

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DEBORAH DARISH,

Plaintiff,

CASE NO. 2:12-cv-14101

v.

HON. MARIANNE O. BATTANI

LINCOLN NATIONAL CORPORATION,
d/b/a THE LINCOLN NATIONAL LIFE
INSURANCE CORPORATION,

Defendant.

OPINION AND ORDER GRANTING DEFENDANT'S MOTION FOR
JUDGMENT ON THE ADMINISTRATIVE RECORD, DENYING PLAINTIFF'S
MOTION FOR JUDGMENT ON THE ADMINISTRATIVE RECORD, AND
AFFIRMING THE DECISION OF THE PLAN ADMINISTRATOR

Before the Court are the parties' cross-motions for judgment on the administrative record. (Docs. 12, 16). Plaintiff Deborah Darish, an employee benefits plan participant, seeks judicial review of plan administrator Defendant Lincoln National Corporation's denial of long-term disability benefits under the Employee Retirement Income Security Act ("ERISA") 29 U.S.C. § 1001 *et seq.* The matter is fully briefed; therefore, the Court finds that oral argument will not aid in the resolution of this matter. See E.D. Mich. L.R. 7.1(f)(2). For the reasons below, Plaintiff's motion is **DENIED**, Defendant's motion is **GRANTED**, and the decision denying benefits is **AFFIRMED**.

I. STATEMENT OF FACTS

A. Background

Plaintiff Deborah Darish worked for Oakwood Healthcare, Inc. in a sedentary administrative capacity before serving as a registered floor nurse beginning in

December 2008. In accordance with her employment benefits, Darish received disability insurance coverage through a group insurance policy (“the Plan”) provided by Defendant Lincoln National Life Insurance Company (“Lincoln National”). Lincoln National issued the policy to Darish’s employer and also administered the Plan. The Plan is subject to ERISA and granted Lincoln National the discretion to determine benefits eligibility.

In January 2009, Darish injured her lower back while lifting a patient. In accordance with the Plan, Lincoln National approved and paid short-term benefits for six months. However, the Plan also contains a two-step disability claim procedure to receive long-term benefits. In order to receive long-term disability benefits, the claimant must demonstrate the inability to work his or her “Own Occupation,” which is the occupation that the claimant “was employed with the Employer prior to Disability; and was his or her main source of earned income prior to Disability.” (A.R. 61). If successful, the claimant is entitled to benefits for 24 months.

Once the 24 month period expires, the claimant must demonstrate that she cannot perform “the Main Duties of any Gainful Occupation” in order to demonstrate “Total Disability” and continue to receive long-term benefits. (A.R. 63). “Total Disability” is defined as the inability “to perform each of the Main Duties of any Gainful Occupation.” (Id.) Importantly, the Plan limits payment of benefits to 24 months for certain conditions under the “Specified Injuries or Sickness Limitation.” (A.R. 84). These conditions include: “any Chronic Fatigue Sickness, Environmental Sickness, Mental Sickness, Musculoskeletal/Connective Tissue Injury or Sickness, or Substance Abuse” (Id.) Notably, fibromyalgia is included within the definition of

“Musculoskeletal/Connective Tissue Injury or Sickness.” (A.R. 85). In other words, if the claimant is disabled because of fibromyalgia, she may only receive benefits for 24 months and must demonstrate that a different medical condition renders her disabled to continue receiving benefits.

Darish alleges she injured her lower back while lifting a patient in January 2009. In accordance with the Plan, Lincoln approved and paid short-term benefits for six months and long-term benefits for an additional 24 months. In March 2011, Darish applied for long-term Any Gainful Occupation Total Disability benefits to no avail. Subsequently, Lincoln discontinued benefits on July 15, 2011 after concluding that Darish was not precluded from performing any gainful employment. (A.R. 623-28). After two appeals, Lincoln issued its final denial on May 23, 2012. (A.R. 118-23).

B. Medical Evidence

Darish’s record medical history is extensive. She has a history of Type II diabetes, hypertension, and hyperlipidemia. (A.R. 168). In October 2006, Darish underwent fusion surgery on her lumbar spine performed by Dr. Nilesh Patel. (A.R. 249). Although the surgery was successful, she began experiencing pain in her bilateral buttocks and sacroiliac area six months later. (A.R. 198). Dr. Patel contemplated corrective surgery in May 2008, but later changed his opinion after Darish showed several signs of progress. (A.R. 649).

