

Alston v. Metropolitan Life Ins. Co.

M.D.N.C.,2006.

Only the Westlaw citation is currently available.

United States District Court,M.D. North Carolina.

Alice J. ALSTON Plaintiff,

v.

METROPOLITAN LIFE INSURANCE COM-
PANY and The IBM Long-Term Disability Plan,
Defendants.

No. 1:05CV00121.

Oct. 27, 2006.

JUDGMENT

[TILLEY](#), District Judge

*1 This case arises from a dispute between Plaintiff Alice J. Alston and Defendants Metropolitan Life Insurance Company and the IBM Long-Term Disability Plan concerning the termination of Ms. Alston's long-term disability benefits. On June 21, 2006, an Order and Recommendation of United States Magistrate Judge ("Recommendation") [Doc. # 41] was filed and notice was served on the parties pursuant to [28 U.S.C. § 636\(b\)](#). Plaintiff timely filed objections to the Recommendation and Defendants have responded. The Court has reviewed the objected-to portions of the Recommendation and has made a de novo determination which is in accord with the Recommendation.

IT IS THEREFORE ORDERED that: (1) Defendant's Motion for Summary Judgment [Doc. # 24] is GRANTED; (2) Plaintiff's Motion for Summary Judgment [Doc. # 181] is DENIED; and (3) Plaintiff's Motion for Pre-Judgment Interest, Attorney's Fees and Costs [Doc. # 20] is DENIED AS MOOT. This case is thereby DISMISSED.

ORDER AND RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE

[WALLACE W. DIXON](#), Magistrate J.

This case arises from a dispute between Plaintiff Alice J. Alston ("Plaintiff" or "Ms. Alston") and Defendants Metropolitan Life Insurance Company ("MetLife" or "Metropolitan") and the IBM Long-

Term Disability Plan ("the Plan") (collectively "Defendants") concerning the termination of Ms. Alston's long-term disability benefits. This matter is presently before the court on the following motions: Plaintiff's Motion for Summary Judgment [Docket No. 18]; Plaintiff's Motion for Pre-Judgment Interest, Attorney's Fees and Costs [Docket No. 20]; Defendants' Motion for Summary Judgment [Docket No. 24]; and Defendants' Motion to Strike [Docket No. 34]. Because the parties have not consented to the jurisdiction of a magistrate judge, the court must deal with the dispositive motions for summary judgment by way of recommended disposition.

For the reasons set forth below, Defendants' Motion to Strike will be granted. Furthermore, it will be recommended that Plaintiff's Motion for Summary Judgment be denied, that Defendants' Motion for Summary Judgment be granted, and that Plaintiff's Motion for Pre-Judgment Interest, Attorney's Fees and Costs be denied as moot.

I. FACTS

Ms. Alston began her employment with International Business Machines Corporation ("IBM") on December 31, 1982, and worked as an administrative assistant for the majority of her nearly twenty-year tenure with the company. (Docket No. 30, Ex. 1, Attach. to Pl.'s Mot. for Summ. J. at 40-44) [hereinafter "R."]. Her job responsibilities included "[a]nswering phones, typing, filing, set-up/schedule conference calls, process TEA's, pick up/distribute mail and other administrative duties as assigned."(R. at 2) During her employment Ms. Alston was covered under the IBM Long-Term Disability Plan, an employee benefit plan that provides certain benefits in the event of long-term disability. MetLife insures the Plan and has "discretionary authority to interpret the terms of the Plan and to determine eligibility for and entitlement to Plan benefits in accordance with the terms of the Plan."(R. at 326-27) Disability is defined under the Plan as follows:

*2 [T]otally disabled means that ... during the first 12 months after you complete the waiting period, [FN1](#) you cannot perform the important duties of *your regular occupation* with IBM because of a sickness or injury. After expiration of that 12 month period, totally disabled means that, because of sickness or injury, you cannot perform the important duties of *your occupation or of any gainful occupation* for which you are reasonably fit by your education, training or experience.

