

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

SHIRLEY McLEOD,
Plaintiff,

v.

**HARTFORD LIFE AND ACCIDENT
INSURANCE COMPANY et al.,**
Defendants

**CIVIL ACTION
NO. 01-4295**

MEMORANDUM OPINION AND ORDER

RUFE, J.

September 27, 2004

This case concerns Plaintiff Shirley McLeod’s claim under section 502(a)(1)(B) of the Employee Retirement Income Security Act of 1974 (“ERISA”), 29 U.S.C. § 1132(a)(1)(B), for wrongful denial of long term disability benefits. Following a remand with instructions from the Third Circuit Court of Appeals, the Court must now determine an appropriate remedy.

I. BACKGROUND AND PROCEDURAL HISTORY

In January 2000, McLeod worked for Valley Media, Inc. stocking videocassettes in a warehouse. She participated in Valley Media, Inc.’s health insurance and disability benefits plan (the “Plan”), which was subject to ERISA and administered by Defendant Hartford Life and Accident Insurance Company (“Hartford”).

Due to the debilitating physical effects of multiple sclerosis (“MS”), McLeod stopped working on January 28, 2000. McLeod applied for short term disability (“STD”) benefits, which Hartford initially approved from February 4, 2000 through February 17, 2000, and then extended

through May 4, 2000.¹

When it granted the extension, Hartford notified McLeod that it would begin investigating her eligibility for long term disability (“LTD”) benefits. Pursuant to Hartford’s request and in support of her application for LTD benefits, McLeod completed a questionnaire and submitted medical documentation and other materials. There is no evidence that McLeod failed to satisfy any of Hartford’s requests for information, and Hartford does not so contend.

From the outset of the investigation, Hartford’s primary concern was whether McLeod’s claim was subject to the Plan’s preexisting condition exclusion. Nowhere in the record is this more evident than in a May 25, 2000 letter from Hartford’s claim examiner to McLeod, which states in relevant part:

In order to *fully evaluate* this claim for [LTD] benefits, we need the following information: Medical History Form.

Based on the information we received, your effective date of coverage under this policy was 04/01/1999. Since your disability began within 24 months of your coverage, we must investigate your claim to be sure that your disability has not resulted from a pre-existing condition.²

The natural inference flowing from this letter (as well as from the ensuing administrative, district court, and court of appeals litigation) is that, from Hartford’s perspective, McLeod’s claim for LTD benefits always turned on one question: whether she was excluded from coverage because her MS was a preexisting condition for which benefits were not payable under the Plan. At no point did Hartford question whether McLeod could satisfy any other eligibility provisions of the Plan, including whether McLeod was “totally disabled.” To the contrary, Hartford’s claims examiner’s

¹ Letter from Lugo to McLeod of 5/3/00, Ex. X to Def.’s Mot. for Summ. J.

² Letter from Lugo to McLeod of 5/25/00, Ex. C to Def.’s Mot. for Summ. J. (emphasis added).

log states in a September 5, 2000 entry: “Based on the information submitted, it appears reasonable that [McLeod] is unable to perform the duties of her medium occupation due to pain, numbness, weakness of her legs with prolonged standing.”³

On October 10, 2000, Hartford denied McLeod’s claim for LTD benefits on the grounds that her disability was a preexisting condition. McLeod pursued an administrative appeal, but Hartford affirmed its earlier decision on July 10, 2001. Hartford’s final decision letter rests squarely on the preexisting condition provision and is silent on other provisions of the Plan. In the ensuing federal court litigation, Hartford defended its decision exclusively on the grounds that it properly applied the preexisting condition exclusion.

On February 27, 2003, this Court granted summary judgment in favor of Hartford and against McLeod. In short, the Court held that it was not arbitrary and capricious for Hartford to rely on the Plan’s preexisting condition exclusion provision when it denied McLeod’s claim for LTD benefits.⁴ On June 22, 2004, the Third Circuit reversed and remanded “with instructions to enter an order denying Hartford’s motion for summary judgment and granting McLeod’s motion for summary judgment, and for calculation of the LTD benefits due to McLeod.”⁵

Following denial of Hartford’s petition for rehearing en banc, this Court entered an August 6, 2004 Order reciting the Third Circuit’s directive nearly verbatim. Hartford responded with a “preliminary projection of benefits due to plaintiff,” which generally outlined the benefits “potentially” due to McLeod. Hartford insisted, however, that the matter be remanded to the Plan

³ Claims Log at 7-8 (HLI000007-HLI000008), Exs. to Pl.’s Mot. for Summ. J.

