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United States District Court, S.D. New York.

MICHAEL DECARLO, Plaintiff,

v.

LINCOLN LIFE ASSURANCE COMPANY OF BOSTON, Defendant.

21 Civ. 2627 (PGG) (GWG)

|

Filed 08/29/2024

REPORT & RECOMMENDATION

GABRIEL W. GORENSTEIN United States Magistrate Judge

Plaintiff Michael DeCarlo brings this action under the Employee Retirement Income Security Act, 29 U.S.C. § 1001 et seq. ("**ERISA**"), seeking long-term **disability** benefits under a policy now administered by Lincoln Life Assurance Company of Boston ("Lincoln"). See Complaint, filed Mar. 26, 2021 (Docket # 1). Both DeCarlo and Lincoln have moved for summary judgment. [1] For the reasons stated below, Lincoln's motion for summary judgment should be granted and DeCarlo's motion denied.

I. BACKGROUND

A. The Policy

DeCarlo began working at Mount Sinai Health Systems in 2012 as the Director of Information Technology. Notice of **ERISA** Administrative Record Filing, filed July 11, 2022 (Docket # 28) ("R."), at LIN000183; Pl. SJ 56.1 ¶ 1; Def. SJ 56.1 ¶ 5. In connection with his employment, DeCarlo participated in his employer's employee benefit plan, which included a **disability** income policy issued by Liberty Life Assurance Company of Boston, now known as The Lincoln National Life Insurance Company ("Lincoln"). Pl. SJ 56.1 ¶¶ 3-5; Def. SJ 56.1 ¶ 5; see R. LIN002223-LN002287 ("Group Policy"); Def. SJ Mem. at 1 n.1.

The Group Policy defines "disability" or "disabled" as follows:

> (i) if the Covered Person is eligible for the 24 Month Own Occupation benefit, "Disability" or "Disabled" means that during the Elimination Period and the next 24 months of Disability the Covered Person, as a result of Injury or Sickness, is unable to perform the Material and Substantial Duties of his Own Occupation; and
>
> (ii) thereafter, the Covered Person is unable to perform, with reasonable continuity, the Material and Substantial Duties of Any Occupation.

R. LIN002233; see also R. LIN002225 (defining the different "classes" for which certain definitions apply). The Group Policy defines "Own Occupation" as "the Covered Person's occupation that he was performing when his Disability or Partial Disability began," R. LIN002237, and "Any Occupation" as "any occupation that the Covered Person is or becomes reasonably fitted by training, education, experience, age, physical and mental capacity," R. LIN002232. "Material and Substantial Duties" is defined as the "responsibilities that are normally required to perform the Covered Person's Own Occupation, or any other occupation, and cannot be reasonably eliminated or modified." R. LIN002236.

In addition to defining "disabled" and "disability," the Group Policy defines "partial disability" or "partial disabled" as being able to:

1. perform one or more, but not all, of the Material and Substantial Duties of his Own Occupation or Any Occupation on an Active Employment or a part-time basis; or

2. perform all of the Material and Substantial Duties of his Own Occupation or Any Occupation on a part-time basis; and

3. earn between 20.00% and 80.00% of his Basic Monthly Earnings.

R. LIN002238.

B. DeCarlo's Initial Claim

DeCarlo stopped working at his job in July 2015. Pl. SJ 56.1 ¶ 8; Def. SJ 56.1 ¶ 28. Shortly afterwards, on August 4, 2015, DeCarlo made a claim for short-term disability benefits under his employer's plan. R. LIN000050-LIN000051; Pl. SJ 56.1 ¶ 8; Def. SJ 56.1 ¶ 28. The basis for the claim was chronic fatigue. R. LIN000051; Pl. SJ 56.1 ¶ 9; see Def. SJ 56.1 ¶ 29. On December 29, 2015, Dr. Susan Levine, an infectious disease and Chronic Fatigue Syndrome specialist, see R. LIN002045, diagnosed DeCarlo with Chronic Fatigue Syndrome, R. LIN001947-LIN1950; Pl. SJ 56.1 ¶ 30; Def. SJ 56.1 ¶ 36. In connection with DeCarlo's claim for short-term disability benefits, the claims examiner obtained an opinion from David Ray, M.D., a board-certified psychiatrist and neurologist. See R. LIN002108-LIN002111; Def. SJ 56.1 ¶ 40. Among other medical evidence reviewed, Dr. Ray contacted DeCarlo's treating psychiatrist, Dr. Ira Lipton. R. LIN002108-LIN002111; see Pl. SJ 56.1 ¶ 40 (stating Dr. Lipton is the "Psychiatrist that treats Mr. DeCarlo"). Dr. Ray's February 23, 2016 memorandum summarizes Dr. Lipton's findings, which included a judgment that "DeCarlo primarily suffers from a refractory and Recurrent Major Depression as well as a Panic Attack Disorder." R. LIN002110. Dr. Lipton had also opined that DeCarlo was unable to work. R. LIN002111. Lincoln approved DeCarlo's claim for short-term disability benefits (for which DeCarlo had received benefits as of July 10, 2015). See R. LIN002088.

Lincoln requested additional information in connection with DeCarlo's claim for long-term disability benefits. See R. LIN002088. On May 6, 2016, DeCarlo completed an "Activities Questionnaire," wherein he indicated that he had "crippling fatigue," a "lack of concentration" and "no physical or mental stamina." R. LIN002041. DeCarlo also underwent a physical examination, performed by Dr. Hillel Tobias, see R. LIN001977-LIN001982, and obtained additional letters from his treating psychiatrist, Dr. Lipton, indicating, inter alia, that he was unable to work, see R. LIN002053, LIN001940. Lincoln referred the medical evidence to psychologist Derek Stern, Ph.D., who issued a report on June 29, 2016. See R. LIN001771-LIN001777. Dr. Stern noted the "limited psychiatric documentation in the record, as the treating psychiatrist, Dr. Lipton[,] has not provided any treatment records." R. LIN001771. Nonetheless, Dr. Stern concluded that the record supported a diagnosis of Major Depressive Disorder and believed that, based on DeCarlo's "subjectively reported symptoms," DeCarlo "would reasonably be considered unable to pursue usual life activities or work related activities from 07/03/15 through the date of this review." R. LIN001771-LIN001772. On July 5, 2016, Lincoln approved DeCarlo's claim for long-term disability benefits. R. LIN00036, LIN001762-LIN001764.

