

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

No. 5:05-CV-129-BO(1)

LISA MITCHELL,)	
)	
Plaintiff,)	
)	
v.)	<u>ORDER</u>
)	
METROPOLITAN LIFE INSURANCE)	
COMPANY,)	
)	
Defendant.)	
_____)	

This matter is before the Court on Plaintiff’s and Defendant’s Cross-Motions for Summary Judgment pursuant to Federal Rule of Civil Procedure 56. A hearing on this matter was held in Raleigh on March 10, 2006. For the following reasons, Plaintiff’s Motion for Summary Judgment is GRANTED, and Defendant’s Motion for Summary Judgment is DENIED.

BACKGROUND

On February 24, 2005, Plaintiff, a former employee of Siemens Energy & Automation, Inc. (“Siemens”), filed suit against Defendant Metropolitan Life Insurance Company (“Defendant”) pursuant to the Employee Retirement Income Security Act of 1974 (“ERISA”), 29 U.S.C. §§ 1001, *et seq.* In her Complaint, Plaintiff alleges that Defendant wrongfully terminated her short-term disability (“STD”) benefits and wrongfully failed to pay STD benefits to which she was entitled as a participant in the Metropolitan Life employee welfare benefits plan (“Plan”).¹ Plaintiff claims that this denial violates §502(a)(1)(B) of ERISA. *See* 29 U.S.C. §

¹In Plaintiff’s complaint, Plaintiff also sets forth a claim for long-term disability benefits (“LTD”). Defendant alleged in its answer that Plaintiff had failed to exhaust her administrative remedies with respect to LTD benefits, having failed to assert a claim for LTD benefits at the

1132(e)(1).

Plaintiff formerly worked at Siemens as a “Group Leader” for three years. In her capacity as Group Leader, she was responsible for supervising between 15 and 18 workers involved in the manufacturing of switch gears. Plaintiff stopped working at Siemens on August 1, 2003, due to increasingly disabling mental illness. Plaintiff has battled mental illness for a number of years, and was diagnosed with depression at age 16. Since that time, Plaintiff has been diagnosed with bipolar affective disorder, major depressive disorder, panic disorder with agoraphobia, and seizure disorder.

At the time she stopped working at Siemens, Plaintiff was being treated by her primary care physician, Dr. Stephen Marsh, and by Dr. Marsh’s physician’s assistant, Paul Mattera. Following a consultation with Mr. Mattera on August 2, 2003, Plaintiff filed her initial STD claim with Defendant on August 5, 2003.

Siemens contracts with Defendant to provide STD benefits to employees who become disabled, for a maximum of 26 weeks. The STD Plan applicable to hourly employees, such as Plaintiff, provides the following definition of disability:

“Disabled” or “Disability” means that, due to sickness, pregnancy or accidental injury, you:

1. are receiving Appropriate Care and Treatment from a Doctor on a continuing basis; and
2. are unable to earn more than 80% of your Predisability Earnings at your Own Occupation for any employer in your local economy.

Your loss of earnings must be a direct result of your sickness, pregnancy or

administrative level. In her Motion for Summary Judgment, Plaintiff acknowledges that she has failed to exhaust her administrative remedies, and has moved the Court for a dismissal of her LTD claim without prejudice.

accidental injury. Economic factors such as, but not limited to, recession, job obsolescence, paycuts and job sharing will not be considered in determining whether you meet the loss of earnings test.

Additionally, the Plan grants discretionary authority to the Plan administrator and other Plan Fiduciaries, to “determine eligibility for and entitlement to Plan benefits in accordance with the terms of the Plan.” The policy requires that a claimant provide documented proof of disability, including the date the disability began, the cause of disability and the prognosis of disability.

In early August 2003, Plaintiff submitted a form to Defendant, filled out by Mr. Mattera, stating that Plaintiff suffered from severe depression, and could not return to work until August 28, 2003. On August 18, 2003, Defendant approved Plaintiff’s first claim for STD benefits through August 27, 2003.

