IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

RONDA GAINES, Plaintiff, v. AETNA INC., et al., Defendants.	CIVIL ACTION FILE NO. 1:12-CV-3318-TWT

OPINION AND ORDER

This is an ERISA action seeking to recover long-term disability benefits. It is before the Court on the Plaintiff's Motion for Trial/Judgment on the Papers [Doc. 20] and the Defendant's Motion for Judgment on the Administrative Record [Doc. 21]. For the reasons stated below, the Defendant's motion is DENIED and the Plaintiff's motion is GRANTED.

I. Judgment on the Administrative Record

Rule 52(a)(1) provides the appropriate vehicle for judgment on the administrative record in ERISA cases. "When a decision is based on the agreed-upon administrative record, judicial economy favors using findings of fact and conclusions of law, not Fed. R. Civ. P. 56, to avoid an unnecessary step that could result in two

appeals rather than one."[1] Both parties agree to the administrative record.[2] They further agree that findings of fact and conclusions of law are the appropriate method for resolving this matter. The Court therefore treats these motions as a Trial on the Papers pursuant to Fed. R. Civ. P. 52(a). "In an action tried on the facts without a jury . . . the court must find the facts specially and state its conclusions of law separately. The findings and conclusions may be stated on the record after the close of the evidence or may appear in an opinion or a memorandum of decision filed by the court."[3]

II. Findings of Fact

The Plaintiff, Ronda Gaines, was employed as a Care Manager Consultant with the Defendant Aetna Inc. ("Aetna"). She began work on October 1, 2006.[4] As part of her benefits through that employment, the Plaintiff was eligible for Short-Term Disability and Long-Term Disability benefits through Aetna.[5] The benefit plans were

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1 McInvale v. Metropolitan Life Ins. Co., No. 5:07-cv-459, 2009 WL 2589521, at *1 n.2 (M.D. Ga. Aug. 18, 2009) (citing Doyle v. Liberty Life Assur. Co., 542 F.3d 1352, 1363 n.5 (11th Cir. 2008)); see also Aleksiev v. Metropolitan Life. In. Co., No. 1:10-cv-3322-SCJ, at *29-30 (N.D. Ga. Mar. 9, 2012).

2 Br. in Supp. of Pl.'s Mot. for Trial/Judgment on the Papers, at 21-22.

3 FED. R. CIV. P. 52(a)(1).

4 Administrative Record ("A.R.") at 248.

5 Id. at 67-69.

administered by Aetna Life Insurance Company ("ALIC").[6] The plans provided for a one-week short-term disability waiting period, 25 weeks of short-term disability, and 18 months of long-term disability benefits, provided that the insured could show that she is unable to perform the material duties of her own occupation.[7] The Plaintiff's occupation was sedentary.[8] With respect to her claim for benefits here, the Plaintiff was first absent from work on December 17, 2009.[9]

The Plaintiff suffers from multiple medical issues, including lupus, fibromyalgia, asthma, and mild degenerative joint changes.[10] On May 17, 2010, the Plaintiff's primary care physician, Dr. Fowler indicated that the Plaintiff suffered from escalating pain.[11] In 2010, she underwent a partial thyroidectomy and suffered from hypocalcemia following the surgery.[12] On June 9, 2010, records from Dr. Fowler note that the Plaintiff was doing better following surgery and that her lupus continued to

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6 Id. at 69.

7 Id. at 257.

8 Id. at 258.

9 Id. at 257.

10 Id. at 84-85, 95.

11 Id. at 169.

12 Id. at 90.

cause joint pains, but did not appear to be progressive.[13] On June 10, 2010, approximately two weeks post-surgery, Dr. Dockery noted improvement in the Plaintiff's sleeping and "no problems since last seen."[14] Dr. Dockery did, however, record the Plaintiff's continued hypocalcemia.[15] Additionally, on June 30, 2010, Dr. Fowler's office notes stated that the Plaintiff's lupus occurred randomly, was improved, and had no associated symptoms.[16] Dr. Fowler also completed an Attending Physician's Statement on June 30, 2010.[17] In that statement, Dr. Fowler stated that the Plaintiff was unable to work and noted several times her difficulty sitting for long periods of time.[18] At a visit to Dr. Fowler on August 2, 2010, the Plaintiff's medical records reflect that her chronic pain issues were still prevalent and that "standing or walking for prolonged periods" was difficult.[19]

On August 2, 2010, the Plaintiff's application for long-term disability benefits was denied when the plan administrator determined that the medical records did not

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13 Id. at 162, 165.

