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HONORABLE RICHARD A. JONES

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

CHRISTOPHER RICHARD CHAPIN,

Plaintiff,

v.

THE PRUDENTIAL INSURANCE
COMPANY OF AMERICA, MICROSOFT
CORPORATION, and the MICROSOFT
CORPORATION WELFARE PLAN,

Defendants.

No. 2:19-cv-01256-RAJ

ORDER

I. INTRODUCTION

This matter comes before the Court on two motions. Defendant The Prudential Insurance Company of America (“Prudential”) filed a motion for summary judgment on Plaintiff Christopher Richard Chapin’s (“Plaintiff”) ERISA claims for long-term disability (“LTD”) benefits and equitable relief. Dkt. # 44. On the same day, Plaintiff filed a motion for judgment on the Administrative Record (“AR”) under Fed. R. Civ. P. 52 on those same claims against Prudential. Dkt. # 49.

Having thoroughly reviewed the parties’ submissions, the administrative record, and applicable law, the Court **DENIES** Prudential’s cross-motion for summary judgment

1 and **GRANTS** Plaintiff’s motion for judgment on the administrative record. The Court
2 first addresses Prudential’s motion for summary judgment. Dkt. # 44.

3 4 **II. SUMMARY JUDGMENT**

5 Summary judgment is appropriate if there is no genuine dispute as to any material
6 fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P.
7 56(a). The moving party bears the initial burden of demonstrating the absence of a
8 genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986).
9 Where the moving party will have the burden of proof at trial, it must affirmatively
10 demonstrate that no reasonable trier of fact could find other than for the moving party.
11 *Soremekun v. Thrifty Payless, Inc.*, 509 F.3d 978, 984 (9th Cir. 2007). On an issue where
12 the nonmoving party will bear the burden of proof at trial, the moving party can prevail
13 merely by pointing out to the district court that there is an absence of evidence to support
14 the non-moving party’s case. *Celotex Corp.*, 477 U.S. at 325. If the moving party meets
15 the initial burden, the opposing party must set forth specific facts showing that there is a
16 genuine issue of fact for trial to defeat the motion. *Anderson v. Liberty Lobby, Inc.*, 477
17 U.S. 242, 250 (1986). The court must view the evidence in the light most favorable to
18 the nonmoving party and draw all reasonable inferences in that party’s favor. *Reeves v.*
19 *Sanderson Plumbing Prods.*, 530 U.S. 133, 150-51 (2000).

20 In its pending motion, Prudential moves for summary judgment on Plaintiff’s
21 ERISA claims for LTD benefits pursuant to ERISA § 502(a)(1)(B), 29 U.S.C.
22 § 1132(a)(1)(B) and equitable relief pursuant to § 1132(a)(3). Dkt. # 44 at 7; Dkt. # 1 at
23 22-24. Under § 1132(a)(1)(B), a beneficiary may bring a civil action to “recover benefits
24 due to him under the terms of his plan, to enforce his rights under the terms of the plan,
25 or to clarify his rights to future benefits under the terms of the plan.” Under 29 U.S.C.
26 § 1132(a)(3), a beneficiary may bring a civil action “to enjoin any act or practice which
27 violates any provision of this subchapter or the terms of the plan, or (B) to obtain other

1 appropriate equitable relief (i) to redress such violations or (ii) to enforce any provisions
2 of this subchapter or the terms of the plan.”

3 As Plaintiff correctly observes, the dispositive question before the Court for
4 Plaintiff’s first claim is whether the evidence in the administrative record shows that
5 Chapin has a disability under the terms of the Plan. Dkt. # 52 at 2. Whether Plaintiff is
6 disabled is a genuine issue of material fact that requires a review of the evidence. *See*
7 *Gordon v. Metro. Life Ins. Co.*, 747 F. App’x 594, 595 (9th Cir. 2019) (holding that
8 “because the parties have produced conflicting medical opinions regarding [the
9 plaintiff’s] disability, those opinions create a genuine dispute of material fact”). The
10 medical opinions provided by both parties here create a genuine dispute of material fact.
11 *See* AR at 55-56, 97-100, 112, 118-122. Because the Court cannot decide whether
12 Plaintiff is disabled as a matter of law without considering the evidence, Prudential is not
13 entitled to summary judgment on this claim. *See* 477 U.S. at 323. The Court therefore
14 **DENIES** Prudential’s motion for summary judgment as to Plaintiff’s claim for benefits
15 under ERISA 29 U.S.C. § 1132(a)(1)(B).

16 With respect to Plaintiff’s second claim, Prudential argues that it is entitled to
17 summary judgment because the claim is “impermissibly duplicative” of Plaintiff’s first
18 claim for benefits. Dkt. # 44 at 24. The Court disagrees. This Court has noted that
19 although a plaintiff is barred from seeking duplicative relief in an ERISA action, a
20 plaintiff is not barred from seeking different remedies under § 1132(a)(3) and
21 § 1132(a)(1)(B). *See Hancock v. Aetna Life Ins. Co.*, 251 F. Supp. 3d 1363, 1369, 1371-
22 72 (W.D. Wash. 2017) (“[Plaintiff] is not precluded from bringing a Section 1132(a)(3)
23 claim simply because she also brings a Section 1132(a)(1)(B) claim”); *see also Zisk*
24 *v. Gannett Co. Income Prot. Plan*, 73 F. Supp. 3d 1115, 1118 (N.D. Cal. 2014) (“Courts
25 of this district have found that (a)(3) claims remain viable even when an (a)(1)(B) claim
26 is asserted, particularly where the relief sought in connection with each claim is
27 distinct.”).

