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United States District Court, S.D. Florida.

Sharon DELUCCA, Plaintiff,
v.
The GUARDIAN LIFE INSURANCE COMPANY OF AMERICA, Defendant.

CASE NO.: 9:22-cv-80903-DMM
|
Signed September 14, 2023
|
Entered September 15, 2023

Synopsis

Background: Beneficiary of long-term disability (LTD) benefits plan brought action against plan administrator under **Employee Retirement Income Security Act** (**ERISA**), alleging wrongful termination of benefits that had been based on unspecified trauma and stressor related disorder, major depressive disorder, recurrent, moderate, and agoraphobia. Administrator moved for summary judgment.

Holdings: The District Court, Donald M. Middlebrooks, J., held that:

[1] beneficiary did not show that plan administrator received unjust benefit, as required for waiver of objective evidence requirement in insurance policy, by approving her claim for years without supporting documentation;

[2] deeming beneficiary disabled for years was not relevant, standing alone, to issue of whether her benefits were wrongfully terminated;

[3] beneficiary's symptoms significantly improved over time, supporting decision by administrator to terminate her benefits;

[4] administrator was entitled to discount conclusions by beneficiary's doctors based largely on her self-reported symptoms that she was unfit to work; and

[5] administrator was entitled to rely on reasoned opinion of its independent medical examiner (IME) when considering whether to terminate benefits.

Motion granted.

Procedural Posture(s): Motion for Summary Judgment.

West Headnotes (12)

[1] Summary Judgment Effect of applicable substantive law

368H Summary Judgment
368HIII Grounds for Summary Judgment; Factors Considered

368Hk42 Absence of Issue of Fact
368Hk47 What Constitutes "Material" Fact
368Hk47(2) Effect of applicable substantive law

On a motion for summary judgment, an issue of fact is "material" if it is a legal element of the claim under the applicable substantive law which might affect the outcome of the case. Fed. R. Civ. P. 56.

[2] **Summary Judgment** Pension and benefit plans

368H Summary Judgment
368HV Particular Cases and Contexts
368Hk179 Labor and Employment
368Hk183 Pension and benefit plans

The court does not engage in a typical summary judgment analysis when ruling on an **ERISA** case; the focus is not on whether questions of material fact require a trial. **Employee Retirement Income Security Act** of 1974, § 2 et seq., 29 U.S.C.A. § 1001 et seq.

[3] **Labor and Employment** Standard and Scope of Review

Labor and Employment Judgment and Relief

231H Labor and Employment
231HVII Pension and Benefit Plans
231HVII(K) Actions
231HVII(K)5 Actions to Recover Benefits
231Hk684 Standard and Scope of Review
231Hk685 In general
231H Labor and Employment
231HVII Pension and Benefit Plans
231HVII(K) Actions
231HVII(K)5 Actions to Recover Benefits
231Hk698 Judgment and Relief
231Hk699 In general

When reviewing an **ERISA** plan administrator's benefits decision, a court conducts the following six-step analysis: (1) apply the de novo standard to determine whether the claim administrator's benefits-denial decision is wrong, that is, 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; and (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. **Employee Retirement Income Security Act** of 1974, § 2 et seq., 29 U.S.C.A. § 1001 et seq.

[4] **Labor and Employment** Presumptions and burden of proof

231H Labor and Employment
231HVII Pension and Benefit Plans
231HVII(K) Actions
231HVII(K)5 Actions to Recover Benefits

231Hk692 Evidence
231Hk694 Presumptions and burden of proof

A plaintiff suing for insurance benefits under **ERISA** bears the burden of proving her entitlement to those benefits under the plan. **Employee Retirement Income Security Act** of 1974 § 502, 29 U.S.C.A. § 1132(a)(1)(B).

[5] **Labor and Employment** Evidence in Determination or Review Proceeding

231H Labor and Employment
231HVII Pension and Benefit Plans
231HVII(J) Determination of Benefit Claims by Plan
231Hk627 Evidence in Determination or Review Proceeding
231Hk628 In general

Even if waiver principles applied in **ERISA** context, beneficiary of long-term disability (LTD) benefit plan did not show that plan administrator received unjust benefit, as required for waiver of objective evidence requirement in insurance policy, by approving her claim for years without supporting documentation. **Employee Retirement Income Security Act** of 1974 § 502, 29 U.S.C.A. § 1132(a)(1)(B).

[6] **Estoppel** Nature and elements of waiver

156 Estoppel
156III Equitable Estoppel
156III(A) Nature and Essentials in General
156k52.10 Waiver Distinguished
156k52.10(2) Nature and elements of waiver

"Waiver" is voluntary, intentional relinquishment of known right.

[7] **Labor and Employment** Disability Claims

Labor and Employment Disability claims

231H Labor and Employment
231HVII Pension and Benefit Plans
231HVII(J) Determination of Benefit Claims by Plan
231Hk627 Evidence in Determination or Review Proceeding
231Hk629 Disability Claims
231Hk629(1) In general
231H Labor and Employment
231HVII Pension and Benefit Plans
231HVII(K) Actions
231HVII(K)5 Actions to Recover Benefits
231Hk692 Evidence
231Hk696 Weight and Sufficiency
231Hk696(2) Disability claims

Deeming beneficiary disabled for years by administrator of **ERISA** long-term disability (LTD) plan was not relevant, standing alone, to issue of whether her benefits were wrongfully terminated, since insurance policy made clear that beneficiary had ongoing burden of showing that she was "not able to perform, on a full-time basis, the major duties of any gainful work," i.e., "disabled" under applicable policy definition, and administrative record and parties' submissions, taken as whole, supported administrator's decision to terminate beneficiary's LTD benefits. **Employee Retirement Income Security Act** of 1974 § 502, 29 U.S.C.A. § 1132(a)(1)(B).