⁴ 247 F. Supp. 2d 650.

⁵ 372 F.3d 618, 625.

administrator for a wholesale evaluation of whether McLeod is “eligible” for LTD benefits under the Plan. Because Hartford initially denied McLeod’s claim on the threshold issue of the preexisting condition exclusion, Hartford insists that the ultimate questions remain unresolved, *i.e.*, whether and, if so, for what period McLeod was disabled under the Plan, and the amount of benefits she is eligible to receive under the Plan.

II. DISCUSSION

In opposing Hartford’s request for a remand for further administrative review, McLeod argues: (1) the Third Circuit decided by necessary implication that McLeod is entitled to LTD benefits, and thus the law of the case doctrine precludes a remand; (2) alternatively, Hartford waived any defense grounded in McLeod’s eligibility for LTD benefits because it failed to raise the issue at any point prior to its response to the Court’s August 6, 2004 Order; and (3) no remand is necessary because the administrative record is complete and demonstrates McLeod’s entitlement to LTD benefits. Because the Court agrees with McLeod’s second and third arguments, the Court will not address the law of the case doctrine.

Applicants for LTD benefits bear the burden of proving they are totally disabled under the terms of the Plan. An applicant may receive LTD benefits if her disabling condition prevents her from performing the essential duties of her occupation during the Elimination Period (defined as “the last to be satisfied of” either “the first 90 consecutive days of any one period of Disability,” or the expiration of STD benefits) and for the next two years.⁶ In this case, the Elimination Period started

⁶ See Plan at 5, 11 (HLI0000611, HLI0000617), Ex. A to Def.’s Mot. for Summ. J.

on McLeod's date of disability, January 28, 2000.⁷ Ninety consecutive days later was April 27, 2000. However, because Hartford extended McLeod's STD benefits through May 4, 2000, this latter date is the end of the Elimination Period.⁸ Accordingly, the two year period ran from May 5, 2000 through May 4, 2002. As set forth infra at Part II.A., the administrative record demonstrates unequivocally that McLeod met her burden for the first two year period.

Following the two year period, an applicant may continue to receive LTD benefits if her disabling condition prevents her from performing the essential duties of *any* occupation for which she is qualified.⁹ Here, this latter period began on May 5, 2002. The administrative record is incomplete with respect to this period, which is discussed infra at Part II.B.

A. LTD Benefits for May 5, 2000 through May 4, 2002

Hartford is correct that there has been no administrative determination of whether and, if so, for what period McLeod was disabled under the Plan, or the amount of benefits she is eligible to receive under the Plan. As Hartford notes, ordinarily questions of eligibility for benefits under an ERISA plan should be resolved by the plan administrator in the first instance, not by a

⁷ See Explanation of Benefits (HLI000114), Ex. Y to Def.'s Mot. for Summ. J. (identifying 1/28/00 as McLeod's "disability date").

⁸ The parties' filings are somewhat confused on which date the Elimination Period ends. Hartford identifies April 27, 2000 as the end of the Elimination Period, but it does not explain how it arrived at that date. See Hartford's Preliminary Projection of Benefits Due to Plaintiff at 3-4 [Doc. # 31]. McLeod first used April 27, 2000, see Pl.'s Resp. at 10 & n.1 [Doc. # 35], but in a later filing she used May 4, 2000. See Pl.'s Sur-Reply at 3 n.3 [Doc. # 39]. The Plan clearly states that the Elimination Period is "the last to be satisfied" of either ninety consecutive days of disability or the end of STD benefits. Because payment of STD benefits expired after the ninety-day period expired, the Court believes May 4, 2000 is the appropriate date. The parties have offered no contrary argument or guidance.

