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United States District Court, S.D. Florida,
MIAMI DIVISION.

PATRICK FORBUS, Plaintiff,
v.
STANDARD INSURANCE COMPANY, Defendant.

CASE NO. 1:23-CV-24723-GAYLES
|
Entered on FLSD Docket 11/17/2025

Attorneys and Law Firms

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ORDER

DARRIN P. GAYLES UNITED STATES DISTRICT JUDGE

***1 THIS CAUSE** comes before the Court upon Plaintiff's Motion for Summary Judgment ("Plaintiff's Motion"), [ECF No. 21], and Defendant's Motion for Summary Judgment ("Defendant's Motion"), [ECF No. 24]. The Court has reviewed the Motions and the record and is otherwise fully advised. For the following reasons, Defendant's Motion is granted and Plaintiff's Motion is denied.

BACKGROUND [1]

Plaintiff Patrick Forbus ("Plaintiff") is a 67-year-old man with a history of chronic back pain and lumbar degenerative disease. Prior to applying for disability benefits in 2019, Plaintiff was a software engineer at Ace Info Solutions, Inc. ("AIS").

I. The Policy

By virtue of his employment with AIS, Plaintiff participated in a group **long term disability** ("LTD") insurance policy (the "Policy") issued by Defendant Standard Insurance Company ("Defendant") and governed by the Employee Retirement Income Security Act of 1974 ("**ERISA**"), 29 U.S.C. § 1001 *et seq.* AIS delegated to Defendant complete discretionary authority to make all benefits determinations under the Policy.

The Policy sets forth two time periods during which an insured might be entitled to LTD benefits. The first, the "Own Occupation Period" [2], encompasses the first 24 months an insured receives benefits. [ECF No 19-1 at 9]. During this time, an insured qualifies as "Disabled" if he is unable to perform the "Material Duties" of his "Own Occupation" or current position. [3] *Id.* at 14. The Own Occupation Period is followed by the "Any Occupation Period" which encompasses the remaining time a Disabled

insured may receive benefits. *Id*. at 9. During the Any Occupation Period, an insured qualifies as "Disabled" if he is unable to perform the "Material Duties" of "Any Occupation." [4] *Id.*at 14.

***2** Under the Policy, if LTD benefits are approved and paid for a time, they will end on the date the claimant is no longer Disabled or fails to furnish "proof of continued Disability and entitlement to benefits." *Id.* at 18. In addition, the Policy requires an insured who claims LTD benefits to apply for federal disability benefits from the Social Security Administration ("SSA"). [5]

II. Plaintiff's Claim and Medical Treatment

In the fall of 2019, Plaintiff applied for disability benefits. In his Employee Claim Statement, Plaintiff claimed he would be disabled beginning on December 11, 2019, because of his degenerative spine, arthritis, muscle atrophy, hand tremors, cracked kneecap, and spine fusion surgery scheduled for that day.

On January 21, 2020, Plaintiff's surgeon, Dr. Allesandro Speciale ("Dr. Speciale"), completed an Attending Physician Statement ("APS") stating that Plaintiff would need to stop working as of the date of his surgery. He also noted that Plaintiff could not bend, lift, twist, or drive for two weeks post-surgery and that he expected Plaintiff could return to work on February 4, 2020.

On January 29, 2020, Dr. Speciale completed an Ortho/Neuro Questionnaire stating that Plaintiff reported pain in his spine and "subjective weakness or incoordination." [ECF No. 23 ¶ 6]. Dr. Speciale did not identify restrictions or limitations related to sitting, standing, or walking and noted frequent capacities for lifting, carrying, and pushing/pulling up to 10 lbs. and capacity for occasional driving and other activities. He expected Plaintiff to improve and be able to return to work on a part-time basis on March 4, 2020.

On March 27, 2020, Defendant approved Plaintiff's LTD claim for benefits beginning on March 10, 2020. [6] On March 9, 2021, Defendant notified Plaintiff that it was reviewing his claim to determine if he would continue to be disabled under the Any Occupation definition of disability and provided him with the opportunity to share additional information regarding his medical conditions.

