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UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

JOSEPH STEVENS,
PLAINTIFF

Vs. CIVIL NO.
11-7473 (PGS)

SANTANDER HOLDINGS, USA., INC.,
SELF-INSURED SHORT TERM
DISABILITY PLAN, et al,
DEFENDANT

JANUARY 29, 2014
CLARKSON S. FISHER COURTHOUSE
402 EAST STATE STREET
TRENTON, NEW JERSEY 08608

B E F O R E: THE HONORABLE PETER G. SHERIDAN
U.S. DISTRICT COURT JUDGE
DISTRICT OF NEW JERSEY

A P P E A R A N C E S: (BY TELEPHONE)

BONNIE G. RAFEL, LLC
BY: BONNY G. RAFEL, ESQUIRE
FOR THE PLAINTIFF

BALLARD SPAHR, LLP
BY: MARY CATHERINE GORDON, ESQUIRE
FOR THE DEFENDANT

COURT'S OPINION ON CROSS-MOTIONS FOR SUMMARY JUDGMENT

Certified as true and correct as required
by Title 28, U.S.C. Section 753
/s/ Francis J. Gable
FRANCIS J. GABLE, C.S.R., R.M.R.
OFFICIAL U.S. REPORTER
(856) 889-4761

1 THE COURT: Good afternoon. This is Judge Sheridan.
2 So, this is the matter of Stevens versus Santander. Do you
3 wish to put your appearance on the record?

4 MS. RAFEL: Sure. Bonnie Rafel for plaintiff.

00:00 5 THE COURT: All right. The attorney for the
6 defendants?

7 MS. GORDON: This is Mary Cate Gordon for Liberty
8 and Santander.

00:01 9 THE COURT: So now we've got everybody. So, I was
10 just going to read my opinion at the present time. We've had
11 oral argument and we've read all the briefs, and so this is my
12 opinion.

13 Plaintiff, Joseph Stevens, commenced this action on
14 December 22, 2011, against Santander Holdings, Inc., Self
00:01 15 Short Term Disability Plan, Santander Holdings Long Term
16 Disability Plan, as well as Liberty Life Assurance Company of
17 Boston, seeking relief under ERISA for termination of the
18 plaintiff's short-term benefits and denial of plaintiff's
19 claim for long-term benefits. And this motion's before the
00:02 20 Court on the parties' cross-motions for summary judgment. For
21 the reasons outlined herein, the plaintiff's motion for
22 summary judgment is granted, and the defendant's motion for
23 summary judgment is denied.

00:02 24 The facts of the case are as follows. And I'm
25 actually outlining the facts. But at any rate on October 2nd,

1 2006 plaintiff began working for Sovereign Bank, a subsidiary
2 of Santander, as a Retail Financial Consultant II. At all
3 relevant times Santander sponsored plaintiff's disability
4 plans, namely the Santander Short Term Disability Plan, which
5 I may refer to as the STD Plan; as well as a Long Term
6 Disability Plan, which I'll refer to as the LTD plan at times.

7 The plaintiff's STD Plan was funded by Santander and
8 administered by Liberty as follows. Liberty as the
9 administrator was responsible for processing claims and making
10 determinations and recommendations to Santander. While
11 Santander retained authority to make final determinations with
12 regard to approval or denial of the STD claims.

13 The LTD plan was somewhat different. The LTD was
14 fully insured by Liberty. Liberty also provided
15 administrative services to the LTD plan, and Liberty paid
16 benefits under the LTD plan based on premiums collected from
17 Santander.

18 As a Retail Financial Consultant, plaintiff's work
19 duties included sitting 70 percent of the day, walking five
20 percent, standing 10 percent, typing 10 percent, and driving
21 five percent. Plaintiff's job also required him to lift 10
22 pounds or less each day.

23 On June 15, 2007, plaintiff had an MRI conducted.
24 It showed that plaintiff suffered from degenerative disk
25 disease. After a brief hospital stay he sought treatment from

1 a rheumatologist, Dr. Carrie Edelman. On September 22, 2010,
2 plaintiff was examined again by Dr. Edelman and his complaints
3 included fever, chills, fatigue, weakness, blurred vision,
4 shortness of breath palpitations, abdominal pain, nausea,
00:05 5 constipation, diarrhea, dizziness, numbness, depression,
6 insomnia, anxiety and non-restorative sleep. A
7 musculoskeletal exam revealed multiple tender points in
8 plaintiff's shoulders, hands, knees and ankles. Dr. Edelman
9 diagnosed the plaintiff with HLA-B27, which is a genetic
00:05 10 marker in blood testing that's found in 95% of Caucasians who
11 are diagnosed with ankylosing spondylitis. That disease is a
12 progressive and incurable immune disease that causes pain and
13 inflammation in the joints.