14 Id. at 90.

15 Id.

16 Id. at 158.

17 Id. at 427.

18 Id. at 427-29.

19 Id. at 152.

support an inability to work.[20] Specifically, the records indicated that the Plaintiff had improved after her thyroidectomy.[21] In the letter denying benefits, ALIC provided the Plaintiff with the ability to submit more information supporting her disability and obtain a second review.[22] The Plaintiff appealed the initial denial of benefits under the Plan, stating that her request for disability was not based solely on her thyroid surgery, but rather on symptoms associated with lupus and chronic pain.[23] ALIC received the Plaintiff's appeal on August 10, 2010.[24] On September 7, 2010, ALIC indicated that it might need more documentation, which the Plaintiff needed to send by September 12, 2010.[25] The Plaintiff submitted a letter from Dr. Fowler, dated August 19, 2010, which stated that the Plaintiff had difficulty sitting or standing for long periods and could not perform her job duties due to chronic fatigue.[26]

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[20] Id. at 460.

[21] Id. at 461.

[22] Id. at 461-62.

[23] Id. at 229-30.

[24] Id. at 463.

[25] Id. at 480.

[26] Id. at 485.

On September 28, 2010, the Plaintiff's file was referred to Dr. Mark Borigini for review.[27] Dr. Borigini is an independent physician who is board certified in internal medicine with a specialty certificate in rheumatology and added expertise in fibromyalgia.[28] Upon review of the Plaintiff's medical records, Dr. Borigini noted diagnoses of chronic pain, lupus, fatigue, hypothyroidism, and mild degenerative joint disease.[29] He further explained that aside from one note mentioning PIP swelling, the medical records contained no documentation that the Plaintiff's lupus was persistently active or of any major organ involvement related to lupus.[30] Dr. Borigini's opinion was that the Plaintiff could continue work, at least on light duty, given that there was no documentation of inability to work and that one of Dr. Fowler's notes in June 2010 stated that the Plaintiff could work light duty.[31] Dr. Borigini spoke with Dr. Fowler on October 25, 2010.[32] Dr. Fowler stated that the Plaintiff was disabled due to chronic pain, but that did not change Dr. Borigini's opinion based on the medical records.[33]

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27 Id. at 215.

28 Id. at 214.

29 Id. at 216.

30 Id.

31 Id. at 217.

32 Id. at 217-18.

33 Id. at 218.

On November 2, 2010, ALIC upheld the initial denial of benefits to the Plaintiff.[34] That denial was based on Dr. Borigini's determination that the medical records did not show a physical basis for any limitations based on the Plaintiff's lupus.[35] On December 2, 2010, the Plaintiff submitted a letter to ALIC explaining that her conditions caused serious pain, requiring her to spend 18 or more hours a day in bed.[36] That letter also indicated the Plaintiff struggles with hypothyroidism and hypocalcemia following her thyroid surgery.[37]

On December 30, 2010, Dr. Mark Hanna noted that the Plaintiff came into his office with a cane and was suffering from muscle weakness to the point that her knees were no longer supporting her daily activities.[38] Dr. Hanna suggested aquatic rehabilitation because he did not believe the Plaintiff could handle rehabilitation on land.[39] On June 3, 2011, the Plaintiff's visit to Dr. Fowler showed that she was still

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34 Id. at 710.

35 Id.

36 Id. at 658.

37 Id.

38 Id. at 89.

39 Id.

suffering from pain, edema, and hypocalcemia.[40] Dr. Fowler stated that fibromyalgia was the main concern.[41]

As a part of applying for long-term disability benefits, the Plaintiff underwent a Functional Capacity Evaluation ("FCE"). This evaluation was performed on May 20 and 23, 2011.[42] Because the Plaintiff arrived 70 minutes late on the first day of the evaluation, a second day of evaluation was required.[43] The evaluator noted, therefore, that the Plaintiff's "functional abilities on a day-to-day basis could not be validated."[44] The evaluator additionally noted that in hand coordination activities performed at desk height, the Plaintiff displayed effort inconsistent with her ability to lift her purse.[45] In all other activities, the Plaintiff used maximal effort.[46] Specifically, the evaluator noted the level of effort using patterns of movement, heart rate, and blood pressure.[47] The effort displayed in activities outside of finger flexion and hand coordination was

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40 Id. at 95.