A. Additional Medical Records and Treatment

On March 29, 2021, Plaintiff provided a Health Provider Verification Statement listing his healthcare providers since September 1, 2020. Defendant obtained the records from those providers which reflect that on January 22, 2021, Plaintiff saw Dr. Jiang Haibing ("Dr. Jiang") for imaging and chronic lower back pain, including a lumbar spine CT with comparison to a 2019 study. Dr. John Ergener ("Dr. Ergener") reviewed the CT and met with Plaintiff. Dr. Ergener noted that Plaintiff's "hardware and cage appear intact and fusion likely growing/healing" and Plaintiff "seems to be making progress." [ECF No. 23 ¶ 9]. He advised Plaintiff to "gradually increase activity." *Id*. [7]

The records also show that Plaintiff had an x-ray of his right knee on January 25, 2021, which showed very mild degenerative changes and small joint effusion. On September 22, 2021, Plaintiff saw Dr. Jiang for lower back pain and a medication refill. Dr. Jiang noted that Plaintiff's chronic back pain was stable. He encouraged Plaintiff to try to stop taking Percocet. [8]

B. Medical File Review by Dr. Michelle Alpert

***3** On March 9, 2022, Dr. Michelle Alpert ("Dr. Alpert"), a board-certified physical medicine and rehabilitation physician, reviewed Plaintiff's medical records at the request of Defendant. Dr. Alpert noted Plaintiff's surgery, post-operative pain management treatment, and Dr. Jiang's encouragement for Plaintiff to stop using Percocet. She found that Plaintiff's "lumbar degenerative spinal disease is chronic and progressive and will not improve." [ECF No. 22 ¶ 23]. Based on Plaintiff's spinal condition and knee osteoarthritis, Dr. Alpert opined that Plaintiff should be restricted to lifting 20 pounds occasionally and ten pounds frequently and that he had the ability to sit continuously with normal breaks. She noted that Plaintiff had decreased

range of motion but did not show any other focal motor or neurologic deficits that would prevent him from returning to work with limitations.

C. Transferable Skills Analysis and Any Occupation Review

On March 31, 2022, Defendant's vocational case manager, Chris Karellas ("Mr. Karellas"), performed a Transferable Skills Analysis and Any Occupation Review ("TSA/AOR") which assessed Plaintiff's ability to perform any occupation given Plaintiff's documented functional capacity, work history, education, training, experience, transferable skills, and the labor market. [9] The TSA/AOR included an additional vocational analysis and Plaintiff's Education, Training and Experience form, dated April 6, 2020, which indicated that Plaintiff had a bachelor's degree in management information systems, a number of skills and abilities and extensive work experience. Based on the TSA/AOR, including consideration of Dr. Alpert's medical assessment, Mr. Karellas identified three alternative occupations within Plaintiff's physical capacities and consistent with his background and wages: software engineer, data process manager, and computer operations manager.

D. Denial of Claim

On August 16, 2022, Defendant denied Plaintiff's claim for continued LTD benefits under the Policy, stating that Plaintiff did not meet the Any Occupation definition of disability applicable after March 9, 2022. In making this determination, Defendant relied on Dr. Alpert's opinion that, although Plaintiff had limited restrictions and limitations due to his back pain and lumbar degenerative disc/joint disease, he retained capacity for full time sedentary work. Defendant also relied on the TSA/AOR which identified three suitable occupations based on Plaintiff's training, education, and experience. [10] Plaintiff was 64 at the time of the decision.

III. Plaintiff's Administrative Appeal

On February 9, 2023, Plaintiff appealed Defendant's decision to deny him continued benefits. In support of his claim, Plaintiff attached additional medical records, a functional capacity evaluation ("FCE"), and SSA records.

A. Additional Medical Records Submitted in Support of Appeal

In support of his appeal, Plaintiff submitted additional medical records which revealed that Plaintiff saw Dr. Speciale for a post-operative visit on January 30, 2020. During that visit, Plaintiff denied any radicular symptoms and felt that he was improving gradually but noted that he felt pressure when sitting, pain after prolonged standing, and leg weakness. On January 31, 2020, Plaintiff commenced physical therapy. [11]

***4** According to the additional records, Plaintiff met with Dr. Speciale on April 2, 2020, and reported slow but steady progress and that he was in physical therapy two times a week. On June 30, 2020, Plaintiff again saw Dr. Speciale and reported low-grade, ongoing low back pain that was aggravated with yard work. Dr. Speciale reviewed Plaintiff's radiological studies that showed well-positioned screws and cage and stable alignment with no evidence of hardware loosening. Dr. Speciale encouraged Plaintiff to engage in a home exercise program and to continue using his external bone stimulator.