14 Thereafter, the records indicate that plaintiff's
00:06 15 health deteriorated rapidly. By October 5, 2010 plaintiff
16 stopped working at Santander because of his medical
17 conditions. On October 6, 2010, plaintiff called Liberty to
18 report his short-term disability claim. On October 12, 2010
19 Dr. Edelman completed a medical certificate in which she
00:06 20 certified to the State of New Jersey, I believe for disability
21 purposes, that she was treating the plaintiff, and reported
22 his ankylosing spondylitis, but at that time Dr. Edelman
23 indicated that plaintiff can return to work on February 5,
24 2011.

00:07 25 In addition, on that same day, Dr. Edelman completed

1 a Liberty Mutual form, regarding restrictions of activities
2 that the plaintiff may have, and in that report she indicated
3 he could not lift or carry on a systematic basis. She also
4 reported about other symptoms that I had referred to earlier.
5 And Dr. Edelman also indicated that the plaintiff's activities
6 were restricted from October 5, 2010 to February 5, 2011, as
7 she had previously indicated to the disability individuals.
8 On October 26, 2010 plaintiff applied for temporary disability
9 from the State.

10 On October 29, 2010, a nurse, Katherine Keller,
11 reviewed plaintiff's medical records on behalf of Liberty, and
12 Keller evidently contacted Edelman's assistant. At that time,
13 Dr. Edelman had indicated there was an increase of symptoms in
14 the plaintiff and he needed injections to relieve some of the
15 inflammation and pain. Keller concluded that the plaintiff
16 had workplace restrictions, such as he was restricted from
17 kneeling and walking and carrying and pushing and pulling. On
18 November 7, 2010, Liberty issued a letter approving
19 plaintiff's STD benefits, based on his inability to perform
20 the material and substantial duties of his job from October 5,
21 2010 through December 21, 2010, and with benefits beyond that
22 point contingent on medical information.

23 Then it looks like it's more than a month later, Dr.
24 Edelman again certified to the disability agency that
25 plaintiff remained unable to work since October 5, 2010 due to

1 the ankylosing spondylitis, as well as the other symptoms that
2 I mentioned earlier. And then Dr. Edelman revised the
3 estimate date of his recovery to be February 14, 2011.

4 On December 21, 2010 plaintiff again visited Dr.
5 Edelman. His symptoms were about the same. At that time Dr.
6 Edelman completed an attending physician's assessment for
7 Liberty, and her remarks seem to be similar. That is,
8 plaintiff can only work up to two and a half hours a day, and
9 he had had restrictions in sitting and standing and walking.

10 Dr. Edelman indicated that plaintiff could not function in an
11 occupational setting full-time.

12 On January 3, 2011, another Liberty nurse,
13 Piechowiak, reviewed plaintiff's medical records, and extended
14 approval of the benefits to February 5, 2011. On February 9,
15 plaintiff visited Dr. Edelman again with more of the same
16 symptoms. On February 14th, 2011, Nurse Piechowiak conducted
17 another review of plaintiff's medical file on behalf of
18 Liberty, and she concluded that plaintiff's exam did not
19 depict active joint inflammation, and the clinical exam
20 findings did not support functional restrictions. Nurse
21 Piechowiak recommended further review of the file, so Liberty
22 retained a rheumatologist, Dr. Kramer.

23 On February 17, Dr. Kramer reviewed plaintiff's
24 medical file, and Dr. Kramer then called Dr. Edelman. Dr.
25 Kramer conducted a review and concluded that plaintiff could

1 "sustain a full-time work capacity with supported
2 restrictions." On March 1, 2011 based upon Dr. Kramer's
3 findings, Liberty issued a letter determining that plaintiff's
4 STD benefits were not payable beyond February 5, because "the
5 restrictions supported based on the medical information would
6 not preclude you from performing the material and substantial
7 duties of your own job at Santander Holdings."

8 On March 11, Dr. Edelman wrote to Liberty stating
9 that she had been treating plaintiff for a while, and then
10 reviewed her prior diagnosis, but she did add, at least this
11 is the first time I saw it, that the plaintiff's condition was
12 complicated by gout, neuropathy and cognitive dysfunction. On
13 March 16, 2011 plaintiff appealed the termination of his STD
14 benefits in a letter to Liberty's Appeal Review Unit, that's
15 the ARU.