[FN1](#). The Plan defines “waiting period” as a “total of 52 weeks of your regularly scheduled IBM work time that falls within a continuous 24 months during which you are totally disabled and eligible to receive benefits under the IBM Sickness and Accident Income Plan.”(R. at 308)

(R. at 308) (emphasis added). Proof of disability, satisfactory to MetLife, must be submitted to MetLife at the employee's expense to be eligible for benefits. (*Id.*)

Ms. Alston was diagnosed with [Multiple Sclerosis](#) (“MS”) on February 15, 2001, by Dr. Ugo Goetzl of Millennium Neurology Associates, PLLC. (R. at 23) Dr. Goetzl noted in a medical treatment report dated April 4, 2001, that Ms. Alston's “date of injury” was approximately October 2000 with some symptoms “evident for prior 2 years.” (R. at 20) Dr. Goetzl found that Ms. Alston could return to work on April 9, 2001, but he set a functional limitation of four-hours per day “because of the chronic fatigue associated with MS” and because of the unknown effect of her prescribed medications. (*Id.*)

Ms. Alston's last day of work was April 13, 2001, and she applied for long-term disability benefits under the Plan on May 19, 2001. (R. at 1-13) A MetLife nurse consultant reviewed Ms. Alston's file on October 1, 2001, and found that “the medical documentation submitted supports physical inability to perform the functional requirements of her job duties, for at least 60 days.”(R. at 257) MetLife approved Ms. Alston's long-term disability claim effective October 16, 2001, under the “your/own oc-

cupation” classification and granted her a monthly benefit equal to 66.67% of her regular monthly compensation (i.e., \$1,657.82). (R. at 45-46)

Ms. Alston also filed a claim for Social Security disability insurance benefits on May 15, 2001. The Social Security Administration approved the claim on February 5, 2002, and granted Ms. Alston a monthly benefit of \$1,143.00. (R. at 88-97) Pursuant to the Plan's offset provision, MetLife reduced Ms. Alston's monthly benefit to \$514.82 and began collecting an overpayment balance of \$5,715.00. (R. at 100-02)

On August 15, 2002, MetLife initiated a review of Ms. Alston's status under the Plan's “any occupation” classification and requested updated medical records and personal information. (R. at 103) Ms. Alston complied with the request and submitted a personal profile evaluation, additional medical records, and a medical authorization form on August 22, 2002. (R. at 109-34) In her personal profile, Ms. Alston discussed her limited ability to “[p]erform light housework once a week and ... do some grocery shopping with the aid of a wheelchair,” and she complained of an increased inability to stand for long periods of time and blurred vision. (R. at 110-15)

*3 Dr. Goetzl returned a physical capacities evaluation form to MetLife on August 19, 2002, but failed to answer any of the specific inquiries; instead, he wrote at the bottom of the form that Ms. Alston was “permanently disabled because of the symptoms assoc[iated] with her [Multiple Sclerosis](#).”(R. at 106) Dr. Goetzl completed an attending physician statement of functional capacity form in greater detail on January 27, 2003, and diagnosed Ms. Alston with MS, [diabetes](#), [hyperthyroidism](#), and [hypertension](#). (R. at 135) Based on her MS-related symptoms of left leg weakness, gait disturbance, balance impairment, and blurred vision, Dr. Goetzl found that Ms. Alston should be somewhat limited as to transportation, standing, and sitting/lifting and that she should completely avoid reaching, pushing, pulling, twisting, grasping, finger dexterity, repetitive movement, concentrated

visual attention, and computer work. (*Id.*) Dr. Goetzl concluded that Ms. Alston had “permanent disability” for both the “own occupation” and “any occupation” categories. (R. at 136)

Dr. Warren Silverman, Board Certified, Occupational Medicine and Internal Medicine, conducted an independent physician consultant review of Ms. Alston's medical records on March 12, 2003. Dr. Silverman found that Ms. Alston “has good documentation of the diagnosis of [multiple sclerosis](#)” and that “[s]he has had problems primarily with left leg weakness and control of her ocular and extraocular muscles.”(R. at 145) “Her condition in April and May 2002 demonstrated significant neurological [complications of the disease](#), but apparently with pharmacological intervention she was stabilized and as of 12/19/02 the report indicated only mild manifestations of her previous underlying complications.”(*Id.*) Based on the record at the time, Dr. Silverman concluded that Ms. Alston “appears to have stabilized as of 12/19/02 at a level that would allow her to perform a wide variety of sedentary tasks.”(R. at 146) Dr. Silverman noted, however, that more recent medical records should be analyzed and, if necessary, either an independent medical examination or a functional capacity evaluation (“FCE”) should be conducted. (*Id.*)