On July 29, 2020, Plaintiff had a telehealth visit with National Spine during which he told the provider that he gets "some low back pain with extended activity, but overall is doing well." [ECF No. 23 ¶ 17].

On August 13, 2020, and January 27, 2021, Plaintiff saw two different providers for right knee pain and received cortisone shots. On June 14, 2021, Plaintiff was admitted to the Magruder Hospital, complaining of swelling and discomfort in his right knee. The provider aspirated Plaintiff's right knee. On September 18, 2021, an MRI of Plaintiff's right knee showed medial and lateral meniscus tears, tricompartmental chondrosis, distal quadriceps, proximal patellar enthesopathy, mild tendinopathy without discrete tear, moderate knee joint effusion, and a small ruptured Baker's cyst. An x-ray of his lumbosacral spine, dated September 18, 2021, showed postsurgical changes at L4-L5 without evidence of hardware complication or acute osseous abnormality.

On September 20, 2021, Plaintiff saw neurologist Dr. Syed Afraz Salahuddin ("Dr. Salahuddin"). Dr. Salahuddin noted that, clinically, Plaintiff did not have any radicular symptoms or weakness/numbness/pain to suggest an active focal neuropathy or radiculopathy. He also noted that, based on imaging, Plaintiff's hardware looked stable, and he did not see any evidence of ongoing nerve damage. On exam, Plaintiff had normal muscle tone, symmetric and 5/5 muscle strength, symmetric and +1 reflexes, normal coordination, intact sensation, and no gait abnormality. While Dr. Salahuddin noted mild atrophy in Plaintiff's calf, he found there were no "radicular symptoms or weakness/numbness/pain to suggest any active focal neuropathy or radiculopathy." [ECF No. 23 ¶ 19]. He recommended physical therapy and core and leg exercises.

On September 23, 2021, an x-ray of Plaintiff's right knee showed mild osteoarthritic changes. The reviewing physician noted the exam of Plaintiff's knee was unchanged from January 27, 2021, and diagnosed Plaintiff with right knee osteoarthritis.

On December 5, 2021, Plaintiff was admitted to Saint Joseph Hospital South in Florida for calf pain and swelling following a drive from Maryland to Florida. An ultrasound showed no evidence of deep vein thrombosis. Plaintiff was discharged the same day.

On February 28, 2022, Plaintiff saw Dr. Kent Brown ("Dr. Brown") to transition into his care and request medication refills, including oxycodone. Plaintiff reported that he was able to take care of himself, did not have any difficulty walking or climbing stairs or doing errands alone, and had no exercise intolerance. Dr. Brown noted that Plaintiff was doing very well on oxycodone and took one pill before bed.

On June 21, 2022, Plaintiff saw Dr. Mathew Jackson ("Dr. Jackson") for right knee pain. Dr. Jackson noted that Plaintiff did not use walking aids and that his exam was normal, showing normal sensation and strength with no tenderness, erythema, or swelling. Dr. Jackson indicated that Plaintiff has arthritis and was a good candidate for total knee replacement.

B. SSA Decision

***5** As required by the Policy, Plaintiff applied for SSA benefits. Plaintiff submitted the records from the SSA proceedings in support of his appeal. On January 6, 2022, an Administrative Law Judge ("ALJ") approved Plaintiff's claim for a disability, commencing in December 2019. In particular, the ALJ found that Plaintiff (a) had "severe impairments" from his spine disorder, right knee dysfunction, and obesity; (b) possessed residual functional capacity to perform "less than the full range of sedentary work"; (c) would be "off task" for 15 percent of a given work day, not counting normal breaks; (d) was unable to perform any past relevant work, specifically including his own former occupation as a software engineer; (e) had no job skills that transferred to other occupations within his residual functional capacity; and (f) was "closely approaching retirement age on the established disability onset date." [ECF No. 22 ¶¶ 27-29].

