means.

79. The position of Tanning Salon Attendant includes the requirement of "inputting computer commands for tanning."

80. The position of Tourist Information Assistant requires customer service, light clerical and phone tasks. "Light clerical" tasks such as composing letters in response to

inquiries, and maintaining personnel, license-sales and other records are tasks that may or may not involve computer use.

III. Discussion

A. Standard of Review

The parties disagree as to the standard of review that applies to Defendant Anthem Life's decision to deny LTD benefits to Plaintiff MacDonald under the "any occupation" definition of disability.

Plaintiff MacDonald admits that Defendant Anthem Life has discretionary authority to determine eligibility for benefits and to interpret the terms and provisions of the policy. Plaintiff MacDonald further argues that the final decision to deny LTD benefits under the "any occupation" provision was made by Kristie Y. Woods, who is employed by Wellpoint, the parent company of Defendant Anthem Life. Anderson v. Unum Life Insurance Company of America, 414 F.Supp.2d 1079 (M.D. Ala. 2006)(de novo standard applied; final benefits decision made by Unum, a subsidiary of UnumProvident).

Defendant Anthem Life responds that an entity vested with discretionary authority may delegate that authority to another entity without losing discretion. Aschermann v. Aetna Life Ins. Co., 689 F.3d 726, 728-30 (7th Cir. 2012); Zurndorfer v. Unum Life Ins. of America, 543 F.Supp.2d 242, 256-57 (S.D. N.Y. 2008). Defendant argues that Kristie Y. Woods was an authorized agent of Anthem Life, and was delegated discretionary authority to make the final benefit decision. Defendant argues that there is evidence that Kristie Y. Woods worked for and on behalf of Anthem Life, as all correspondence to Plaintiff is on Anthem Life letterhead, including the final

determination letter.

The Court finds that the final benefits decision was made by an authorized agent of Defendant Anthem Life. The insurance policy conferred discretionary authority on Anthem Life to determine eligibility for benefits, and to construe the terms of the policy to make a benefits decision. The Court will therefore review the decision of the administrator under the arbitrary and capricious standard of review.

B. Plaintiff's Claim for LTD Benefits

Under ERISA, the plaintiff has the burden of showing she is entitled to benefits under the terms of the Plan. Horton v. Reliance Standard Life Ins. Co., 141 F.3d 1038, 1040 (11th Cir. 1998). Plaintiff MacDonald applied for LTD benefits on November 22, 2009; Defendant Anthem Life granted LTD benefits under the "own occupation" definition of disability. At the end of the 24-month "own occupation" period, Defendant Anthem Life terminated Plaintiff's claim for continued LTD benefits. Plaintiff MacDonald appealed the decision; after review by a person who was not involved in the decision to deny LTD benefits under the "any occupation" definition, Defendant Anthem Life again denied LTD benefits. The denial was based on a functional capacity evaluation, an independent medical examination, a transferrable skills analysis, and a labor market survey. Defendant Anthem Life determined that Plaintiff MacDonald was capable of performing other "gainful occupations" and therefore no longer met the Policy's definition of disability.

Indicia of arbitrary and capricious decision may include a lack of substantial evidence, procedural irregularities, a mistake of law, bad faith and conflict of interest by the fiduciary. Sandoval v. Aetna Life and Cas. Ins. Co., 967 F.2d 377 (10th Cir. 1992); Rekstad v. U.S. Bancorp, 451 F.3d 1114, 1119-20 (10th Cir. 2006); Adams v. SBC Communications, Inc., 200 Fed. Appx. 766, 771-774 (10th Cir. 2006).

A pertinent conflict of interest exists where the ERISA plan administrator both makes eligibility decisions and pays awarded benefits out of its own funds. Metro. Life Ins. Co. v. Glenn, 554 U.S. 105 (2008). Where a conflict exists and a court must reach step six, "the burden remains on the plaintiff to show the decision was arbitrary; it is not the defendant's burden to prove its decision was not tainted by self-interest." Doyle v. Liberty Life Assurance Co., 542 F.3d 1352,1360 (11th Cir. 2008). "The effect that a conflict of interest will have...will vary according to the severity of the conflict and the nature of the case: [the Court] look[s] to the conflict's 'inherent or case-specific importance.'" Blankenship v. Metropolitan Life Ins. Co., 644 F.3d 1350, 1355 (11th Cir. 2011)(citing Glenn, 554 U.S. at 118-119).

