

II. BACKGROUND

A. Plaintiff's Occupation and ERISA Plan

Caesar is fifty-six year old high school graduate with some college education. She is a former employee of Allstate where she worked as a claims adjuster, rising to the position of Senior Staff Claim Representative. Her primary job responsibilities included handling property settlement claims. (HLI00054; HLI00444)

As an employee of Allstate, Caesar was eligible to apply for LTD benefits under a welfare benefit plan issued by Hartford and governed by ERISA (HLI00848-874). The Hartford policy (the "Policy"), Policy Number GLT83123837, defines "Disability" to mean that "during the Elimination Period and for the next 24 months" the insured is "prevented...from performing one or more of the Essential Duties of [the insured's]...Occupation."(HLI00797; HLI00863). The insured's "Occupation" is defined as the "occupation as it is recognized in the general workplace." "Occupation" is not limited to the specific job performed for a specific employer at a specific location. (HL00866-867)

After this 24-month period, the insured must be prevented from performing the "Essential Duties" of "Any Occupation" to be recognized as "Disabled" and to continue to receive LTD benefits under the Policy. The Policy defines "Any Occupation" to be one for which the insured is qualified "by education, training or experience, and that has any earning potential greater than an amount equal to the lesser of the product of your Indexed Pre-disability Earnings and the Benefit Percentage and the Maximum Monthly Benefit shown in the Schedule of Insurance." (HLI00863)

B. Plaintiff's Disability and Application for Benefits

Though Caesar has suffered from ongoing back pain throughout her adult life, it was spontaneous pain in her right leg that ultimately led her to stop working on September 9, 2003. (HLI00444; HLI00805) An MRI revealed Caesar was suffering from a large extruded disc fragment. She underwent surgery in October 2003 to relieve her right leg pain through lumbar decompression. Neurologist Dr. Christopher Furey performed the surgery. (HLI00840-841; HLI00809)

Caesar applied for LTD benefits on December 29, 2003. (HLI00818-826) She was approved to receive LTD benefits on February 4, 2004 with benefits becoming effective on January 14, 2004, meaning the LTD benefits would expire on January 14, 2006. On the expiration date, Caesar would be required to meet the "Any Occupation" standard in order to continue to receive benefits. (HLI00803) Caesar included as part of her application for LTD benefits an Attending Physician's Statement ("APS") completed by Dr. Furey on December 30, 2003, in which he indicated Caesar would be "totally disabled" for an additional three months. (HLI00830-831)

C. Continued Medical Treatment and Benefits

Caesar continued to seek medical attention from Dr. Furey who found during a March 4, 2004 visit that she "certainly continues disabled." (HLI00767) On May 6, 2004, Dr. Furey observed that Caesar continued experiencing "diffuse low back pain as well as new onset

of radiating right leg pain” and recommended an MRI, though he made no specific determination regarding her disability status. (HLI00768) On May 27, 2004, after reviewing Caesar’s MRI, Dr. Furey concluded that she had a “recurrent disk herniation,” that she had “stopped making significant progress,” and recommended a surgery to revise the disk. (HLI00769)

This second surgery took place in September 2004. (HLI00702) Following up to this surgery, Dr. Furey reported on March 16, 2005 that Caesar was having a “moderate amount of activity related back pain” and “no significant leg pain.” Caesar visited Dr. Furey after having undergone a CT scan which revealed her leg was better than before the surgery, but her back continued to bother her. Additionally, he noted that “she continues to remain disabled” and that “it is unlikely she will be able to return to work.”

(HLI00657)

In July 2005, Hartford began the review process to determine whether Caesar would be eligible to continue receiving LTD benefits under the “Any Occupation” standard after the initial 24-month benefits period expired. (HLI00749-750/90-91) Dr. Furey again completed an APS on August 19, 2005 in which he reported that Caesar could stand, sit, and walk for only 30 minutes at a time for no more than 1-2 hours per day. (HLI00725-728) Additionally, Dr. Furey commented that Caesar was “totally disabled permanently.” (HLI00728) As a result of this evaluation, on December 14, 2005, Hartford approved Caesar to continue receiving LTD benefits until she no longer met the “Any Occupation” disability standard. Hartford indicated that it would periodically request updates from Caesar to confirm her disability status. (HLI00695-696)

Caesar visited Dr. Furey again on December 29, 2005, when he found she had

“baseline chronic back pain,” but was, “much improved from prior to surgery.”