C. FCE

The record for Plaintiff's administrative appeal included an independent FCE by Laila Stephenson, DPT, PT ("Ms. Stephenson") on October 12, 2022. Plaintiff told Ms. Stephenson that he was unable to return to work and unable to sit for 2 hours continuously. In her testing, Ms. Stephenson noted that Plaintiff sat for 1.5 hours and the reason for stopping was noted as "sustained." [ECF No. 23 ¶ 25]. Ms. Stephenson also noted that the Plaintiff "sat upright with hips and knees at 90 degrees" for 1.5 hours, "did not exhibit signs of discomfort" and demonstrated "[p]roper body mechanics and posture ...." *Id*. Further, Ms. Stephenson noted that although Plaintiff's lumbar spine and right knee pain was made worse with prolonged periods of sitting, Plaintiff stated that "he felt better with walking" and his "back pain [was] brought to a 0/10 at end of [a] 6 minute walk." *Id.* Ms. Stephenson found that Plaintiff was able to sit for 1 hour continuous for a total of 3 hours total per day, stand 20 minutes continuously up to 2 hours per day, walk for 1 hour continuous up to 2 hours per day, and drive up to 30 continuous minutes per work shift.

D. Defendant's Peer Review of Medical Records

During the administrative appeal, the Defendant also considered a Peer Review Report (the "Report") by Dr. Natalie Boodin ("Dr. Boodin"), a physical medicine and rehabilitation specialist hired by Defendant to review Plaintiff's records. On March 17, 2023, Dr. Boodin issued her Report discussing Plaintiff's age, medical records, and medical history, and his letter to appeal the denial of the LTD benefits, FCE, Ortho/Neuro questionnaire, and Plaintiff's SSA application and decision. Dr. Boodin agreed with the bulk of the FCE except with respect to the amount of time Plaintiff could sit in a day, finding:

> [t]he claimant can sit up to 8 hours in an 8-hour day with the ability to change positions every 30 minutes briefly from seated to standing for comfort. He can lift, push, pull, carry no more than 10 pounds occasionally. He can stand and walk no more than occasionally. He may not do kneeling, crouching, and not more than occasional bending, stooping, climbing. There are no upper extremity fine motor movement or fingering restrictions.... He has been on chronic pain medications[ ] and does not complain of cognitive side effects that would contribute to limitations and restrictions.

[ECF No. 23 ¶ 26].

Defendant provided Plaintiff with Dr. Boodin's Report for review. On April 5, 2023, and on May 8, 2023, Plaintiff submitted additional records to Defendant as detailed below.

On February 21, 2023, Plaintiff had an x-ray of his right hand that showed osteoarthritis of the distal digits. On February 24, 2023, an x-ray of his left wrist showed osteoarthritis, and an x-ray of his right knee showed only mild degenerative changes.

On March 2, 2023, Plaintiff had an evaluation at Mercy Health for physical therapy. Plaintiff reported knee and back pain, no home exercise plan since July of 2020, increased pain with sleeping, standing, and ambulating for more than 1–2 hours, and increased right knee pain with more than a two-mile walk. Plaintiff also indicated that he was not taking pain medication, was independent with activities of daily living, ambulation, and was an active driver. Mercy Health proposed a five-week physical therapy treatment plan with visits twice per week. Therapy was curtailed when Plaintiff strained his back lifting a rock.

***6** On March 24, 2023, Plaintiff saw Dr. J. Frazier at the Cleveland Clinic for concerns about left wrist pain and a bony projection and, with respect to his back, the records reflect he was "no longer utilizing Percocet." [ECF No. 23 ¶ 28].

On May 19, 2023, Dr. Boodin reviewed the additional medical records and submitted an addendum to her Report (the "Addendum"). In the Addendum, Dr. Boodin noted that the new records showed that Plaintiff had a five-week physical therapy plan in March 2023 and had improved until his last visit when he reported injuring himself picking up a rock. Dr. Boodin indicated that the additional records did not change her opinions. On May 24, 2023, Defendant provided Dr. Boodin's Addendum to Plaintiff for review.

On June 7, 2023, Plaintiff provided additional medical records from the Cleveland Clinic in support of his appeal. On May 1, 2023, Plaintiff presented to the Cleveland Clinic for an MRI review of his right knee. The MRI showed tricompartmental arthritis. Dr. Michael Scarcella explained the MRI and potential surgical options, but Plaintiff wished to proceed with non-surgical modalities. On May 9, 16, and 23, 2023, Plaintiff went to Cleveland Clinic for Euflexxa injections into his right knee.