Plaintiff continued to obtain medical treatment from Mr. Mattera, and was also eventually referred by her insurance company to a psychiatric nurse practitioner at Carolina Partners in Mental Health Care, Ms. Paula M. Leif. Plaintiff began meeting with Ms. Leif on August 29, 2003, and continued to see her for psychiatric treatment throughout the relevant short-term disability period. After the first meeting, Ms. Leif prescribed Wellbutrin and Ambien to Plaintiff, and suggested that she remain out of work for another month.

On August 31, 2003, Plaintiff was admitted to the Raleigh Community Hospital, after going to the emergency room and complaining of chest pain. The attending physician, Dr. Anthony Morgan, diagnosed Plaintiff with “1. Esophageal dysfunction with epigastric and chest pain and dysphagia. 2. Anxiety and depression. 3. Perineal rhinitis. 4 Resting tachycardia.” Reports from Plaintiff’s admission to Raleigh Community Hospital and additional notes from

consultations with Mr. Mattera were submitted to Defendant, who extended Plaintiff's STD benefits through September 30, 2003, by letter dated September 12, 2003.

Through the end of 2003, Plaintiff continued to see Ms. Leif for treatment of her mental illness. Plaintiff's condition did not improve. At a therapy session on September 29, 2003, Ms. Leif increased Plaintiff's Zoloft prescription. At the next visit, on October 13, 2003, Ms. Leif determined that Plaintiff had a Global Assessment of Functioning ("GAF")² score of 45.

According to Ms. Leif's records, Plaintiff's anxiety and depression increased throughout October and early November. Ms. Leif again assigned Plaintiff a GAF score of 45 on November 3, 2003. In addition to her psychological difficulties, during the month of September 2003, Plaintiff underwent an operation for an "incisional hernia" which led to a period of physical rehabilitation.

From September through November, Plaintiff continued to submit medical records to Defendant based on her consultations with Mr. Mattera and Ms. Leif. Defendant extended Plaintiff's claims for ongoing STD benefits on three more occasions.³ The last letter approving an extension of Plaintiff's STD claim, sent on November 12, 2003, informed Plaintiff that if no additional information was received by November 26, 2003, her claim would be closed.

On December 2, 2003, Plaintiff submitted additional notes from Ms. Leif, dated December 1, 2003, which stated that Plaintiff had continued anxiety concerning her son's mental

²A patient's GAF score ranges between zero and 100, and measures "psychological, social and occupational functioning on a hypothetical continuum of mental health-illness." American Psychiatric Ass'n, Diagnostic and Statistical Manual of Mental Disorders 32 (4th ed. 1994). A GAF score below 50 represents a serious impairment in functioning. *Id.*

³On September 19, 2003, Defendant approved Plaintiff's claim through October 10, 2003; on October 27, 2003, Defendant approved Plaintiff's claim through October 30, 2003; and on November 12, 2003 Defendant approved Plaintiff's claim through November 17, 2003.

health and her employment, and that Plaintiff's Diazepam prescription was ineffective. In the same report, Ms. Leif assigned Plaintiff a GAF score of 43.

By letter dated December 15, 2003, Defendant terminated Plaintiff's STD claim, effective November 17, 2003. In support of its decision to deny benefits, Defendant's letter cited a review of Plaintiff's medical history performed by a Behavior Health Clinician that worked for Defendant. The letter also referred to Ms. Leif's recent treatment records, which indicated that "your [Plaintiff's] affect is appropriate, your speech is normal, thought process is goal directed and your concentration is good. Although there is a report of increased anxiety symptoms, there is no report of the frequency or severity of these symptoms, nor how they would prevent you from being able to work at this time." The letter went on to state that "[a]lthough you may be experiencing some increased anxiety, there are no functional impairments presented which supports [sic] your inability to perform the duties of your occupation on a full time basis." On December 23, 2003, Plaintiff formally appealed Defendant's denial of STD benefits.