16 On March 26, 2011, the Liberty manager, Kristin
17 Newhart, reviewed the file; and agreed with the decision to
18 refer the matter to the ARU, noting that clarification has
19 been received from attending physician -- I believe that's Dr.
20 Edelman, from conversation with a peer reviewer, however, no
21 clinical evidence/data has been provided. So she sent it over
22 to the ARU to look at.

23 On April 27, 2011, Dr. Edelman completed a
24 rheumatoid arthritis medical assessment, and in that
25 assessment she diagnosed plaintiff with, as we had indicated

1 before, chronic ankylosing spondylitis, and the
2 seonegativespondyloarthropathy, and he also exhibited moderate
3 to severe pain. On May 5, 2011, Jennifer Sullivan, a Liberty
4 nurse, and case manager reviewed plaintiff's medical file and
00:15 5 concluded in relevant part that "there is no documentation to
6 support the claimant's self-reported cognitive impairments",
7 and he had not "seen a neurologist or any psychological
8 clinician." So there was no documentation of the plaintiff's
9 mental health status.

00:16 10 At about 3:30 on May 9, an appeal review consultant
11 with Liberty, I believe it's Ms. Payne, e-mailed Sovereign
12 Bank in order to provide Liberty's recommendation that the
13 original determination to deny plaintiff's STD disability
14 benefits be upheld. At that time Santander responded almost
00:17 15 immediately and agreed with the appeal determination. And
16 it's interesting, I'm not sure I have if this history exactly
17 correct, but it appears that on May 9 Liberty issued a letter
18 upholding its original denial of plaintiff's STD benefits.
19 And on May 10, 2011, Liberty issue a letter to plaintiff
00:17 20 upholding its original denial of the plaintiff's STD, and by
21 extension, as I understand the process, the plaintiff's LTD
22 benefits were impacted.

23 So, at that juncture what was key to the Court is
24 this chronology or timing of sending the recommendation to
00:17 25 Santander and their review. It doesn't show any meaningful

1 timeframe in which to analyze the plaintiff's case.

2 So at any rate, in Liberty's letter at that time,
3 Liberty indicated that it relied on Dr. Kramer's February 25,
4 2011 review, which did not find evidence sufficient to support
00:18 5 Edelman's diagnosis of cognitive impairment. There were then
6 some letters that were forwarded to Liberty by plaintiff's
7 wife and by his mother-in-law, indicating the plaintiff's
8 medical issue and symptoms.

9 On June 22, 2011, the Social Security Administration
00:18 10 determined plaintiff was disabled since October 5, 2010. And
11 I know the Social Security determination is not controlling in
12 this matter, but at any rate in that hearing, plaintiff had a
13 medical consultant, Dr. Park, who opined that "plaintiff's
14 pain and allegations were grossly supported by the medical
00:19 15 evidence." On June 22nd, 2011, an orthopedic surgeon, Dr.
16 Pirone, determined that plaintiff was unable to engage in any
17 substantial activity because of his inflammatory arthritis,
18 and chronic and active diseases.

19 On July 27 and 28, 2011, a psychologist, George
00:20 20 Peters, performed a neuropsychological evaluation. Dr. Peters
21 determined plaintiff's IQ was in the 12th percentile, his
22 processing speed was low to average, and his attention and
23 concentration were variable. In short, Dr. Peters noted "I'm
24 uncertain whether his current IQ levels represent a
00:20 25 long-standing average, low/average capacity, or a decline from

1 previously higher level. It is difficult for me to believe
2 that an individual with Mr. Stevens' level of IQ could pass a
3 Series 7 test to become a stockbroker as that is very
4 difficult test." I'm not certain whether Mr. Stevens ever had
5 to pass that Series 7 test, but what's important about the
6 doctor's statement is it shows that Mr. Stevens' cognitive
7 abilities were limited.

8 On October 19, 2011, plaintiff submitted a formal
9 appeal of Liberty's denial of his STD benefits beyond February
10 5, 2011. As I understand it, this appeal also requested
11 approval of his LTD benefits. The appeal enclosed a
12 substantial amount of information. It included the Social
13 Security award, including Dr. Parks and Dr. Pirone's reports,
14 Dr. Peters' evaluation; there was also, I believe, treatment
15 from a Dr. Jarahian; Dr. Edelman's reports; Dr. Kramer's
16 reports were also included; and the plaintiff's attorney
17 submitted a CD of all the evidence that was submitted to the
18 Social Security Administration. So, having been involved in
19 that manner there were a number of reports from treating
20 physicians, and consultants with regard to Mr. Stevens'
21 ailments.