[8] **Labor and Employment** Presumptions and burden of proof

231H Labor and Employment
231HVII Pension and Benefit Plans
231HVII(K) Actions
231HVII(K)5 Actions to Recover Benefits
231Hk692 Evidence
231Hk694 Presumptions and burden of proof

If a claimant has satisfied his burden under the disability policy of showing he is disabled, then the plan administrator under **ERISA** must show that the claimant is not disabled before it can terminate his benefits. **Employee Retirement Income Security Act** of 1974 § 502, 29 U.S.C.A. § 1132(a)(1)(B).

[9] **Labor and Employment** Record on review

231H Labor and Employment
231HVII Pension and Benefit Plans
231HVII(K) Actions
231HVII(K)5 Actions to Recover Benefits
231Hk691 Record on review

A court under the de novo standard of review in an **ERISA** case may consider information beyond what an administrator had available in the administrative record. **Employee Retirement Income Security Act** of 1974, § 2 et seq., 29 U.S.C.A. § 1001 et seq.

[10] **Insurance** Remediation of Disability

Labor and Employment Eligibility for benefits; conditions constituting disability

217 Insurance
217XX Coverage--Health and Accident Insurance
217XX(C) Disability Insurance
217k2563 Remediation of Disability
217k2564 In general
231H Labor and Employment
231HVII Pension and Benefit Plans
231HVII(H) Coverage and Benefits of Particular Types of Plans
231Hk570 Disability Plans
231Hk572 Eligibility for benefits; conditions constituting disability

Beneficiary's unspecified trauma and stressor related disorder, major depressive disorder, recurrent, moderate, and agoraphobia significantly improved over time, supporting decision by **ERISA** plan administrator's to terminate her long-term disability (LTD) benefits; although beneficiary's treatment notes reflected episodes of agoraphobia and depression, those episodes did not appear to be as continuous or as severe as they were when she first began receiving benefits, she was able to leave house to run errands, go shopping, and take vacations, she and her husband were in the process of moving from Rhode Island to Florida, she traveled at least nine times, post-termination video surveillance showed her driving and shopping unaccompanied over course of few days, for hours at a time, going to grocery store, hair salon, and other populated areas, seemingly without incident. **Employee Retirement Income Security Act** of 1974 § 502, 29 U.S.C.A. § 1132(a)(1)(B).

[11] **Insurance** Weight and sufficiency

Labor and Employment Weight and sufficiency

217 Insurance
217XX Coverage--Health and Accident Insurance
217XX(C) Disability Insurance
217k2573 Evidence
217k2578 Weight and sufficiency
231H Labor and Employment
231HVII Pension and Benefit Plans
231HVII(J) Determination of Benefit Claims by Plan
231Hk627 Evidence in Determination or Review Proceeding
231Hk629 Disability Claims
231Hk629(2) Weight and sufficiency

ERISA plan administrator was entitled to discount conclusions by beneficiary's doctors, based largely on her self-reported symptoms, rather than on objective medical examination, that she was unfit to work, when considering whether to terminate her long-term disability (LTD) benefits that had been based on unspecified trauma and stressor related disorder, major depressive disorder, recurrent, moderate, and agoraphobia; although doctors wrote down patient's subjective complaints, that did not transmute evidence from subjective to objective, and medical opinion from independent doctor provided reasoned basis for disagreeing with conclusions by beneficiary's doctors. **Employee Retirement Income Security Act** of 1974 § 502, 29 U.S.C.A. § 1132(a)(1)(B).

[12] **Insurance** Weight and sufficiency

Labor and Employment Weight and sufficiency

217 Insurance
217XX Coverage--Health and Accident Insurance
217XX(C) Disability Insurance
217k2573 Evidence
217k2578 Weight and sufficiency
231H Labor and Employment
231HVII Pension and Benefit Plans
231HVII(J) Determination of Benefit Claims by Plan
231Hk627 Evidence in Determination or Review Proceeding
231Hk629 Disability Claims
231Hk629(2) Weight and sufficiency

ERISA plan administrator was entitled to rely on reasoned opinion of its independent medical examiner (IME), when considering whether to terminate beneficiary's long-term disability (LTD) benefits that had been based on unspecified trauma and stressor related disorder, major depressive disorder, recurrent, moderate, and agoraphobia; IME provided reasoned basis for disagreeing with other doctors' conclusions that beneficiary was disabled because IME's final report was based in part on peer-to-peer call with beneficiary's doctor, during which he opined that beneficiary did not require any higher level of psychiatric care, IME's report indicated that beneficiary's diagnoses lacked objective evidentiary support and that she had never been directed to work in another workplace even though her reported trauma was worksite specific. **Employee Retirement Income Security Act** of 1974 § 502, 29 U.S.C.A. § 1132(a)(1)(B).

Attorneys and Law Firms

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ORDER ON CROSS MOTIONS FOR SUMMARY JUDGMENT

Donald M. Middlebrooks, United States District Judge

***1 THIS CAUSE** is before the Court on two fully briefed motions: (1) Defendant, The Guardian Life Insurance Company of America's ("Guardian['s]") Motion for Summary Judgment [ECF No. 35], filed on January 26, 2023 ("Guardian MSJ"); [1] and (2) Plaintiff, Sharon Delucca's ("Delucca['s]") Motion for Summary Judgment [ECF No. 38], also filed on January 26, 2023 ("Delucca MSJ"). [2]

At issue is whether Guardian wrongfully terminated Delucca's long-term disability ("LTD") benefits under a plan governed by the **Employee Retirement Income Security Act** of 1974 ("**ERISA**"), 29 U.S.C. § 1001 *et. seq.* I have reviewed the record, the submissions of counsel, the relevant statutory authority and case law. For the reasons set forth below, Guardian's Motion for Summary Judgment [ECF No. 35] is **GRANTED**, and Delucca's Motion for Summary Judgment [ECF No. 38] is **DENIED**.