On August 7, 2023, Dr. Boodin reviewed Plaintiff's newly submitted records. In a Second Addendum, Dr. Boodin notes Plaintiff's age and details her review of Plaintiff's medical records. She discusses the FCE and the SSA's findings and decision. In addition, she elaborated on her disagreement with the FCE, finding that Plaintiff's subjective complaints about his pain and stiffness with sitting were not supported by the physical exam findings. She states that her review of the newly submitted records did not change her opinion regarding limitations and restrictions. Defendant provided Plaintiff with the Second Addendum.

E. Final Determination

On August 25, 2023, Defendant completed its review of Plaintiff's appeal, finding that Plaintiff failed to submit adequate Proof of Loss under the Policy to support his claim that he had restrictions and limitations which would prevent him from performing the Material Duties of Any Occupation after March 9, 2022. In its letter to Plaintiff's counsel notifying them of its decision, Defendant referenced the TSA/AOR's finding that the occupations of software engineer, data processing manager, and computer operations manager were understood to exist in sufficient numbers in Plaintiff's labor market to be reasonably accessible to him. Defendant also addressed the SSA Decision and explained that, although it considered Plaintiff's receipt of Social Security Disability benefits as part of the appeal review, its analysis of Plaintiff's claim differs from an ALJ's analysis of a social security claim. In particular, Defendant stated that unlike the SSA, which gives greater consideration to claimants who are 55 or older, "the Group Policy does not include a consideration of a claimant's age when evaluating whether they meet the Definition of Disability." [ECF No. 22 ¶ 38].

IV. This Action

On October 18, 2022, Plaintiff filed this action against Defendant to recover **long-term disability** benefits under **ERISA**, 29 U.S.C. § 1132(a)(1)(B). The parties have now filed competing motions for summary judgment.

LEGAL STANDARD

***7** In **ERISA** benefit denial cases, "the district court sits more as an appellate tribunal than as a trial court. It does not take evidence, but, rather, evaluates the reasonableness of an administrative determination in light of the record compiled before the plan fiduciary." *Curran v. Kemper Nat'l Servs., Inc.* No. 04-14097, 2005 WL 894840, at *7 (11th Cir. Mar. 16, 2005) (internal quotations omitted). As a result, "the typical summary judgment analysis does not apply to **ERISA** cases." *Ruple v. Hartford Life and Acc. Ins. Co.*, 340 F. App'x 604, 610 (11th Cir. 2009). "Thus, there may indeed be unresolved factual issues evident in the administrative record, but unless the administrator's decision was wrong, or arbitrary and capricious, these issues will not preclude summary judgment as they normally would." *Miller v. PNC Fin. Serv. Grp.*, 278 F. Supp. 3d 1333, 1341 (S.D. Fla. 2017) (internal quotation omitted).

"**ERISA** itself provides no standard for courts reviewing the benefits decisions of plan administrators or fiduciaries." *Blankenship v. Metro. Life Ins. Co.*, 644 F.3d 1350, 1354 (11th Cir. 2011). However, the Eleventh Circuit, based on guidance from the Supreme Court, has "established a multi-step framework to guide courts in reviewing an **ERISA** plan administrator's benefits decisions." *Id.* The steps are as follows:

(1) Apply the *de novo* standard to determine whether the claim administrator's benefits-denial decision is "wrong" (i.e., the court disagrees with the administrator's decision); if it is not, then end the inquiry and affirm the decision.

(2) If the administrator's decision in fact is "*de novo* wrong," then determine whether he was vested with discretion in reviewing claims; if not, end judicial inquiry and reverse the decision.

(3) If the administrator's decision is "*de novo* wrong" and he was vested with discretion in reviewing claims, then determine whether "reasonable" grounds supported it (hence, review his decision under the more deferential arbitrary and capricious standard).

(4) If no reasonable grounds exist, then end the inquiry and reverse the administrator's decision; if reasonable grounds do exist, then determine if he operated under a conflict of interest.

(5) If there is no conflict, then end the inquiry and affirm the decision.

(6) If there is a conflict, the conflict should merely be a factor for the court to take into account when determining whether an administrator's decision was arbitrary and capricious.

Id. at 1355.