In December 2008, at the time of her reassignment to floor nurse, Darish treated with Dr. Alan Schram, a podiatrist, for inflammation in her left foot and ankle. (A.R. 786). Dr. Schram also noted that Darish was “saddened” by her reassignment and expressed concern that she would have difficulty performing the duties of the job. (Id.)

To aid in supporting her foot and ankle, Dr. Schram prescribed a custom orthotic for Darish to wear while working as a floor nurse. (Id.).

After Darish injured her lower back, she again treated with Dr. Patel. On December 30, 2008, Dr. Patel evaluated Darish and noted that she “has difficulty walking long distances” and “can walk 5 minutes without pain and, at most, 10 minutes.” (A.R. 649). Dr. Patel determined that Darish should not work as a floor nurse at this time, but may be able to work in “a more administrative-type of position” if she had restricted duties. (Id.) On January 16, 2009, Darish submitted her claim for short-term disability benefits. Shortly thereafter, on the Attending Physician’s Statement, Dr. David Margolis commented that Darish should not lift any weight because of her lower back pain. (A.R. 810). On February 12, 2009, Dr. Margolis determined that Darish could not return to work until April 15, 2009. (A.R. 798). During a follow-up visit on March 30, 2009, Dr. Margolis noted that Darish had muscle spasms in her lower back, but that she had full strength and range of motion in her arms and legs. Nonetheless, Dr. Margolis recommended Darish should not work because of her lower back pain. (A.R. 793).

In February 2009, Darish applied for Social Security benefits. (A.R. 257). Dr. Moises Alviar examined her and issued a report stating that Darish is “not able to work eight hours per day in a seated or standing position.” (A.R. 142). He also found that she is unable to lift or push more than five pounds. (Id.) In addition, Dr. Delois Daniels completed a physical residual functional capacity assessment in July 2009 concluding that Darish’s “ability to sustain any gainful work would be significantly interfered with.” (A.R. 182). Consequently, the Social Security Administration (“SSA”) granted benefits to Darish.

On September 5, 2009, at Lincoln National's request, Dr. Margolis assessed Darish's functional capacity. (A.R. 730). He stated that Darish could perform full-time sedentary work, but that she "must be able to get up from sedentary work at least every 15 minutes." (Id.) In addition, he recommended Darish should not engage in any heavy lifting. (Id.)

On March 24, 2011, Dr. Patel treated Darish again. He noted that she continued to suffer from lower back pain and opined that "I definitely do not feel that she would be able to do any nursing-type position nor any type of active patient care." (A.R. 650). He also stated that Darish would not be able "to sit for more than an hour without taking frequent breaks" (Id.) In the follow-up exam on April 28, 2011, Dr. Patel noted that Darish continued to experience pain and that it would be difficult for her "to work as a floor nurse with any type of prolonged sitting, standing, pushing, lifting, pulling, etc." (A.R. 651).

Darish then underwent an examination by Dr. Razmig Haladjian on May 16, 2011. Dr. Haladjian noted that Darish continued to experience pain in her bilateral buttocks and hip, but had normal range of motion in her lumbar spine and legs. (A.R. 652-53). A diagnostic bilateral sacroiliac joint injection and diagnostic L5-S1 nerve block were performed the same day, resulting in no effect on her symptoms. (A.R. 347-51). In a report dated August 11, 2011, Dr. Patel concurred that both tests were negative. (A.R. 197). He also noted that "no anatomic correlation has been made yet as far as source of pain." (Id.)

In October 2011, Dr. Margolis filled out a "Fibromyalgia Residual Functional Capacity Questionnaire." (A.R. 370-74). In it, he confirmed that Darish met the

American College of Rheumatology criteria for fibromyalgia based on her moderately severe lower back pain. (A.R. 370). In terms of functionality, he noted that Darish could not perform low stress jobs and that she could only sit for twenty minutes at a time and stand for five minutes at a time. (A.R. 371-72). Dr. Margolis also determined that Darish would miss more than four days of work per month because of her symptoms. (A.R. 373).

Darish underwent surgery for carpal tunnel on November 28, 2011. (A.R. 185). On December 14, 2011, Darish treated with rheumatologist Dr. Blake Roessler, who diagnosed her with fibromyalgia. (A.R. 359). Specifically, he noted that she “has a clinical syndrome associated with chronic persistent musculoskeletal pain without evidence of systemic inflammation or autoimmunity,” which is “consistent with fibromyalgia.” (A.R. 360). In addition, he found no evidence of active psoriatic arthritis. (A.R. 359).