I. Background [3]

Delucca was employed as a graphic arts professor at Roger Williams University (the "University"). *See* Delucca SOF ¶ 1; Guardian SOF ¶¶ 3, 9. The University had insurance for the LTD component of its employee welfare benefits plan (the "Plan") through a policy issued by Guardian, under Policy No. G-00514283 (the "Policy"). *See* Guardian SOF ¶ 2. Guardian serves as the "claims fiduciary" for LTD claims under the Plan. *See id.* ¶ 4.

A. The Terms of Guardian's LTD Policy

Under the Policy, the terms "Disability" or "Disabled" mean,

> [T]hat a current *sickness* or *injury* causes physical or mental impairment to such a degree that you are:
>
> ***2** (1) During the *elimination period* and the *own occupation* period, not able to perform on a full-time basis, the major duties of your *own occupation.*
>
> (2) After the end of the *own occupation* period, not able to perform, on a full-time basis, the major duties of any *gainful work.*

See Guardian SOF ¶ 5; Delucca SOF ¶ 11(emphasis in original).

The Policy defines "Gainful Work" or "Gainful Occupation" as "Work for which you are, or may become, qualified by: (a) training; (b) education; or (c) experience. When you are able to perform such work on a full-time basis, you can be expected to earn at least 80% of your indexed *insured earnings* within 12 months of returning to work." *See* Guardian SOF ¶ 6 (emphasis in original).

The Policy requires that claimants provide Guardian with ongoing "Proof of Loss." *See id.* ¶ 7. The "Proof of Loss" provision states that a claimant "must provide *objective medical evidence* from a *doctor*" and "[p]roof that you: (i) are currently; and (ii) have been receiving *regular* and *appropriate care* from a *doctor*, from the date *disability* began." *Ibid.* (emphasis in original). "Objective medical evidence," under the Policy, "[m]ay include but is not limited to: (a) diagnostic testing; (b) laboratory reports; and (c) medical records of a doctor's exam documenting: (i) clinical signs; (ii) presence of symptoms; and (iii) test

results consistent with generally accepted medical standards supported by nationally recognized authorities in the health care field." *Id.* ¶ 8.

B. Guardian Initially Accepts Delucca's Short-Term and Long-Term Disability Claims

In late 2015, Delucca settled a lawsuit from 2013 alleging gender discrimination and retaliation against the University and three employees. *See id.* ¶ 11. She remained involved in another, related lawsuit, *see ibid.*, and on December 17, 2015, stopped working due to symptoms of anxiety, depression, and agoraphobia. *See* Guardian SOF ¶ 10; Delucca SOF ¶¶ 16, 17. Her conditions were, according to subsequent treatment notes, due at least in part to "dealing with a legal battle [with] work." *Id.* ¶ 18.

On December 18, 2015, Delucca filed a claim for short-term disability benefits. *See* Guardian SOF ¶ 12; Delucca SOF ¶ 18. The form was signed by her treating psychologist, Dr. John Zeller, and set forth her disabling conditions as "(1) unspecified trauma and stressor related disorder; (2) major depressive disorder, recurrent, moderate; and (3) agoraphobia," and noted the conditions were "due to employment." *See* Guardian SOF ¶ 12. Delucca had only one other health provider, psychiatrist Dr. Greg Etter. *See id.* ¶ 17. As part of her treatment, Delucca took various psychotropic medications, *see* Guardian SOF ¶¶ 74–75; AR00586, and regularly attended therapy—once every 1-3 months with Dr. Etter and once every 1–2 weeks with Dr. Zeller, *see* Guardian SOF ¶ 20. Guardian paid Delucca short-term disability benefits until they expired in June 2016, *see id.* ¶ 13, then began paying her LTD benefits, *see id.* ¶ 16.

Delucca submitted treatment notes and psychiatric assessment forms ("PAFs") required by Guardian while receiving short and long-term disability benefits. *See* Delucca SOF ¶ 18. Guardian periodically assessed these documents through in-house reviews by a behavioral health case manager ("BHCM"). *See* Guardian SOF ¶ 18.

***3** Dr. Zeller's treatment notes and PAFs reflect that Delucca was in a poor psychiatric state in 2016. Treatment notes from January through March of that year reflect that she was "exhausted," "worn down after [a] long legal battle," and was suffering from heightened anxiety and symptoms of depression and agoraphobia. AR00580–81. She was having "difficulty venturing far from home," AR00580, and suffering "multiple physical health issues—including chronic cough, shortness of breath and pain in her esophagus/trachea," AR00583. In PAFs completed from January through March 2016, Dr. Zeller noted Delucca's "current degree of psychological impairment" was "major," which the form describes as having "major symptoms or difficulty in several areas including: social, occupational, family" and being "[u]nable to perform occupational duties or engage in interpersonal relationships." *See* Guardian SOF ¶ 14; AR 00586–597. Dr. Zeller did not indicate that any psychiatric testing had been done. *Ibid.*

A BHCM review from April 2016 states that Delucca's documentation was "subj[ective] in nature" as it did "not provide any obs[ervational] or clinical [symptoms] assessed by [her] provider." AR00316. Despite these concerns, the review determined it reasonable to continue to extend her benefits, given her difficulty with leaving home and her physical symptoms. *See* AR00317.

Treatment notes from July through October 2016 indicate that Delucca's symptoms did not meaningfully improve, and her anxiety appeared to physically manifest as intestinal issues and excoriation (i.e., compulsive skin-picking). AR00473–481. Delucca undertook a mindfulness practice and gradual exposure therapy to decrease anxiety related to avoidance behavior, with mixed results. *Ibid.* She reported high levels of anxiety when running errands or working in the front yard, fearing "faculty or employees from the University driving by and seeing her." AR00479. Guardian's BHCM review noted Delucca was undergoing exposure therapy but was having difficulty being in public places and her yard. *See* AR00341. Guardian concluded that Delucca's medical records continued to support her inability to return to work. *See ibid.*

By 2017, Delucca had continued with her exposure therapy and was "getting outside more and working in the yard." AR00789. She was also working on processing "deep grief and sadness related to [the] loss of her profession as a professor of design." AR00788. Treatment notes reflect ups and downs in her mood and feelings. *See* AR00783–790. She continued to report symptoms of depression and anxiety but was attending Zumba classes, despite "fear and hesitations about attending." AR00785. She also reported traveling to Florida with her husband to vacation on a cruise ship and to Philadelphia to visit her brother.