Where the plan administrator had discretion to review claims under the plan, "the district court may assume the benefits decision was *de novo* wrong and begin its analysis at step three." *Lopez v. Life Ins. Co. of North America,* No. 20-25259, 2021 WL 4307049, at * (S.D. Fla. Sep. 21, 2021) (citing *Mickell v. Bell/Pete Rozelle NFL Players Ret. Plan,* 832 F. App'x 586, 591 (11th Cir. 2020). "Review of the plan administrator's denial of benefits is limited to consideration of the material available to the administrator at the time it made its decision." *Blankenship*, 644 F.3d at 1354. The claimant has "the burden of proving his entitlement to contractual benefits." *Hortan v. Reliance Standard Life Ins. Co.*, 141 F.3d 1038, 1040 (11th Cir. 1998).

ANALYSIS

It is undisputed that AIS delegated to Defendant complete discretionary authority to make all benefits determinations under the Policy. Therefore, for purposes of this Order, the Court assumes that Defendant's decision was *de novo* wrong and jumps to step three of the analysis: whether Defendant's decision was arbitrary and capricious. *See Campbell v. Reliance Standard Life Ins. Co.*, 857 F. App'x 570, 572 (11th Cir. 2021).

I. Reasonable Grounds Supported Defendant's Decision

***8** Plaintiff argues that the Defendant's decision was arbitrary and capricious because Defendant ignored his subjective complaints of pain, found him capable of sedentary work, and disregarded the SSA's decision and his age. The Court disagrees and finds that reasonable grounds supported Defendant's decision.

"When conducting a review of an **ERISA** benefits denial under an arbitrary and capricious standard (sometimes used interchangeably with an abuse of discretion standard), the function of the court is to determine whether there was a reasonable basis for the decision, based upon the facts as known to the administrator at the time the decision was made." *Glazer v. Reliance Standard Life Ins. Co.*, 524 F.3d 1241, 1246 (11th Cir. 2008). "A reasonable determination is not necessarily the best determination, or even the result the Court would have reached." *Lopez,* 2021 WL 4307049, at *8 (quoting *Bloom v. Hartford Life & Accident Ins. Co.*, 917 F. Supp. 2d 1269, 1285 (S.D. Fla. 2013). "So long as a Defendant's decision 'has a reasonable factual basis,' the Court must uphold its determination, 'even if the record also contains contrary information.' " *Id.* (quoting *Slomcenski v. Citibank, N.A.*, 432 F.3d 1271, 1280 (11th Cir. 2005)).

As detailed above, Plaintiff documented his medical condition and limitations through his medical records, statements by treating providers, his FCE, his own statements about his pain, and the SSA's determination that he was disabled under SSA standards. Plaintiff's medical records clearly indicate that he had surgery in 2019, suffers lumbar degenerative disc/joint disease, and osteoarthritis of his right knee. However, those records and his providers' statements also indicate that Plaintiff's surgery was largely a success and that his condition continued to improve. And, while the FCE restricted Plaintiff's sitting to one hour at a time for a total of three hours per day, it also documented Plaintiff's ability to, at least at the time of the evaluation, sit for 1.5 hours and longer periods with walking breaks.

Defendant relied on the opinions of two reviewing physicians, Drs. Alpert and Boodin, and vocational case manager Karellas. Each of these reviewers found that Plaintiff's medical records did not support his claim that he was incapable of any work. That finding is partially supported by Plaintiff's own treating physicians and other providers. For example, Dr. Speciale (Plaintiff's surgeon) did not identify any restrictions or limitations for Plaintiff related to sitting, standing, or walking in his January 29, 2020, questionnaire or his notes from Plaintiff's June 30, 2020, visit. Plaintiff's FCE showed that he sat for 1.5 hours and short walks relieved his pain. In short, Defendant's extensive review found that Plaintiff could return to sedentary duty work of the

nature identified in the TSA/AOR. This finding, while different from what Plaintiff's providers or even the Court might opine, is not unreasonable and is supported by evidence in the record. Indeed, "administrators are not obliged to accord special deference to the opinions of treating physicians." *Black & Decker Disability Plan v. Nord*, 538 U.S. 822, 825 (2003). "[W]here [the plaintiff's] own doctors offered different medical opinions than [the administrator's] independent doctors, the [ ] administrator may give different weight to those opinions without acting arbitrarily and capriciously." *Blankenship*, 644 F.3d at 1356 (citations omitted).