Ms. Alston underwent an FCE on April 10, 2003, and it was determined that she was “capable of sustaining the light level of work for an 8-hour day.”(R. at 171) During the evaluation, Ms. Alston was able to both manipulate small objects and write well with her left hand; did not drop any objects; she did not have any tremors or blurry vision; she had only minimal left foot drop and drag during ambulation, which she was able to correct with verbal cues; and she experienced dizziness during repetitive squats for endurance, which cleared after several minutes. (R. at 175) Ms. Alston “reported that she [was] having a good day [that day], [and that] there are days she feels much worse in regards to balance, eyesight, and gait.”(*Id.*)

MetLife faxed Dr. Goetzl a second attending physician statement of functional capacity form on July

5, 2003, which he completed and returned on July 9, 2003. (R. at 152-53) Dr. Goetzl again found Ms. Alston to be “permanently disabled from any work because of the chronic symptoms associated with her [multiple sclerosis](#).”(*Id.*) By letter dated July 9, 2003, MetLife terminated Ms. Alston's long-term disability benefits effective August 1, 2003. (R. at 148-50) Based on the medical records on file, Dr. Silverman's review, and the FCE, MetLife concluded that “[t]he information on file does not support a condition that would prevent [Ms. Alston] from doing sedentary work.”(R. at 149)

*4 Ms. Alston filed an appeal letter and updated medical records on July 15, 2003. (R. at 158-68) In the appeal letter, Ms. Alston noted that her FCE was cut short because of her inability to perform various physical tests and that the evaluation “expressed only a small measure of [her] physical capabilities.”(R. at 158) She further noted that she experienced three exacerbations of her condition over the previous two years that resulted in hospitalization. (*Id.*) In the updated medical records, Dr. Goetzl again expressed his belief that Ms. Alston “is totally and permanently disabled from any kind of work,” but he also noted that he “agree[d] with the FCE” and that there were “[n]o new neurologic symptoms.” (R. at 162)

Dr Robert Menotti, Internal Medicine/General Surgery, F.A.C.S., conducted a second independent physician consultant review of Ms. Alston's file on November 4, 2003. (R. at 183-84) Viewing the FCE in isolation, Dr. Menotti stated that “a reasonable reviewer would get the opinion that on that day, the claimant would appear medically able to perform useful work.”(R. at 183) He emphasized, however, that MS “clearly goes through remissions and exacerbations” and that Ms. Alston's file “is well documented in that regard with multiple admissions to the hospital to treat some of the exacerbations.”(*Id.*) Dr. Menotti further found Dr. Goetzl's restrictions to be appropriate and concluded:

There may come a time in the future where the claimant is stable enough to perform useful work, but this is only going to be up to the observation supplied through continued follow-up with her

treating neurologist, Dr. Goetzl. It is the opinion of this reviewer, based on the new medical information that has flowed into this file that the claimant would be considered medically unable at this point in time to perform useful work.

(R. at 183-84) Accordingly, Ms. Alston's long-term disability benefits were reinstated on November 6, 2003.

Three months later, on February 9, 2004, MetLife again requested Ms. Alston to provide updated medical records. (R. at 189) On March 1, 2004, she submitted records dated November 19, 2003, which noted that her symptoms related to MS and fatigue "have improved on her current regimen [and with] increased exercise." (R. at 190) "[S]he stopped all her medications (except for her MS [medications]) about 3 [months] ago [and] feels much better; less sluggish in general." (R. at 191) "Her exercises did help her MS [symptoms]; made her feel like her muscles were stronger." (*Id.*) On March 26, 2004, Ms. Alston submitted records dated March 11, 2004, which state that she has been stable for the past six months but remains fatigued; has increased her exercise program and gained strength; has mild gait disturbance with weakness in her left leg; and has foot numbness, lower back pain, and stable vision with no dizziness. (R. at 195)

On May 10, 2004, Dr. Joseph Jares, III, Board Certified in Neurology, conducted a third independent physician consultant review of Ms. Alston's medical records. (R. at 201-05) Dr. Jares reviewed Dr. Goetzl's notes and found:

*5 that overall Ms. Alston has been doing well with some residual left leg weakness and mild [footdrop](#). Her vision has been stable, though she has had some transient focusing problems. Ms. Alston's energy level is "good with Provigil." Ms. Alston has some balance impairment and left-sided weakness on examination and mild left hyperreflexia and a left steppage gait.