22 On September 15, 2011, a Liberty nurse Barbara
23 Keaveney concluded, "the additional medical evidence reviewed
24 inclusive of the neuropsychological testing does not provide
25 objective evidence to correlate with the claimant's ongoing

1 self reports, and does not alter the previous peer review
2 assessment."

3 On November 3, 2011, Liberty retained Dr. Burns to
4 conduct a final review of plaintiff's record. Without
00:23 5 specifically evaluating the physical and cognitive demands of
6 the plaintiff's own occupation, Dr. Burns concluded that
7 plaintiff was capable of working full time. And at one point
8 Dr. Burns stated in his report that Mr. Stevens had
9 restrictions, but concluded, "in view of the ongoing symptoms
00:24 10 these restrictions would be ongoing; based on the available
11 documentation from the claimant, he can work full-time." And
12 Burns noted that plaintiff's record did not reflect permanent
13 joint damage.

14 On November 9, 2011, Liberty e-mailed Sovereign Bank
00:24 15 and recommended that Sovereign uphold its original December,
16 2010 decision to deny STD benefits beyond February 5, 2011.
17 It seems that immediately thereafter Santander agreed. And on
18 November 10, 2011, Liberty issued a letter upholding their
19 original determination. And that was based on the grounds
00:24 20 that "the medical evidence is insufficient to support Mr.
21 Stevens' inability to perform the material duties of his job
22 as a sales representative." The important part here is there
23 is no showing that Santander spent any significant time in
24 deliberating about the matter, or even becoming familiar with
00:25 25 all the different reports that were filed in order to make the

1 decision with regard to disability. Sovereign's response was
2 less than a day.

3 So at the present time, plaintiff now seeks payment
4 of short-term disability benefits as well as long-term
5 disability.

6 Summary judgment is appropriate under Rule 56 when
7 the moving party demonstrates there is no genuine issue of
8 material fact, and the evidence establishes the moving party's
9 entitlement to a judgment as a matter of law. That's *Celotex*
10 *Corp. v. Catrett*, 477 U.S. 317 at 322-23 (1986). A factual
11 dispute is genuine if a reasonable jury could return a verdict
12 for the non-movant, and it is material if under the
13 substantive law it could affect the outcome of the suit.
14 That's *Anderson v. Liberty Lobby*, 477 U.S. 242 at 248 (1986).

15 In looking the ERISA law, a denial of benefits under
16 ERISA is to be reviewed "under a de novo status unless the
17 benefit plan gives the administrator or the fiduciary
18 discretionary authority to determine eligibility for the
19 benefit or to construe the terms of the plan." That's
20 *Firestone Tire & Rubber Co. v. Bruch*, 489 U.S. 101 115 (1989).

21 Thus, where the plan gives the administrator discretion, the
22 administrator's interpretation of the plan "will not be
23 dismissed if reasonable." That's *Mitchell v. Eastman Kodak*
24 *Co.*, 113 F.3d 433 (3d. Cir. 1997). In other words, when a
25 plan administrator has discretion to determine claimant's

1 eligibility for benefits, the plan administrator's decision is
2 subject to review under an arbitrary and capricious standard.
3 That's *Stoetzner v. U.S. Steel Corp.*, 897, F.2d 115 at 119
4 (3d. Cir. 1990). See also, *Miller v. Metro Life Ins. Co.*, 925
5 F.2d, 9979 at 983 (6th Cir. 1991). The plan administrator's
6 decision is arbitrary and capricious if it is without reason
7 unsupported by substantial evidence, or erroneous as a matter
8 of law. That's *Abnathya v. Hoffmann-La Roche*, 2 F.3d 40 at 45
9 (3d. Cir. 1993).

10 Generally, courts review various procedural factors
11 underlying the administrator's decision making process, as
12 well as structural concerns regarding how the particular ERISA
13 plan was funded. That's *Miller v. American Airlines*, 632 F.3d
14 837. The conflict of interest can be created, for example,
15 when an employer both funds and evaluates employee claims.
16 That's *Glenn* 554 U.S. at 105. A conflict of interest can also
17 be created if an employer pays an independent insurance
18 company to fund, interpret and administer a law. That's *Pinto*
19 *v. Reliance Standard Life Ins. Co.*, 214 F.3d 377 at 383 (3d.
20 Cir. 2000) rev'd on other grounds. That's the *Glenn* case
21 again, 554 U.S. at 114.