1 Here, Plaintiff distinguishes the equitable relief he is seeking under § 1132(a)(3) to
2 declaratory and injunctive relief compelling Prudential “to correct their claims-handling
3 policies” to ensure that he will not be deprived of a full and fair review of claims within
4 the required timelines. Dkt. # 1 at 24-25. Because these remedies are not available under
5 § 1132(a)(1)(B), which provides only for recovery of benefits due under the terms of a
6 plan, enforcement of rights under the terms of the plan, or clarity on rights to future
7 benefits, the remedies sought in Plaintiff’s two claims are not duplicative. The Court
8 therefore denies Prudential’s motion for summary judgment on Plaintiff’s second claim
9 against Prudential seeking declaratory and injunctive relief pursuant to 29 U.S.C.
10 § 1132(a)(3).

11 III. JUDGMENT ON THE ADMINISTRATIVE RECORD

12 On November 25, 2019, Plaintiff submitted the administrative record under seal.
13 Dkt. # 26. On February 19, 2020, Plaintiff and Defendants Microsoft and Microsoft
14 Corporation Welfare Plan settled Plaintiff’s STD claims and moved the Court to dismiss
15 these claims with prejudice. Dkt. # 34. The Court granted the motion. Dkt. # 35. On
16 May 8, 2020, Plaintiff filed the pending motion for judgment on the administrative record
17 pursuant to Rule 52. Dkt. # 49. The Court now issues the following findings of fact and
18 conclusions of law with respect to Plaintiff’s two remaining ERISA claims seeking LTD
19 benefits and injunctive relief.

20 A. FINDINGS OF FACT

- 21 1. Plaintiff has been employed as a software engineer by Microsoft from 2011 to the
22 present. Dkt. # 1 ¶ 12.
- 23 2. Prudential is an insurer that administers claims for short term disability (“STD”)
24 benefits under Microsoft’s STD Payroll Policy and administers and insures LTD
25 benefit claims on behalf of Microsoft and the Microsoft Employee Welfare Plan
26 (the “Plan”). *Id.* ¶ 8.
- 27 3. Prudential issued the LTD Insurance Policy, which is governed by ERISA, to

1 Plaintiff in connection with the Plan. *Id.* ¶¶ 14-15.

2 4. Prudential defines “disability” as related to its LTD Insurance Policy accordingly:

3 You are disabled when Prudential determines that, due to your *sickness* or *injury*:

- 4 • You are unable to perform the *material and substantial duties* of your *regular*
5 *occupation*, or you have a 20% or more loss in your *monthly earnings*; and
6 • You are under the *regular* care of a doctor; and

7 After 24 months of payments, you are disabled when Prudential determines that
8 due to the same sickness or injury:

- 9 • you are unable to perform the duties of any *gainful occupation* for which you
10 are reasonably fitted by education, training or experience; and
11 • you are under the regular care of a doctor.

12 AR 180 (emphasis in original).

13 5. The term “regular occupation” is defined as “the occupation you are routinely
14 performing when your disability begins. Prudential will look at your occupation
15 as it is normally performed instead of how the work tasks are performed for a
16 specific employer or at a specific location.” *Id.*

17 6. Under the plan, “[d]isabilities which, as determined by Prudential, are due in
18 whole or part to mental illness have a limited pay period.” AR 932.

19 Mental illness means a psychiatric or psychological condition regardless of
20 cause. Mental illness includes but is not limited to schizophrenia,
21 depression, manic depressive or bipolar illness, anxiety, somatization,
22 substance related disorders and/or adjustment disorders or other conditions.
23 These conditions are usually treated by a mental health provider or other
24 qualified provider using psychotherapy, psychotropic drugs, or other
25 similar methods of treatment as standardly accepted in the practice of
26 medicine.

27 7. As a Microsoft software engineer, Plaintiff worked on a team that powered “one of
28 the largest scale services in the Office” with “35-40 million business seats on the
service.” *Id.* at 749. In his role, he was focused on “experimentation, live site
analysis, automation design and implementation to monitor and validate e2e
functionality, availability, capacity, freshness and performance of [the] large
database.” *Id.* His job description called for “[e]xceptional test aptitude, customer

1 focus and expertise in formal and informal testing techniques as well as quality
2 measurement.” *Id.*

3 8. On March 19, 2018, Plaintiff went to his primary care physician, Dr. Wallace
4 Hodges. *Id.* at 29. Plaintiff reported anxiety and insomnia to Dr. Hodges related
5 to “a supervisor who ‘bullies’” him.” *Id.* Plaintiff said he “worries constantly
6 about work . . . can’t turn his brain off at night and is consequently only getting
7 about 4 hours sleep/night.” *Id.* In his physical examination of Plaintiff, Dr.
8 Hodges noted that he was “alert, attentive, intact memory, judgment,
9 concentration,” and “[n]ormal affect, mood,” as well as normal speech, thought
10 content, and processes. *Id.* at 31. In his Plan of Care, Dr. Hodges noted that “[i]n
11 my experience, an inimical supervisor is one of the most inimical problems found
12 in the workplace. Treating [Plaintiff’s] mood deterioration cannot be done
13 effectively without changing the environment.” *Id.* Dr. Hodges recommended
14 that Plaintiff “separate himself from his hostile work environment, initially with
15 short term disability.” *Id.* at 31-32. He noted that given Plaintiff’s
16 “circumstances,” this was healthier than medication. *Id.* at 32. Dr. Hodges
17 recommended that Plaintiff consult with a psychiatrist for further evaluation. *Id.*
18 at 31.