(R. at 202) Dr. Jares further found Dr. Goetzl's characterization of Ms. Alston's symptoms to be inconsistent with his repeated conclusions that she is

completely disabled. (*Id.*) Based on Ms. Alston's stable condition and her ability to participate in an exercise program, Dr. Jares concluded that "she is capable of working in a sedentary occupation." (*Id.*)

MetLife sent a copy of Dr. Jares's findings to Dr. Goetzl on May 21, 2004, and inquired whether he concurred that Ms. Alston was "capable of working in her usual occupation of administrative assistant." (R. at 238) Dr. Goetzl responded three days later and reiterated his belief that "Ms. Alston is disabled because of her multiple sclerosis-related fatigue. The fatigue which may be stable at this time will be exacerbated by any work, even a sedentary position." (R. at 206) Dr. Jares reviewed Dr. Goetzl's letter and prepared an addendum to his original report on August 16, 2004, finding as follows:

Unfortunately, Ms. Alston's fatigue cannot be measured in objective fashion. Dr. Goetzl's notes suggest that she has responded to [Provigil](#). It is unknown how often she experiences fatigue and to what extent it prevents her from doing daily activities. Ms. Alston has been employed as an administrative assistant/secretary. There is no indication she could not perform a sedentary position.

(R. at 209) Dr. Jares concluded that the letter from Dr. Goetzl "does not change my previously submitted opinion. There is no objective clinical information submitted that would indicate that Ms. Alston is not capable of working." (R. at 210)

By letter dated August 25, 2004, MetLife informed Ms. Alston that her long-term disability benefits would again be terminated effective October 1, 2004. (R. at 211-12) On October 19, 2004, Ms. Alston filed an appeal requesting reconsideration in light of the favorable opinions of her treating physicians. (R. at 218-21) Dr. Goetzl wrote a letter on October 17, 2004, stating that Ms. Alston's "major disabling symptom is that of fatigue," which is "difficult for a clinician to evaluate." (R. at 220) He recommended a new FCE and noted that "[b]y history in the context of this progressive disease [Ms. Alston] is permanently and totally disabled for any kind of work." (*Id.*) Dr. Elizabeth Twardon, Ms. Al-

ston's primary care physician, wrote a letter on September 10, 2004, outlining Ms. Alston's fatigue, difficulty walking, and dominate-hand weakness, and concluding that her condition "has not restored to normal, predictable functional status that would enable her to maintain any regular employment." (R. at 221)

*6 On November 10, 2004, Dr. Silverman conducted his second independent physician consultant review of Ms. Alston's medical records. (R. at 230-32) Dr. Silverman noted that "the medical records do document the presence of neurological deficits on the basis of [multiple sclerosis](#)," but he found that "[l]ooking at the issues at hand with regard to intermittent episodes of fatigue and the ability to walk rapidly to a restroom it does not appear that she has a condition that would not be amenable to a reasonable accommodation." (R. at 231) Based on the current medical records, Dr. Silverman concluded that Ms. Alston's condition was not severe enough to "prevent her from performing sedentary or light activity levels in the workplace." (R. at 232)

By letter dated November 18, 2004, MetLife upheld its decision to terminate Ms. Alston's long-term disability benefits. (R. at 227-29) MetLife based its decision on the independent reports of Drs. Jares and Silverman, as well as the most recent notes by Dr. Goetzl indicating that Ms. Alston was "on a treadmill for 20-30 minutes per day, was doing stretching, calisthenics, and [her] fatigue and energy levels were improved." (R. at 228) Further, Ms. Alston was informed that she had exhausted her administrative remedies under the Plan and that no further appeals would be considered. (R. at 229)

Ms. Alston initiated the current action on February 16, 2005, asserting a right to long-term disability benefits under the Employee Retirement Income Security Act of 1974 ("ERISA"). She filed a Motion for Summary Judgment and a Motion for Pre-Judgment Interest, Attorney's Fees and Costs on November 21, 2005. Defendants filed a Motion for Summary Judgment on November 30, 2005, and a Motion to Strike on February 13, 2006. Briefing has been completed and these motions are ready for

a ruling.