C. DeCarlo's Return to Work

In April 2017, DeCarlo began indicating to the claims examiner, Kerry Arvenitis, that he was interested in seeking employment in some capacity. On April 7, 2017, Arvenitis noted that DeCarlo stated "he would like to start with part-time work then transition in to full-time work." R. LIN000030. DeCarlo again articulated this desire in June 2017. R. LIN000030 (noting DeCarlo indicated he "just wants to be back to work"). In October 2017, DeCarlo reported that he used his computer approximately 3 hours per day, read for approximately 1-2 hours per day, and was "taking some free courses @ Khan Academy to try to build up [his] mental stamina." R. LIN001290-LIN001293. DeCarlo also indicated that he "will do any job [he is] physically and mentally capable of doing," and that while he "would prefer one in [his] field," he would "do anything." R. LIN001293. In January 2018, DeCarlo spoke with Arvenitis and indicated that his concentration and energy levels had improved. R. LIN000027.

Lincoln obtained a psychiatric opinion from board-certified psychiatrist Reginald Givens, M.D., in February 2018. R. LIN001190-LIN001195. Dr. Givens opined that a "[d]iagnosis supported by medical evidence would be bipolar 2 disorder with episodes of irritability, mood lability with documentation of rapid speech, impulsivity and promiscuity. Panic disorder is supported with history of panic attack." R. LIN001194. Dr. Givens also opined that DeCarlo had "impairments in areas of occupational duties requiring sustained concentration and persistence and short term memory and that would translate to restrictions of no work requiring sustained concentration/persistence and short term memory." Id.

On February 13, 2018, Lincoln sent a letter to DeCarlo notifying him that the criteria for determining whether he was "disabled" for purposes of receiving benefits would soon change under the policy. R. LIN001185-LIN001186. Specifically, while the definition of disability that applied to DeCarlo until that point had only considered whether DeCarlo could "perform the material and substantial duties of your own occupation as a IT Director," the criteria would change to whether DeCarlo could "perform the material and substantial duties of your own or any other occupation for which you are or become reasonably fitted for by training, education or experience." R. LIN001185 (emphasis added); see R. LIN002233 (Group Policy's definition of "disabled" changes after 24 months of receiving benefits). The letter concluded that "[b]ased on this change in the definition of disability and the medical and vocational information in your claim file, we have determined that you have qualified for continued benefits." R. LIN001185.

In August 2018, Dr. Lipton indicated to Arvenitis that DeCarlo continued to suffer from "severe fatigue" and "impaired concentration," and concluded that DeCarlo "remains unable to work." R. LIN001142. Dr. Levine observed in a report dated August 10, 2018, that DeCarlo "cannot perform in a sustained and predictable manner due to physical (fatigue) and cognitive decline" and that such restrictions were "indefinite." R. LIN001112; Def. SJ 56.1 ¶ 96. Nonetheless, DeCarlo indicated that he believed he could perform part-time work, stating:

> With my current treatments I believe I can return to work part time. After 5-6 hours of concentration I'm exhausted and need to nap. Due to my anxiety, I cannot travel on public transportation, or go over bridges/tunnels.

R. LN001129. In November 2018, Arvenitis noted that DeCarlo had begun volunteering with the Boy Scouts. R. LIN000021.

In March 2019, DeCarlo began working with a vocational rehabilitation specialist at Lincoln, Kathleen Regan, on a plan to return to work. See R. LIN001019. Regan requested Dr. Lipton complete a "Restrictions Form," explaining that DeCarlo had told her that "he believes he would be able to consider part-time work at this time and try to gradually increase to full-time." R. LIN001062. On April 1, 2019, Dr. Lipton submitted a "Restrictions Form," which stated that he believed DeCarlo's depression and anxiety had improved but that "some fatigue, panic and anxiety [were] present." R. LIN001033. Dr. Lipton concluded that DeCarlo could return to work on a part-time basis but would likely not be able to commute into Manhattan. Id.; see R. LIN000926; Def. SJ R.56.1 ¶ 102. Regan continued to collect information from DeCarlo. DeCarlo admitted that he had been performing some work for the last three years as a consultant for his brother's business, R. LIN000016, and again stated in June 2019 that he could "handle part time work at this point," R. LIN000920.

In the meantime, Lincoln conducted surveillance on DeCarlo from May 20 to May 22, 2019. See R. LIN000969-LIN000976. An investigator observed DeCarlo travel to a "Eye Care 20/20" on May 20 and a grocery store on May 22. R. LIN000969-LIN000970.

On June 6, 2019, DeCarlo spoke with a claims examiner and asked whether he could receive any benefits while working full-time. R. LIN000015. He informed another claims examiner, Jessica Austin, that he had been hired for a six-month contracting

position that involved working 35 hours per week. Id. Shortly after, Dr. Lipton provided an update on DeCarlo's medical status, indicating that DeCarlo's "symptoms have improved" and that "he can return to work on a part-time basis." R. LIN000926.

In June 2019, DeCarlo obtained two employment offers to work as a project manager on a part-time basis. See R. LIN000014-LIN000015, LIN000915. Claims examiner Austin consulted with a psychologist, Dr. Stern, who opined that DeCarlo was likely capable of working on a part-time basis, while noting that it was not entirely clear given a lack of medical documentation from DeCarlo's treating providers. R. LIN000014. DeCarlo provided Lincoln with one of the employment offer letters he received, which provided that DeCarlo would "perform the duties and obligations for [his] Position as are customarily performed by an employee in a similar position ...." R. LIN000643. DeCarlo began working on a part-time basis in July 2019, see R. LIN000835-LIN000836, and Lincoln began paying partial disability benefits as a result, see R. LIN000837.

D. Lincoln's Reevaluation of DeCarlo's Benefits

On January 17, 2020, DeCarlo indicated that he was too fatigued to perform full-time work and that his "provider" was continuing to recommend only part-time work. R. LIN000012-LIN000013. Several days later, Dr. Levine provided a note to Lincoln stating that DeCarlo was "experiencing ongoing episodic weakness, fatigue post-exertional malaise should he exceed his daily limitations of working more than 25 hours a week ...." R. LIN000657. Lincoln performed additional surveillance from January 29 to February 1, 2020. See R. LIN000687-LIN000699. On the first two days of surveillance, DeCarlo was observed driving to work at approximately 8:15 a.m. and had not returned home by the time the surveillance concluded around 3:30/4:00 p.m. R. LIN000691-LIN000695. On the third day, DeCarlo was observed staying inside his house for most of the day, and on the final day, a Saturday, DeCarlo's car was not present at his house for the entire day. R. LIN000695-LIN000698.