19 9. March 20, 2018 was Plaintiff’s last day of work. *Id.* at 15.

20 10. On March 22, 2018, Dr. Robert B. Olsen, a doctor of internal medicine and
21 psychiatry, conducted an initial evaluation of Plaintiff, who had been referred to
22 him through Dr. Hodges. AR at 102. Plaintiff reported that he was unable to
23 perform his job, and described various problems including depression, anxiety,
24 insomnia, nervousness, loss of appetite, decreased sexual desire, and suicidal
25 thoughts. *Id.* In the evaluation notes, Dr. Olsen described Plaintiff’s struggles at
26 work following negative feedback and a poor performance review as the source of
27

1 his ailments. *Id.* at 103. Plaintiff reported the onset of depression and anxiety
2 beginning in September 2017. *Id.* at 104-05.

3 11. Dr. Olsen diagnosed Plaintiff with Depression Disorder, Other Trauma or Stressor
4 Related Disorder, due to occupational harassment, and Cognitive Disorder due to
5 depression and several months of occupational harassment and sleep deprivation.
6 *Id.* at 112.

7 12. Dr. Olsen conducted a mental status examination of Plaintiff during the visit. *Id.*
8 at 47-48. Dr. Olsen gave Plaintiff a 10/10 on orientation, noted that he was able to
9 repeat four disparate items immediately; complete serial sevens and spell a five-
10 letter word forwards and backwards adequately; recall four out of four disparate
11 items following several minute delay; name the last seven presidents in order; and
12 successfully complete other tasks. *Id.*

13 13. He also wrote that “Mr. Chapin is advised that he should not return or attempt to
14 return to employment at the Microsoft Corporation; that should he do so, he is
15 placing his mental and physical health in jeopardy.” *Id.*

16 14. Dr. Olsen noted that recovery was anticipated “within 6-12 weeks.” *Id.*

17 15. Dr. Olsen provided material on workplace bullying and its impact on health
18 outcomes in his evaluation notes. *Id.* at 49-51.

19 16. On May 9, 2018, Dr. Margaret “Lisa” Frank, a psychiatrist, reviewed Plaintiff’s
20 medical file, including some visit notes from Dr. Hodges and Dr. Olsen, on behalf
21 of Prudential. *Id.* at 55. Dr. Frank concluded that “there is no evidence to support
22 a functionally impairing condition.” *Id.* at 55. Specifically, she noted that
23 although Dr. Hodges and Dr. Olsen diagnosed Plaintiff with anxiety, “neither
24 provider gives sufficient evidence to support impairment due to anxiety.” *Id.* at
25 54.

26 17. On June 12, 2018, Dr. Frank provided an addendum to her original report after
27 reviewing additional information from Dr. Olsen. *Id.* at 56. In it, she again
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1 concluded that “the clinical evidence does not provide support for functional
2 impairment due to the claimant’s diagnosed psychiatric condition of anxiety
3 disorder,” even in light of the additional information. *Id.* Dr. Frank noted “a
4 significant lack of objective data.” *Id.*

5 18. On June 21, 2018, Dr. Olsen conducted testing of Plaintiff’s cognitive abilities.
6 *Id.* at 97-100. Dr. Olsen conducted the North American Adult Reading Test and
7 additional tests examining “sustained attention, working memory, information
8 processing, decision speed and psychomotor speed.” *Id.* at 97-98. Plaintiff scored
9 within the average range in verbal learning and recall for simple information, but
10 “major deficits” were demonstrated in psychomotor speed as well as immediate
11 and delayed recall. *Id.* at 98. On tests assessing his immediate and delayed recall,
12 Plaintiff’s scores of 12/24 on immediate recall and 9/12 on delayed recall
13 indicated that he was “moderately impaired.” *Id.* at 97. The results of Plaintiff’s
14 selective attention tests were “consistent, consistently slow, even ponderous.” *Id.*
15 Dr. Olsen noted that Plaintiff “appeared to lose sequential track of the next target,”
16 and had “difficulty scanning and locating the target” on Trail Making Tests, where
17 Plaintiff’s performance was in the 16th percentile for the first trial and in the 20th
18 percentile for the second. *Id.* at 97-98.

19 19. Dr. Olsen noted that a test for “effort and possible feigning” was conducted and
20 revealed that Plaintiff’s performance was “credible,” and there was no evidence of
21 negative response bias or reduced effort or feigning. *Id.* at 97-98.