Additionally, Dr. Furey found that her strength was intact. (HLI00655) In a Physical Capacities

Evaluation (“PCE”) completed on August 28, 2006, Dr. Furey concluded that Caesar was capable

of sitting for 1-2 hours each day for a total of 4-6 hours, standing for 1 hour for a total of 4-6

hours, and walking for 1 hour, for a total of 4 hours. Dr. Furey concluded that Caesar was

“permanently disabled” in the evaluation due to “chronic pain and limited motion.”

(HLI00673-675)

By February 2007, Caesar had begun seeing Dr. David Brandt, a primary care physician, who completed an APS and PCE in which he declared her disability from lumbar spine stenosis

to be “lifetime-permanent.” In addition, he found that she could not stand or walk in a workplace

environment, but she could sit for two hours at a time, though he did not indicate how many

hours total of sitting she could tolerate in the workplace. (HLI00649) Dr. Brandt did say,

however, that generally Caesar could stand for 15 minutes every half-hour and walk for 20 feet

at a time. Dr. Brandt opined that she could neither stand nor walk when the questionnaire

specifically asked about her capacity in the workplace. He also commented that she could

“frequently” (34-67% of the workday) employ her gross motor, fine motor, and sensing skills.

(HLI00651) Based on this evaluation, a Hartford claim administrator decided to continue

Caesar’s LTD benefits. (HLI00032-33)

Dr. Brandt completed another APS on August 23, 2007 in which he determined that

Caesar was capable of sitting for one hour at a time for two hours per day total and that she

had no ability to stand or to walk in the workplace environment. He also found she could

“occasionally” (1-33% of the workday) lift between 1-10 pounds maximum, handle items,

or reach above the shoulder or at the desk level. (HLI00638) Dr. Brandt predicted that she would “never” participate in vocational rehabilitation services and that the restrictions he identified would last Caesar’s “lifetime.” (HLI00638)

On June 25, 2007, Caesar sustained an injury to her left hand that also required medical attention. She reported experiencing decreased sensation as a result of the injury and having diffuse numbness in her hands prior to this injury. Dr. Raymond Wurapa diagnosed this injury as a “first web space laceration” that did not result in any “significant functional deficits.” (HLI00627) He assessed that her hand should heal on its own, but acknowledged that there could be possible neuropathic complications due to her diabetes, a condition from which she has suffered for some time. (HLI00628) On August 3, 2007, Dr. David Pietro performed an electromyographic examination (“EMG”) on Caesar that was normal and a nerve conduction study that revealed she had bilateral carpal tunnel syndrome, which was mild in her right hand, but moderately severe in her left. (HLI00629-630)

In addition to LTD benefits from Hartford, Caesar also began receiving Social Security benefits in March 2004 due to her disability. Social Security paid Caesar \$12,180.00 to cover the benefits she should have received from March 2004 until September 2004. From then on, she received \$1,740.00 per month in Social Security benefits. (HLI00787) Caesar sent two faxes in August 2005 and January 2006 to inform Hartford of these additional benefits. (HLI00691; HLI00753) Caesar repaid \$7800 to Hartford Insurance on December 9, 2004 and set up monthly payments of \$307.50 withheld from her LTD benefits to adjust for her newly received Social Security payments.