AR00786. Guardian's BHCM reviewer determined in mid-2017 that Delucca's treatment was appropriate and that her symptoms were still impacting her ability to normally socialize and shop. AR00355.

Near the end of 2017, the applicable definition for "disability" under the Policy changed from "not [being] able to perform, on a full-time basis, the major duties of your *own occupation*" to "not [being] able to perform, on a full-time basis, the major duties of any *gainful work.*" *See* Delucca MSJ at 13; Guardian SOF ¶ 5.

Throughout the following years, treatment notes reflect that Delucca continued to work through her anxiety with therapy and mindfulness. According to a PAF Dr. Zeller completed on February 9, 2018, Delucca's psychological impairment had improved from "major" to "moderate," which noted limitations "in performing some occupational duties or engaging in some interpersonal relationships." *See* Guardian SOF ¶ 19; AR 00629–30. By November of 2018, she reported "pushing herself to engage in socialization and ... to go outside" and went to the store for three hours, not leaving despite feeling anxious. AR00902. Dr. Zeller noted that she presented as "less depressed." *Ibid.* In Fall of 2019, she was "struggling with anxiety and distress secondary to recent events with a friend" and continued to work through resurfacing childhood trauma. *See* AR00854–56. She was able to have "a restful weekend in Vermont with her husband," where she "was able to relax" and upon returning home received "basic instructions in mindfulness practice" from Dr. Zeller. AR00856. She later reported "greater relaxation and calm throughout her day." AR00587. By "us[ing] her mindfulness practice in the grocery store," she "gradually lowered her anxiety and was able to stay for much longer than she usually [did]." *Ibid.* Guardian's claim notes from January 2020 state that Delucca was "on medications" and that her condition was "improving." AR00386.

***4** During June of 2020, Delucca "report[ed] that her mood ha[d] been better overall." AR01122. She also reported, however, "struggling with anxiety and stress secondary to **coronavirus** pandemic" and had "a lot of fear and anxiety around recent marches in response to police brutality." *Ibid.* The following month, she reported "feeling good about ... spend[ing] time on [a] boat and also tak[ing] some [ ] trips." AR01123. She was "feeling better" about "consuming less news" and had "less anxiety around going to places in town." AR01123. In August, she appeared to have some setbacks and reported "struggling with symptoms of depression" and with going outside to interact with others. AR01124. She also reported "pu[ting] off going outside [to] work in the yard." AR01125. The following month, Dr. Zeller noted that Delucca "still has some fear about being in her yard or being in the store and running into someone from the University" but was in a better mood and "very excited" about an "upcoming trip south to Marina w[h]ere she and [her] husband will keep [the] boat for the winter." *See* Dr. Zeller Subpoena Production [ECF No. 36-4] at 9. She was "trying to get more involved with reaching out to others and also exercising more." *Ibid.* In PAF dated September 11, 2020, Dr. Zeller continued to assess Deluca as "moderate[ly] impaired." AR01118. In it, Dr. Zeller noted there were no "[r]ecent test results or other rating scale score" to report. *Ibid.*

A BHCM review from October 2020 concluded Delucca's ongoing medical issues supported covering her LTD claim for at least a few more months so she could "continue to develop/strengthen coping skills." *See* Guardian SOF ¶ 33; AR00395–96. The review also noted that Guardian should "request updated psych assessment[s]" and treatment notes from Delucca's providers for a follow-up review. *See* Guardian SOF ¶ 33, AR00396.

C. Guardian Terminates Delucca's LTD Claim in 2021 and Denies Her Appeal

In April 2021, Delucca and her husband bought a home in Boca Raton, where she would eventually move and retire. *See* Guardian SOF ¶ 42. The following month, Guardian reviewed Delucca's updated medical records. Guardian SOF ¶ 44; AR00413. The review highlighted that Delucca's "problems with anxiety, depression, and agoraphobia" symptoms had "been lessening in severity, to the point that [Delucca] was able to travel to Florida twice in Dec. 2020." AR00413. The review also recognized reports that Delucca was "having problems going outside in her current neighborhood in Rhode Island" but that her "mood ha[d] [been] better" and that she had purchased a home in Florida. *Ibid.* The review also noted that Dr. Etter considered Delucca to have a "major impairment," while Dr. Zeller considered her to have a "moderate impairment." *Ibid.* Moreover, "both [doctors] opined [that Delucca] cannot RTW [(i.e., return to work)]" and "gave no [expected return-to-work] date" or any recommendations for potential workplace accommodations. *Ibid.*

The reviewer concluded that the "available psychiatric information d[id] not support [Delucca's LTD claim] since there are few psychiatric [symptoms] described," which did "not appear to be severe in extent or scope." *Ibid.* The reviewer pointed out that Delucca's symptoms "appear to be consistent with routine (as opposed to disabling) [ ] [mental health] problems" as evidenced by her ability "to travel significant distances from home (e.g., traveling from RI to FL)." AR00415. The review also noted that her symptoms no longer appeared to impact "global" functioning and that the "available medical [information] does not support extending LTD." *Ibid.* Guardian notified Delucca that it was terminating her LTD benefits as of May 5, 2021. *See* Guardian SOF ¶ 45; AR01366–69.