II. DISCUSSION

A. Motion to Strike

The court will first consider the motion to strike before addressing the substance of the case. In considering a motion for summary judgment, the court may evaluate the pleadings, depositions, answers to interrogatories, admissions on file, and affidavits in making its determination. [FED. R. CIV. P. 56\(c\)](#). Exhibits, in the form of written documents, which are attached to an affidavit and properly authenticated, may be considered on summary judgment if the affiant is a competent witness through whom the document can be received into evidence at trial. See [Orsi v. Kirkwood](#), 999 F.2d 86, 92 (4th Cir.1993); [10A CHARLES ALAN WRIGHT, ARTHUR R. MILLER, & MARY KAY KANE, FEDERAL PRACTICE AND PROCEDURE § 2722 \(3d ed.2002\)](#). Affidavits filed in support of a motion for summary judgment:

shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers ... referred to in an affidavit shall be attached thereto or served therewith.

*7 [FED. R. CIV. P. 56\(e\)](#). In the absence of an affirmative showing of personal knowledge of specific facts, a court cannot consider such an affidavit in making its summary judgment determination. See [Antonio v. Barnes](#), 464 F.2d 584, 585 (4th Cir.1972). Rather, an affidavit submitted on summary judgment "must present evidence in substantially the same form as if the affiant were testifying in court." [Evans v. Techs. Applications & Serv. Co.](#), 80 F.3d 954, 962 (4th Cir.1996).

On July 21, 2005, the court adopted Defendants' Rule 26(f) Report that limited discovery to "the applicable Plan document and the contents of the Administrative Record." Plaintiff thereafter attached as Exhibit 1 to her reply memorandum a sixteen-page document purported to be "a copy [of] MetLife's

current Claim Management Guidelines” (“Guidelines”) that is clearly designated as “Proprietary & Confidential Information.” Defendants moved to strike this Exhibit 1 and all portions of the reply referencing Exhibit 1 under [Rule 56\(e\)](#) for lack of authentication and under Local Rule 7.3(h). Plaintiff conceded that the Exhibit 1 was not properly authenticated and attempted to cure this deficiency through a declaration by her counsel, Andrew O. Whiteman. In his declaration, Attorney Whiteman discusses several cases in which “MetLife's Claim Management Guidelines have been produced without restriction” and states that “portions of the Claims Management Guidelines, and briefs referring to them, can be printed from Case Management/Electronic Case Filing websites by anyone who has a Pacer account.” (Docket No. 39, Decl. of Andrew O. Whiteman).

Under the Federal Rules of Evidence, “[t]he requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims.” [FED.R.EVID. 901\(a\)](#). The Rules provide a list of “examples of authentication or identification conforming with the requirements of [Rule 901].” *Id.* 901(b). The only potential avenues of authentication in this case are “testimony of a witness with knowledge” under subsection (b)(1) and “public records or reports” under subsection (b)(7), both of which fail. First, Attorney Whiteman has no personal knowledge concerning either the development or application of the submitted Guidelines and would not be competent to testify as to the procedures stated therein. See [FED. R. CIV. P. 56\(e\)](#); [Orsi, 999 F.2d at 92](#). Further, it would be ethically impermissible for Attorney Whiteman to act as both Ms. Alston's advocate and a witness in the case. See N.C. R. PROF'L CONDUCT 3.7(a). Second, even though MetLife's Guidelines were filed in other cases and publically available via electronic means, they are not public records. MetLife has contested both cases where the same Guidelines have been submitted and neither court actually determined the propriety of its introduction. (See Docket No. 40, Defs.' Reply to Pl.'s Resp. to Defs.' Mot. to Strike).