Even where a conflict of interest exists, courts still "owe deference" to the plan administrator's "discretionary decision-making" as a whole. Doyle, 542 F.3d at 1363; see also Glenn, 554 U.S. 1210 (Roberts, C.J., concurring in part and concurring in the judgment) (noting the "deference owed to plan administrators when the plan vests discretion in them").

1. Substantial Evidence

a. Vocational Assessment

Plaintiff MacDonald was granted LTD benefits based on Plaintiff's inability to perform the duties of her own occupation; after her accident, Plaintiff was treated for complex regional pain syndrome and impingement in her left arm. Plaintiff's work as a medical claims processor included constant keyboarding, which Plaintiff could not do.

After twenty-four months, under the Policy, the definition of disability becomes disability from performing "any occupation" rather than "own occupation." Defendant Anthem Life argues that Defendant accepted the limitations identified in two current

medical examinations, and obtained detailed vocational analyses which confirmed the existence of several jobs that Plaintiff could perform within those limitations. The denial of LTD benefits under the "any occupation" definition of disability was based on the FCE, the TSA, the LMS and the IME, which provide a reasonable basis for Anthem Life's conclusion that Plaintiff could perform other gainful occupations. Defendant argues that Plaintiff did not provide updated medical evidence to support her claim, the most updated medical evidence supported Plaintiff's ability to perform up to a light level of work (in excess of the sedentary level of Plaintiff's own occupation).

Courts have recognized that plan administrators routinely rely on FCE's. Townsend v. Delta Family-Care Disability and Survivorship Plan, 295 Fed. Appx 971 (11th Cir. 2008). A functional capacity evaluation is the best means of assessing an individual's functional level. Lake v. Hartford Life and Acc. Ins. Co., 320 F.Supp.2d 1240, 1249 (M.D. Fla. 2004). The FCE which shows that Plaintiff MacDonald can perform light work with some restrictions supports Defendant Anthem Life's determination that Plaintiff was not disabled from any gainful work. See Muzyka v. UNUM Life Ins. Co. of Am., 195 Fed. Appx. 904 (11th Cir. 2006).

Defendant Anthem Life argues that Dr. Krost's findings in the IME and PCA are consistent with the FCE findings as to Plaintiff's ability to perform light work, and Defendant Anthem Life obtained a more in-depth vocational assessment on appeal. Rehabilitation Counselor Jane Lynn Veal, LA, CRC, spoke with fifteen employers within fifty miles of Plaintiff's home to confirm that, with her restrictions, Plaintiff could perform the five occupations identified, that jobs existed in the targeted area, and that the wages exceed that of the target wage for "gainful" employment under the Policy.

Defendant Anthem Life argues that the medical and vocational evidence on which Defendant relied was undisputed; Anthem Life's decision represents an informed judgment, and articulates an explanation consistent with the relevant facts surrounding

Plaintiff's claim for benefits. Defendant argues that Defendant's decision is reasonable and should be upheld.

Vocational evidence, such as the TSA and LMS, is an "effective method of reaching an informed decision as to a claimant's work capability." Richey v. Hartford Life & Accident Insurance Company, 608 F.Supp.2d 1306 (M.D. Fla. 2009). A claims administrator reviewing benefits eligibility under an "any occupation" standard is not required to "collect vocation evidence" in order to "prove there are available occupations for the claimant." Archible v. Metropolitan Life Ins. Co., 85 F.Supp.2d 1203, 1220 n.13 (S.D. Ala. 2000). The burden is on the claimant to provide the administrator with proof of continued disability.