D. Hartford's Independent Review of Caesar's Medical Status and Employability

On October 19, 2007, a Hartford claims adjuster contacted Dr. Brandt, Dr. Pietro, and Dr. Wurapa regarding Caesar's current functionality in terms of her ability to perform under two sets of restrictions and limitations, each posing two levels of desk work Caesar might be able to perform. (HLI00028) Dr. Pietro had no opinion because he had only performed diagnostic testing on Caesar. (HLI00586-587) Dr. Wurapa opined that Caesar could work at either level of restriction Hartford presented. (HLI00582) Dr. Brandt amended the document to reflect greater restrictions commensurate with his more dire opinion of Caesar's disability, given her development of "severely symptomatic bilateral carpal tunnel syndrome." He opined that she was capable of sitting for no more than 30 minutes at a time without getting up and sitting at a table with her arms supported for no more than 30 minutes per day. (HLI00583-584)

Based on these evaluations, Hartford contacted a vocational specialist to determine whether Caesar was capable of returning to work. The specialist noted, after a review of Caesar's record, that her ability to work would turn on the condition of her hand. The specialist further explained that even if Caesar's back would allow her to sit in a sedentary position, limited hand ability as a result of carpal tunnel would impede her from doing work while in that position. (HLI00027)

Hartford then hired an independent file review contractor, Managing Claims Managing Care ("MCMC") to review Caesar's file and make a final determination about her disability status. Dr. Joanne Werntz, an orthopaedic hand surgeon, prepared the review of Caesar's file on February 8, 2008 and concluded that she was not precluded from "any occupation" and could work in a sedentary position, as defined by the Department of Labor,

despite her prior back and hand problems. (HLI00565) Regarding her carpal tunnel diagnosis to which Dr. Brandt attributed his thirty-minute restriction on Caesar's desk time, Dr. Werntz's contact with Dr. Wurapa's office informed her that Caesar had already undergone surgery in her left hand to relieve the carpal tunnel symptoms and was to have surgery on the right hand within two weeks. Dr. Wurapa's office informed Dr. Werntz that Caesar should be fully recovered and able to work four weeks after the surgery. In the course of this review, Dr. Werntz also learned that Dr. Brandt had referred Caesar to a new spine specialist, Dr. Hannallah, but no medical records from this specialist were included in the review. (HLI00565)

Following several inquiries by Hartford in March and May 2008 to acquire additional records from Dr. Hannallah regarding Caesar's lower back pain, and from Dr. Wurapa, regarding her hands' condition after surgery, Dr. Werntz conducted another review of Caesar's file on August 20, 2008. Dr. Werntz concluded that Caesar was capable of returning to work a "full-time sedentary position" with limited restrictions. (HLI00528)

In reaching this conclusion, Dr. Werntz spoke with Dr. Hannallah who confirmed that he had seen Caesar in December 2007 and decided there was not much he could do for her "longstanding" lower back pain, but he would not issue any specific work restrictions without completing a FCE. Dr. Wurapa reported that his office was still waiting for Caesar to schedule her second surgery and there was no reason for this delay since she should have already recovered from the first surgery. He believed Caesar would be able to work with no restrictions four weeks after her final surgery. (HLI00526)

Hartford then recommended an Employability Analysis on October 1, 2008 to determine the types of positions for which Caesar would be qualified given her medical condition.

(HLI00519) This analysis used the Occupational Access System (“OASYS”), a Department of Labor computerized job matching system. The analysis took Caesar’s functionality status into account and only searched for sedentary positions. The results of the search concluded that her physical condition qualified her for two sedentary “Claims Adjuster” positions. (HLI00501)

E. Termination of Benefits and Subsequent Appeal

Based on its medical and subsequent employability review, Hartford decided to terminate

Caesar’s LTD benefits, effective October 25, 2008. (HLI00491) In a letter, Hartford explained

that Caesar no longer met the policy’s definition of “Disability” beyond October 25, 2008.

Hartford’s explanation for this decision took into account Caesar’s education and professional background, which it concluded qualified her to perform the duties of a claims adjuster.