41 Id.

42 Id. at 187.

43 Id.

44 Id. at 189.

45 Id. at 188.

46 Id. at 622.

47 Id. at 623.

consistent with the Plaintiff's diagnoses, past medical and surgical history, and objective physical findings.[48] The evaluator found that the Plaintiff was limited in her ability to tolerate seated work, which she could only do for up to 33% of the workday.[49] Additionally, the evaluator found that the Plaintiff did not meet the Department of Labor qualifications for a sedentary position because she could tolerate up to ten pounds of force only occasionally and seated work activities for less than half of the workday.[50]

On June 21, 2011, the Plaintiff requested a third review of her file.[51] With the request for the third review, the Plaintiff's attorney submitted additional medical records, a physician questionnaire from Dr. Fowler, and the FCE, all attempting to document the Plaintiff's inability to work.[52] The physician questionnaire, completed by Dr. Fowler, indicated the diagnoses of lupus, fibromyalgia, hypoparathyroidism, hypocalcemia, renal disease, and depression.[53] Dr. Fowler stated that the Plaintiff

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48 Id. at 622.

49 Id. at 192.

50 Id. at 626.

51 Id. at 505-506.

52 Id.

53 Id. at 171.

presented with multiple trigger points consistent with fibromyalgia, ankle tenderness and edema, chronic low back and lower extremity pain, and chronic fatigue.[54] He also noted the Plaintiff's list of medications, including 20 milligrams of Oxycontin every 12 hours.[55] Dr. Fowler further stated that the medications contributed to the Plaintiff's fatigue, that her pain affected her ability to maintain attention and concentration in daily work activities, and that she was not able to sustain a 40-hour work week.[56]

On August 12, 2011, the Plaintiff's claim was submitted to a rheumatology specialist for further independent review.[57] That specialist, Ibrahim Alghafeer, reviewed the Plaintiff's records from a rheumatology perspective.[58] After review of the Plaintiff's records, Dr. Alghafeer noted diagnoses of lupus, fibromyalgia, and arthritis.[59] He noted the FCE results indicating that the Plaintiff did not meet the demands of sedentary work due to her inability to handle up to ten pounds of force and inability to tolerate sitting for most of the time.[60] With respect to the FCE, Dr.

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54 Id.

55 Id.

56 Id. at 172.

57 Id. at 298.

58 Id. at 301-02.

59 Id. at 301.

60 Id.

Alghafeer stated that the results indicated inconsistency, but did not explain that the results also stated the Plaintiff used maximal effort in most activities.[61] Dr. Alghafeer's analysis mentions a conversation with Dr. Fowler on August 19, 2011, in which Dr. Fowler explained that the Plaintiff suffered from chronic pain and swelling in her ankles that could interfere with her ability to stand or walk.[62] Dr. Alghafeer further lists a medical record from August 19, 2010, indicating that the Plaintiff needed assistance from her son to move around her house.[63] He also mentions a medical record from June 3, 2011, where the Plaintiff came into the office in a wheelchair.[64] In his analysis, Dr. Alghafeer opines that there is no serological evidence of active lupus and that the Plaintiff's fibromyalgia does not render her disabled.[65] In coming to this conclusion he states that the Plaintiff's medical records indicated no "sleepiness or fatigue that affected her ability to drive, balance, stand or walk."[66]

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61 Id.

62 Id.

63 Id. at 300.

64 Id.

65 Id. at 301.

66 Id.

On August 12, 2011, a third independent physician, Dr. Siva Ayyar, who is board certified in occupational medicine, reviewed the Plaintiff's file.[67] Dr. Ayyar disregarded the results of the FCE, stating that based on his review, the evaluator stated that the Plaintiff gave inconsistent effort throughout the evaluation.[68] He stated that the Plaintiff's constraints were the result of deconditioning, absence from the workplace, poor tolerance to pain, and individual motivation and desire.[69] After noting that the Plaintiff's principal issues were fibromyalgia, lupus, and chronic pain, Dr. Ayyar stated that "[p]ain, however, in and of itself, should not be a debilitating or disabling issue."[70] He then continued by stating his opinion that the Plaintiff could work in excess of the limits set by the FCE and Dr. Fowler, but for her lack of personal tolerance.[71] Dr. Ayyar's opinion was that the Plaintiff's inability to work was not due to her medical diagnoses, but rather to her desire and motivation to work.[72] He

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67 Id. at 311.