⁹ See Plan at 11 (HLI0000617), Ex. A to Def.'s Mot. for Summ. J.

court.¹⁰ Hartford suggests that a remand is appropriate so that it may complete the administrative record, noting at least one basis upon which administrative review might result in a denial of benefits.¹¹ However, in the circumstances of this case, Hartford has waived its opportunity to contest McLeod's eligibility for LTD benefits for the period May 5, 2000 through May 4, 2002.

Waiver is the "voluntary, intentional relinquishment of a known right."¹² Courts in this district have conducted a case-by-case analysis in determining whether waiver should apply in

¹⁰ See Grossmuller v. Int'l Union, United Auto. Aerospace and Agric. Workers of Am., 715 F.2d 853, 859 (3d Cir. 1983).

¹¹ Although Hartford is careful to note that the administrator may or may not so conclude, it hints that McLeod might not satisfy the Plan's definition of "total disability." As noted supra, a Plan participant must be disabled during the Elimination Period. In an effort to justify the need for a remand, Hartford now suggests that McLeod may not have been disabled throughout the Elimination Period. Hartford's attempt to cloud the issue is a red herring.

On October 1, 2000, the Social Security Administration ("SSA") awarded disability benefits to McLeod. In so doing, the SSA concluded that McLeod became disabled on June 1, 2000. Hartford seizes on this date to suggest that McLeod may not have been disabled throughout the Elimination Period (1/28/00-5/4/00), and thus might not be eligible for LTD benefits under the Plan.

The Plan instructs participants that LTD benefits are available if, during a two year period after the Elimination Period expires, he/she cannot perform the essential functions of "**your**" specific occupation. By contrast, SSA disability benefits are available to those who are unable "to do any substantial gainful activity" due to a "severe impairment, which makes you unable to do your previous work **or any other substantial gainful activity which exists in the national economy.**" 20 C.F.R. § 404.1505 (emphasis added). Therefore, SSA's determination that McLeod could not as of June 1, 2000 perform **any** substantial gainful activity does not cast doubt on Hartford's previously unquestioned, narrower conclusion that McLeod was unable to perform **her** job stocking shelves with videocassettes as of May 4, 2000, a mere four weeks earlier, or thereafter. See Claims Log at 7-8 (HLI000007-HLI000008), Exs. to Pl.'s Mot. for Summ. J. If anything, SSA's broader determination strongly suggests that McLeod could not perform her job on May 4, 2000.

As Hartford so firmly notes, the SSA determination is not part of the administrative record (although Hartford pines for a remand so it may correct this gap in the record). The Court does not examine the SSA determination in an effort to justify an award of benefits, nor could it under governing law. See, e.g., Kosiba v. Merck & Co., - F.3d - -, 2004 WL 2029942, at *8 (3d Cir. Sept. 13, 2004) (federal court review of a denial of benefits is limited to the administrative record available at the time of the administrator's decision). Rather, the Court examines this document to discount Hartford's red herring. As demonstrated infra, the existing record more than adequately demonstrates McLeod's entitlement to benefits. Moreover, to the extent Hartford never formally determined whether McLeod was disabled throughout the Elimination Period, it has waived its opportunity to do so.

¹² Pergosky v. Life Ins. Co. of N. Am., No. Civ.A.01-4509, 2003 WL 1544582, at *6 (E.D. Pa. Mar. 24, 2003) (citation omitted).

the ERISA context.¹³ Waiver is unavailable if its application would expand the scope of coverage beyond the governing ERISA plan.¹⁴ Here, the administrative record demonstrates that McLeod was eligible for LTD benefits at the time she made her application. Therefore, finding that Hartford waived its opportunity to determine in the first instance whether McLeod is eligible would not expand coverage beyond the provisions of the Plan.

McLeod could not perform the essential functions of her job, which required her to pack boxes with videocassettes, and carry and stack the packed boxes. These activities required “continuous standing, walking, sitting, stooping, kneeling, crouching and reaching and working overhead, occasional balancing,” as well as pushing and pulling up to fifty pounds and lifting and carrying up to thirty-eight pounds.¹⁵ Based on the medical and other evidence in the administrative record, McLeod’s MS prevented her from performing these essential functions.