22 Often, the structural inquiry focuses on financial
23 incentives created by the way the plan is organized. The
24 procedural inquiry focuses on how the administrator treated
25 the particular claim. That's *Post v. Hartford Ins. Co.*, 501

1 F.3d 154, at 162 (3d. Cir. 2007). Specifically in considering
2 the process the administrator used to deny benefits, courts
3 consider numerous irregularities to determine whether in the
4 claimant's case the administrator has given the court reason
5 to doubt its fiduciary neutrality. *Id.* at 165. Ultimately
6 the court must determine willfulness by taking into account
7 several different, often case specific factors reaching a
8 result by weighing them all together. That's the *Miller* case,
9 2000 U.S. App. LEXIS 1462.

10 Here, there's a number of procedural anomalies that
11 can lead to a finding of an arbitrary and capricious
12 termination. First, a reversal of a benefits determination
13 when there was really no significant new additional medical
14 evidence. Second, some disregard for opinions previously
15 relied upon by the nurses at Liberty. Here, the Court has
16 considered and weighed the factors presented, to determine
17 whether the defendants acted appropriately in terminating the
18 plaintiff's benefits. The Court gives weight to the following
19 conclusions. First, the defendant reversed their initial
20 position with regard to short-term disability anyway, that
21 plaintiff was disabled, and terminated plaintiff's short-term
22 disability without receiving a significant amount of
23 supporting information that differed in a material way from
24 their original position.

25 Next, the defendants failed to consider plaintiff's

1 ability to perform his particular job requirements in denying
2 the final appeal, which it seemed from all the treating
3 physicians that the plaintiff really couldn't perform his job
4 functions. And most important to the Court is that despite
5 retaining final approval authority over the STD plan and the
6 long-term disability plan as well, Santander failed to conduct
7 any meaningful independent review of plaintiff's file, which
8 the Court views as "rubber stamping" Liberty's benefit
9 determinations. If I have this right, in one case Santander
10 received and affirmed Liberty's final decision to terminate
11 plaintiff's benefits within 15 minutes. This just does not
12 seem to be a fair and reasonable review of the plaintiff's
13 file.

14 Having reviewed these various factors as a whole the
15 Court finds the defendant's decision to terminate short-term
16 disability benefits and to deny long-term benefits, was not a
17 product of reasoned decision making. Defendant's termination
18 of benefits under that standard was arbitrary and capricious.

19 Once the Court finds that the denial of the benefits
20 was arbitrary and capricious, the Court has discretion to
21 fashion a remedy. See, *Carney v. International Brotherhood of*
22 *Elec. Workers*, 66 FED APPX 381, 386 (3d. Cir. 2003). In
23 *Miller*, the Third Circuit noted that "in deciding whether to
24 remand to the plan administrator or reinstate benefits, it is
25 important to consider the status quo prior to the unlawful

1 denial or termination. As such, important distinction emerges
2 between an initial denial of benefits and termination of
3 benefits after they were already awarded." And the court then
4 goes on to note that "it is appropriate to remand to the
5 administrator for full consideration whether the claimant is
6 disabled. To restore the status quo, i.e., where plaintiff
7 received STD. Upon termination, however, a finding that the
8 decision was arbitrary and capricious means that the
9 administrator terminated the claimants benefits unlawfully.

10 Accordingly, STD benefits should be reinstated to restore the
11 status quo. That's *Miller*, 2011 U.S. App. LEXIS 1462.

12 So, pursuant to *Miller* the Court notes that
13 defendants approved plaintiff's STD benefits on November 7,
14 2010, before subsequently terminating them on March 11, 2011.
15 So, with regard to the short-term benefits, the Court finds
16 that the retroactive reinstatement of the benefits should
17 occur. The Court further notes that because defendant denied
18 plaintiff's claim for long-term benefits from the outset, the
19 appropriate remedy with respect to the long-term disability is
20 to remand to the plan administrator for full consideration of
21 the plaintiff's eligibility for long-term benefits. That's
22 the *Miller* case again, where it states: "Where benefits are
23 improperly denied at the outset, it is appropriate to remand
24 to the administrator", which the Court is doing here.

25 Based on those determinations, the Court finds in

1 looking at the case, the Court has the discretion to allow
2 attorneys fees and costs to the prevailing party. That's 29
3 U.S.C. Section 1132(g)(1). This provision permits the
4 district court to award fees and cost to any party that has
5 achieved some degree of success to the merits. That's
6 *National Security System v. IOLA*, 700 F.3d 65 at 103 (3d. Cir.
7 2012). It looks to me here where Santander had undertaken
8 little or no review of what Liberty was doing, their decisions
9 were very arbitrary and capricious. And as such, the
10 plaintiff should be permitted to obtain costs and legal fees
11 for bringing this action. And the Court will issue an order
12 consistent with this opinion.

13 All right thank you.

14 (Matter concluded.)

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