In late February and March 2020, Dr. Lipton and Dr. Levine provided information on DeCarlo's condition. Dr. Lipton submitted a report in which he stated that DeCarlo was only able to work on a part-time basis. R. LIN000609. Dr. Levine provided a note stating that DeCarlo "continues to be partly disabled." R. LIN000655. In late March 2020, in a conversation with Lincoln's claims examiner, DeCarlo stated that his "provider" was getting "frustrated" at Lincoln's repeated requests for treatment notes and did not plan on giving them to Lincoln. R. LIN000010. DeCarlo submitted an "Activities Questionnaire," indicating that he worked from 9:00 a.m. to 1:30 p.m. everyday and felt "completely wiped out" after. R. LIN000580. He also indicated that he could not work full-time because of "fatigue and lack of concentration." Id.

On March 25, 2020, Lincoln sought a third-party review of DeCarlo's case through Exam Coordinators Network. See R. LIN000010; Def. SJ 56.1 ¶ 127. Mahdy Flores, DO, MS, board-certified in family medicine and occupational and environmental medicine, issued a report on April 1, 2020. See R. LIN000535-LIN000546. Dr. Flores observed that DeCarlo's "primary complaint" was chronic fatigue. R. LIN000543. Dr. Flores reviewed DeCarlo's medical information and concluded that DeCarlo did not "meet the clinical criteria for chronic fatigue syndrome diagnosis." R. LIN000544. Specifically, Dr. Flores observed that "[w]hile the claimant's primary symptom of persistent chronic fatigue is consistent with the diagnosis, the claimant has no other associated symptoms," such as "sore throat, ... cervical or axillary lymph node tenderness, ... pain in multiple joints, and ... muscle pain." Id. Dr. Flores also noted that "the medical information does not support any concentration or cognitive/memory impairment," since such "complaints are not specifically reported by the claimant." Id. In regard to DeCarlo's reports of fatigue, Dr. Flores concluded that "the medical information does not quantifiably support the reported severe and chronic fatigue." Id. Specifically, Dr. Flores noted that "none of the medical reports or examinations made notations that the claimant looked fatigued, exhausted or tired." Id. After reviewing other conditions and complaints in DeCarlo's medical file, Dr. Flores summarized her results by stating: "In summary, the medical information does not demonstrate clinical evidence to support impairment due to physical issues or conditions. Therefore, the medical information is not indicative of restrictions and limitations." R. LIN000545.

On April 3, 2020, Dr. Levine responded to Dr. Flores's report. See R. LIN000479-LIN000481. Dr. Levine disagreed with Dr. Flores's conclusions related to a diagnosis of Chronic Fatigue Syndrome. At the onset, Dr. Levine noted that she was an expert in Chronic Fatigue Syndrome, indicating that she had seen over three thousand patients with the disease and was the former "Chairperson of the Federal Advisory Committee ... on the disease." R. LIN000479. Dr. Levine took issue with several aspects of Dr. Flores's description of the medical evidence, as well as some of Dr. Flores's observations about a lack of symptoms —

such as Dr. Flores's observation that DeCarlo was rarely reported as "looking fatigued." R. LIN000480. Dr. Levine summarized her observations of Dr. Flores's report by stating that she was "not convinced that [Dr. Flores] is at all familiar with [Chronic Fatigue Syndrome]" and that Dr. Flores "is not the appropriate reviewer" for DeCarlo's claim. R. LIN000481. Finally, Dr. Levine emphasized that it was her medical opinion that DeCarlo "is not capable of performing in a consistent and predictable manner and cannot work more than his current part time status allows." Id.

Following Dr. Levine's response, Lincoln obtained two additional medical opinions. First, Lincoln referred DeCarlo's case to MLS Group of Companies, LLC, for an independent review. R. LIN000009, LIN000451. On April 24, 2020, board-certified infectious disease specialist Piotr (Peter) Kapinos, M.D., issued a report. See R. LIN000451-LIN000457. Dr. Kapinos twice attempted, unsuccessfully, to speak with Dr. Levine. R. LIN000452. Dr. Kapinos concluded that "the medical evidence does not support any diagnoses causing functional impairment at the present time." R. LIN000455. Specifically, Dr. Kapinos relied on the lack of objective medical findings in the record and on the surveillance conducted by Lincoln in reaching his conclusion. See R. LIN000455. Dr. Kapinos opined that DeCarlo "is able to perform a sustained full time work capacity (8 hours/day, 5 days/week) without any restrictions or limitations." R. LIN000456.

The second opinion, dated May 15, 2020, was issued by Warran Taff, M.D., a board-certified psychiatrist. R. LIN000423-LIN000429. Along with reviewing DeCarlo's medical file, Dr. Taff spoke with DeCarlo's treating psychiatrist, Dr. Lipton. R. LIN000425. Dr. Taff noted a lack of "objective, measurable and valid evidence to support" the contention that any cognitive impairments were impairing DeCarlo's ability to work. R. LIN000426; see R. LIN000427 ("[T]here is no evidence to support an inability to work on a full-time basis, from a psychiatric perspective."). Dr. Taff concluded that "it appears that self-reporting is the only basis for providers' continuing recommendations of an inability to work full time due specifically to psychiatric and cognitive impairment." R. LIN000427.

On May 19, 2020, after obtaining the aforementioned medical opinions, Lincoln sent a letter to DeCarlo, see R. LIN000413-LIN000422 ("5/19/20 Denial Letter"), informing him that Lincoln determined that his benefits were not payable beyond May 14, 2020, [2] in light of Lincoln's determination that DeCarlo had not met "Mount Sinai Health System's definition of disability beyond May 18, 2020," R. LIN000413, LIN000420.

E. DeCarlo's Appeal

DeCarlo appealed on November 6, 2020, submitting, among other materials, results from a neuropsychological test and a vocational report. See R. LIN000170-LIN000224. In regard to the neuropsychological testing, the testing was performed on July 31, 2020, R. LIN000215, and Erik Dranoff, Ph.D., issued a report on October 4, 2020, see R. LIN000213-LIN000222. After considering "extensive record review, clinical and collateral interviewing, neuropsychological testing, and direct observation," R. LIN000221, Dr. Dranoff concluded that DeCarlo "is unable to acquire and retain substantive full-time gainful employment and may experience some problems managing the stress in his occupational and social functioning if he is encouraged to try and work on a full time basis." R. LIN000221- LIN000222. In support, Dr. Dranoff referenced DeCarlo's Chronic Fatigue Syndrome diagnosis and various medical providers' reports indicating that DeCarlo was "experiencing a wide range of physical and psychological symptoms ...." R. LIN000221. Dr. Dranoff also noted that his evaluation of DeCarlo revealed a "decline over the last few years" in DeCarlo's cognitive functioning. Id.