b. Opinions of Treating Physicians

Defendant Anthem Life argues the opinions of Plaintiff's treating physicians were outdated, inconsistent with the rest of the medical evidence, and did not address Plaintiff's current level of functioning. Defendant Anthem argues that, where the opinion of the treating physician is conclusory, and the medical consultant provided a detailed explanation of why the plaintiff was capable of work, the reliance of the claim administrator on the opinion of the medical consultant was reasonable and correct. Blankenship v. Metropolitan Life Ins. Co., 644 F.3d 1350, 1356 (11th Cir. 2011)(where plaintiff's own doctors offer different medical opinions than independent medical consultants, plan administrator may give different weight to those opinions without acting arbitrarily and capriciously); Gipson v. Administrative Committee of Delta Air Lines, Inc.., 350 Fed. Appx. 389, 395 11th Cir. 2009); Herring v. Aetna Life Ins. Co., 2013 WL 1798263, *2-3 (11th Cir. 2013)(It is reasonable for an administrator to rely on the findings of two reviewing physicians in conjunction with an IME and vocational report despite the treating physician's opinion that plaintiff was disabled).

To the extent that other evidence in the record suggests Plaintiff is disabled, the plan administrator is entitled to weigh the evidence and resolve conflicting evidence about the claimant's disability. Townsend v. Delta Family-Care Disability and Survivorship Plan, 295 Fed. Appx. 971, 977 (11th Cir. 2008).

c. Consideration of Award of Social Security Disability Benefits

Defendant Anthem Life argues that the approval of Social Security benefits may be considered, but is not conclusive on whether a claimant is also disabled under the terms of an ERISA plan. Ray v. Sun Life & Health Ins. Co., 443 Fed. Appx. 529, 533 (11th Cir. 2011). Social Security decisions are not binding on ERISA plan administrators, and are just one factor to consider in evaluating an ERISA disability determination. Paramore v. Delta Air Lines. Inc., 129 F.3d 1446, 1452 n.5 (11th Cir. 1997). Social Security decisions are determined by a uniform set of federal criteria, while benefits under an ERISA plan is controlled by the terms of the Plan, and the definition of ERISA disability usually differs from the SSA definition. Black and Decker Disability Plan v. Nord, 538 U.S. 822, 833 (2003).

In the July 9, 2012 determination letter, Defendant Anthem Life explained that entitlement to Social Security Disability Income benefits is based on a different set of guidelines, and often different medical evidence, which can lead to differing conclusions.

2. Procedural Irregularities

a. Selective Review of Records

Plaintiff Macdonald argues that, in her file review, Nurse Szopinski ignored the medical records of Dr. Mellor, which include objective evidence of complex regional

pain syndrome, edema and decreased range of motion, as of July, 2011.

Plaintiff argues that when Dr. Krost completed a PCA, Dr. Krost provided a new set of limitations; therefore Defendant Anthem Life should have referred the file for a new TSA to determine whether Plaintiff could perform the previously identified occupations or any other occupations. Plaintiff argues that this case is just like Rementer v. Metropolitan Life Insurance Company, 2006 WL 66721, *3 (M.D. Fla. January 10, 2006); see also Williams v. United of Omaha Life Insurance Co., 2013 WL 5519525, *19 (N.D. Ala. September 30, 2013). Plaintiff MacDonald requests that the Court find that the absence of supporting vocational analysis renders the decision to deny benefits under the "any occupation" definition arbitrary and capricious.

Plaintiff MacDonald argues that, without the use of her left hand, Plaintiff could not perform the five occupations identified in the claim file, which are defined by the DOT, the Occupational Access System (OASYS), the U.S. Department of Labor's O*Net, and America's Career InfoNet. Plaintiff argues that three of the occupations require computer usage, and the other two require extensive use of hands to clean and maintain equipment, physically assist customers, carry baggage, and perform other such tasks.

Defendant Anthem Life responds that Dr. Krost explicitly found that Plaintiff could perform full-time light work despite some limitations in the use of her left arm. During the FCE, Plaintiff MacDonald admitted to some use of her left arm, despite some limitations in use. Dr. Krost's PCA contains more specific limitations, but Dr. Krost does not opine that Plaintiff MacDonald could not use her left arm at all. Dr. Krost states that Plaintiff needed to limit the use of her left arm, and that Plaintiff could work full-time at a light level with that limitation. Dr. Krost's clinical findings reflect restrictions, not a complete inability to use the left arm.