*8 Because the submitted Guidelines have not been properly authenticated, Defendants' motion to strike will be granted and the court will not consider Plaintiff's Exhibit 1 or any portions of her reply referencing Exhibit 1 in addressing the motions for summary judgment. [FN2](#)

[FN2](#). The court will forego analysis under Local Rule 7.3(h) because of its finding that Exhibit 1 has not been properly introduced under [FED. R. CIV. P. 56\(e\)](#).

B. Motions for Summary Judgment

Summary judgment is proper only when “there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” [FED. R. CIV. P. 56\(c\)](#). A party seeking summary judgment “bears the initial responsibility of informing the district court of the basis for its motion, and identifying those portions of the [record] which it believes demonstrate the absence of a genuine issue of material fact.” [Celotex Corp. v. Catrett, 477 U.S. 317, 323 \(1986\)](#). Once the moving party has met its burden, the non-moving party must then “set forth specific facts showing that there is a genuine issue for trial.” [Matsushita Elec. Indus. Co. Ltd. v. Zenith Radio Corp., 475 U.S. 574, 586-87 \(1986\)](#) (quoting [FED. R. CIV. P. 56\(e\)](#)).

In making a determination on a summary judgment motion, the court must view the evidence in the light most favorable to the non-moving party, according that party the benefit of all reasonable inferences. [Bailey v. Blue Cross & Blue Shield of Va., 67 F.3d 53, 56 \(4th Cir.1995\)](#). Mere allegations and denials, however, are insufficient to establish a genuine issue of material fact. See [Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 \(1986\)](#). Judges are not “required to submit a question to a jury merely because some evidence has been introduced by the party having the burden of proof, unless the evidence be of such a character that it would warrant the jury in finding a verdict in favor of that party.” *Id.* at 251 (internal quotations and citations omitted). Thus, the moving party can bear

its burden either by presenting affirmative evidence or by demonstrating that the non-moving party's evidence is insufficient to establish its claim. Celotex, 477 U.S. at 331 (Brennan, J., dissenting). “[A] complete failure of proof concerning an essential element of [a plaintiff's] case necessarily renders all other facts immaterial.” Celotex, 477 U.S. at 323.

The applicable standard of review of the denial of benefits under an ERISA plan is well-settled. Where a plan administrator is granted discretionary authority to determine benefit eligibility or construe the terms of the plan, the denial of benefits must be reviewed for abuse of discretion. See Firestone Tire & Rubber Co. v. Bruch, 489 U.S. 101, 111 (1989); Ellis v. Metropolitan Life Ins. Co., 126 F.3d 228, 232 (4th Cir.1997). Under this deferential standard, an administrator's decision will not be disturbed as long as it is reasonable, even if this court would have come to a different independent conclusion. Ellis, 126 F.3d at 232. “Such a decision is reasonable if it is ‘the result of a deliberate, principled reasoning process and if it is supported by substantial evidence.’” *Id.* (quoting Bernstein v. CapitalCare, Inc., 70 F.3d 783, 788 (4th Cir.1995)). Because the Plan at issue clearly vests MetLife with discretionary authority to both interpret the terms of the Plan and determine benefit eligibility, the abuse of discretion standard is appropriate in this case. (R. at 326-27)

*9 The Court of Appeals for the Fourth Circuit has set out a number a factors that courts may consider when determining the reasonableness of a benefits decision: (1) the language of the plan; (2) the purposes and goals of the plan; (3) the adequacy of the materials considered to make the decision and the degree to which they support it; (4) whether the fiduciary's interpretation was consistent with other provisions in the plan and with earlier interpretations of the plan; (5) whether the decision making process was reasoned and principled; (6) whether the decision was consistent with the procedural and substantive requirements of ERISA; (7) any external standard relevant to the exercise of discretion; and (8) the fiduciary's motives and any conflict of

interest it may have. Booth v. Wal-Mart Stores, Inc. Assocs. Health & Welfare Plan, 201 F.3d 335, 342-43 (4th Cir.2000).