Plaintiff's status did not improve during December 2003 and January 2004. In December, Plaintiffs' son was admitted to Holly Hill Hospital in Raleigh for psychological treatment. According to Mr. Leif's records, this development had an extremely negative impact on Plaintiff's mental condition. In her notes from December 15, 2003, Ms. Leif determined that Plaintiff had a GAF score of 38. Her affect was described as "intense," her speech was "rapid," and her thought processes were "tangential."

On January 12, 2004, while Plaintiff's appeal was pending, Ms. Leif advised Plaintiff that she should admit herself to Holly Hill Hospital ("Holly Hill"), due to her deteriorating mental state. Upon admission to Holly Hill, Plaintiff was examined by a psychiatrist, Dr. Robert

Skwerer. In the admission report, Dr. Skwerer noted that Plaintiff was severely mentally ill, and had a GAF score of between 20 and 25.⁴ Plaintiff continued to receive treatment at Holly Hill from January 12 to January 21 as an inpatient, and then until February 24 as an outpatient. Dr. Skwerer ultimately diagnosed Plaintiff with bipolar disorder, depression and anxiety.

Plaintiff's appeal was denied by letter dated February 5, 2004. In the letter, Defendant informed Plaintiff that her claim had been reviewed by an Independent Physician Consultant, Dr. Leonard Kessler. The letter cites Dr. Kessler's opinion that "the medical documentation failed to support impairment due to a psychiatric disorder beyond November 17, 2003." While Plaintiff informed Defendant of her hospitalization at Holly Hill prior to the denial of the appeal, there is no indication that Plaintiff's hospitalization and medical records from Plaintiff's inpatient treatment were considered by either Dr. Kessler or Defendant. The letter went on to inform Plaintiff that she had exhausted her administrative remedies, and that no further appeals would be considered.

On March 1, 2004, Plaintiff retained counsel. Plaintiff's counsel subsequently requested that Defendant to reconsider the denial of Plaintiff's benefits. On March 11, 2004, Defendant responded that it would not further consider Plaintiff's claim.

Plaintiff continued to submit additional evidence of medical treatment to Defendant, in an effort to obtain a second review of Defendant's previous denial. On July 13, 2004, Defendant informed Plaintiff that Defendant would conduct a second review. After Defendant granted the second appeal, Plaintiff submitted additional medical records pre-dating her claim for STD

⁴A GAF score between 21 and 30 indicates "serious impairment in communication or judgment ... OR inability to function in almost all areas." American Psychiatric Ass'n, Diagnostic and Statistical Manual of Mental Disorders 34 (4th ed. 1994).

benefits, and also submitted evidence describing a seizure that occurred in March 2004. On September 7, 2004, Defendant gave Plaintiff's medical records to Dr. Margaret O'Connor, a board certified psychologist, in order to conduct an independent review of Plaintiff's ability to work. Dr. O'Connor's report concluded that "[t]here is no indication in Ms. Mitchell's file that she has cognitive problems that would present an impasse to her ability to work as a Group leader in assembly." While Dr. O'Connor was cognizant of Plaintiff's history of depression and anxiety, she also observed that Plaintiff's physicians and therapists had tended to rely on Plaintiff's self-reporting, and that a previous MMPI-2 test indicated that Plaintiff had a tendency to exaggerate her symptoms of mental illness.

Plaintiff's second appeal was denied on October 27, 2004. In the letter denying the appeal, Defendant noted that Plaintiff's record, including records produced during her hospitalization and treatment at Holly Hill, had been reviewed by Dr. O'Connor. In conclusion, the letter stated that "the frequency of treatment was not consistent with the presence of a severe psychiatric disorder" and "the file documentation failed to provide evidence that supported [Plaintiff's] Inability [sic] to perform the duties of her job beyond November 17, 2003."