Subsequently, Dr. Mustapha Mallah completed a “Physical Residual Functional Capacity Questionnaire” on March 30, 2012. (A.R. 130-134). He diagnosed Darish with fibromyalgia and opined that she cannot perform low stress jobs. (A.R. 130-131). Further, he found that depression and anxiety accompany her physical condition. (A.R. 131). Like Dr. Margolis, he concluded that Darish would miss at least four work days per month. (A.R. 133).

Dr. Jamie Lee Lewis conducted a file review of Darish’s medical history and issued a report in February 2012. (A.R. 110-17). She found that Darish could stand on an occasional basis, occasionally lift or push twenty pounds, frequently lift ten pounds, and occasional stooping. (A.R. 117). Darish twice provided supplemental evidence to

Dr. Lewis. In a report dated May 4, 2012, Dr. Lewis stated that “[d]ocumentation does not support that the patient would be limited in sitting ability, or that sitting would exacerbate to a measurable degree the patient’s underlying lumbar pathology.” (A.R. 106).

II. STANDARD OF REVIEW

Motions for judgment on the administrative record in an ERISA action are not akin to motions for summary judgment under Fed. R. Civ. P. 56(a). See Wilkins v. Baptist Healthcare Sys., Inc., 150 F.3d 609, 618 (6th Cir. 1998) (“This standard of review does not neatly fit under either Rule 52 or Rule 56, but is a specially fashioned rule designed to carry out Congress’s intent under ERISA.”). Accordingly, a district court reviews an ERISA plan administrator’s denial of benefits *de novo* unless the plan grants the administrator discretionary authority to determine eligibility for benefits. Cox v. Standard Ins. Co., 585 F.3d 295, 299 (6th Cir. 2009) (citing Gismondi v. United Techs. Corp., 408 F.3d 295, 298 (6th Cir. 2005)). If the plan gives the administrator discretionary authority, a court applies the highly deferential “arbitrary and capricious” standard of review. Id.

“The arbitrary and capricious standard is the least demanding form of judicial review of administrative action. When it is possible to offer a reasoned explanation, based on the evidence, for a particular outcome, that outcome is not arbitrary or capricious.” Schwalm v. Guardian Life Ins. Co. of America, 626 F.3d 299, 308 (6th Cir. 2010) (internal quotation marks omitted) (quoting Shields v. Reader's Digest Ass'n, Inc., 331 F.3d 536, 541 (6th Cir. 2003)). Even when a claimant has introduced evidence that might be sufficient to support a finding of disability, if there is a reasonable explanation

for the administrator's decision denying benefits because of the plan's provisions, then the decision is neither arbitrary nor capricious. Id. (citing Williams v. Int'l Paper Co., 227 F.3d 706, 712 (6th Cir. 2000)). Therefore, a reviewing court must uphold the administrator's decision "if it is the result of a deliberate, principled reasoning process and if it is supported by substantial evidence." Baker v. United Mine Workers of Am. Health & Ret. Funds, 929 F.2d 1140, 1144 (6th Cir. 1991).

In her brief, Darish concedes that the Plan grants Lincoln National discretionary authority to determine eligibility for benefits. (Doc. 12 at 8). The Court agrees. Therefore, Lincoln National's decision to deny benefits will be analyzed under the highly-deferential arbitrary and capricious standard.

III. ANALYSIS

Darish argues Lincoln National's decision to deny benefits was arbitrary and capricious for four reasons: 1) Lincoln National afforded greater weight to its own reviewing physician than to Darish's treating physicians; 2) Lincoln National failed to consider the award of total disability benefits by the Social Security Administration; 3) Lincoln National operated under a conflict of interest in denying benefits; and 4) Darish suffers from symptoms independent of fibromyalgia that are sufficient for a finding of total disability. Lincoln National asserts that the medical evidence supports the conclusion that Darish can perform sedentary work, and regardless, Darish failed to provide evidence of total disability outside of the Specified Injuries or Sickness Limitation.

A. Lincoln National's Decision was not Arbitrary and Capricious

1. Weight of Physicians' Opinions

Darish argues that Lincoln National improperly afforded too much weight to the medical opinions of Dr. Lewis, Lincoln National's reviewing physician. She also asserts that Dr. Lewis made credibility determinations in his file review, which are improper under Calvert v. Firststar Finance Inc., 409 F.3d 286 (6th Cir. 2005). Both arguments are without merit.