In addition to Dr. Dranoff's report, DeCarlo submitted a "vocational file review," dated November 6, 2020, performed by Charles Galarraga, MS, CRC, LCPC. See R. LIN000171-LIN000212. Galarraga stated in the "Referral Objective" portion of the report that DeCarlo's counsel referred DeCarlo's case "for the purpose of a vocational file review of vocational and medical file referral information as well as a labor market study on the OWN Occupation period of his policy." R. LIN000171 (emphasis omitted). As part of the analysis, Galarraga called eleven employers hiring varying levels of information technology professionals and asked a series of questions. See R. LIN000195-LIN000210. The questions related to the general duties of the role and whether someone with DeCarlo's background and certain claimed medical limitations would be capable of performing the job. See R. LIN000195. For example, some of the questions were: "If a potential applicant had difficulties with completion of work-

related demands[,] would this preclude them from performing the material and substantial aspects of this occupation?" and "If a potential applicant had issues with reduced energy and motivation[,] would this preclude them from performing the duties of this occupation?" Id. After collecting the data, Galarraga concluded:

> After reviewing all file referral information as outlined within the resource section of this report, reviewing claimant's transferrable skills, interviewing claimant regarding his training, education, and work history, and performing a telephonic Labor Market Survey within a 50-mile radius of claimant's address, it is in the opinion of this VRC that claimant, from a vocational standpoint, cannot perform the duties of his OWN Occupation or ANY Occupation given the restrictions and limitations of his Attending Medical Providers as well as the Insurance Company Independent Medical Evaluations ....

R. LIN000210.

DeCarlo's appeal was assigned to appeals consultant Stephanie Berry. R. LIN000008; see R. LIN000054-LIN000065. Two additional reviews of DeCarlo's medical file were rendered. First, Armando Meza, M.D., a board-certified infectious disease and internal medicine expert, reviewed DeCarlo's medical file in December 2020. See R. LIN000103-LIN000114. After reviewing the record, Dr. Meza concluded that DeCarlo "does not have any clinically significant comorbid diagnoses" and found that "[t]he reviewed medical records do not indicate any need for restrictions or limitations ...." R. LIN000113-LIN000114. Second, Jeremy Hertza, Ph.D., a board-certified psychologist/neuropsychologist, reviewed DeCarlo's medical file and issued a report. See R. LIN000142-LIN000149. Dr. Hertza concluded:

> I respectfully disagree with the providers conclusion that the claimant's formal test results support inability to work full time in gainful employment. Additionally, his symptoms do not appear to limit his social or occupational functioning. Further, there is limited medical documentation within a year prior to the timeframe in question aside from surveillance reports. Based on the limited documentation during the timeframe under review, and the formal evaluation, the documentation does not support that he has cognitive symptoms that rise to the level of severity that would preclude his functioning. The medical documentation does reflect that he has ongoing complaints of fatigue, but this is inconsistent with his ability to complete the intensive formal evaluation without any accommodations. Additionally, the test results reflected all areas within normal limits in the average range. Therefore, no cognitive impairment is supported that would warrant any restrictions or limitations or any time frame in question.

R. LIN000147. Similar to the other professionals who reviewed DeCarlo's files, Drs. Meza and Hertza were unable to speak with DeCarlo's treating providers --- either because they were unable to get in contact with them or because, in the case of Dr. Levine, the treating providers were unwilling to discuss the review over the phone. See R. LIN000114, LIN000144, LIN000149.

In connection with their reports, Drs. Meza and Hertza had submitted several questions to Dr. Levine related to "clinical" and "objective" findings used to support Dr. Levine's opinion that DeCarlo was unable to perform work on a full-time basis. See R. LIN000140, LIN000116. On December 11, 2020, Dr. Levine wrote a letter to DeCarlo's counsel outlining clinical evidence supportive of her conclusions:

> I reviewed the results of neurocognitive testing performed on the above patient and determined that there are a number of barriers, related to Mr. Decarlo's neurocognitive deficits that prevent him from working fulltime.

> On the last page of the neurocognitive report provided by Dr. Dranoff on l0/4/00 [sic] based on his examination of Mr. DeCarlo he summarizes the following key findings:
>
> 1. The patient has suffered from depression and anxiety disorder for many years but was able to function until the last few years when his fatigue, including his mental fatigue, prevented him from working in a sustained and predictable manner.
>
> 2. The results of this recent neurocognitive testing support the presence of deficits in his short term memory; nonverbal memory; attention span and executive functioning
>
> 3. Based on the presence of these deficits, Mr. DeCarlo is incapable of working fulltime in a predictable and competent manner.

R. LIN000121. Dr. Hertza provided an addendum to his report based on Dr. Levine's response but continued to conclude that "the documentation does not support that the claimant's abilities are not sustainable full-time as no impairment is supported." R. LIN000080.

Lincoln also obtained a "transferable skills analysis" from senior vocational case manager Michelle Reddinger, MA, CRC. See R at LIN000068-LIN000072. Reddinger, relying on Drs. Hertza's and Meza's conclusions that DeCarlo did not have any significant restrictions or limitations, see R. LIN000067, found that DeCarlo could perform a variety of occupations, including "Software Engineer; Manager, Data Processing; Manager, Computer Operations; Data Base Administrator; Chief, Computer Programmer; Systems Analyst; and Computer Operator," R. LIN000072. Additionally, Reddinger considered the Labor Market Survey conducted by DeCarlo's vocational expert, Galarraga, to be "moot" because "[t]he Labor Market Survey was completed based on Mr. Decarlo's own occupation; however, he is currently in the any occupation phase of his policy." R. LIN000071.

On February 11, 2021, Lincoln sent a letter to DeCarlo affirming its denial of benefits and explaining its determination. See R. LIN000054-LIN000065. DeCarlo filed the instant action to challenge Lincoln's determination.