22 20. On October 4, 2018, Dr. Olsen provided an addendum with material “to document
23 and quantify the symptoms of [Plaintiff’s] cognitive impairment which prevent
24 [Plaintiff] from returning to gainful employment at Microsoft.” AR at 98. Dr.
25 Olsen provided test results from on June 21, 2018 “as a limited measure of
26 [Plaintiff’s] current degree of cognitive impairment.” *Id.* at 97. Dr. Olsen also
27 noted that the tests “do not represent a complete neuropsychiatric battery; rather
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1 the tests were chosen to examine sustained attention, working memory,
2 information processing, decision speed, and psychomotor speed.” *Id.* at 97-98.

3 Dr. Olsen states that “[m]ore complex testing of executive functioning can be done
4 if requested.” *Id.* at 98.

5 21. Dr. Olsen also refuted Dr. Frank’s earlier assessment that there was a lack of
6 evidence supporting Plaintiff’s functional impairment due to anxiety. *Id.* at 100.

7 22. Between March and October 2018, Dr. Olsen treated Plaintiff six times: March 23,
8 June 1, June 26, August 15, September 24, and October 24. *Id.* at 94.

9 23. On October 15, 2018, Plaintiff’s therapist, Diane Schachter, LMFT, submitted a
10 letter to the Prudential Appeals Unit confirming her agreement with Dr. Olsen’s
11 diagnosis of depression, anxiety, and occupational post-traumatic stress. *Id.* at 68.

12 24. She further explained that “[t]hese symptoms which we are treating lead to
13 [Plaintiff’s] cognitive impairment. He describes consistent sleep deprivation,
14 nightmares, suicidal ideation, and fear of losing his job.” *Id.* She noted that
15 Plaintiff follows “the CALM meditation program to deepen his facility with
16 meditation and mindfulness,” and is “active with processing his feeling and
17 thoughts,” as part of his recovery efforts. *Id.*

18 25. On December 13, 2018, Dr. Jeremy B. Hertz, a neuropsychologist contracted by
19 Prudential, provided a peer review regarding Plaintiff. He reviewed information
20 provided by Plaintiff, initial evaluation notes from Dr. Olsen, a statement and
21 clinical visit summaries from Dr. Hodges, letters from Dr. Frank, and a letter from
22 Ms. Schachter. *Id.* at 118.

23 26. Dr. Hertz noted that much of Dr. Olsen’s reports and notes were illegible but
24 concluded that “the documentation provided for review does not convincingly
25 support psychiatric or cognitive impairment of a severity as to preclude gainful
26 activity and as such, no neuropsychological restrictions and limitations are
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1 recommended at this time.” *Id.* at 120. Dr. Hertzka further noted the absence of
2 “independent and validated measurable clinical evidence.” *Id.* at 121.

3 27. In support of his conclusion, he explained that (1) Dr. Olsen is not a
4 neuropsychologist, and (2) because Dr. Olsen is a treating provider, “the measures
5 performed cannot be considered independent.” *Id.* He further noted that on
6 March 9, 2018, Plaintiff “present[ed] with a mental status that is well within
7 functional limits” based on the fact that he was neatly dressed, alert, attentive, his
8 memory was intact, and he had a normal mood, affect, speech, thought content and
9 processes, as described by Dr. Olsen during the visit. *Id.* at 122.

10 28. Dr. Hertzka also concluded that Ms. Schachter did not provide “measurable clinical
11 evidence of either cognitive impairment of psychiatric impairment that would
12 preclude working.” *Id.*

13 29. On January 9, 2019, Dr. Olsen provided a response objecting to Dr. Hertzka’s
14 review of the record. *Id.* at 139. Dr. Olsen argued that he had, indeed, provided
15 “objective data of cognitive impairment,” and that he offered to provide “more
16 sophisticated testing should such be requested.” *Id.*

17 30. Dr. Olsen also noted in his response that clinical depression “is a brain disease”
18 and that “[c]ognitive impairment is a core symptom of depressive disorders.” *Id.*
19 at 43.

20 31. On January 22, 2019, Dr. Hertzka reviewed and provided a response to Dr. Olsen’s
21 January 9, 2019 letter. *Id.* at 114. Dr. Hertzka concluded that his “original opinion
22 remains intact,” based on a “lack of congruence between the documentation and
23 claimant’s reports.” *Id.* He further explained that

24 [it] can easily be remedied with an independent and comprehensive
25 assessment of both psychological and neurocognitive functionality with
26 multiple stand-alone and embedded validity measures (which is the current
27 clinical standard for cases such as this with a disability component). If the
28 claimant is indeed globally debilitated from both a psychiatric and

1 cognitive perspective, such an assessment will clearly provide definitive
2 support, which is lacking in the current documentation provided for review.
3 Without such independent and validated, measurable evidence, my original
4 concerns remain.

5 *Id.*

6 32. Dr. Hertzka reiterated his view that “this testing cannot be considered independent,
7 as Dr. Olsen is the treating provider. *Id.* He concluded his letter by pointing to the
8 “disparity between claimant’s reports and the lack of validated clinical evidence in
9 the cumulative documentation to support such global and severe debility as to
10 reasonably preclude all gainful activity.” *Id.* He again stated that this “can be
11 easily remedied with an independent and comprehensive assessment of both
12 psychological and neurocognitive functionality with multiple stand-alone and
13 embedded validity measures.” *Id.*

14 33. On April 22, 2019, Plaintiff’s counsel submitted a voluntary supplemental appeal
15 of Prudential’s January 3, 2019 decision upholding the denial of Mr. Chapin’s
16 claims for STD. *Id.* at 134. Plaintiff’s counsel argued that Prudential wrongly
17 dismissed Dr. Olsen’s opinions and failed to identify any evidence showing
18 Plaintiff is capable of performing his job duties at Microsoft. *Id.* at 135.