The court in Calvert noted that "[w]here . . . the conclusions from [a file] review include critical credibility determinations regarding a claimant's medical history and symptomology, reliance on such a review may be inadequate." 409 F.3d at 297 n.6. However, Darish fails to identify one flaw or improper credibility determination within Dr. Lewis's report. Dr. Lewis concluded that "[d]ocumentation does not support that the patient would be limited in sitting ability, or that sitting would exacerbate to a measurable degree the patient's underlying lumbar pathology." (A.R. 106). In doing so, he provided an extensive review of all the medical evidence in the record and reviewed supplemental evidence provided by Darish.

There is no evidence that Dr. Lewis flatly rejected any evidence favorable to Darish, nor does Darish cite any specific examples. Instead, Darish argues that Lincoln National's reliance on a file review is a factor that weighs in favor of a finding that the decision was arbitrary and capricious. As the Sixth Circuit has noted, there is "nothing inherently objectionable about a file review by a qualified physician in the context of a benefits determination." Calvert, 409 F.3d at 296. Here, Dr. Lewis did not make any credibility determinations in his file review. Rather, Dr. Lewis's conclusion is based on a

thorough review of all medical evidence in the record. Darish's blanket statement that Dr. Lewis made credibility determinations regarding Darish's symptoms and that Lincoln National overlooked Darish's treating physicians' opinion is unsupported. Consequently, the fact that Lincoln National relied on a file review in its decision to deny benefits will not be weighed in Darish's favor.

2. Social Security Award

A finding of disability by the Social Security Administration does not "automatically entitle[] [a claimant] to benefits under an ERISA plan, since the plan's disability criteria may differ from the Social Security Administration's." DeLisle v. Sun Life Assur. Co of Canada, 558 F.3d 440, 445-46 (6th Cir. 2009) (citing Whitaker v. Hartford, 404 F.3d 947, 949 (6th Cir. 2005)). However, where the plan administrator

(1) encourages the applicant to apply for Social Security disability payments; (2) financially benefits from the applicant's receipt of Social Security; and then (3) fails to explain it is taking a position different from the SSA on the question of disability, the reviewing court should weigh this in favor of a finding that the decision was arbitrary or capricious.

Bennett v. Kemper Nat. Servs., Inc., 514 F.3d 547, 554 (6th Cir. 2008).

It is undisputed that Lincoln National encouraged Darish to apply for benefits. Certainly, it benefitted from the award because of the offset of benefits due. However, contrary to Darish's argument, Lincoln National did consider the evidence underlying the award of benefits in its determination. Dr. Lewis specifically considered and discussed the opinions of the SSA treating and reviewing physicians, Dr. Alviar and Dr. Daniels, in his review. (A.R. 114). In addition, Lincoln National's denial letters specifically state that although it is aware of the award of Social Security benefits, its "policy provisions and review processes are independent from that of the Social Security Administration."

(A.R. 122). Moreover, the SSA's finding of disability predates Lincoln National's determination by nearly two years, in which Darish's diagnosis shifted from lower back pain physically resulting from her lumbar spine to fibromyalgia unrelated to any musculoskeletal complications. See Cox v. Standard Ins. Co., 585 F.3d 295, 303 (6th Cir. 2009) (rejecting plan administrator's failure to consider Social Security benefits award as a factor to be weighed in favor of finding the decision arbitrary and capricious where the "determination was made . . . two years before [administrator's] review of [plaintiff's] claim"). Consequently, this factor does not weigh in Darish's favor.

3. Conflict of Interest

The general rule is that an apparent conflict of interest arises when the administrator both determines eligibility for benefits and is responsible for paying such benefits. See Glenn v. Metro. Life Ins. Co., 461 F.3d 660, 666 (6th Cir. 2006) (noting that such a "dual function creates an apparent conflict of interest"). In such a case, "the conflict must be weighed as a 'facto[r] in determining whether there is an abuse of discretion.'" Firestone Tire & Rubber Co. v. Bruch, 489 U.S. 101, 115 (1989) (internal citation omitted).