“A fiduciary's conflict of interest, in addition to serving as a factor in the reasonableness inquiry, may operate to reduce the deference given to a discretionary decision of that fiduciary.” *Id.* at 343 n. 2. Where a conflict of interest is established, the deference afforded the fiduciary's decision “will be lessened to the degree necessary to neutralize any untoward influence resulting from the conflict.” Ellis, 126 F.3d at 233. “The more incentive for the administrator or fiduciary to benefit itself by a certain interpretation of benefit eligibility or other plan terms, the more objectively reasonable the administrator or fiduciary's decision must be and the more substantial the evidence must be to support it.” *Id.*

In the present case, Plaintiff argues that the termination of her long-term disability benefits was unreasonable and constituted an abuse of discretion because MetLife: (1) had a conflict of interest; (2) violated several 2002 ERISA regulations in its review of her claim; ^{FN3} and (3) discounted considerable subjective evidence of disability ^{FN4} and based its decision on physician reviews that relied on incomplete and misrepresented medical records.

^{FN3}. The ERISA regulations that Plaintiff asserts were violated by MetLife in the handling of her claim include: (1) that “the appropriate named fiduciary shall consult with a health care professional who has appropriate training and experience in the field of medicine involved in the medical judgment,”²⁹ C.F.R. § 2560.503-1(h)(3)(iii) (2002); (2) that the claims procedures must provide for a review by an individual “who is neither the individual who made the adverse benefit determination that is the subject of the appeal, nor the subordinate of such individual,” *id.* § 2560.503-1(h)(3)(ii); and (3) that the claims procedures must “[p]rovide for a review that takes into account all comments, documents, records, and other in-

formation submitted by the claimant relating to the claim,”*id.* [§ 2560.503-1\(h\)\(2\)\(iv\)](#).

FN4. The plain language of the Plan requires that claimants provide “proof of disability, satisfactory to Metropolitan.”(R. at 308) It does not specifically require “objective” evidence of disability.

First, MetLife clearly has a conflict of interest because it both insures the Plan and has “discretionary authority to interpret the terms of the Plan and to determine eligibility for and entitlement to Plan benefits....” (R. at 326-27) While such a conflict of interest necessitates a reduction of deference afforded a benefits decision and requires the decision to be more objectively reasonable and to have stronger evidentiary support, the conflict is “greatly mitigated” by reliance on independent physicians to conduct claims reviews. See [Ellis, 126 F.3d at 234](#). Because Drs. Silverman, Menotti, and Jares were each independent physician consultants, the influence of the conflict of interest in this case was significantly reduced.

Second, the ERISA regulations that Plaintiff asserts MetLife failed to comply with in the review of her benefits claim are inapplicable to this case. The 2002 regulations cited by Plaintiff apply only “to claims filed under a group health plan on or after the first day of the first plan year beginning on or after July 1, 2002, but in no event later than January 1, 2003.”29 C.F.R. § 2560.503-1(o)(2); see also [DiCamillo v. Liberty Life Assurance Co., 287 F.Supp.2d 616, 625 \(D.Md.2003\)](#) (finding that the 2002 ERISA regulations did not apply to a claim that was originally filed on November 7, 2001); [Wertheim v. Hartford Life Ins. Co., 268 F.Supp.2d 643, 659 \(E.D.Va.2003\)](#) (applying the ERISA regulations that were in effect at the time the initial benefits claim was submitted in May 2000); [Wade v. Life Ins. Co. of North America, 271 F.Supp.2d 307, 323 \(D.Me.2003\)](#) (finding that the 2002 ERISA regulations did not apply to a claim that was originally filed in 1997). Ms. Alston filed her claim on May 19, 2001, over one year before the cited regulations took effect. Further, Ms. Alston's July 15,

2003, appeal from MetLife's initial termination of her benefits does not constitute an independent claim for benefits and trigger the application of the 2002 regulations. See [DiCamillo, 287 F.Supp.2d at 625 n. 5](#).

***10** Finally, Plaintiff asserts that it was unreasonable for MetLife to require objective evidence of disability because of the MS-related symptoms that are not quantifiable (e.g., fatigue) and that short shrift was given to the subjective evidence submitted by her treating physicians. She further asserts that the reviews relied upon by MetLife in its denial of benefits were based on incomplete and misrepresented medical records. This court finds, however, that MetLife's decision was based on substantial evidence and the result of a thorough, reasoned, and principled decision making process.