McLeod completed Hartford’s LTD benefits application form, answering questions about her job as well as her disabling condition. She stated therein that she could not work because she “can barely walk and [has] extreme pain in the feet and legs.”¹⁶ Her application for STD benefits includes an attending physician’s statement, dated March 10, 2000, listing McLeod’s symptoms as “severe pain legs, feet, can’t stand long [sic],” and concluding that McLeod has “[s]evere limitation

¹³ See id.; Russo v. Abington Mem’l Hosp., No. Civ.A.94-195, 2002 WL 1906963, at *11-13 (E.D. Pa. Aug. 1, 2002).

¹⁴ See, e.g., Juliano v. Health Maintenance Org. of N.J., Inc., 221 F.3d 279 (2d Cir. 2000) (declining to apply waiver because participant could not prove “medical necessity,” which was an essential element of the policy); Pergosky, 2003 WL 1544582, at *7 (declining to apply waiver because it would make benefits available to a person excluded by the plan).

¹⁵ Letter from Mercer to Moore of 5/29/01 at 4 (HLI000048), Ex. GG to Def.’s Mot. for Summ. J.; see also Application for LTD benefits at 2 (HLI000551), Ex. Z to Def.’s Mot. for Summ. J.

¹⁶ Application for LTD benefits at 4 (HLI000549), Ex. Z to Def.’s Mot. for Summ. J.

of functional capacity; incapable of minimal (sedentary) activity.”¹⁷

The LTD application also includes a May 16, 2000 attending physician statement by neurologist Dr. Clyde Markowitz, listing a diagnosis of MS, and describing McLeod’s limitations generally as “severe leg pain, problems walking, leg weakness.” More specifically, he described her abilities accordingly: (a) standing limited due to “gait disorder”; (b) walking limited due to “balance problem”; (c) pulling “difficult”; (d) limited in driving; (e) keyboard use/repetitive hand motion “poor”; (f) ability to sit and push “OK.” He expected McLeod’s limitations to last indefinitely.¹⁸ Dr. Markowitz’s subsequent June 5, 2000 treatment notes state that McLeod intermittently uses a cane “for balance issues.”¹⁹ Hartford’s claims log notes most of Dr. Markowitz’s observations in a June 15, 2000 entry.²⁰

At Hartford’s request, neurologist Dr. Brian Mercer conducted an independent review of McLeod’s medical records. Dr. Mercer noted that as of January 28, 2000, McLeod “appeared to be suffering severe pain in the lower extremities, related to her [MS]. Because of her severe pain, she can be employed only on [sic] a sedentary capacity with a ten pound lifting, pulling and pushing restriction.”²¹ Under any reasonable interpretation, all of this evidence demonstrates that McLeod’s MS prevented her from performing her job as a stockperson.

Moreover, nowhere in the administrative record does Hartford question whether

¹⁷ Application for STD benefits at 6 (HLI000113), Ex. D to Def.’s Mot. for Summ. J.

¹⁸ Application for LTD benefits at 8-9 (HLI000552-HLI000553), Ex. Z to Def.’s Mot. for Summ. J.

¹⁹ Clinical Evaluation Note of 6/5/00 (HLI000197), Ex. AA to Def.’s Mot. for Summ. J.

²⁰ Claims Logs at 10, Exs. to Pl.’s Mot. for Summ. J. (HLI000010).

²¹ Letter from Mercer to Moore of 5/29/01 at 6 (HLI000050), Ex. GG to Def.’s Mot. for Summ. J.

McLeod could satisfy the Plan's definition of disability. To the contrary, Hartford's only substantive discussion of the issue strongly suggests that Hartford *did* believe McLeod was disabled under the Plan. As quoted supra at Part I, Hartford's September 5, 2000 claims log entry states, "Based on the information submitted, it appears reasonable that [McLeod] is unable to perform the duties of her medium occupation due to pain, numbness, weakness of her legs with prolonged standing."²² The next entry, dated September 29, 2000, contains a recommendation to deny McLeod's claim as barred by the preexisting condition exclusion.²³

Hartford's initial denial letter followed on October 10, 2000. The letter cites only one reason for denying LTD benefits to McLeod: the Plan's preexisting condition exclusion.²⁴ McLeod continued to submit additional medical evidence during her administrative appeal, but this evidence focused on the preexisting condition exclusion issue, and specifically on whether McLeod received treatment for MS during the ninety days prior to her enrollment in the Plan. None of that evidence suggests McLeod was not disabled.