19 34. On the same day, Plaintiff’s counsel also filed a claim for LTD benefits “for the
20 same reasons he is disabled under the STD Policy,” noting that Dr. Olsen
21 “tentatively estimates [Plaintiff’s] disability will persist for approximately two
22 years.” *Id.* at 135; *see also id.* at 161.

23 35. On May 8, 2019, Prudential stated that additional information was necessary to
24 determine Plaintiff’s eligibility for benefits. *Id.* at 345. Prudential requested the
25 following:

- 26 • Education and Employment History Request (to be completed by Plaintiff);
- 27 • Activities of Daily Living Questionnaire (to be completed by Plaintiff);
- 28 • Medical and Psychiatric Authorizations (to be completed by Plaintiff);
- Reimbursement Agreement (to be completed by Plaintiff);

- Mental Status Examination (to be completed by Plaintiff’s doctor); and
- All outstanding medical records from all treating providers for the prior 60 days.

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3 36. On May 27, 2019, Prudential sent Plaintiff a letter noting that it was unable to
4 make a determination on his claim at that time because it had not received the
5 necessary information. *Id.* at 305. It requested the same forms and records
6 requested in the May 8 letter. *Id.* at 306. Prudential noted that it would require
7 additional time to review the claim. *Id.*

8 37. On June 5, 2019, Plaintiff provided Prudential with the forms requested by
9 Prudential. *Id.* at 275. Plaintiff also informed Prudential that its “failure to affirm
10 or deny coverage for [his] LTD claim within 45 days violates [his] right to full and
11 fair review of his LTD claim under 29 C.F.R. § 2560.503-1(1)(3). *Id.* The plan
12 permits a maximum extension of two 30-day extensions of this deadline, for a
13 maximum total period of 105 days to determine LTD claims.

14 38. The same day, Prudential wrote to Plaintiff’s counsel, indicating that Plaintiff had
15 not yet provided information necessary for Plaintiff’s appeal, despite Plaintiff’s
16 counsel’s May 16, 2019 representation that such information would be
17 forthcoming. *Id.* at 467. Prudential noted that it was Plaintiff’s “responsibility to
18 provide all information that all requirements under the STD policy have been
19 met.” *Id.*

20 39. On June 14, 2019, Plaintiff via counsel, sent Prudential a letter alleging that
21 Prudential’s failure to respond to Plaintiff’s LTD claim within 45 days of April 22,
22 2019, which was June 6, 2019, “violates the Department of Labor’s regulation
23 enforcing Mr. Chapin’s right under ERISA to full and fair review of his LTD
24 claim,” pursuant to 29 C.F.R. § 2560.503-1(f)(3). *Id.* at 715.

25 40. On June 17, 2019, Prudential sent a letter to Plaintiff’s counsel stating that it had
26 not received Plaintiff’s medical records past October 4, 2018 except for an
27 October 15, 2018 from Ms. Schachter. *Id.* at 465. Prudential stated it would
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1 provide Plaintiff additional time to remit the necessary information. *Id.* If
2 Prudential did not receive the information, it would proceed with a review of
3 Plaintiff's claim based on information on file as of July 23, 2019. *Id.* Prudential
4 noted that "[a]ll time frames for the review of Mr. Chapin's appeal will be
5 suspended until the earlier of the receipt of the information requested or the end of
6 the additional 45-day period allowed for [Plaintiff] to supply such information."

7 *Id.*

8 41. On June 19, 2019, Prudential stated that it was unable to make a determination on
9 the claim and required an extension of time to complete the review. *Id.* Prudential
10 also stated that it needed a "Mental Status Examination as well as complete
11 records from all treating providers from March 1, 2019 forward." *Id.*

12 42. On July 1, 2019, Plaintiff's counsel sent Prudential a letter stated that Prudential
13 was delaying determination of Plaintiff's benefits by asking for information that
14 had already been provided by Plaintiff. *Id.* Plaintiff's counsel asked Prudential to
15 explain if it disputed Plaintiff's entitlement to LTD benefits and, if so, why. *Id.*
16 Plaintiff's counsel also asked Prudential to state what medical information it relied
17 upon to refuse to pay LTD benefits to Plaintiff. *Id.* Plaintiff's counsel requested
18 that Prudential answer these questions within 14 days. *Id.*

19 43. On July 11, 2019, Prudential again sent Plaintiff a letter informing him that it was
20 unable to make a determination on his claim and would need more time. *Id.* at
21 338.

22 44. On July 31, 2019, Prudential sent a letter to Plaintiff's counsel to inform him that
23 Plaintiff needed to undergo an Independent Medical Examination ("IME") as part
24 of Prudential's appellate review. *Id.* at 336. Prudential scheduled such an exam
25 for August 27, 2019. *Id.*

1 45. On August 9, 2019, Plaintiff filed suit in this Court seeking STD and LTD, over a
2 year after Plaintiff claimed STD benefits and over 15 weeks after Plaintiff claimed
3 LTD benefits.¹ *Id.* at 290-91.