On December 16, 2004, Theresa Arena, Benefits Analyst at Siemens, sent a letter to Plaintiff's counsel in which she stated that Plaintiff was an hourly employee, and was therefore covered under a different STD plan than had previously been discussed. The plan applicable to salaried employees has a more stringent definition of disability: a salaried employee is only entitled to short term disability benefits if they are unable to perform their jobs. Plaintiff's counsel wrote to Siemens, and argued that Plaintiff's claim for STD benefits might have been examined under the wrong standard. Defendant replied by letter dated January 28, 2005, noting

the difference between the two benefits plans, but informing Plaintiff that “the initial appeal determination stands.”

Plaintiff filed her complaint in this Court, pursuant to section 502(a)(1)(B) of ERISA, on February 24, 2005. Plaintiff and Defendant have filed cross-Motions for Summary Judgment. The matter is now ripe for ruling.

ANALYSIS

1. Plaintiff’s Claim for Short-Term Disability Benefits

A court may grant summary judgment only if there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. *See* Fed. R. Civ. P. 56(c); *see also Celotex Corp. v. Catrett*, 477 U.S. 317 (1986). The court must determine “whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 251-52 (1986). The moving party bears the initial burden to show the court that there is no genuine issue concerning any material fact. *See Celotex*, 477 U.S. at 325. In order to survive the motion, the non-moving party must then show that there is “evidence from which a jury might return a verdict in his favor.” *Anderson*, 477 U.S. at 257. The Court must accept all of the non-moving party’s evidence as true and must view all inferences drawn from the underlying facts in the light most favorable to the non-moving party. *See id.* at 255.

Plaintiff claims that summary judgment pursuant to Rule 56 is appropriate in this case because Defendant abused its discretion by denying Plaintiff the full and fair review to which she was entitled under 29 U.S.C. § 1133. Furthermore, Plaintiff argues that Defendant’s decision was not “reasonable and appropriate” and did not rely on adequate materials in making an

adverse decision. *Hines v. UNUM Life Ins. Co of America*, 110 F. Supp. 2d 458, 464 (W.D. Va. 2000). Defendant, on the other hand, argues that it is entitled to summary judgment in its favor, as there are no material facts in dispute and as Defendant's claim determination was reasonable and not an abuse of discretion under the applicable standard of review. This Court agrees with Plaintiff.

The law in this area is clear that when the terms of an ERISA plan grant the administrator "discretionary powers," the administrator's exercise of those powers may be disturbed only to prevent an abuse of discretion. *See Haley v. Paul Revere Life Ins. Co.*, 77 F.3d 84, 89 (4th Cir. 1996) (citing Restatement (Second) of Trusts § 187 (1957)); *see also Coffman v. Metropolitan Life Ins. Co.*, 2003 WL 2293610 (4th Cir. 2003).⁵ In this case, both parties agree that the ERISA plan at issue clearly granted Defendant "discretionary authority to interpret the terms of the Plan and to determine eligibility for an entitlement to Plan benefits in accordance with the terms of the Plan." Thus, an abuse of discretion standard is applicable.

When reviewing an administrator's decision under an abuse of discretion standard, this Court must not "disturb the administrator's decision if it is reasonable, even if the court itself would have reached a different conclusion." *Haley*, 77 F.3d at 89 (citing *Doe v. Group Hospitalization & Medical Services*, 3 F.3d 80, 85 (4th Cir. 1994)); *see also Sheppard & Enoch*

⁵ This Court does review *de novo* certain aspects of an ERISA plan. When reviewing an ERISA plan administrator's decision to grant or deny plan benefits, a Court decides *de novo* whether the plan's language prescribes the benefit or whether it confers discretion on the administrator to determine the benefit. *See Haley*, 77 F.3d at 89. If the plan confers discretion, the court must decide *de novo* whether the administrator in making its determination acted within the scope of that discretion. *See id.* Then, if the plan administrator's decision falls within the scope of the administrator's contractually conferred discretion, the court may review the merits of the decision only for an abuse of discretion. *See id.*

Pratt Hosp., Inc. v. Travelers Ins. Co., 32 F.3d 120, 124-25 (4th Cir. 1994). Judicial review of the administrator's decision is limited to the evidence before the administrator at the time of the decision denying Plaintiff's claim. *Elliot v. Sara Lee Corp.*, 190 F.3d 601, 608-09 (4th Cir. 1999).