It is doubtful that Hartford would seriously contest the above conclusion or analysis. Indeed, Hartford states in its most recent filing addressing the issue, "Hartford does not contend now, (nor could it) that McLeod is not disabled. Hartford merely states that the initial determination of eligibility must first be made at the administrative level."²⁵ The above catalogue of evidence and procedural history is presented to demonstrate that Hartford had ample evidence to conclude (and

²² Claims Log at 7-8, Exs. to Pl.'s Mot. for Summ. J. (HLI000007-HLI000008).

²³ See id. at 6 (HLI000006).

²⁴ Letter from Lugo to McLeod of 10/10/00, Ex. BB to Def.'s Mot. for Summ. J.

²⁵ Hartford's Reply in Further Supp. of its Preliminary Projection of Benefits Due at 6.

perhaps had concluded) that McLeod was eligible for LTD benefits. It declined to reach that issue, however, relying instead on the preexisting condition exclusion, as it thought it was entitled to do.

However, after over four years of administrative and judicial proceedings, the Third Circuit has conclusively determined that Hartford erred when it relied on the preexisting condition exclusion. Hartford cannot now insist on further administrative review, with all its attendant delay and expense, so that it may explore a “different” path that, as the discussion above demonstrates, Hartford traveled down before. Permitting further administrative review so that Hartford may formally proclaim that McLeod is in fact disabled would serve no useful purpose when the administrative record leads so ineluctably to that conclusion.²⁶ Moreover, such an outcome would be manifestly unfair to McLeod.

A strikingly similar case from the Second Circuit strongly supports the Court’s conclusion. In Lauder v. First UNUM Life Insurance Co., 284 F.3d 375 (2d Cir. 2002), Lauder was injured after leaving her workplace on her last day of employment. She applied for disability benefits and provided preliminary medical documentation of her disability. First UNUM initially investigated Lauder’s medical condition but abandoned its requests for medical information at an early stage. Instead, it denied coverage to Lauder on the grounds that she was no longer a covered employee when the accident occurred.²⁷

On de novo review, the district court disagreed with First UNUM, concluding that Lauder was a covered employee. The court also determined that First UNUM had before it

²⁶ See Hunter v. Fed. Express Corp., No. Civ.A.03-6711, 2004 WL 1588229, at *12 (E.D. Pa. July 15, 2004) (refusing to remand and directing award of benefits where the administrative record is complete).

²⁷ Lauder, 284 F.3d at 377-78.

preliminary information concerning Lauder’s disability but chose not to pursue it “for administrative reasons.”²⁸ Accordingly, the district court concluded that Lauder was covered by the policy and thus eligible for benefits, and that First UNUM had waived any argument that Lauder was not disabled.

The Second Circuit affirmed on the same grounds, observing that applying waiver would not create coverage where it would not otherwise exist.²⁹ Reviewing the administrative record for evidence of Lauder’s disability, the court noted, “Lauder’s disability is exactly the type contemplated by the policy.”³⁰ In support of her claim, Lauder had submitted a physician’s statement and accompanying doctor’s letter, as well as a medical release. “By giving First UNUM all the information she had to prove her case, Lauder met her obligation under the policy.”³¹ Despite the availability of the necessary materials, First UNUM chose not to pursue a full investigation of her medical condition. “Therefore, what First UNUM waived by its conduct was its right to *investigate*; the underlying disability itself was established. . . . Any complaints First UNUM now has about the sufficiency of such evidence are a direct result of its decision not to investigate Lauder’s claim.”³²

In the case at bar, Hartford had more information concerning the applicant’s disability than did First UNUM. Like First UNUM, Hartford chose to ignore this information and look elsewhere for a basis to deny McLeod’s claim. As the preceding discussion demonstrates, the administrative record demonstrates that McLeod’s disability is exactly the type of disability

²⁸ Id. at 378.