***9** The SSA decision does not change this result. "[A]pproval of disability benefits by the SSA is not considered dispositive on the issue of whether a claimant satisfies the requirement for disability under an **ERISA**-covered plan." *Oliver v. Aetna Life Ins. Co.*, 613 F. App'x. 892, 897 (11th Cir. 2015). *See also Dooley v. Unum Life Ins. Co. of Am.*, No. 22-23808, 2023 WL 5955771, at *20 (S.D. Fla. July 27, 2023) (holding that "[w]hile approval of social security benefits 'may be considered, it is not conclusive on whether a claimant is also disabled under the terms of an **ERISA** plan.' ") (quoting *Ray v. Sun Life & Health Ins. Co.*, 443 F. App'x 529, 533 (11th Cir. 2011)). This is because the standards for what constitutes a disability under the SSA and **ERISA** plans are different. *See Oliver*, 613 F. App'x at 899 (discussing differences between the "manifestly different criteria of the SSA and the **ERISA** plan at issue). Accordingly, the Court does not find that the SSA decision renders Defendant's disability determination unreasonable. [12]

Finally, Plaintiff argues that Defendant did not take his age into account in making its decision and/or that Defendant took inconsistent positions as to age such that its decision is arbitrary and capricious. The Court disagrees.

In its denial letter, Defendant explained why it was reaching a different decision than the ALJ:

> [W]e understand that the Social Security Administration gives greater consideration to claimants who are 55 or older. In contrast, the Ace Info Solutions, Inc. Group Policy does not include a consideration of a claimant's age when evaluating whether they meet the Definition of Disability.

[ECF No. 22 ¶ 38].

The Court cannot find that Defendant gave no consideration to Plaintiff's age in making its determination. Indeed, Plaintiff's medical records are replete with references to his age, the Defendant's request for the TSA/AOR details Plaintiff's age, Dr. Alpert notes Plaintiff's age in her review, and Dr. Boodin notes Plaintiff's age in her Report and both Addendums. [13] The denial letter simply explains the very real differences between the analyses for SSA claims and those under the Policy. Importantly, the Policy does not require that Defendant give significant weight to Plaintiff's age, while the SSA regulations do. *See e.g.* 20 CFR 404.1563(d) (stating that the SSA will consider a person between the ages 50–54 as "closely approaching advanced age" and will "consider that your age along with a severe impairment and limited work experience may seriously affect your ability to adjust to other work.").

Similarly, the Court cannot find that Defendant took inconsistent positions regarding Plaintiff's age such that its decision was arbitrary and capricious. It is not inconsistent to consider Plaintiff's age but still determine that he was capable of sedentary work in the positions identified by the TSA/AOR. Defendant appears to have considered all of Plaintiff's medical records, his FCE, the SSA determination, and his subjective complaints. Defendant and its reviewers simply reached a different conclusion from Plaintiff and his providers as to what the record supports. Therefore, the Court finds that reasonable grounds supported Defendant's decision to deny Plaintiff continued LTD benefits.

II. Defendant's Structural Conflict of Interest

***10** Defendant does not dispute the existence of a structural conflict of interest as both insurer of **long-term disability** benefits and claims administrator; however, Defendant argues that it was not motivated by such a conflict. A conflict of interest is "merely [ ] a factor for the court to take into account when determining whether an administrator's decision was arbitrary and capricious." *Blankenship*, 644 F.3d at 1355. "[T]he burden remains on the plaintiff to show the decision was arbitrary; it is not the defendant's burden to prove its decision was not tainted by self-interest." *Id.* at 1357.

Beyond the mere existence of the conflict, there is nothing in the record to reflect that the structural conflict influenced Defendant's decision. Defendant paid Plaintiff a full two years of LTD benefits. Defendant's employees' compensation is not impacted by claims decisions and is wholly unrelated to the amount or number of claims paid or denied. [ECF No. 20-1]. And, Dr. Alpert and Dr. Boodin certified in their reports that they "do not accept compensation for review activities that is dependent in any way on the specific outcome of the case." [ECF No. 19 at 498, 522]. Indeed, the Eleventh Circuit has expressly stated that "the presence of a structural conflict of interest is an unremarkable fact in today's marketplace." *Wright v. Reliance Standard Life Ins. Co.*, 844 F. App'x 141, 145 (11th Cir. 2021) (quoting *Blankenship*, 644 F.3d at 1356).