While courts may neither “require administrators automatically to accord special weight to the opinions of a claimant's physician” nor impose “a discrete burden of explanation when they credit reliable evidence that conflicts with a treating physician's evaluation,” plan administrators “may not arbitrarily refuse to credit a claimant's reliable evidence, including the opinions of treating physicians.”[Black & Decker Disability Plan v. Nord, 538 U.S. 822, 834 \(2003\)](#). In the present case, neither MetLife nor the independent physician consultants arbitrarily rejected the opinions of Ms. Alston's treating physicians. Dr. Goetzl's repeated conclusion that Ms. Alston was completely disabled and incapable of performing even sedentary work was adequately considered throughout the claims process but ultimately found to be contradictory to other information contained in the records. The more subjective findings were determined to have minimal weight in light of the more objective, contrary information indicating an ability to perform and maintain sedentary employment. Specifically, Ms. Alston's stable condition, seemingly controlled fatigue, lack of recent exacerbations, “minimal impairment due to her left-sided weakness and intermittent visual problems,” and ability to participate in an exercise program all suggested a capability of performing administrative assistant duties.

The fact that Dr. Jares was not provided with the April 9, 2004, MetLife interview of Ms. Alston does not diminish the reasonableness of his conclusions. During the interview, Ms. Alston reported that she was “doing pretty good but still gets tired” especially after she has overdone housework and that “fatigue is a big factor.” (R. at 281) This subjective, cumulative information would have undoubtedly been trumped by the objective indicators discussed above that were found to support Ms. Alston’s ability to perform sedentary work. Plaintiff further attempts to characterize Dr. Jares’s findings that “[h]er fatigue seems to be controlled with [Provigil](#)” as a misrepresentation. That conclusion, however, is consistent with Dr. Goetzl’s March 20, 2003, notes that “Fatigue, good control with [Provigil](#)” and is a reasonable interpretation of his March 11, 2004, notes that Ms. Alston was “[s]till having fatigue for which she takes [Provigil](#)” and that “[s]he’s [increased] her exercise program and feels somewhat stronger.”

*11 While it is unquestionable that Ms. Alston suffers from MS, there is legitimate disagreement as to the debilitating nature of her MS-related symptoms. Two independent physician consultants reviewed her medical records and concurred that any subjective evidence favoring a finding that she is “totally disabled” was outweighed by substantial objective evidence indicating an ability to perform and maintain a sedentary occupation. MetLife’s decision simply came down to a permissible judgment call between conflicting medical opinions. Given the differing conclusions of Ms. Alston’s treating physicians along with those of Dr. Menotti and Drs. Jares and Silverman, MetLife’s denial of long-term disability benefits was reasonable and not an abuse of discretion. See [Booth, 201 F.3d at 345](#) (“Confronted with this record of conflicting opinion, it was within the discretion of the Administrative Committee—indeed it was the duty of that body—to resolve the conflicts...”); [Elliott v. Sara Lee Corp., 190 F.3d 601, 606 \(4th Cir.1999\)](#) (holding that “it is not an abuse of discretion for a plan fiduciary to deny ... benefits where conflicting medical reports were presented.”); [Ellis, 126 F.3d at 234](#) (finding no abuse of discretion where a treating

physician’s findings conflicted with an independent panel of medical specialists).

III. CONCLUSION

IT IS THEREFORE ORDERED that Defendants’ Motion to Strike Exhibit 1 of Plaintiff’s Reply to Defendants’ Response to Plaintiff’s Motion for Summary Judgment and all portions of the reply referencing Exhibit 1 [Docket No. 34] be GRANTED.

Furthermore, IT IS RECOMMENDED that Plaintiff’s Motion for Summary Judgment [Docket No. 18] be DENIED, that Defendants’ Motion for Summary Judgment [Docket No. 24] be GRANTED, and that Plaintiff’s Motion for Pre-Judgment Interest, Attorney’s Fees and Costs [Docket No. 20] be DENIED AS MOOT.

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Slip Copy, 2006 WL 3102970 (M.D.N.C.)

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