About three months after Guardian's decision, Delucca submitted her administrative appeal, providing letters from Dr. Zeller, Dr. Etter, and her husband. *See* Guardian SOF ¶ 52. Dr. Zeller's letter opined that "[w]hile Ms. DeLucca has made some progress in treatment, there is no question that her symptoms cause significant distress and impairment in her functioning" and that her symptoms "continue to be a significant impediment to her being able to function in an occupational setting." AR01338–39. Similarly, Dr. Etter's letter concluded that Delucca "has residual and chronic anxiety and depressive symptoms that result in impaired function and the recommendation not to work." AR01340. Guardian's in-house "Nurse Case Manager" reviewed the missives, noting that the doctors "fail[ed] to provide any significant clinical evidence indicative of global functional impairment" and that there was "no new clinic information [ ] on appeal." *Id.* ¶ 54.

***5** Guardian then referred the file for an independent physician consultant ("IPC") review, which was done by Dr. David Yuppa, a board-certified psychiatrist. *See* Guardian SOF ¶ 52. To prepare his report, Dr. Yuppa reviewed Delucca's treatment records from 2015 to 2021. *Id.* ¶ 58. He also tried to get in contact with Dr. Zeller for a peer-to-peer call but was unsuccessful prior to issuing his initial report. *Id.* ¶ 58. Dr. Yuppa's report concluded as follows:

> Based on a review of the provided data as summarized and analyzed below, it is the reviewer's opinion within a reasonable degree of clinical probability that the medical evidence does not support psychiatric functional impairment from 5/5/21 through the present and beyond.

AR01144. Part of Dr. Yuppa's rationale for his conclusion was that Delucca's symptoms and activities did not match those of someone suffering from an impairing psychiatric condition:

> Records from [Delucca's] providers during this timeframe indicate that [Delucca's] main sources of emotional stress were situational, and included mainly the termination of her disability benefits and her plan to sell her home. Despite these situational stressors, [Delucca] was able to perform errands / self-care, engage socially with friends, attend hair appointments, and leave her home several times / on a regular basis despite reports of agoraphobia. [Delucca] has had no suicidal ideation or other evidence of severe / impairing depressive symptoms. The evidence does not support severe / impairing anxiety.

AR01147. Dr. Yuppa also opined that Delucca's treatment plan was not consistent with that of someone suffering from a severely impairing or an incapacitating condition:

> The treatment plan has most recently consisted of outpatient medication management with Dr. Etter every 2 months and counseling with Dr. Zeller on a weekly basis. This is consistent with the standards of care for management of non-impairing psychiatric conditions. This would not be consistent with treatment

> standards for management of a severe, impairing, and/or incapacitating condition. Such a treatment plan would include a referral to a higher level of care, such as an IOP/PHP, or inpatient psychiatric hospital.

Ibid.

After Dr. Yuppa's initial report, he spoke with Dr. Etter and issued an amended report, *see* Guardian SOF ¶ 61–62, which reaffirmed his prior conclusions and rationale, *see* AR01411–12. It reflected that Dr. Etter was unable to provide "any additional clinical information, such as updated exam findings, treatment planning change[s]" or "increases in treatment acuity," supporting Delucca's self-reported symptoms. *See* AR01411. Dr. Etter acknowledged, according to the report, that Delucca "presented 'very well' in that while she had a respiratory 'tic' and appeared anxious, she was always well groomed, well spoken, and appropriately related." *Ibid.* Although Delucca self-reported symptoms of agoraphobia, "Dr. Etter conceptualized [Delucca] as having chronic PTSD resulting from her prior place of employment." *Ibid.* Dr. Yuppa noted that "[i]t remains unclear why [Delucca] was not ever directed to return to work in another workplace, given that her original complaints/reported trauma was job/worksite specific" and that "she has maintained stability (albeit with residual symptoms of anxiety and agoraphobia) with a very low acuity of treatment." AR01412.

During Delucca's appeal, Guardian also referred her file for a "vocational review," *see* Guardian SOF ¶ 64, and created a "transferability of work skills report," *see* AR01158. The report identified four jobs for which Delucca was qualified: (1) "Professor"; (2) "Art Director"; (3) "Department Head/University"; and (4) "Commercial Designer." *See* AR01159–161.

***6** Guardian subsequently advised Delucca that her benefits termination had been upheld on appeal. AR01392–98. The letter explained that Delucca could not continue receiving LTD benefits after May 5, 2021, because she "no longer [met] the definition of disability as defined in the policy," given that there was "no evidence to preclude her from doing gainful work ... on a full time basis." AR01397. On June 20, 2022, Delucca filed this action, *see* ECF No. 1.

II. Legal Standard

[1] Summary judgment is appropriate if the pleadings, discovery and disclosure materials on file, and any affidavits show "there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a), (c). The parties may support their positions by citations to materials in the record, including pleadings, depositions, interrogatory responses, documents, affidavits, or declarations. *See* Fed. R. Civ. P. 56(c). "An issue of fact is material if it is a legal element of the claim under the applicable substantive law which might affect the outcome of the case." *Burgos v. Chertoff*, 274 F. App'x 839, 841 (11th Cir. 2008) (internal quotation marks omitted) (quoting *Allen v. Tyson Foods, Inc.*, 121 F.3d 642, 646 (11th Cir. 1997)).

[2] **[3]** **[4]** The court does not, however, engage in a typical summary judgment analysis when ruling on an **ERISA** case. *See Foster v. Hartford Life & Accident Ins. Co.*, No. 09-cv-80933, 2010 WL 11504337, at *9 (S.D. Fla. Sept. 7, 2010). The focus is not on whether questions of material fact require a trial. *See ibid.* (noting that in **ERISA** cases, "the court sits in more of an appellate capacity" when reviewing an administrator's decision). Courts in the Eleventh Circuit reviewing a plan administrator's decision to terminate insurance benefits follow a six-step test:

> (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.