Additionally, Hartford based its decision on a review of her medical information to determine that she is “able to perform sedentary work” with some “additional restrictions.” (HLI00497-498)

On November 20, 2008, Caesar informed Hartford she would appeal their decision to terminate her LTD benefits. (HLI00487) Caesar submitted a formal appeal on February 9, 2009 in which she included additional medical records, a FCE, and a vocational assessment. (HLI00146-484)

The additional medical records included a new APS completed by Dr. Brandt that indicated Caesar was “totally disabled” from “Any Occupation.” The additional records also included information regarding her sleep apnea. (HLI00293) Caesar visited a sleep specialist on October 2, 2007 after a referral from Dr. Brandt. This specialist diagnosed Caesar with

“moderate obstructive sleep apnea” on October 7, 2007 and successfully “titrated” Caesar to relieve the apnea symptoms on October 21, 2007. (HLI00479-482) Additionally, the new medical records also included information from Dr. Sandra Phalen who had diagnosed Caesar with “Major Depression, Adjustment Disorder, and Anxiety & Depressed Mood” on November 8, 2007.

The vocational assessment, conducted in January 2009, concluded that Caesar would be qualified for “unskilled” or “semi-skilled” work, based on her academic achievement, aptitude levels, and general learning capabilities, would be qualified for “unskilled” or “semi-skilled” work. The Dictionary of Occupational Titles (“DOT”) describes the position of insurance claims adjuster as “skilled work” that requires “specific vocational preparation.” (HLI00447-448)

The Functional Capacity Evaluation conducted in December 2008 concluded Caesar was demonstrating physical capabilities in the “below sedentary strength” and did not meet the “majority” of an insurance claim adjuster’s essential job tasks as defined by the DOT. (HLI00453-470)

Hartford referred Caesar’s file for three additional medical reviews after the appeal to Reliable Review Services. The first additional review was done by Dr. Michael Farber, a board-certified internist. Dr. Farber reviewed Caesar’s medical record and discussed her condition with Dr. Brandt. Based on this review, Dr. Farber concluded that there was no examination or data to support finding Caesar has a “functional limitation due to general medical conditions.” (HLI00122-125)

Dr. Marie Claude Riguid performed a psychiatric review of Caesar’s file. Her review found that based on the records available there was no basis for concluding Caesar was suffering

from depression. Additionally, Dr. Riguard concluded that nothing in her record suggested she had functional limitations as a result of her psychiatric condition; rather, all her limitations emanated from her physical condition. (HLI00113-114)

Finally, Dr. William Andrews, board-certified in orthopedic surgery, reviewed Caesar's orthopedic functionality. Dr. Andrews was unable to reach Dr. Wurapa to discuss Caesar's condition; nonetheless, he concluded that Caesar was capable of performing in a "full time sedentary capacity." Based on the "minimal strength requirements" the insurance claims adjuster position requires, Dr. Andrews concluded Caesar was "capable of this activity level," despite the "permanent" restrictions she faces from her back problems. (HLI00116)

As a result of these three independent reviews, Hartford upheld its decision to terminate Caesar's LTD benefits on March 31, 2009 based on the weight of her record and the three reviews Reliable Review Services coordinated. They concluded Caesar could perform sedentary work and, thus, is no longer eligible to receive LTD benefits. (HLI00107-110)

III. STANDARD OF REVIEW

Under federal law, a civil action may be brought by a participant or beneficiary of a disability benefits plan "to recover benefits due him [or her] under the terms of his [or her] plan, to enforce his [or her] rights under the terms of the plan, or to clarify his [or her] rights to future benefits under the terms of the plan." 29 U.S.C. § 1132(a)(1)(B). In reviewing a claim for alleged wrongful denial of benefits, the district court must base its decision solely upon the underlying administrative record. Evidence that was not presented to the plan administrator cannot be considered by the court. *Wilkins v. Baptist Healthcare Sys., Inc.*, 150 F.3d 609, 619

(6th Cir.1998).