II. SUMMARY JUDGMENT STANDARD

Rule 56(a) of the Federal Rules of Civil Procedure states that summary judgment shall be granted when "the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a); see Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). A genuine issue of material fact exists "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). "[O]nly admissible evidence need be considered by the trial court in ruling on a motion for summary judgment." Raskin v. Wyatt Co., 125 F.3d 55, 66 (2d Cir. 1997) (citations omitted); see also Fed. R. Civ. P. 56(c)(4) (parties shall "set out facts that would be admissible in evidence").

In determining whether a genuine issue of material fact exists, "[t]he evidence of the non-movant is to be believed" and the court must draw "all justifiable inferences" in favor of the nonmoving party. Anderson, 477 U.S. at 255 (citing Adickes v. S.H. Kress & Co., 398 U.S. 144, 158-59 (1970)). Once the moving party has shown that there is no genuine issue as to any material fact and that it is entitled to judgment as a matter of law, "the nonmoving party must come forward with 'specific facts showing that there is a genuine issue for trial,' " Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986) (emphasis in original) (quoting Fed. R. Civ. P. 56(e)), and "may not rely on conclusory allegations or unsubstantiated speculation," Scotto v. Almenas, 143 F.3d 105, 114 (2d Cir. 1998). In other words, the nonmovant must offer "concrete evidence from which a reasonable juror could return a verdict in his favor," Anderson, 477 U.S. at 256, and "[a] party opposing summary judgment does not show the existence of a genuine issue of fact to be tried merely by making assertions that are conclusory," Major League Baseball Props., Inc. v. Salvino, Inc., 542 F.3d 290, 310 (2d Cir. 2008). "Where it is clear that no rational finder of fact 'could find in favor of the nonmoving party because the evidence to support its case is so slight,' summary judgment should be granted." FDIC v. Great Am. Ins. Co., 607 F.3d 288, 292 (2d Cir. 2010) (quoting Gallo v. Prudential Residential Servs., Ltd. P'ship, 22 F.3d 1219, 1224 (2d Cir. 1994)).

III. DISCUSSION

A. Standard of Review

"[A] denial of benefits challenged under [29 U.S.C.] § 1132(a)(1)(B) is to be reviewed under a de novo standard unless the benefit plan gives the administrator or fiduciary discretionary authority to determine eligibility for benefits or to construe the terms of the plan." Firestone Tire & Rubber Co. v. Bruch, 489 U.S. 101, 115 (1989); accord Fichtl v. First Unum Life Ins. Co., 2024 WL 1300268, at *10 (S.D.N.Y. Mar. 26, 2024). Under a de novo standard, "the plaintiff has the burden of proving by the preponderance of the evidence that he is disabled within the meaning of the plan." Fichtl, 2024 WL 1300268, at *10. However, "[w]hen a plan gives an administrator such discretion, 'a court may not overturn the administrator's denial of benefits unless its actions are found to be arbitrary and capricious.' " Arnone v. Aetna Life Ins. Co., 860 F.3d 97, 105 (2d Cir. 2017) (quoting McCauley v. First Unum Life Ins. Co., 551 F.3d 126, 132 (2d Cir. 2008)). "In the ERISA context, an administrator's decision is arbitrary and capricious if it is made without reason, if it is unsupported by substantial evidence, or, ... if it is erroneous as a matter of law." Id. (citation and internal quotation marks omitted).

Here, the Group Policy indicates that Lincoln has the "authority, in its sole discretion, to construe the terms of this policy and to determine benefit eligibility hereunder." R. LIN002278. "Such language is sufficient to entitle Defendant to the deferential arbitrary and capricious standard of review." Friedland v. UBS AG, 2019 WL 1232084, at *7 (E.D.N.Y. Mar. 14, 2019) (finding language leaving interpretation of plan to the "sole discretion" of the plan administrator sufficient to apply arbitrary and capricious standard); Wegmann v. Young Adult Inst., Inc., 2018 WL 3910820, at *8 (S.D.N.Y. Aug. 14, 2018) (applying arbitrary and capricious standard where plan granted administrator the power "to interpret the Plan, and to resolve ambiguities, inconsistencies and omissions" and to "determine the amount of benefits which shall be payable to any person in accordance with the provisions of the Plan").

DeCarlo does not dispute that the Group Policy provides discretion to Lincoln in interpreting the policy; rather, DeCarlo argues that a de novo standard should be used in the Court's analysis because Lincoln failed to accurately take into account the Labor Market Survey conducted by Galarraga. See Pl. SJ Mem. at 20-21. In Halo v. Yale Health Plan, Dir. of Benefits & Recs. Yale Univ., 819 F.3d 42 (2d Cir. 2016), the Second Circuit held that "when denying a claim for benefits, a plan's failure to comply with the **Department of Labor's** claims-procedure **regulation**, **29 C.F.R. § 2560.503-1**, will result in that claim being reviewed de novo in federal court, unless the plan has otherwise established procedures in full conformity with the **regulation** and can show that its failure to comply with the claims-procedure **regulation** in the processing of a particular claim was inadvertent and harmless." Id. at 57-58; accord Kwasnik v. Oxford Health Ins., Inc., 2024 WL 3027924, at *6 (S.D.N.Y. June 17, 2024).[3] Of relevance here, **29 C.F.R. § 2560.503-1**(h)(2)(iv) provides that, in the course of an appeal of an adverse benefit determination, a provider must "[p]rovide for a review that takes into account all comments, documents, records, and other information submitted by the claimant relating to the claim, without regard to whether such information was submitted or considered in the initial benefit determination." See also **29 C.F.R. § 2560.503-1**(h)(4) (applying section 2560.503-1(h)(2)(iv) to disability benefit plans); accord Aitken v. Aetna Life Ins. Co., 2018 WL 4608217, at *14 (S.D.N.Y. Sept. 25, 2018).

Here, DeCarlo argues that Lincoln improperly found the Labor Market Survey "moot" based on the inaccurate belief that the report only considered DeCarlo's "own occupation" — that is, an IT Director — when in fact it considered both DeCarlo's "own occupation" and "any occupation." Pl. SJ Mem. at 20-21; see R. LIN000061 ("The vocational consultant noted that the Labor Market Survey was completed based on Mr. DeCarlo's own occupation; however, he is currently in the any occupation phase of his policy."). Thus, this misinterpretation of the report meant that Lincoln did not take the report "into account."