In determining whether Defendant abused its discretion in denying Plaintiff disability benefits such that its decision was unreasonable, this Court must review numerous factors, such as:

“(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 decisionmaking 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., 201 F.3d 335, 342-43 (4th Cir. 2000); *see also Lockhart v. United Mine Workers of America 1974 Pension Trust*, 5 F.3d 74, 77 (4th Cir. 1993).

The last factor – the fiduciary's motives and possible conflict of interest – is most relevant in this case, as Defendant is both the administrator of the ERISA-governed Plan and the insurer of the Plan benefits at issue. The Fourth Circuit has held that courts may apply a slightly modified abuse of discretion standard when there is a possible conflict of interest “to the extent necessary to counteract any influence unduly resulting from the conflict.” *Elliot v. Sara Lee Corp.*, 190 F.3d 601, 605 (4th Cir. 1999) (internal citation omitted). “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 evidence must be to support it.” *Id.* (internal citation omitted). Here, Defendant MetLife is both the administrator of the plan and the insurer that must pay benefits if an applicant successfully establishes a short-term disability. Consequently, the Court will review Defendant’s denial of Plaintiff’s benefits applying a heightened, or “modified” abuse of discretion standard.

In the instant case, Defendant’s decision to deny benefits is problematic because of the lack of adequate materials supporting the decision, and a decision-making process that does not appear reasoned and principled. Based on records submitted from Mr. Mattera and Ms. Leif, Defendant approved Plaintiff’s disability claim several times. However, on December 15, 2003, Defendant denied Plaintiff’s claim for benefits, based primarily on notations in the records created by Ms. Leif. The letter denying benefits draws attention to Ms. Leif’s notes taken during a December 1, 2003 counseling session, describing Plaintiff’s appropriate affect, normal speech, goal-directed processes and good concentration. However, Defendant’s reliance on those aspects of Ms. Leif’s records as a basis for the denial of benefits is puzzling, and does not provide any objectively adequate basis for the denial of benefits.

Prior to the December 15th denial of benefits, Ms. Leif had produced records of her meetings with Plaintiff on September 29, October 13, November 3, and December 1. These records were submitted to Defendant in support of Plaintiff’s applications for continuation of STD benefits. Ms. Leif’s records reflect that at each meeting, Ms. Leif checked a box indicating that Plaintiff had “appropriate” affect, “normal” speech, and “goal-directed” thought processes.⁶

⁶At the meeting on September 29, Ms. Leif recorded that Plaintiff’s concentration was “fair.” At every other meeting until the December 15th session, Plaintiff’s concentration was “good.”

It is inconsistent for Defendant to cite Ms. Leif's assessment of Plaintiff's affect, speech and thought processes on December 1 as evidence that Plaintiff was no longer disabled, in light of the fact that Ms. Leif's assessment of those qualities was consistent throughout the counseling period.⁷ Moreover, Ms. Leif's notes from December 1, evidently the primary source relied upon by Defendant for the initial denial decision, reflects at best Plaintiff's continued struggle with mental illness, and at worst a deteriorating mental condition. In the report, Ms. Leif notes that Plaintiff "stay[s] nervous all the time." She also assigns Plaintiff a GAF score of 43, which reflects a *decline* in Plaintiff's functioning since mid-October and early November. In conclusion, Ms. Leif states that Plaintiff will not be able to return to work until at least January 2, 2004. In addition to being inconsistent with Defendant's previous decisions to grant Plaintiff STD benefits, Defendant's interpretation of Ms. Leif's notes from early December 2003 appears to be arbitrary and self-serving.