District courts review a plan administrator's denial of ERISA benefits de novo, unless, as is the case here, the benefit plan gives the administrator discretionary authority to determine eligibility for benefits or to construe the terms of the plan. *Wilkins*, 150 F.3d at 613 (6th Cir.1998) (citing *Firestone Tire & Rubber Co. v. Bruch*, 489 U.S. 101, 115 (1989)). When such discretion exists, courts review a plan administrator's decision to terminate benefits using the highly deferential arbitrary and capricious standard of review. *Yeager v. Reliance Standard Life Ins. Co.*, 88 F.3d 376, 380 (6th Cir.1996). “This standard ‘is the least demanding form of judicial review of administrative action.... When it is possible to offer a reasoned explanation, based on the evidence, for a particular outcome, that outcome is not arbitrary and capricious.’” *Evans v. Unum Provident Corp.*, 434 F.3d 866, 876 (6th Cir. 2006) (quoting *Perry v. United Food & Workers Dist. Unions 445 & 442*, 64 F.3d 238, 241 (6th Cir.1995)). This deferential standard, however, is not a simple formality: “the arbitrary and capricious standard ... does not require [the Court] merely to rubber stamp the administrator's decision.” *Jones v. Metropolitan Life Ins. Co.*, 385 F.3d 654, 661 (6th Cir.2004). Instead, a plan administrator's decision will only be “upheld if it is the result of a deliberate, principled reasoning process and if it is supported by substantial evidence.” *Baker v. United Mine Workers of America Health & Retirement Funds*, 929 F.2d 1140, 1144 (6th Cir.1991). This requires the reviewing court to weigh “the quality and quantity of the medical evidence and the opinions on both sides of the issues.” *McDonald v. Western Southern Life Ins. Co.*, 347 F.3d 161, 172 (6th Cir.2006).

One further element of the arbitrary and capricious standard of review is that an actual conflict of interest exists when the entity adjudicating the claim is also the entity responsible for

paying the benefits. *Killian v. Healthsources Provident Administrators, Inc.*, 152 F.3d 514, 521 (6th Cir.1998). This conflict does not, however, alter the standard of review. Instead, it becomes another factor in analyzing whether the plan administrator's decision was arbitrary and capricious. *See Firestone Tire & Rubber*, 489 U.S. at 115.

IV. LAW AND ANALYSIS

Hartford denied Caesar's requests for continued LTD benefits based on its determination that Caesar was no longer Disabled, as defined in the Policy. Hartford argues that its determination that Caesar is not disabled must be affirmed because: (1) it is supported by evidence that demonstrates Caesar is capable of sedentary work; and (2) Hartford is not required to defer to Caesar's treating physician.

Caesar argues that Hartford's determination that she was not disabled and subsequent termination of her LTD benefits was arbitrary and capricious because Hartford: (1) terminated previously awarded benefits without a significant health improvement; (2) failed to consider Caesar's Social Security determination; (3) ignored medical evidence; (4) did not consider co-morbid conditions; and (5) unreasonably relied on file reviews. Further, Caesar requests this Court to consider Hartford's conflict of interest in making this benefits determination.

A. Hartford's Conflict of Interest

Under the terms of the Policy, Hartford is authorized to determine whether Bowers is eligible for benefits and when, if ever, benefits should be paid. (HLI00037-38.) This dual function creates "a conflict of interest; that a reviewing court should consider...as a factor in

determining whether the plan administrator has abused its discretion in denying benefits.”

Metropolitan Life Ins. Co. v. Glenn, 554 U.S. 105, 128 S.Ct. 2343, 2346 (2008). The significance of this factor “will depend upon the circumstances of the particular case.” *Id.* If no evidence suggests this conflict of interest affected an insurer’s “reasonable interpretation” of the benefits claim, an insurer’s execution of this dual function should not affect a review of whether its decision to deny benefits was arbitrary and capricious. *Hobson v. Metro. Life Ins. Co.*, 574 F.3d 75, 83 (2d Cir. 2009).

B. Terminating Preexisting Benefits

Caesar argues that Hartford acted arbitrarily and capriciously when it terminated LTD benefits it had previously granted Caesar for a period of nearly five years because Hartford did not point to any sufficient improvement in her medical condition. (Doc. 27, p. 16-17) Without showing evidence of a “significant medical improvement,” she argues, Hartford’s decision to terminate LTD benefits is arbitrary and capricious, based on the Sixth Circuit’s decision in *Kramer v. Paul Revere Life Ins Co.*, 571 F.3d 499.