4 46. Following Plaintiff’s and Microsoft’s settlement of STD claims, Microsoft
5 confirmed that Plaintiff exhausted his STD benefits on September 19, 2018. *See*
6 *Dkt. # 50-1.*

7 **B. CONCLUSIONS OF LAW**

8 **1. Plaintiff is entitled to seek benefits pursuant to 29 U.S.C. § 1132(a)(1)(B).**

9 Pursuant to 29 U.S.C. § 1132(a)(1)(B), a participant or beneficiary of an ERISA-
10 governed health plan may “recover benefits due to him under the terms of his
11 plan . . . enforce his rights under the terms of the plan . . . [and] clarify his rights to future
12 benefits under the terms of the plan.” The parties do not dispute that Plaintiff is a
13 “participant” in such a “plan” as defined by 29 U.S.C. § 1002(7) and is thereby entitled to
14 seek benefits under § 1132(a)(1)(B).

15 **2. Under Rule 52, the Court evaluates the persuasiveness of conflicting evidence.**

16 Under Federal Rule of Civil Procedure 52, “an action [may be] tried on the facts
17 without a jury.” Fed. R. Civ. P. 52(a)(1). “In a trial on the record, but not on summary
18 judgment, the judge can evaluate the persuasiveness of conflicting testimony and decide
19 which is more likely true.” *Kearney v. Standard Ins. Co.*, 175 F.3d 1084, 1095 (9th Cir.
20 1999).

21 **3. The Court conducts a *de novo* review of the administrative record.**

22 The Court reviews a denial of benefits challenged under this provision under a *de*
23 *novo* standard, as agreed by the parties (Dkt. # 34 at 12; Dkt. # 26 at 18). *See Firestone*

24
25 ¹ The parties stipulated that Plaintiff’s current claim for LTD benefits under the plan was
26 “deemed denied” under ERISA and the plan, and the Plaintiff has exhausted his
27 administrative remedies with respect to his current claim for LTD benefits under the Plan.
Dkt. # 30 ¶ 8.

1 *Tire & Rubber Co. v. Bruch*, 489 U.S. 101, 115 (1989) (“[A] denial of benefits
 2 challenged under § 1132(a)(1)(B) is to be reviewed under a *de novo* standard unless the
 3 benefit plan gives the administrator or fiduciary discretionary authority to determine
 4 eligibility for benefits”); WAC § 284-96-012(1)(“No disability insurance policy may
 5 contain a discretionary clause.”); *Mirick v. Prudential Ins. Co. of Am.*, 100 F. Supp. 3d
 6 1094, 1097 (W.D. Wash. 2015) (“Washington State law invalidates the attempt to grant
 7 deference to [the plan administrator’s] claim decision.”). The Court does not give
 8 deference to the plan administrator’s decision when conducting a *de novo* review of the
 9 record but “rather determines in the first instance if the claimant has adequately
 10 established that he or she is disabled under the terms of the plan.” *Muniz v. Amec Const.*
 11 *Mgmt., Inc.*, 623 F.3d 1290, 1295-96 (9th Cir. 2010). The Court must make reasonable
 12 inferences where appropriate in evaluating the persuasiveness of each party’s arguments.
 13 *Reetz v. Hartford Life & Accident Ins. Co.*, 294 F. Supp. 3d 1068, 1078 (W.D. Wash.
 14 2018).

15 **4. Plaintiff has the burden of proof to show he is entitled to benefits by a
 16 preponderance of evidence.**

17 When a district court reviews a plan administrator’s decision under *de novo*
 18 review, “[t]he claimant has the burden of proving by a preponderance of the evidence that
 19 he was disabled under the terms of the plan.” *Armani v. Nw. Mut. Life Ins. Co.*, 840 F.3d
 20 1159, 1162–63 (9th Cir. 2016); *Muniz v. Amec Const. Mgmt., Inc.*, 623 F.3d 1290, 1294
 21 (9th Cir. 2010). The burden of establishing something by a “preponderance of evidence”
 22 requires the trier of fact “to believe that the existence of a fact is more probable than its
 23 nonexistence before [he] may find in favor of the party who has the burden to persuade
 24 the [judge] of the fact’s existence.” *Concrete Pipe & Prod. of California, Inc. v. Constr.*
 25 *Laborers Pension Tr. for S. California*, 508 U.S. 602, 622 (1993).

26 **5. Plaintiff presented evidence of disability as defined by the Plan.**

27 Plaintiff provided the opinions of his primary care physician, psychiatrist, and
 28 therapist and objective testing of Plaintiff’s cognitive functionality. The opinions of the

1 two treating doctors and therapist were consistent in concluding that Plaintiff suffered
2 from depression and anxiety, which resulted in cognitive impairment. Their view was
3 supported by objective testing conducted by Plaintiff’s psychiatrist. *Id.* at 97-101. The
4 Court finds this evidence to be compelling at the outset.