CONCLUSION

Based on the foregoing, it is **ORDERED AND ADJUDGED** as follows:

1. Defendant's Motion for Summary Judgment, [ECF No. 24], is **GRANTED**, and Plaintiff's Motion for Summary Judgment, [ECF No. 21], is **DENIED**.

2. The Court will enter a separate final judgment pursuant to Federal Rule of Civil Procedure 58.

3. This case is closed, and all pending motions are denied as moot.

DONE AND ORDERED in Chambers at Miami, Florida, this 17th day of November, 2025.

All Citations

Slip Copy, 2025 WL 3541545

Footnotes

1 The facts in this matter are gleaned from the administrative record, [ECF No. 19], as set forth in the parties' statements of fact and responses. [ECF Nos. 22, 23, 27, 29].

2 The Own Occupation Period begins after the Policy's 90-day "Benefit Waiting Period." [ECF No. 19-1 at 31]. The Policy defines the Benefit Waiting Period as "the period [the insured] must be continuously Disabled before LTD Benefits become payable." *Id.*

3 The Policy defines "Own Occupation" as "any employment ... that involves Material Duties of the same general character as the occupation you are regularly performing for your Employer when Disability begins" and "Material Duties" as "the essential tasks, functions and operations, and the skills, abilities, knowledge, training and experience, generally required by employers from those engaged in a particular occupation that cannot be reasonably modified or omitted." [ECF No. 19-1 at 14].

4 The Policy defines "Any Occupation" as "any occupation or employment which you are able to perform, whether due to education, training, or experience, which is available ... in the national economy and in which you can be expected to earn at least 60% of your Indexed Pre-disability Earnings within twelve months of your return to work, regardless of whether you are working in that or any other occupation." [ECF No. 19-1 at 14].

5 Under the Policy's offset provisions, Defendant's LTD payments to an insured would be reduced by amounts received from the SSA.

6 Defendant's internal claim notes indicate, in part, that "[d]ue to [Plaintiff's] age, and that he has had a long history of back pain requiring a second surgery which is requiring further time for recovery, I find it reasonable that [Plaintiff] is disabled ...." [ECF No. 22 ¶ 18]

7 Dr. Ergener also noted that Plaintiff self-reported that he was "unable to lie down, sit or stand for long periods without pain." [ECF No. 22 ¶ 19].

8 Plaintiff also saw Dr. Jiang on March 29, 2021, during which he reported taking Percocet before bed. On June 29, 2021, Plaintiff called Dr. Jiang complaining of weakness and muscle atrophy in his left leg.

9 In Defendant's request to Mr. Karellas to perform the TSA/AOR, it noted that Plaintiff "is a 63 [year old] male who ceased work on [December 10, 2019] due to back pain." [ECF No. 29 ¶ 42].

10 On January 8, 2023, after the denial, Plaintiff provided Defendant with a personal statement sharing, in pertinent part, his subjective pain levels and limitations. He also noted that Defendant terminated his benefits only a few months after Plaintiff's newly obtained Social Security disability benefits were used to refund Defendant for overpayment of LTD benefits.

11 Although he reported improvement, Plaintiff eventually discontinued physical therapy due to insurance visit limitations.

12 Notably, the SSA issued its decision on January 6, 2022. When Defendant issued its decision, it had more information than that presented to the ALJ, including Dr. Alpert's Report, the TSA/AOR, the medical records from the SSA decision, the FCE, and Dr. Boodin's Report and Addendums.

13 Defendant's reference to Plaintiff's age in its claim notes for its initial decision only supports the position that Defendant did take age into account. The Court does not find Defendant's initial decision awarding LTD and final decision denying benefits inconsistent. At the time of Plaintiff's initial claim, Defendant found that Plaintiff was disabled "due to [Plaintiff's age] and [his] history of back pain requiring a second surgery which is requiring further time for recovery." His age was a consideration, but not the only basis. By the time of the final decision, Plaintiff was no longer recovering from surgery. In fact, he had improved and was deemed capable of sedentary work.

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