Blankenship v. Metro. Life Ins. Co., 644 F.3d 1350, 1355 (11th Cir. 2011). A plaintiff suing for insurance benefits under 29 U.S.C. § 1132(a)(1)(B) bears the burden of proving her entitlement to those benefits under the plan. *Horton v. Reliance Standard Life Ins. Co.*, 141 F.3d 1038, 1040 (11th Cir. 1998) (per curiam); *but see Melech v. Life Ins. Co. of N. Am.*, 739 F.3d 663, 673 (11th Cir. 2014) (looking to the terms of the plan to determine who has the burden).

III. Discussion

The Policy specifies that a claimant must provide "ongoing proof of loss," AR00263, which includes "[o]bjective medical evidence in support of [the claimant's] limitations and restrictions[.]" AR00262. Whether Delucca had satisfied this requirement when Guardian terminated her benefits is at the heart of the parties' dispute. A related disagreement, also central to the dispute, is whether Delucca's reportedly disabling psychiatric conditions had improved to the point she was no longer disabled (as defined in the Policy).

***7** Guardian contends that Drs. Zeller and Etter provided "little objective support that [Delucca] was disabled." Guardian MSJ at 7. Dr. Zeller's assessment of Delucca's "impairment," Guardian highlights, changed from "major" to "moderate" in September 2020. *See ibid.* Dr. Zeller's treatment notes also at times indicate that Delucca's mood was "ok" and her affect "full." *See ibid.* Guardian also contends that Dr. Etter's repeated conclusions that Delucca could not return to working were based only on her self-reported symptoms and not, among other things, "test results" or "detailed objective observations." *Ibid.* And, Guardian argues, Delucca's treatment plan did not match that of someone suffering from level of debilitating conditions she alleged. *See id.* at 9. Guardian also points to the extent of Delucca's ability to travel outside her home, including for vacations, as "wholly incompatible" with her claim that "she is too anxious to work outside the home." *Id.* at 16. Guardian highlights that its decision was supported by Dr. Yuppa's independent review of the claim file, on whose opinion Guardian was entitled to rely. *Id.* at 10.

Delucca counters that there was no principled basis for Guardian's termination of her LTD benefits because since 2016 Guardian had approved her claim based on the same type of evidence it later claimed was insufficient. *See* Delucca Response to Guardian MSJ at 3 ("Because Ms. Delucca continued to give Guardian the same records and information, Guardian was wrong to terminate her benefits without having any evidence showing her conditions had improved or changed in some significant way."); *see also* Delucca MSJ at 3 ("Where for five years Guardian agreed exposure therapy and Ms. Delucca's limited ability to leave her house were appropriate, now suddenly were [sic] contrary to disability."). Because Guardian previously accepted Delucca's evidence as "objective," she argues, Guardian "is required to show what had changed to support their [sic] decision to terminate benefits." Delucca Response to Guardian MSJ at 10. Delucca further argues that Guardian has not actually shown that her condition has "improved in any meaningful way" because Guardian was always aware of her vacillating symptoms and has merely "cherry picked" instances where she was doing better while ignoring those where she was doing worse. Delucca Response to Guardian MSJ at 8–9. Moreover, Guardian cannot now point to the Policy's objective evidence requirement because if it approved her claim for years without such supporting documentation then the requirement has been waived. *See* Delucca Response to Guardian MSJ at 11.

[5] **[6]** As a preliminary matter, even if waiver principles were to apply in the **ERISA** context, Delucca's waiver argument fails because she has not shown that Guardian received an "unjust benefit" through its actions. [4]

***8** **[7]** Because the Policy makes clear that Delucca had the *ongoing* burden of showing that she was "not able to perform, on a full-time basis, the major duties of any gainful work" (i.e., "disabled" under the applicable Policy definition), *see* AR00264 (emphasis omitted), it is irrelevant, standing alone, that Guardian for years deemed her disabled. *See Richards v. Hartford Life & Acc.Ins. Co.*, 356 F. Supp. 2d 1278, 1284 (S.D. Fla. 2004) (noting that a claimant's "burden is the same whether or not the administrator denies a claim initially or decides to discontinue benefits after initially approving them"), aff'd sub nom. *Richards v. Hartford Life & Acc. Ins. Co.*, 153 Fed. Appx. 694 (11th Cir. 2005).

Delucca argues to the contrary, claiming that Guardian has the burden of showing she was no longer disabled when it terminated her LTD benefits, relying on *Levinson v. Reliance Standard Life Ins. Co.*, 245 F.3d 1321 (11th Cir. 2001). That case, however, is inapposite because its facts are materially different from the present case.

In *Levinson*, the administrator had at first approved the claimant's LTD benefits based on a letter from his cardiologist indicating that the claimant suffered from serious heart conditions, which left him disabled as defined under the policy. *See ibid.* But after a nurse and claims representative for the administrator reviewed the claim file and determined that the claimant was "asymptomatic and not disabled," the administrator terminated his LTD benefits. *Id.* at 1326. That decision, the district court determined, was wrong for two reasons: first, being asymptomatic did "not appear to be a reason for denying benefits anywhere in the language of the policy," *id.* at 1327; and second, the administrator's conclusions were not based "upon any independent medical evidence," nor did there "appear to be any evidence before [the administrator] that contradicted [the claimant's] evidence from his physician that he was totally disabled." *Ibid.* The administrator appealed the decision, arguing, in relevant part, that the district court had "wrongly switched the burden to [the administrator] to prove [the claimant] was no longer disabled in order to end benefits." *Id.* at 1331. The court rejected the argument, noting that because submissions from the claimant's physicians reflected that he still had a disabling heart condition, the claimant had "satisfied his obligations under the terms of the plan" and the administrator therefore "had to produce evidence showing that [he] was no longer disabled in order to terminate his benefits." *Ibid.*