5 The second step in the analysis requires an evaluation of whether the cognitive
6 impairment renders Plaintiff “disabled” under the terms of the Plan. To establish
7 entitlement for the first 24 months, Plaintiff must establish that he is unable to perform
8 the material and substantial duties of his regular occupation, regardless of specific
9 employer or location. *See* AR at 180. The Court finds that the evidence supports that
10 Plaintiff’s cognitive impairment precluded him from performing his duties as a software
11 engineer engaged in the type of work he had been doing, which included cognitively
12 demanding tasks including “experimentation, live site analysis, automation design and
13 implementation to monitor and validate e2e functionality,” and required “[e]xceptional
14 test aptitude, customer focus and expertise in formal and informal testing techniques as
15 well as quality measurement.” *Id.* at 749. The results of Dr. Olsen’s June 21, 2018
16 testing revealed significant deficits in psychomotor speed, attention, and immediate and
17 delayed recall that would preclude Plaintiff from performing the material and substantial
18 duties of his regular occupation. *Id.* at 98.

19 **6. Prudential’s reliance on pure paper review is minimally persuasive.**

20 Prudential’s failure to have its own independent doctors conduct an exam of
21 Plaintiff or perform functionality testing undermines Prudential’s position. *See, e.g.,*
22 *Reetz v. Hartford Life & Accident Ins. Co.*, 294 F. Supp. 3d 1068, 1083 (W.D. Wash.
23 2018) (finding that doctor’s report was “minimally persuasive” because she did not
24 examine the claimant in person). Indeed, the Ninth Circuit has found that a “pure paper”
25 review of claimant’s medical condition “raise[s] questions about the thoroughness and
26 accuracy of the benefits determination.” *Montour v. Hartford Life & Acc. Ins. Co.*, 588
27 F.3d 623, 634 (9th Cir. 2009) (internal quotations and citation omitted).

1 Several significant omissions further undermine the reliability of Dr. Frank’s
2 paper review. First, Dr. Frank’s conclusion was based on an incomplete review of the
3 medical records because it omitted any discussion of Dr. Olsen’s testing of Plaintiff on
4 June 21, 2018. *See* AR at 57. Dr. Frank also failed to address Plaintiff’s diagnosis of
5 depression and traumatic stress disorder and focused solely on Plaintiff’s anxiety in her
6 discussion of cognitive impairment. *Id.* at 51. Similarly, as noted above, Dr. Hertz’s
7 disregard of Dr. Olsen’s opinion based on a presumption of bias and dismissal of Dr.
8 Olsen’s testing because he is a psychiatrist and not a neuropsychologist also raise
9 questions about the reliability of Dr. Hertz’s peer review.

10 The Court finds the observations and findings of Plaintiff’s treating doctors who
11 were able to “personally [] observe the effects of [his condition] and assess the credibility
12 of his reports of pain” to be more persuasive than those of Defendant’s consultants.
13 *Rabbat v. Standard Ins. Co.*, 894 F. Supp. 2d 1311, 1322 (D. Or. 2012).

14 Here, Prudential denied Plaintiff’s claim based on the opinions of two consultants
15 who had never met or examined Plaintiff and who inappropriately concluded that the
16 treating doctors’ opinions should be discounted. The Court therefore finds that Plaintiff’s
17 doctors are more probative and reliable than those contracted by Prudential to conduct
18 paper reviews of medical records.

19 **7. Prudential failed to meet its fiduciary duty to investigate Plaintiff’s claims.**

20 Although Plaintiff carries the burden of demonstrating that he is entitled to
21 benefits, plan administrators have a fiduciary duty to conduct an adequate investigation
22 when considering a claim for benefits. *Cady v. Hartford Life & Accidental Ins. Co.*, 930
23 F.Supp.2d 1216, 1226 (D. Idaho 2013); see also *Booton v. Lockheed Med. Ben. Plan*, 110
24 F.3d 1461, 1463 (9th Cir. 1997) (“[W]hat C.F.R. § 2560.503–1(g)] calls for is a
25 meaningful dialogue between ERISA plan administrators and their beneficiaries.... [I]f
26 the plan administrators believe that more information is needed to make a reasoned
27 decision, they must ask for it.”). Here, Dr. Hertz repeatedly stated that an independent

1 testing could very easily confirm or deny the validity of testing if necessary. *Id.* at 114.
2 Dr. Olsen too acknowledged that the testing he conducted did not “represent a complete
3 neuropsychiatric battery” and that “[m]ore complex testing of executive functioning can
4 be done if requested.” *Id.* at 97-98. But Prudential took no such action in its initial
5 review and did not request any additional testing until seven months after Dr. Hertz
6 conducted his peer review. *Id.* at 118. Nonetheless, it rejected the opinions of Plaintiff’s
7 treating doctor, who specializes in psychiatry, Plaintiff’s psychiatrist, and Plaintiff’s
8 therapist—all of whom reached the same conclusions as to Plaintiff’s inability to meet
9 the demands of his job.

10 The Court finds that Prudential failed to engage in meaningful dialogue with
11 Plaintiff or meet its fiduciary duty to conduct an adequate investigation on this claim.
12 Indeed, a plan administrator may not “shut [its] eyes to readily available information
13 when the evidence in the record suggests that the information might confirm the
14 beneficiary’s theory of entitlement.” *Rodgers v. Metropolitan Life Ins. Co.*, 655
15 F.Supp.2d 1081, 1087 (N.D.Cal. 2009) (citations omitted).