We disagree with DeCarlo's contention. As an initial matter, we are not convinced that Lincoln's characterization of the Labor Market Survey was error. Indeed, the report's author, Galarraga, specifically states that a "Labor Market Survey was conducted and this VRC was able to speak with six out of 11 Human resources/Recruiters regarding the claimant's OWN Occupation." R. LIN000210 (emphasis in original). The reference to "own occupation" is repeated elsewhere in the report. See R. LIN000171 ("Mr. Michael DeCarlo's LTD file was referred to Seacoast Rehabilitation ... for the purpose of a vocational file review of

vocational and medical file referral information as well as a labor market study on the OWN occupation period of his policy.") (emphasis in original).

Moreover, even assuming that Lincoln's characterization was not accurate, the appeals consultant plainly took the report "into account" as required by **29 C.F.R. § 2560.503-1**(h)(2)(iv). In considering the report, Lincoln's appeals consultant, Stephanie Berry, responded to the report by stating:

> Mr. Galarraga concluded that Mr. DeCarlo cannot perform the duties of his own or any occupation. On page 23 and page 24 [of his report], a number of transferrable skills are listed for Mr. DeCarlo; however, Mr. Galarraga eliminated 26 of 34 of the skills as non-transferrable noting that he based the decision on the October 4, 2020 neuropsychological report and attending physician's restrictions and limitations. Generally speaking however; we find that it does not make sense that these [skills] were eliminated, because Mr. DeCarlo has secured a new part-time job as a Program manager and has persisted in the job since July 2019.... Mr. DeCarlo is performing a number of the skills in his current job that Mr. Galarraga eliminated from his transferrable skills analysis.

See R. LIN00060. The phrase "take[ ] into account" in the regulatory language suggests the consideration of the report as a whole; it does not require a court to judge the quality of that consideration. See Kwasnik, 2024 WL 3027924, at *8 ("The fact that Oxford was not persuaded by Plaintiff's submissions does not mean that it did not consider them.").

Additionally, the fact that Lincoln analyzed the report — as reflected by Lincoln citing particular pages of the report and providing a thorough discussion of the limitations Galarraga identified, see R. LIN00060-LIN00061 — belies DeCarlo's assertion that Lincoln "failed to read the report," see Pl. SJ Mem. at 21. Lincoln's analysis is a far cry from the case relied on by DeCarlo, where the insurer did not mention the report in its decision. See Aitken, 2018 WL 4608217, at *15 ("Because Clifton's report says nothing about Dr. Kincaid's report, it does not establish that Aetna took Dr. Kincaid's report into account.").

DeCarlo's only other argument is that a review of Galarraga's report by Lincoln's appeals consultant was insufficient to take the report into account, and that Lincoln merely sought to "cover up" its vocational expert's failure to properly consider the report. See Def. SJ Opp. at 2. As an initial matter, nothing in **29 C.F.R. § 2560.503-1**(h)(2)(iv) suggests that evidence must be taken "into account" by a particular individual. Indeed, the only case cited by DeCarlo addressed only whether the appeals consultant, rather than a particular expert, considered the plaintiff's vocational report. See Schuman v. Aetna Life Ins. Co., 2017 WL 1053853, at *16 (D. Conn. Mar. 20, 2017) (finding genuine issue of material fact where defendant did not proffer "any affirmative evidence that the appellate reviewer did consider [the vocational specialist]'s report") (emphasis omitted). As discussed above, Lincoln's appeals consultant in fact considered the report. Moreover, the Court rejects DeCarlo's assertion that Lincoln's vocational expert, Reddinger, did not properly evaluate the report. While DeCarlo is correct that Reddinger believed Galarraga's report was focused on DeCarlo's "own occupation," see R. LIN000071, Reddinger also disagreed with Galarraga's report in that Reddinger found that "no restrictions and limitations (physical or cognitive) have been identified," id. This disagreement with Galarraga's report shows engagement with the core assumptions of the report, i.e., what limitations did DeCarlo have that affected his capacity to work on a full-time basis, which is the issue that Lincoln was called upon to consider.

Accordingly, Lincoln's determination must be reviewed under the arbitrary and capricious standard.

B. Arbitrary and Capricious Review

"The arbitrary and capricious standard is a highly deferential standard of review." Kwasnik, 2024 WL 3027924, at *9 (citing Preville v. PepsiCo Hourly Emps. Ret. Plan, 649 F. App'x 63, 64 (2d Cir. 2016)). "In the ERISA context, an administrator's decision is arbitrary and capricious if it is made 'without reason,' if it is 'unsupported by substantial evidence,' or, ... if it

is 'erroneous as a matter of law.' " Arnone, 860 F.3d at 105 (quoting McCauley, 551 F.3d at 132). Of most significance to the instant motion, "[s]ubstantial evidence is such evidence that a reasonable mind might accept as adequate to support the conclusion reached by the administrator and ... requires more than a scintilla but less than a preponderance." Celardo v. GNY Auto. Dealers Health & Welfare Tr., 318 F.3d 142, 146 (2d Cir. 2003) (internal alterations and quotation marks omitted); see Durakovic v. Bldg. Serv. 32 BJ Pension Fund, 609 F.3d 133, 141 (2d Cir. 2010); accord J.M. v. United Healthcare Ins., 2023 WL 6386900, at *3 (S.D.N.Y. Sept. 29, 2023).

Here, DeCarlo has not met his burden of showing that Lincoln's determination was arbitrary and capricious. In the denial of DeCarlo's appeal, Lincoln found that nothing in the medical record supported the conclusion that DeCarlo had "restrictions or limitations rendering him unable to perform the duties of the occupations identified as being within his functional capacity and vocational skills, on a full-time basis ...." R. LIN000061. In reaching this determination, Lincoln relied on the conclusions reached by Drs. Flores, Kapinos, Taff, Hertza and Meza, who all found, after reviewing DeCarlo's medical file, that he did not have any limitations or restrictions that would prevent him from returning to work on a full-time basis. See R. LIN000055-LIN000059; Def. SJ Mem. at 25. Of course, at the time of this determination DeCarlo had returned to work as a project manager on a part-time basis, thus providing powerful evidence that he had the cognitive ability to perform work.