Darish argues that Dr. Lewis has incentive to find no disability because Lincoln National hired him as an independent consultant to perform a file review. In essence, Lincoln National both determines who is eligible for benefits and pays benefits awards. Thus, Darish asserts that Dr. Lewis only operates in Lincoln National's best interests. However, Darish failed to present any evidence that Lincoln National only hires physicians who find in their favor or any actual evidence that Dr. Lewis possesses any bias towards Lincoln National. See Peruzzi v. Summa Med. Plan, 137 F.3d 431, 433

(6th Cir. 1998) (requiring “significant evidence” that the conflict of interest tainted the decision). Dr. Lewis acted as an independent third-party reviewing physician. Notably, Darish does not argue that Dr. Lewis was not qualified to conduct such a review or assert any other evidence of bias in favor of Lincoln National. Conclusory allegations are insufficient to demonstrate a conflict of interest within Lincoln National’s administrative review process.

4. Lincoln National’s Decision is Supported by Substantial Evidence

Upon review of the procedures utilized by Lincoln National and the medical evidence in the record, it is clear that Lincoln National’s decision to deny benefits was the “result of a deliberate, principled reasoning process” and “supported by substantial evidence.” Baker, 929 F.2d at 1144. Lincoln National reasonably determined that Darish was not precluded from performing any occupation.

The medical evidence indicates that Darish can perform sedentary work. Indeed, in September 2009, Dr. Margolis noted that Darish can perform full-time sedentary work even though Darish would need to be able to stand up every fifteen minutes. In March 2011, Dr. Patel essentially made the same finding. He opined that Darish could not perform active nursing duties, but never found that she could not perform sedentary work. Rather, he noted that Darish would need to take breaks from sitting after an hour.

During the summer of 2011, Dr. Haladjian noted that diagnostic tests on the lumbar spine were normal. He also found that Darish had full range of motion in her lumbar spine and legs. Dr. Haladjian determined that there was no anatomical correlation regarding the source of Darish’s lower back pain. A few months later, Dr. Margolis, Dr. Roessler, and Dr. Mallah diagnosed Darish with fibromyalgia. In addition,

Dr. Lewis found that Darish could sit for substantial periods of time without exacerbating her lower back condition.

Although there is evidence in the record that may be sufficient to support a finding of disability, the administrator's decision will not be overturned where there exists a reasonable explanation for the decision based on the benefits plan. See Schwalm, 626 F.3d at 308. Here, Lincoln National reasonably concluded that Darish could perform sedentary work based on the medical opinions of at least two treating physicians and one reviewing physician. Lincoln National's determination that Darish can perform sedentary work, even considering her need to take breaks from sitting, is supported by substantial evidence in the record.

B. Plan Limitation for Fibromyalgia

Regardless of whether Darish can perform sedentary work, her claim for benefits is precluded under the "Specified Injuries or Sickness Limitation" within the Plan. The Plan limits benefits for disability based on fibromyalgia for 24 months. Darish concedes that fibromyalgia is not a condition covered by the Plan. (Doc. 19 at 3). However, she argues that she suffers from a disability independent of fibromyalgia, namely her lower back pain. Although there is substantial medical evidence in the record that supports a determination that Darish suffers from fibromyalgia, there exists a severe lack of evidence that the lower back pain is an independent disabling condition.

At least three treating physicians diagnosed Darish with fibromyalgia. Importantly, Dr. Haladjian noted that he could not find an anatomical correlation regarding Darish's lower back pain, which is consistent with fibromyalgia. Numerous clinical tests from multiple physicians revealed no abnormalities in her lumbar spine and

revealed no physical root cause of pain. Darish's fusion surgery was successful and she suffered no continuing complications as a result of it. Importantly, not one physician diagnosed Darish as having post-fusion lower back pain independent of fibromyalgia. Consequently, even if Darish was precluded from performing sedentary work, her claim of disability is barred because Darish has already received the maximum amount of benefits under the limitation.

IV. CONCLUSION

Accordingly, the Court **DENIES** Plaintiff's motion, **GRANTS** Defendant's motion, and **AFFIRMS** the decision of the plan administrator.

IT IS SO ORDERED.

s/Marianne O. Battani
MARIANNE O. BATTANI
UNITED STATES DISTRICT JUDGE

DATE: October 28, 2013

CERTIFICATE OF SERVICE

I hereby certify that on the above date a copy of this Opinion and Order was served upon all parties via the Court's ECF Filing System.

s/Bernadette M. Thebolt
Case Manager