This position, however, does not accurately describe the standard set out in *Kramer*. In that opinion, the issue was that the insurance company had not presented any justification for its decision to terminate benefits in finding that the company acted arbitrarily and capriciously. The 6th circuit did not go so far as to set out a standard requiring insurance companies to demonstrate a patient had “significantly improved” in order to terminate benefits. Thus, Hartford’s finding that there has been *enough* of an improvement in Caesar’s medical condition to qualify her for “Any Occupation,” even while acknowledging her ongoing physical limitations, fits within the company’s discretion in making benefits decisions. Thus, Hartford’s termination decision was

not arbitrary and capricious.

C. The Social Security Determination

Caesar also argues that Hartford's failure to consider the Social Security Administration's disability determination, despite having adjusted her benefits as a result of this determination, was arbitrary and capricious. (Doc. 27, p. 18-19) While the Social Security disability determination is relevant, it is not dispositive. *Kiel v. Life Insurance Company of North America, et al.*, 345 Fed. Appx. 52 (6th Cir. 2009) Because ERISA plans and Social Security use different standards when making disability determination, an insurer could reach a different conclusion from the Social Security Administration when denying benefits and still not have acted arbitrarily or capriciously.

D. Disregard of the Functional Capacity Evaluation

Caesar argues that Hartford was arbitrary and capricious in not conducting Functional Capacity Evaluations earlier in their review process and not giving proper attention to the FCE Caesar provided as part of the appeal process. (Doc. 27, p. 20-21) Caesar, however, overstates the importance of the Functional Capacity Evaluations. They are not *per se* due special attention during the review process; however, if a reviewer's report suggests a complete disregard or overlooking of the FCE's findings, then the validity of the report generally could be called into question. *Calvert v. Firststar Fin., Inc.*, 409 F.286 (6th Cir. 2005)

In this case, Hartford refers at length to the results of Caesar's FCE in its termination of benefits letter to Caesar. Hartford accurately details that Caesar's FCE found she was capable of

“below sedentary level” work and could not perform a “majority” of the job tasks associated with

an insurance claims adjuster position. Thus, in no way did their termination decision misrepresent the FCE’s findings or disregard them. Rather, Hartford’s termination decision references other sources it used to conclude that the “weight of the information” in Caesar’s file suggested she was in fact capable of sedentary work. (HLI00109-110) Such balancing of the medical information fits within Hartford’s discretion; therefore, though their decision was contrary to the FCE’s findings, it was not arbitrary and capricious.

E. Weight of the Treating Physicians

Caesar argues that Hartford “ignored” the opinions of her treating physicians when deciding to terminate her benefits, making their decision arbitrary and capricious. While a plan administrator may not arbitrarily disregard reliable medical evidence, *Elliott v. Metro Life Ins. Co.*, 473 F.3d 613 (6th Cir. 2006), they are entitled to reach conclusions that conflict with those of the patient’s treating physicians. *Calvert*, 409 F.3d. at 296-97. The treating physicians’ statements will hold more weight when the physician has treated the patient for a long time and their opinions were supported by specialists. *Smith v. Bayer*, 275 Fed. Appx. 495 (6th Cir. 2008)

In this case, Caesar identifies the opinions of three of her treating physicians: Dr. Brandt, Dr. Hannallah, and Dr. Wurapa that she claims Hartford disregarded when reaching their termination decision. (Doc. 27, p. 21-22) Hartford’s termination letter, however, mentions the opinions of all three doctors as part of its review. (HLI00109-110) Dr. Farber, the internal medical specialist from Reliable Review Services who looked over Caesar’s file, actually spoke