[8] The Eleventh Circuit has made clear that "*Levinson* does not hold that one payment of benefits binds the administrator to payments forever." *Ruple v. Hartford Life & Acc. Ins. Co.*, 340 Fed. Appx. 604, 613 (11th Cir. 2009). Rather, the case holds that if a claimant has satisfied his burden under the policy of showing he is disabled, then the administrator must show that the claimant is not disabled before it can terminate his benefits. *See id.* (recognizing that "*Levinson* does discuss a 'burden shifting' away from the claimant and onto the administrator" but clarifying that the shift is due to "the claimant [having] carried his burden of proving that he was 'totally disabled within the meaning of the plan"). That straightforward proposition does not apply here because, unlike *Levinson*, the Policy requires claimants to provide "ongoing" proof of disability based on "objective medical evidence" to qualify for LTD benefits. *See id.* at 611 (noting that "when the court makes its own determination of whether the administrator was 'wrong' to deny benefits ... the court applies the terms of the policy"). Thus, when Guardian determined that Delucca presented no objective evidence reflecting that she was disabled (in 2021), that decision was based on language in the policy. Critically, unlike *Levinson*, this is not a situation where an administrator is providing an unsupported conclusion contrary to the claimant's medical providers.

***9** **[9]** The administrative record and the parties' submissions, taken as a whole, support Guardian's decision to terminate Delucca's LTD benefits for three related reasons: First, Delucca's symptoms significantly improved over time; second, Delucca's providers' opinion that she was unfit to work was unsupported by objective medical evidence; and third, Guardian's decision was supported by the opinion of an independent physician consultant, Dr. Yuppa. [5] I address each of these reasons below.

A. The Administrative Record Reflects that Delucca's Symptoms Significantly Improved.

[10] Treatment notes and PAFs supplied by Delucca's providers reflect that her overall functioning significantly improved over time, even if her symptom severity did vacillate. Her improvement is reflected in many different aspects. For example, Dr. Zeller initially assessed her degree of psychological impairment as "major," but eventually downgraded it to "moderate." The degree to which she was able to leave the home also reflects significant improvements. A July 2016 BHCM Review noted that based on Delucca's then-reported symptoms, it appeared she was "not able to leave home" and her "stress response would not allow her to work in her occupation either." AR00319. It is undisputable that over the following years Delucca's conditions significantly improved to the point where she was able to leave the house to run errands, go shopping, and take vacations. To be sure, her treatment notes reflect episodes of agoraphobia and depression, but these episodes do not appear to be as continuous or as severe as they were when she first began receiving LTD benefits. By 2021, Delucca and her husband were in the process of moving to Boca Raton, and her interrogatory responses reflect that in 2021 she traveled at least nine times from Rhode Island to Florida. *See* Plaintiff's Responses to Defendant[']s First Set of Interrogatories [ECF No. 19-3] ¶ 14.

Moreover, post-termination video surveillance taken of Delucca in 2022, shows her driving and shopping unaccompanied over the course of a few days, for hours at a time, going to the grocery store, hair salon, and other populated areas, seemingly without incident. *See* Notice of Conventional Filing [ECF No. 37]. In short, the extent to which Delucca improved—from not being able to leave her house to significantly traveling and leaving her house unaccompanied—supports Guardian's conclusion that Delucca was not disabled when it terminated her LTD benefits.

B. Guardian Was Entitled to Discount Medical Opinions Unsupported by Objective Medical Evidence.

[11] Guardian was entitled to discount Delucca's doctors' conclusions that she was unfit to work because they were based largely on her self-reported symptoms rather than on objective medical examination. *See Doyle v. Liberty Life Assur. Co. of Boston*, 542 F.3d 1352, 1358 (11th Cir. 2008) (concluding that "it was not unreasonable for [insurer] to disregard [claimant's] complaints of intangible pain and suffering" not based on objective medical evidence supporting her claim); *see also Watts v. BellSouth Telecommunications, Inc.*, 218 Fed. Appx. 854, 857 (11th Cir. 2007) (noting that the objective evidence requirement in policies "promotes integrity by assuring there is corroboration for a claimant's subjective complaints, thus deterring embellished allegations of the effect of the diagnosed malady as well as deterring fraud in the claims process") (citations omitted). Delucca herself cites that eight PAFs completed by Dr. Zeller from 2016 to 2021 "did not include a GAF or WHODAS score, did not include any test results," and noted " 'same' for objective and subjective complaints." *See* Delucca Response to Guardian SOF ¶ 84. A doctor's writing down a patient's subjective complaints does not transmute that evidence from subjective to objective; countenancing this would defeat the very purpose of the objective evidence requirement.

C. Guardian Was Entitled to Rely on the Reasoned Opinion of its Independent Medical Examiner.

***10 [12]** Guardian was also allowed to discount the opinions of Delucca's doctors because Dr. Yuppa provided a reasoned basis for disagreeing with their conclusions that Delucca was disabled. *See Helms v. Gen. Dynamics Corp.*, 222 Fed. App'x 821, 833 (11th Cir. 2007) (noting that an administrator is "entitled to discount [a claimant's provider's] opinion in favor of a contrary opinion produced by an IME or peer review"). Dr. Yuppa's final report was based in part on a peer-to-peer call with Dr. Etter, during which Dr. Etter opined that Delucca did not require any higher level of psychiatric care. Delucca's then-current treatment plan, Dr. Yuppa concluded, "would not be consistent with treatment standards for management of a severe, impairing, and/or incapacitating condition." Guardian SOF ¶ 60. Dr. Yuppa's report also identified other issues with Delucca's claim, including that her diagnoses lacked objective evidentiary support and that she had never been directed to work in another workplace even though her reported trauma was worksite specific. In short, Dr. Yuppa's report reached a conclusion contrary to Delucca's doctors and set forth a reasonable explanation of the shortcomings in Delucca's supporting documentation. Guardian was entitled to rely on this report. *See Ray v. Sun Life & Health Ins. Co.*, 443 Fed. Appx. 529, 533 (11th Cir. 2011) (holding that insurer's decision to terminate benefits was not de novo wrong where insurer relied on two non-examining medical experts' opinion that claimant was capable of returning to her occupation and evidence in the record contradicted claimant's treating physician's conclusion that claimant was permanently disabled).