In addition to discussing the medical opinions that supported its conclusion, Lincoln reviewed the evidence submitted by DeCarlo in opposition. See R. LIN000059-LIN00061. Generally, Lincoln found this evidence unpersuasive for two reasons. First, Lincoln found that medical opinions supporting significant restrictions provided little or no "clinical" or "objective" medical evidence and relied heavily on DeCarlo's own subjective reports. See R. LIN000056-LIN000057, LIN000061. The lack of such objective findings provides a basis for upholding Lincoln's decision denying DeCarlo's claim. See Wallace v. Grp. Long Term Disability Plan for Emps. of TDAmeritrade Holding Corp., 2021 WL 1146282, at *14 (S.D.N.Y. Mar. 24, 2021) (finding decision was not arbitrary and capricious where insurer relied on medical opinions that subjective reports did not support "sufficient functional impairments"), aff'd, 2022 WL 2207926 (2d Cir. June 21, 2022). Second, Lincoln found these opinions less persuasive given the identified limitations were at times inconsistent with the fact that DeCarlo had been performing part-time work for approximately one year. See R. LIN000061; R. LIN000060 (finding Galarraga's decision to eliminate "26 of 34" skills did "not make sense ... because Mr. DeCarlo has secured a new part-time job ... and has persisted in the job since July 2019").

DeCarlo argues that Lincoln "completely ignored" multiple medical opinions that supported the conclusion that DeCarlo is not capable of performing work on a full-time basis. See Pl. SJ Mem. at 23; Def. SJ Opp. at 4-5, 10-11. Specifically, DeCarlo points to the opinions given by Drs. Schechter (1/16/17), see R. LIN001461-LIN001469, Morgan (11/30/16), see R. LIN001538-LIN001548, Stern (6/29/16), see R. LIN001771-LIN001777, Wager (7/5/16), see R. LIN001750-LIN001754, Ray (2/23/16), see R. LIN002108-LIN002111, and Givens (2/9/18), see R. LIN001190-LIN001195. The problem with DeCarlo's argument is that all of these opinions were provided long before DeCarlo returned to work in July 2019 and long before Lincoln's determination that DeCarlo was capable of full-time work beginning in May 2020. See R. LIN000061. It is not unreasonable for an insurer to provide little weight to "stale" medical opinions. See Tretola v. First Unum Life Ins. Co., 2015 WL 509288, at *23 (S.D.N.Y. Feb. 6, 2015) (court "places particular weight on the medical opinions most contemporaneous with" the date claimant was determined to be not disabled); accord Hines v. First Unum Life Ins. Co., 2016 WL 1246483, at *14 (S.D.N.Y. Mar. 23, 2016) (plan administrator has discretion to put more weight on evidence contemporaneous with the plan's elimination period than evidence post-dating that period) (collecting cases).

Second, DeCarlo argues that Lincoln impermissibly "cherry-picked" medical evidence that supported its conclusion. See Pl. SJ Mem. at 22-25; Def. SJ Opp. at 8-10. As explained above, Lincoln's choice to not rely on opinions rendered years before is not arbitrary and capricious. Furthermore, Lincoln's decision to give little weight to the more recent opinions — those rendered by Dr. Dranoff, Dr. Levine, Dr. Lipton, and vocational specialist Galarraga — was not unreasonable. As to Dr. Dranoff, Lincoln obtained a medical opinion from Dr. Hertza that addressed the results of Dr. Dranoff's neuropsychological evaluation, and which determined that "the test results and the conclusions are inconsistent." R. LIN000057; see R. LIN000147. While DeCarlo asks us to closely scrutinize Dr. Hertza's opinion, see, e.g., Pl. SJ Mem. at 16-18 (noting Dr. Hertza disregarded certain data points), and

determine whether his conclusion is consistent with Dr. Dranoff's neuropsychological test results, DeCarlo's cognitive abilities are simply not at issue given that he was performing work on a part-time basis. Moreover, on substantial evidence review, the Court cannot engage in medical judgments. See generally Krizek v. Cigna Grp. Ins., 345 F.3d 91, 99 n.5 (2d Cir. 2003) ("medical determinations are beyond the realm of a court's expertise"). As it relates to Drs. Levine and Lipton, DeCarlo's treating providers, Lincoln highlighted the lack of objective clinical findings supporting the doctors' opinions. See R. LIN000056-LIN000058; Pl. SJ Opp. at 12-13. Indeed, when Lincoln's medical consultants reached out to Dr. Levine to get more detail on her medical opinion, see R. LIN000140, LIN000116, Dr. Levine responded solely by pointing to Dr. Dranoff's results, see R. LIN000121, which, as discussed above, Dr. Hertza found did not support "the level of severity to preclude [DeCarlo] functioning in any area," R. LIN000057. A review of both Drs. Levine's and Lipton's opinions and notes reflect that they provided little supporting evidence for their conclusions. See, e.g., R. LIN000121, LIN000479-LIN000481, LIN000431, LIN000608- LIN000609, LIN002053, LIN002119, LIN002131, LIN002191. Given the limited support outside of DeCarlo's subjective complaints, the Court cannot find that Lincoln's decision to assign little weight to these opinions was unreasonable. See Zenker v. Reliance Standard Life Ins. Co., 2013 WL 5308263, at *18 (E.D.N.Y. Sept. 20, 2013) ("Courts have held that it is not unreasonable or arbitrary for a plan administrator to require the plaintiff to produce objective medical evidence of total disability in a claim for disability benefits.") (citation and internal quotation marks omitted). Finally, as it related to Galarraga's vocational report, Lincoln found that Galarraga's conclusion was reached by assuming significant limitations — "eliminat[ing] 26 of 34" of the job-related skills as non-transferable — which was inconsistent with DeCarlo obtaining and persisting in a part-time role for approximately one year. R. LIN00060. Accepting DeCarlo's evidence at face value does not alter the fact that Lincoln had substantial evidence to support its determination in the form of the medical opinions of Drs. Flores, Kapinos, Taff, Hertza and Meza. As case law holds, "the mere fact of conflicting evidence does not render the administrator's conclusion arbitrary and capricious." Roganti v. Metro. Life Ins. Co., 786 F.3d 201, 212 (2d Cir. 2015); see Wallace, 2021 WL 1146282, at *13 ("When a plan administrator is tasked with weighing 'disputes among medical experts as to her physical condition,' such disputes are 'precisely within the discretion of the plan administrator to resolve.' ") (quoting Kruk v. Metro. Life Ins. Co., Inc., 567 F. App'x 17, 19 (2d Cir. 2014)); see also Archer v. Hartford Life & Accident Ins. Co., 2021 WL 2109113, at *4 (E.D.N.Y. May 25, 2021) ("However, there is no requirement that insurers give special weight to treating physicians."). Ultimately, "[r]egardless of how another reasonable mind might have arrived at a decision on the plaintiff's eligibility for disability benefits ..., the court is not free to substitute its own judgment, or that of other medical professionals, for that of [the Plan's administrator] ... as if the court were considering the plaintiff's eligibility anew." Kocsis v. Standard Ins. Co., 142 F. Supp. 2d 241, 253 (D. Conn. 2001); accord Pinkham v. Aetna Life Ins. Co., 2017 WL 4286330, at *9 (S.D.N.Y. Sept. 26, 2017).