with Dr. Brandt in making his determination that Caesar had restrictions or limitations from an internal medicine perspective. (HLI00107-108) Of these three doctors, Caesar consulted with Dr. Brandt most consistently and over the longest period of time. Though in 2007, during one of Hartford's earlier reviews, Dr. Brandt detailed very limiting restrictions on Caesar's ability to work, by the time of his 2009 conversation with Dr. Farber, Dr. Brandt claimed any restrictions on Caesar would be of a musculoskeletal nature. The orthopedic specialist, Dr. Andrews, however, concluded that Caesar had no such restrictions that would prevent her from performing sedentary work requiring such little strength. (HLI00107-108) Given the fact that the treating physicians' opinions were taken into account when Hartford reached its termination decision and specialists reviewing the data and diagnoses of treating physicians found Caesar was capable of sedentary work, Hartford's decision to contradict Caesar's treating physician's opinions was not arbitrary and capricious.

F. Caesar's Co-Morbid Conditions

Caesar claims Hartford failed to consider how her co-morbid conditions were impacting her disability when reaching their termination decision. (Doc. 27, p. 24) A patient's co-morbid conditions are relevant to a termination of benefits decision when adequate medical evidence and opinions support finding a connection between the conditions and the patient's disability status. *Abram v. Cargill, Inc.* 395 F.3d 882, 887-88 (8th Cir. 2005), *superseded by regulation on other grounds in, Midgett v. Wash. Group Int'l Long Term Disability Plan*, 561 F.3d 887 (8th Cir. 2009). In this case, however, Caesar points to no evidence in the record that implies her co-morbid conditions are actually contributing to her disability. Thus, Hartford's failure to consider such conditions did not represent an arbitrary and capricious decision.

G. Reliance on File Reviews

Caesar argues that Hartford made a decision to terminate her benefits contrary to the evidence in the record and made credibility determinations without a medical exam that suggest bias on the part of the file reviewers. (Doc. 27, p. 24-27)

Caesar claims that Hartford's inclusion of a provision in the Policy that allowing the company to require a patient to undergo a physical examination when making a benefits determination means the company was required to conduct such an examination and could not rely solely on a file review when terminating benefits. (Doc. 27, p. 26)

Including such a right in a policy, however, does not then inhibit an insurer from making a final benefits decision solely on the basis of a file review; rather, that choice just becomes one of several to be considered when deciding whether a company's benefits decision was arbitrary and capricious. *Calvert*, 409 F.3d at 295. Thus, Hartford's failure to conduct a physical examination alone does not mean their termination decision was arbitrary and capricious.

Even if a physical exam is not always required, Caesar further argues that the credibility determinations Hartford's file review made regarding Caesar's physical and mental condition, nonetheless, required Hartford to perform a physical examination before deciding to terminate Caesar's LTD benefits. And, the decision not to conduct a physical examination, considering these credibility decisions, was arbitrary and capricious.

The Sixth Circuit has cited two examples of when credibility determinations could be considered arbitrary and capricious. The first is when the file reviewer concludes a patient has made exaggerations regarding their condition without pointing to evidence to support dismissing

their own assessment of their status. The second example is when the file reviewer disregards objective medical data on the record to conclude the plaintiff has no possible limitations. *Id* at 297. In this case, Caesar identifies two credibility determinations Hartford made during the file review process that should have warranted further examination before terminating Caesar's benefits. The first credibility decision Caesar identifies is Dr. Werntz's "rejection" of Caesar's limitations in the absence of "surveillance video." The second was Dr. Andrews' finding that she claims "rejected" the conclusions of the FCE.

Neither of these so-called credibility determinations rise to the level of what the Sixth Circuit has found to be an arbitrary and capricious use of discretion. Regarding the first example, it is not at all clear from the record that Werntz actually rejected Caesar's physical limitations in a manner the Sixth Circuit has previously found to be "incredible" and, thus, arbitrary and capricious. *Id* at 296. Dr. Werntz's mentioning of a lack of surveillance video, which would be an example of objective evidence, was weighed against other evidence in the record that suggested Caesar was capable of some level of sedentary work: her most recent CT scan findings, stable clinical exams, and Dr. Werntz's consideration of the effects one normally faces after lumbar back surgery. Dr. Werntz also noted that because an insurance claim adjuster's work required such minimal strength that any limitations from which Caesar continues to suffer would be unlikely to interfere with her ability to perform some work.(HLI00535) Thus, Dr. Werntz, rather than broadly dismissing Caesar's reported physical condition, actually weighed objective evidence and made an analytical decision based on Caesar's entire file in a manner the Sixth Circuit has recognized is within an insurer's discretion when making disability benefits decisions. *Id* at 296.