Delucca takes issue with Dr Yuppa's report for four overarching reasons, *see* Delucca Response to Guardian MSJ at 12–14, all of which I find unconvincing. First, Delucca argues that Dr. Yuppa cannot point to Delucca's "ability to engage in errands, self-care, and socially with friends" as counter evidence to her disability because she "*always* engaged in these activities, [as] Guardian was aware, and it nonetheless agreed she was disabled." *Id.* at 12 (emphasis in original; alterations added). Delucca provides no case law for this assertion. Nor does she explain why an administrator previously deeming a claimant disabled should bar it from relying on a new opinion from an *independent* medical reviewer concluding otherwise. Second, Delucca argues that Dr. Yuppa was wrong to consider her lack of suicidal ideation as a basis to find her not disabled, because she had never presented that symptom while Guardian deemed her disabled. *See id.* at 13. But Dr. Yuppa never suggests that the symptom was *required* for her to be deemed disabled. Dr. Yuppa's report mentions that fact as part of his overall analysis for concluding that there lacked "evidence of severe/impairing depressive symptoms." AR01147. Third, Delucca takes issue with Dr. Yuppa finding her treatment plan to not match that of someone with disabling psychiatric conditions while not specifying what that treatment plan would be. *See* Delucca Response to Guardian MSJ at 13. Dr. Yuppa did indicate, however, that disabling psychiatric conditions would typically require an "intensive outpatient program" or a "partial hospitalization program." *See* AR001147. Dr. Yuppa was not required to detail what Delucca's "appropriate care" would look like to reach a reasoned conclusion. Lastly, Delucca points out that Dr. Yuppa presents a non-exhaustive list of the types of support that could constitute objective medical evidence. *See* Delucca Response to Guardian MSJ at 13. This point is immaterial because Delucca does not actually contend that her file contained such evidence. And, even if she had presented objective medical evidence, Guardian would be entitled to consider Dr. Yuppa reasoned basis for reaching a conclusion different than Delucca's doctors. *See Ray*, 443 Fed. Appx. at 533.

IV. CONCLUSION

Based on the analysis above, the Court finds that Guardian's decision to terminate Delucca's LTD benefits was not de novo wrong. Accordingly, it is hereby

ORDERED AND ADJUDGED that Guardian's Motion for Summary Judgment [ECF No. 35] is **GRANTED**, and Delucca's Motion for Summary Judgment [ECF No. 38] is **DENIED**. Judgment will be issued by separate order.

All Citations

--- F.Supp.3d ----, 2023 WL 7129986

Footnotes

1 Guardian's MSJ is ripe for a decision: Delucca filed her Response in Opposition to Defendant's Motion for Summary Judgment [ECF No. 42] on February 9, 2023 ("Delucca Response to Guardian MSJ"), to which Guardian filed its Reply Brief in Further Support of its Motion for Summary Judgement [ECF No. 49] on February 16, 2023 ("Guardian Reply MSJ").

2 Delucca's MSJ is also ripe for a decision: Guardian filed is Memorandum of Law in Opposition to Plaintiff's Motion for Summary Judgment [ECF No. 45] on February 9, 2023 ("Guardian Response to Delucca MSJ"), to which Delucca filed her Reply in Support of Her Motion for Summary Judgment [ECF No. 46] on February 16, 2023 ("Delucca Reply MSJ").

3 The facts are taken from (1) the Administrative Record (AR00001–1608) [ECF No. 36-2]; and (2) each party's statement of material facts filings, which are as follows: (i) Defendant's Statement of Material Facts [ECF No. 36] ("Guardian SOF"); (ii) Plaintiff's Response to Defendant's Statement of Material Facts [ECF No. 43] ("Delucca Response to Guardian SOF"); (iii) Defendant's Reply to Plaintiff's Statement of Additional Material Facts [ECF No. 48] ("Guardian

Reply SOF"); (iv) Plaintiff's Statement of Material Facts [ECF No. 39] ("Delucca SOF"); (v) Defendant's Response to Plaintiff's Statement of Material Facts [ECF No. 44] ("Guardian Response to Delucca SOF"); and (vi) Plaintiff's Reply to Defendant's Statement of Additional Material Facts [ECF No. 47] ("Delucca Reply SOF").

Unless otherwise noted, the facts are undisputed.

4 "Waiver is the voluntary, intentional relinquishment of known right." *Glass v. United of Omaha Life Ins. Co.*, 33 F.3d 1341, 1347 (11th Cir. 1994). Although the Eleventh Circuit has left open whether "waiver principles might apply under the federal common law in the **ERISA** context," *id.* at 1348, it has required showing that a party *both* intentionally relinquished a known right *and* obtained an unjust benefit in doing so, *ibid.* (rejecting a waiver claim because "plaintiff ha[d] failed to adduce evidence of any unjust benefit" and declining "to incorporate as part of the federal common law of **ERISA** a 'something-for-nothing' waiver claim").

Even if Guardian were to have intentionally relinquished the objective evidence requirement, the waiver argument still fails because Delucca presents no arguments or evidence for how Guardian would have received an unjust benefit in doing so. *See* Delucca Response to Guardian MSJ at 11–12. To the contrary, Delucca "was not prejudiced because after Guardian terminated her claim[,] citing the lack of objective evidence, she was on notice and then afforded an administrative appeal wherein she had the opportunity and express invitation to provide any evidence (including 'the results of any objective tests') she wanted to be considered by a separate claims unit." Guardian Reply MSJ at 8.

5 The Eleventh Circuit recently clarified that under the de novo standard of review in **ERISA** cases, the Court may consider information beyond what an administrator had available in the Administrative Record. *See Harris v. Lincoln Nat'l Life Ins. Co.*, 42 F.4th 1292, 1297 (11th Cir. 2022) ("[W]hen review is de novo the parties can introduce evidence outside of the administrative record.").

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