Finally, DeCarlo argues that Lincoln "relied heavily on old surveillance to justify its denial." Pl. SJ Mem. at 25; see Def. SJ Opp. at 12. Certainly, "surveillance is of limited relevance" when the record is replete with other medical evidence supporting a benefits claim. Pl. SJ Mem. at 25; see Solnin v. GE Group Life Assur. Co., 2007 WL 923083, at *10 (E.D.N.Y. 2007) ("The fact that Plaintiff engaged in a few hours of activities on three separate days does not belie the evidence indicating that she cannot perform sedentary work."). However, the fact that Lincoln referenced the surveillance data in reaching its conclusion does not detract from the fact that it had five recent medical opinions in the record that supported its conclusion and minimal, non-conclusory evidence to the contrary. Thus, the instant case is distinguishable from the cases cited by DeCarlo where information gathered through surveillance was one of the few pieces of evidence in the record supporting the administrator's decision. See e.g., Glockson v. First Unum Life Ins. Co., 2006 WL 1877140, at *7 (N.D.N.Y. July 6, 2006) (finding administrator's reliance on a single "conclusory" medical opinion and surveillance data arbitrary and capricious); Soron v. Liberty Life Assurance Co. of Bos., 2005 WL 1173076, at *11 (N.D.N.Y. May 2, 2005) ("On the instant record, neither the surveillance videos nor the [functional capacity evaluation] constitute substantial evidence that plaintiff's self-reported symptoms are not as severe as she claims.").

Accordingly, because the Court finds that DeCarlo has failed to show that Lincoln's decision denying DeCarlo benefits was arbitrary and capricious, the Court grants Lincoln's motion for summary judgment and denies DeCarlo's motion.

C. Motion to Strike

DeCarlo requests that the Court strike two documents Lincoln filed in connection with its motion for summary judgment. See Plaintiff's Memorandum of Law in Support of His Motion to Strike, filed Dec. 21, 2022 (Docket # 52) ("Mot. to Strike Mem."). In particular, DeCarlo requests that the Court strike Lincoln's "summary of pertinent medical records," see Summary of Pertinent Medical Records, annexed as Ex. 1 to Def. SJ 56.1 (Docket # 49-1), and a declaration from Jordan Bennen, a "Director of Claims" at Lincoln, which provides information on Lincoln's processes for reviewing claims, see Declaration of Jordan Bennen, filed Dec. 21, 2022 (Docket # 50). DeCarlo contends that the Court cannot consider these documents since they are outside of the administrative record. See Mot. to Strike Mem. at 3-4. Lincoln has opposed DeCarlo's motion. See Lincoln's Opposition to Plaintiff's Motion to Strike, filed Dec. 21, 2022 (Docket # 53).

Because the Court did not consider either piece of evidence DeCarlo moves to strike, DeCarlo's motion should be denied as moot. See Haley v. Tchrs. Ins. & Annuity Ass'n of Am., 2021 WL 4481598, at *7 (S.D.N.Y. Sept. 30, 2021) (denying motion to strike as moot where court did not rely on the evidence at issue); accord Wagner v. Metro. Life Ins. Co., 2011 WL 2638143, at *19 (S.D.N.Y. Feb. 28, 2011), adopted by 2011 WL 2623390 (S.D.N.Y. July 1, 2011).

Conclusion

For the foregoing reasons, defendant Lincoln's motion for summary judgment (Docket # 48) should be granted, and plaintiff DeCarlo's motion for summary judgment should be denied (Docket # 46). DeCarlo's motion to strike (Docket # 52) should be denied as moot.

PROCEDURE FOR FILING OBJECTIONS TO THIS REPORT AND RECOMMENDATION

Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal Rules of Civil Procedure, the parties have fourteen (14) days (including weekends and holidays) from service of this Report and Recommendation to file any objections. See also Fed. R. Civ. P. 6(a), 6(b), 6(d). A party may respond to any objections within 14 days after being served. Any objections and responses shall be filed with the Clerk of the Court. Any request for an extension of time to file objections or responses must be directed to Judge Gardephe. If a party fails to file timely objections, that party will not be permitted to raise any objections to this Report and Recommendation on appeal. See 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72; Fed. R. Civ. P. 6(a), 6(b), 6(d); Thomas v. Arn, 474 U.S. 140 (1985); Wagner & Wagner, LLP v. Atkinson, Haskins, Nellis, Brittingham, Gladd & Carwile, P.C., 596 F.3d 84, 92 (2d Cir. 2010).

All Citations

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Footnotes

1 DeCarlo's motion consists of the following: Notice of Motion, filed Dec. 21, 2022 (Docket # 46) ("Pl. Mot."); Memorandum of Law in Support, annexed as Ex. 1 to Pl. Mot. (Docket # 46-1) ("Pl. SJ Mem."); Statement of Undisputed Facts in Support, annexed as Ex. 2 to Pl. Mot. (Docket # 46-2) ("Pl. SJ 56.1"); Lincoln's Opposition to Plaintiff's ERISA Motion, filed Dec. 21, 2022 (Docket # 47) ("Pl. SJ Opp.").

Lincoln's motion consists of the following: Notice of Motion, filed Dec. 21, 2022 (Docket # 48) ("Def. Mot."); Memorandum of Points and Authorities in Support, annexed as Ex. 1 to Def. Mot. (Docket # 48-1) ("Def. SJ Mem.");

Statement of Material Facts in Support, filed Dec. 21, 2022 (Docket # 49) ("Def. SJ 56.1"); Memorandum of Law in Opposition, filed Dec. 21, 2022 (Docket # 51) ("Def. SJ Opp.").

2 Lincoln's initial letter stated that "benefits are not payable beyond April 14, 2020." See 5/19/20 Denial Letter at 1. However, Lincoln sent a correction on June 3, 2020, indicating that benefits were actually paid through May 14, 2020. See R. LIN000390.

3 Lincoln seemingly takes issue with Halo's statement as to the standard of review where the claims-procedure regulations are violated. See Pl. SJ Opp. at 6-7. It is not necessary to reach this issue, however, since we conclude there was no violation.

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