Similarly, Dr. Andrews also took the FCE into consideration when assessing Caesar's physical status. Though his opinion that Caesar is capable of sedentary work was contrary to the finding of the FCE, he still presented a reasoned basis for his decision. He observed from the record that Caesar's back and hand surgeries had been successful, considered the diagnoses of her current treating physicians, and noted that nothing in the record suggested that she was facing any major orthopedic problems except for pain management of her chronic back pain. (HLI00115-116) Dr. Andrews also relied on the weight of the record and the objective evidence presented in making his determination, rather than making credibility determinations. Because of this reasoned process, Hartford was not arbitrary and capricious in relying on his decision without submitting Caesar to a physical exam.

Additionally, Caesar asserts that Hartford was arbitrary and capricious in failing to conduct a mental examination as part of its review of how Caesar's mental condition impacted her ability to work. Caesar argues that when a patient's mental condition is in question, a company is arbitrary and capricious to rely solely on a file review when making a benefits determination. (Doc. 27, p. 26-27; *Smith v. Bayer*, 275 Fed. Appx. 495 (6th Cir. 2008))

While Caesar is correct that the Sixth Circuit found in *Smith v. Bayer* that it can be "puzzling and troubling" if an insurer denies disability benefits without requesting an in-person examination when mental stability is at issue, the facts presented in that case were quite different from those in the present record. First, the plaintiff in the *Smith v. Bayer* case had worked as drug salesperson. This position required that plaintiff to constantly interface with Bayer's clients, a task that would be much more difficult if the plaintiff was battling depression symptoms. His therapist confirmed his depression directly impacted his ability to return to his previous

occupation. *Id.* at 506 Hartford, on the other hand, was reviewing whether Caesar could perform a sedentary job. Caesar presents no evidence linking how her mental problems would prevent her from performing specific tasks associated with the insurance claim adjuster position. Caesar also fails to present evidence from a mental health professional detailing how exactly how her depression would inhibit her ability to return to work in a sedentary position.

Because of these distinctions, it is not at all clear from the record how Caesar's mental condition would impact her ability to return to work in a sedentary position. Thus, Dr. Rigaud's finding that Caesar's psychiatric condition was not a limitation on her ability to work, even without an actual in-person examination, was not arbitrary and capricious.

Finally, Caesar suggests the reviewing physicians' "inherent" bias automatically makes their decisions suspect and should serve as a basis for finding their termination decision to be arbitrary and capricious. Though the Sixth Circuit has found that reviewing physicians hired by insurers are inherently conflicted, they have equally acknowledged the potential conflict among treating physicians. *Black & Decker Disability Plan v. Nord*, 538 U.S. 822, 831 (2003). Thus, Hartford's decision to rely on the file reviewers' decision, as a general matter, has no more potential for bias than if Hartford had relied solely on the decisions of Caesar's treating physicians; both opinion sources present bias risks. Accordingly, despite some potential for bias that might arise from the inherent conflict of interest among file reviewing physicians, Hartford's reliance on their decisions, which were made in consideration of the weight of the record, was not arbitrary and capricious.

V. CONCLUSION

Because Hartford's decision to deny Ms. Caesar's claim for disability benefits was not arbitrary and capricious, Hartford's Motion for Judgment on the Administrative Record (Doc. 26) is **GRANTED** and Ms. Caesar's Cross-Motion for Judgment on the Administrative Record (Doc. 27) is **DENIED**.

IT IS SO ORDERED.

s/Algenon L. Marbley
ALGENON L. MARBLEY
UNITED STATES DISTRICT COURT

Dated: September 20, 2010