The current dispute between Plaintiff and Defendant represents such a case where Plaintiff must be awarded benefits due to the lack of substantial, objective evidence to controvert Plaintiff's claim of disability. Throughout September, October, and November of 2003, Plaintiff submitted medical records to Defendant derived from appointments with Ms. Leif. Based primarily on those records, Plaintiff's claim for benefits was extended on several occasions. However, on December 15, 2003, Defendant abruptly cut off Plaintiff's benefits, citing records produced by Ms. Leif that were nearly identical to those used to support the previous approval of Plaintiff's claims. It is impossible for the Court to conclude that Defendant's initial decision to

⁷According to Ms. Leif's notes, Plaintiff's affect, speech, thought processes and concentration all took a marked turn for the worse at their meeting on December 15, 2003.

deny Plaintiff's claim for STD benefits was reasoned and principled. Furthermore, despite further deterioration in Plaintiff's mental health, including admission to a private hospital, Defendant did not amend its decision to deny benefits when faced with highly persuasive evidence of Plaintiff's inability to work during the two subsequent appeals.⁸

Defendant's review of Plaintiff's claim during the administrative appeals process did not cure the defective initial review. While the Supreme Court has held that here is no "treating physician" rule in the ERISA context requiring plan administrators to accord special weight to the opinions of a claimant's doctor, a plan administrator may not "arbitrarily refuse to credit a claimant's reliable evidence." *Black & Decker Disability Plan v. Nord*, 538 U.S. 822 (2003). Here, the numerous medical professionals that met with Plaintiff found her mental illness both severe and disabling. Nevertheless, the doctors retained by Defendant to conduct independent reviews of Plaintiff's records came to the opposite conclusion.

Both Dr. Kessler and Dr. O'Connor's reports suffer from deficiencies, and Defendant's decision to rely entirely on their reports was arbitrary in light of the substantial credible evidence of Plaintiff's disability. Dr. Kessler's short two-page report, submitted on January 28, 2004, reviewed Plaintiff's medical history through January 12, 2004. He found that Plaintiff had "no significant cognitive impairments, problems with social interaction, or evidence of functional limitations from a psychiatric disorder alone." However, Dr. Kessler does not discuss Plaintiff's low GAF scores throughout late 2003 and early 2004. Additionally, Dr. Kessler's report was not informed by Plaintiff's admittance to Holly Hill, or by the admissions evaluation conducted by

⁸Specifically, Dr. Skwerer admissions report strongly corroborates Ms. Leif's diagnoses, and further emphasizes the dramatic effect of Plaintiff's illness on her ability to function.

Dr. Skwerer. Defendant was aware of this development at the time the first appeal was denied, but decided to instead rely primarily on Dr. Kessler's incomplete review.

During the second appeal, Dr. O'Connor focused her review of Plaintiff's medical history on an MMPI-2 test administered by Dr. Jonathan Ahr during Plaintiff's treatment at Holly Hill. Dr. O'Connor cited the test as evidence that Plaintiff tended to fake her psychiatric symptoms. However, Dr. Ahr, who administered the test, found that the test demonstrated a recent psychotic break by Plaintiff, rather than reflecting Plaintiff's exaggeration of her psychiatric maladies. Dr. Ahr's observation of psychosis is corroborated by the discharge diagnosis produced upon Plaintiff's departure from Holly Hill. In light of the extensive evidence of depression and anxiety adduced by numerous physicians who met with Plaintiff, it is puzzling that Dr. O'Connor's report emphasizes one particular test, by a doctor that reached the opposite conclusion regarding the test's significance. In light of Defendant's conflict of interest and the medical records reflecting serious mental illness that affects Plaintiff's ability to work, Defendant's decision to rely on Dr. O'Connor and Dr. Kessler's reports constituted an arbitrary refusal to credit Plaintiff's substantial credible evidence of disability.