²⁹ Id. at 379-382. The Second Circuit reversed in part on other grounds, concluding that the district court abused its discretion in awarding attorneys’ fees and costs, and in calculating Lauder’s damages. See id. at 382-84.

³⁰ Id. at 381.

³¹ Id.

³² Id. at 381-82 (quoting Juliano, 221 F.3d at 288).

contemplated by the Plan. It appears Hartford had reached this conclusion as well, as demonstrated by its September 5, 2000 claims log entry, making McLeod's case for waiver even stronger. Hartford knew of McLeod's claim of disability but chose not to challenge it or rely on it when denying her claim. In so doing, Hartford knowingly relinquished that right.

The Lauder court went on to distinguish other cases finding waiver inapplicable. In Juliano v. Health Maintenance Organization of New Jersey, Inc., 221 F.3d 279 (2d Cir. 2000), the Second Circuit declined to permit waiver to avoid "the risk of turning ERISA notices [of denial of benefits] into 'meaningless catalogs' of all possible bases for denial."³³ The Lauder court found this risk absent in the circumstances before it. It is similarly absent in the case at bar. Substituting the parties' names from the instant matter confirms the point:

[Hartford] was not in the position of having to imagine every conceivable basis for denying [McLeod's] claim; it had all her evidence of disability before it, and could easily have evaluated the evidence to assert a lack of disability defense. In other words, such a defense was not hypothetical here. Requiring [Hartford] to assert the defense would lead to exactly the type of "meaningful dialogue[] between plan administrators and plan members" that Juliano envisioned.

....

In contrast to Juliano, this case raises the concern that plan administrators like [Hartford] will try the easiest and least expensive means of denying a claim while holding in reserve another, perhaps stronger, defense should the first one fail.³⁴

³³ Id. at 382.

³⁴ Id. The First Circuit recently voiced similar concerns:

[The overall purpose of internal administrative review of ERISA claims is] "to minimize the number of frivolous lawsuits; promote consistent treatment of claims; provide a nonadversarial dispute resolution process; and decrease the cost and time of claims settlement." . . . Those goals are undermined where plan administrators have available sufficient information to assert a basis for denial of benefits, but choose to hold that basis in reserve rather than communicate it to the beneficiary. Such conduct prevents ERISA plan administrators and beneficiaries from having a full and meaningful dialogue regarding the denial of benefits.

Taking into account ERISA's remedial purpose of protecting plan beneficiaries, the Lauder court declined "to endorse manipulative strategies that attempt to take advantage of beneficiaries in this manner."³⁵ Having foregone the opportunity to investigate the merits of Lauder's claim and relying instead on lack of coverage, the Lauder court held that First UNUM "should not now get another proverbial bite at the apple."³⁶

This reasoning applies with equal force to the case at bar. Accordingly, because the administrative record demonstrates that McLeod was eligible for LTD benefits for the period May 5, 2000 through May 4, 2002, and because in the particular circumstances of this case Hartford has waived its right to contest McLeod's eligibility for LTD benefits, the Court will not remand the matter for further administrative review. Rather, the Court will award benefits retroactively through May 4, 2002.

According to the methodology set forth in Hartford's "preliminary projection of benefits due," McLeod may receive LTD benefits equal to sixty-six and two-thirds percent (66 2/3%) of her income with a minimum monthly benefit of \$50.00 and a maximum monthly benefit of \$5,000.00. McLeod's monthly salary was \$1,560.00; therefore, the maximum monthly LTD benefit she can receive is \$1040.00. The Plan provides that monthly benefits are to be offset by Other Income Benefits.³⁷ Plaintiff submitted documentation showing she has received monthly SSA

Glista v. UNUM Life Ins. Co. of Am., 378 F.3d 113, 129 (1st Cir. 2004) (internal citations omitted).

³⁵ Lauder, 284 F.3d at 382.

³⁶ Id.