In light of the consistency of Dr. Krost's limitations and clinical findings with the FCE, the Court finds it was reasonable for Defendant Anthem Life to rely on the jobs identified in the TSA. Plaintiff did not submit contrary vocational evidence and did not contest the jobs identified in the TSA during her appeal. Plaintiff MacDonald did not assert Plaintiff could not use her left arm at all, and did not provide medical records supporting that extreme limitation.

Other courts have held that the consideration of vocational evidence is not necessary where the evidence in the administrative record supports the conclusion that the claimant does not have a disability which prevents her from performing some identifiable job. Hufford v. Harris Corp., 322 F.Supp.2d 1345, 1359 (M.D. Fla. 2004)(citing Schindler v. Metro. Life Ins. Co., 141 F.Supp.2d 1073, 1082 (M.D. Fla. 2001)). When, as here, the evidence shows that a claimant is capable of light and sedentary work, and the claimant's previous employment was not highly skilled or technical, the plan administrator need not conduct a vocational assessment or consider vocational evidence to determine that a claimant is not disabled under the "any occupation" standard.

3. Conflict of interest

Defendant Anthem Life argues that, in considering whether a structural conflict of interest affected Defendant's's benefit determination, the burden remains on Plaintiff to show the decision is arbitrary; it is not Defendant's burden to prove its decision is not tainted by its self interest. Defendant Anthem Life argues that, in this case, the decision to terminate LTD benefits under the "any occupation" definition was supported by corroborating medical and vocational reviews. Plaintiff has not marshaled any evidence that the structural conflict affected the claim decision.

IV. Conclusions

A. Defendant's Motion for Summary Judgment

Wellpoint delegated discretion to Anthem Life to determine eligibility for LTD benefits, and to determine claims. The Court concludes that Defendant's decision to deny LTD benefits under the "any occupation" definition of disability to Plaintiff MacDonald was not "wrong"; if the decision is found to be "wrong," the decision to deny further LTD benefits was reasonable. The Court therefore grants Defendant's Motion for Summary Judgment.

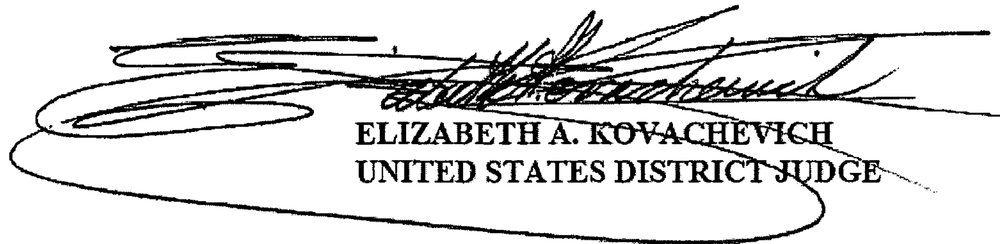
B. Plaintiff's Motion for Summary Judgment

In determining the standard of review, the Court examined the Plan documents, and found that Wellpoint delegated discretion to Defendant Anthem Life. The Court has concluded that Anthem Life's decision to deny LTD benefits to Plaintiff MacDonald was not wrong. The Court therefore denies Plaintiff's Motion for Summary Judgment. Accordingly, it is

ORDERED that Defendant's Motion for Summary Judgment (Dkt. 35) is **granted**; Plaintiff's Motion for Summary Judgment (Dkt. 39) is **denied**. The Clerk of Court shall enter a final judgment in favor of Defendant Anthem Life Insurance Company and against Plaintiff Barbara J. MacDonald, and close this case.

Case No. 8:12-CV-2473-T-17TBM

DONE and ORDERED in Chambers, in Tampa, Florida on this 26th day of September, 2014.



ELIZABETH A. KOVACHEVICH
UNITED STATES DISTRICT JUDGE

Copies to:
All parties and counsel of record