Applying a heightened abuse of discretion standard, as there was a possible conflict of interest inherent in Defendant's decision, the Court finds that Defendant abused its discretion in denying Plaintiff benefits. There was ample evidence that Plaintiff remained disabled through February 9, 2004, the end of the 26-week STD eligibility period. Defendant's decision to deny Plaintiff benefits was not objectively reasonable and this Court finds that there was a lack of substantial, objective evidence to discount the reliability and weight of Plaintiff's uncontradicted evidence of symptoms of depression, anxiety, and bipolar disorder. Plaintiff has met her burden

of showing that she must prevail as a matter of law. Accordingly, Plaintiff's Motion for Summary Judgment is GRANTED, and Defendant's Motion for Summary Judgment is DENIED. Plaintiff is entitled to STD benefits under the terms of the Plan during the period that Defendant wrongfully denied Plaintiff's claim, from November 18, 2003 through February 9, 2004.

2. Attorney's Fees and Pre-Judgment Interest

As Plaintiff is the prevailing party, she may be entitled to attorneys' fees. *See* 29 U.S.C. § 1132(g). In determining whether to award fees and costs in an ERISA case, the Fourth Circuit has directed courts to consider: (1) the degree of the opposing party's culpability or bad faith; (2) the ability of the opposing party to satisfy an award of attorney's fees; (3) whether an award of attorney's fees against the opposing party would deter other persons acting under similar circumstances; (4) whether the party requesting attorney's fees sought to benefit all participants and beneficiaries of an ERISA plan or to resolve a significant legal question regarding ERISA itself; and (5) the relative merits of the parties' positions. *Quesinberry v. Life Ins. Co. of North America*, 987 F.2d 1017 (4th Cir. 1993).

While there is little evidence of "bad faith," Defendant is certainly culpable for the seemingly arbitrary decision to deny Plaintiff benefits. Defendant is patently capable of satisfying an award of attorney's fees, and an award of such fees will deter capricious decision-making by plan administrators under similar circumstances. Accordingly, the Court finds that Plaintiff is entitled to reasonable attorney's fees and costs. The specific amount of attorney's fees and costs to be awarded will be left open, to be determined by the Court upon submissions of affidavits and briefing of the issue by the parties.

Plaintiff also claims to be entitled to pre-judgment interest. "ERISA does not specifically

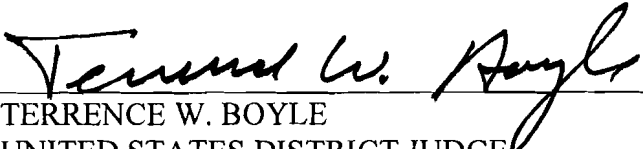
provide for pre-judgment interest, and absent a statutory mandate the award of pre-judgment interest is discretionary with the trial court.” *Quesinberry*, 987 F.2d at 1030. Given the delay in Plaintiff’s recovery, Plaintiff is entitled to pre-judgment interest in order to fully compensate her for lost STD benefits.

CONCLUSION

For the reasons stated above, Plaintiff’s Motion for Summary Judgment is GRANTED. Defendant’s Motion for Summary Judgment is DENIED. Plaintiff’s claim for long-term disability benefits is DISMISSED WITHOUT PREJUDICE. Plaintiff is entitled to short-term disability benefits for the entirety of the 26-week period provided for under Defendant’s policy. Plaintiff is also entitled to attorney’s fees and costs, and pre-judgment interest from November 18, 2003, the date benefits were denied, through the date that judgment is entered. The Court will accept additional briefings from the parties on the amount of damages, reasonable attorney’s fees and costs, and the appropriate rate of legal interest.

SO ORDERED.

This 03 day of March, 2006.


TERRENCE W. BOYLE
UNITED STATES DISTRICT JUDGE