³⁷ See Plan at 9-11 (HLI0000615-HLI0000617), Ex. A. to Def.'s Mot. for Summ. J.

disability payments of \$798.00 since December 2000.³⁸ Accordingly, McLeod's LTD benefits calculation is summarized in the table below:

Period	LTD Benefit Calculation	Other Income Setoff	Net
5/5/00-5/31/00	\$1040/31 days = \$33.55 per day \$33.55 x 27 days = \$905.85	N/A	\$905.85
6/1/00-11/30/00	\$1040 x 6 months = \$6,240	N/A	\$6,240.00
12/1/00-4/30/02	\$1040 x 17 months = \$17,680	\$798 x 17 months = \$13,566.00	\$4,114.00
5/1/02-5/4/02	\$33.55 x 4 days = \$134.20	\$798/31 days = \$25.74 per day \$25.74 x 4 days = \$102.96	\$31.24
Total	Total	Total	Total
5/5/00-5/4/02	\$24,960.05	\$13,668.96	\$11,291.09

Accordingly, the Court awards to McLeod \$11,291.09 in LTD benefits for the period May 5, 2000 through May 4, 2002.

B. LTD Benefits for May 5, 2002 through the Present

As noted supra, for the first two years of disability Plan participants are eligible for LTD benefits if they are disabled from performing their *own* occupation. After May 4, 2002, McLeod would have had to demonstrate that she is prevented from performing the essential duties of *any* occupation for which she is qualified. At no time did Hartford solicit from McLeod (nor did

³⁸ Pl.'s Resp. in Opp. to the Relief Requested by Hartford at 10 & Ex. A [Doc. # 35]. The SSA's award of disability benefits to McLeod is not part of the administrative record, but in a showing of good faith McLeod has submitted it to the Court. Under the waiver principles outlined above, the Court could conclude that Hartford waived its opportunity to deduct McLeod's SSA disability benefits as other income benefits. However, today the Court utilizes its equitable powers to award LTD benefits to McLeod. ERISA directs that equitable relief must be "appropriate." 29 U.S.C. § 1132(a). The Court believes it is "appropriate" to avoid a windfall to McLeod, and thus it will deduct McLeod's SSA disability benefits from the award of LTD benefits.

she voluntarily provide) sufficient evidence to support such a conclusion. Neither party would have had any reason or opportunity to do so in light of the termination of McLeod's benefits and this litigation. Accordingly, the administrative record is not complete on this particular issue. For that reason, and for that reason alone, a remand is appropriate so that McLeod may attempt to prove and Hartford may decide whether McLeod is entitled to LTD benefits from May 5, 2002 through the present.³⁹

An appropriate Order follows.

³⁹ See, e.g., Hunter, 2004 WL 1588229, at *12 (“Generally, courts remand the case when the record is somehow incomplete . . .”).

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

SHIRLEY McLEOD,
Plaintiff,

v.

**HARTFORD LIFE AND ACCIDENT
INSURANCE COMPANY et al.,**
Defendants

**CIVIL ACTION
NO. 01-4295**

ORDER

AND NOW, this 27th day of September, 2004, upon consideration of Defendant Hartford's Preliminary Projection of Benefits Due [Doc. # 31], Plaintiff's Response in Opposition thereto [Doc. # 35], Defendant Hartford's Reply [Doc. # 36], Plaintiff's Sur-Reply [Doc. # 39] and for the reasons set forth in the attached Memorandum Opinion, it is hereby **ORDERED** that:

1. Hartford shall, within fourteen (14) days of the date of this Order, pay long term disability benefits to McLeod for the period May 5, 2000 through May 4, 2002 in the amount of \$11,291.09.

2. McLeod's claim for long term disability benefits for the period May 5, 2002 through the present is hereby **REMANDED** to Hartford;

3. Hartford shall, within seven (7) days of the date of this Order, provide McLeod or her counsel with any and all forms or requests for information it requires to adjudicate her claim;

4. Within thirty (30) days of receipt of such forms or requests for information, McLeod shall complete and return all such forms to Hartford along with any requested information in her

possession;

5. Hartford shall adjudicate McLeod's claim in a manner consistent with the terms of the Valley Media Plan and shall expedite her claim so as to provide a final determination as soon as practicably possible;

6. Counsel for Hartford and McLeod shall provide this Court with a status update report every forty-five (45) days and shall notify the Court immediately when a final determination of McLeod's claim is made.

It is so **ORDERED**.

BY THE COURT:

CYNTHIA M. RUFÉ, J.