16 **8. Prudential ignored the opinions of Plaintiff’s treating doctors and therapist.**

17 Although the opinion of a treating physician is not necessarily accorded greater
18 deference than that of an independent medical consultant, plan administrators “may not
19 arbitrarily refuse to credit a claimant’s reliable evidence, including the opinions of a
20 treating physician.” *Black & Decker Disability Plan v. Nord*, 538 U.S. 822, 834 (2003).
21 In fact, on *de novo* review, a court may “take cognizance of the fact . . . that a given
22 treating physician has ‘a greater opportunity to know and observe the patient’ than a
23 physician retained by the plan administrator.” *Jebian v. Hewlett-Packard Co. Employee*
24 *Benefits Org. Income Prot. Plan*, 349 F.3d 1098, 1109 (9th Cir. 2003) (quoting 538 U.S.
25 at 834).

26 Here, Prudential claims that “[t]he record is clear that Plaintiff can be a capable
27 software engineer, or at least he has no mental illness or other sickness that prevents him

1 from doing so.” Dkt. # 51 at 6. Prudential could only reach this conclusion by ignoring
2 the opinions of Plaintiff’s treating doctor, psychiatrist, and therapist. Wholesale rejection
3 of a treating doctor’s opinion without reason is unjustifiable. *See* 538 U.S. at 834. It is
4 also inexplicable here, where Prudential has failed to identify any inconsistencies or
5 errors in the diagnoses or opinions presented. “[I]n refusing a claimant’s reliable
6 evidence, the plan administrator should themselves be crediting reliable evidence that
7 conflicts with a treating physician’s evaluation.” *James v. AT & T W. Disability Benefits*
8 *Program*, 41 F. Supp. 3d 849, 874 (N.D. Cal. 2014), *judgment entered*, No. 12-CV-
9 06318-WHO, 2014 WL 4068224 (N.D. Cal. July 18, 2014) (internal quotations and
10 citation omitted). Plan administrators may not simply dismiss a “treating physician’s
11 opinion as insufficient based on [an] absence of supporting medical evidence,” without
12 relying on other contradictory evidence. *Farhat v. Hartford Life & Acc. Ins. Co.*, 439 F.
13 Supp. 2d 957, 973 (N.D. Cal. 2006). The Court concludes that Dr. Hertz’s dismissal of
14 Dr. Olsen’s diagnosis and testing results based on the fact that he is a treating doctor is
15 improper.

16 **9. Analysis of physical activity irrelevant to analysis of cognitive impairment.**

17 Prudential points to the fact that Plaintiff continued to exercise as “behavior that
18 conflicted with Plaintiff’s claims that he was so incapacitated by depression and anxiety
19 that he could not work.” Dkt. # 51 at 8. The Court finds that evidence that Plaintiff went
20 skiing, hiking, and went to the gym twice per week is irrelevant to Plaintiff’s claim that
21 he was unable to perform his job due to cognitive impairment. *Id.* Being able to ski,
22 hike, and workout in no way transfers into or supports performance as a software
23 engineer. Similarly, Prudential’s attempt to dismiss Ms. Schachter’s opinion that
24 Plaintiff could not work based on her comment that he exercised and volunteered
25 regularly is without merit. *Id.* at 51.

26 **10. The Court finds that Plaintiff has met his burden by a preponderance of**
27 **evidence and is entitled to benefits from September 19, 2018 through October 31,**

1 **2019.**

2 Plaintiff has established that he has been disabled from March 20, 2018 through
 3 the period in the administrative record. He exhausted his STD benefits on September 19,
 4 2018. *See* Dkt. # 50-1. Dr. Olsen stated that Plaintiff's condition began in autumn of
 5 2017 and would probably continue for two years. AR at 161. He conducted objective
 6 testing demonstrating Plaintiff's ongoing cognitive impairment in June 2018. *Id.* 97-101.
 7 Because the administrative record is undeveloped regarding Plaintiff's disability after
 8 October 2019, however, the Court makes no determination beyond then and remands to
 9 Prudential for further determination of LTD eligibility. *Bunger v. Unum Life Ins. Co. of*
 10 *Am.*, 196 F. Supp. 3d 1175, 1186 (W.D. Wash. 2016) (citing *Mongeluzo v. Baxter*
 11 *Travenol Long Term Disability Ben. Plan*, 46 F.3d 938, 944 (9th Cir.1995)).

12 **11. The Court remands the appropriate calculation of benefits.**

13 Because Prudential did not issue a decision with respect to the benefit amount, it
 14 would be premature for the Court to decide this matter. *See Reddick v. Metro. Life Ins.*
 15 *Co.*, No. 3:15-CV-02326-L-WVG, 2017 WL 1094048, at *4 (S.D. Cal. Mar. 23, 2017)
 16 (Plaintiff "never raised the issue of improper benefits calculation in the administrative
 17 context with [plan administrator] and therefore has not yet exhausted his administrative
 18 remedies regarding pre-termination benefits payments").

19 **12. The Court enters an injunction pursuant to § 1132(a)(3) requiring Prudential to**
 20 **consider claimant's treating physicians' opinions in evaluation.**

21 While the persuasiveness of medical evidence is a matter for review, plan
 22 administrators "may not arbitrarily refuse to credit a claimant's reliable evidence,
 23 including the opinions of a treating physician." *Black & Decker Disability Plan v. Nord*,
 24 538 U.S. 822, 834 (2003).

25 **V. CONCLUSION**

26 For the foregoing reasons, the Court hereby **ORDERS**:

27 (1) Plaintiff's Motion for Judgment under Federal Rule of Civil Procedure 52 is