68 Id. at 309.

69 Id. at 310.

70 Id.

71 Id.

72 Id.

believed that a sit/stand accommodation would assist the Plaintiff in returning to work.[73]

On September 12, 2011, ALIC again upheld the denial of benefits to the Plaintiff.[74] ALIC based its decision on the independent clinical reviews as well as all information in the Plaintiff's file.[75] Specifically, ALIC noted the lack of serological evidence of active lupus, Dr. Alghafeer's conclusion that the Plaintiff had no trouble driving, balancing, standing, or walking, and Dr. Ayyar's conclusion that the Plaintiff's pain was a result of personal tolerance not any disease.[76] As allowed under ERISA, the Plaintiff filed a lawsuit in this Court to challenge that decision. Both parties now move for judgment on the administrative record.

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[73] Id.

[74] Id. at 249.

[75] Id. at 248.

[76] Id. at 249.

III. Discussion

The Long-Term Disability Plan is governed by the Employee Retirement Income Security Act ("ERISA"), which sets forth a comprehensive federal scheme for the enforcement of employee benefit plans.[77] The Eleventh Circuit has set forth a six-step test for courts to apply when reviewing a plan administrator's benefits decision. The test is 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.
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> (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.
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> (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).
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> (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.

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[77] 29 U.S.C. § 1001, *et seq*.

> (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.[78]

This Court begins with the first step of the Blankenship analysis. Having reviewed the administrative record, this Court finds that the plan administrator's decision was *de novo* wrong. There is certainly no doubt that the Plaintiff suffers from numerous illnesses. The question, however, is whether those illnesses prevent the Plaintiff from performing her job duties. Under the applicable Plan definition of disability, a person is disabled when he is unable to perform the material duties of his own occupation for more than half a day solely because of disease or injury.[79] Here, the Plaintiff is clearly disabled under that definition. The Plaintiff's occupation is a sedentary one – requiring sitting for ten to twelve hours a day and constant typing. The FCE indicated that she is able to sit for only 33% of the workday. Although it reflected some inconsistent effort, that related only to grip strength and hand coordination activities, not to overall effort. In fact, the FCE evaluator actually indicated that the Plaintiff used maximal effort in most activities. Additionally, the independent physicians refused to credit the Plaintiff's evidence. Dr. Alghafeer noted

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[78] Blankenship v. Metropolitan Life Ins. Co., 644 F.3d 1350, 1355 (11th Cir. 2011).

[79] A.R. at 460.

a medical record indicating that the Plaintiff came into an appointment using a wheelchair, but then stated that the Plaintiff had no trouble walking. Dr. Ayyar refused to accept chronic pain as a disabling condition. In short, the FCE and the Plaintiff's medical records indicate that she cannot sit for half the workday and therefore cannot perform the material duties of her own occupation for more than half a day.

Because this Court decides that the decision was *de novo* wrong, it must now address the other steps of the analysis. As to the second step in the test, the plan administrator had discretion to review claims. The Plan states that Aetna may delegate its powers to any person or authority.[80] It delegated that power to ALIC.[81] This Court must therefore now consider whether the plan administrator's decision was reasonable.

While courts may not require a plan administrator to give special deference to a treating physician's opinion, "plan administrators may not arbitrarily refuse to credit a claimant's reliable evidence, including the opinions of a treating physician."[82] Plan administrators may rely on independent medical opinions and credit those opinions

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80 Id. at 2354.

81 Id. at 67.

82 Black & Decker Disability Plan v. Nord, 538 U.S. 822, 823 (2003).

over the opinions of treating physicians.[83] Inconsistencies in a treating physician's records cast doubt on the reliability of that physician's assessment.[84] Specifically with regard to chronic pain syndrome and fibromyalgia, however, the Eleventh Circuit has found that plan administrators acted arbitrarily and capriciously when they ignored physical examinations, medical reports, and self-reported symptoms related to those conditions.[85] Additionally, it is arbitrary and capricious for plan administrators to rely on flawed peer reviews that mischaracterize evidence, ignore evidence, or come to findings contradicted by the evidence.[86]

Here, the Defendant refused to credit reliable evidence from the Plaintiff's medical records and relied on flawed peer reviews. Specifically, Dr. Alghafeer, the rheumatology specialist, ignored evidence that the Plaintiff was unable to walk and had excessive fatigue. In coming to his conclusion, he stated that the Plaintiff's medical records indicated no "sleepiness or fatigue that affected her ability to drive,

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83 Blankenship, 644 F.3d at 1356.

84 Ray v. Sun Life & Health Ins. Co., 443 Fed. Appx. 529, 533 (11th Cir. 2011).

85 Lee v. BellSouth Telecomms., Inc., 318 Fed. Appx. 829, 837-38 (11th Cir. 2009) (citing Oliver v. Coca Cola Co., 497 F.3d 1181 (11th Cir. 2007), reh'g granted and partially vacated on other grounds, 506 F.3d 1316 (11th Cir. 2007)).

86 Id. at 840.

balance, stand or walk."[87] This ignores evidence that the Plaintiff came to at least one doctor's appointment in a wheelchair, came to one using a cane, and numerous references by Dr. Fowler to chronic pain and fatigue that affected movement. It also ignores Dr. Hanna's note stating that the Plaintiff had muscle weakness that prevented her from engaging in day-to-day activities.

Dr. Ayyar, the occupational medicine specialist, ignored the diagnosis of chronic pain syndrome and attributed all of the Plaintiff's complaints to personal tolerance. In coming to this conclusion, Dr. Ayyar ignored statements from both the Plaintiff herself and Dr. Fowler that she was motivated and wanted to return to work. Dr. Ayyar actually stated that chronic pain cannot be disabling in and of itself. This is directly contrary to the Eleventh Circuit's decision in Lee. Dr. Ayyar also stated that Dr. Fowler failed to document the frequency or amount of opiate medications taken by the Plaintiff, relying on this failure to determine that the Plaintiff's inability to concentrate due to her medications was unfounded based on the records.[88] Contrary to Dr. Ayyar's statement, however, Dr. Fowler did document at least once that the Plaintiff was taking 20 milligrams of Oxycontin every 12 hours.[89]

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87 A.R. at 301.

88 A.R. at 259.

89 Id. at 100.

Furthermore, the Plaintiff's subjective complaints, when uncontradicted, and in fact supported by evidence, namely the FCE, do constitute medical evidence. This is not a situation like that in Ray, where the employee's subjective complaints were directly contradicted by video surveillance evidence. Both independent physicians who reviewed the Plaintiff's file after the FCE was performed mentioned it in their reviews. Dr. Alghafeer gives no indication, however, that the FCE factored into his decision. Dr. Ayyar references the FCE at length, but discredits it, stating "[a]s noted by the evaluator, Ms. Gaines gave inconsistent effort throughout the evaluation."[90] Dr. Ayyar's statement mischaracterizes the evidence – the evaluator stated only that the Plaintiff displayed inconsistent effort with regards to grip strength and hand coordination, not throughout the evaluation. In fact, the evaluator provided objective pulse and blood pressure evidence that the Plaintiff was using maximal effort in other activities. While it is certainly reasonable for plan administrators to rely on independent physicians, and even to credit those physicians' opinions over the opinions of treating physicians, it is not reasonable for plan administrators to rely on opinions like those of Drs. Alghafeer and Ayyar that ignore and mischaracterize evidence. The plan administrator's decision here was therefore unreasonable.

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[90] A.R. at 309.

The Plaintiff also alleges that a conflict of interest existed here, rendering the plan administrator's decision unreasonable. Because this Court finds the plan administrator's decision unreasonable, there is no need to reach the question of conflict of interest. The Plaintiff's motion for judgment on the papers should therefore be granted, and the Defendant's motion should be denied.

IV. Conclusion

For the reasons stated above, the Plaintiff's Motion for Judgment/Trial on the Papers [Doc. 20] is GRANTED. The Defendant's Motion for Judgment on the Administrative Record [Doc. 21] is DENIED. The Plaintiff is entitled to a judgment awarding her 18 months of Long-Term Disability benefits and the matter is remanded to Aetna to determine whether she is disabled from any occupation.

SO ORDERED, this 30 day of March, 2015.

/s/Thomas W. Thrash
THOMAS W. THRASH, JR.
United States District Judge