

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

E. MARIA SCIARRA,
Plaintiff,

v.

RELIANCE STANDARD LIFE
INSURANCE COMPANY,
Defendant.

Civil Action
No.97-1363

Gawthrop, J.

August 26, 1998

O P I N I O N

This action arises out of a decision by defendant Reliance Standard Life Insurance Company ("Reliance Standard") to deny long-term disability ("LTD") benefits to plaintiff E. Maria Sciarra under a group insurance plan governed by the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. §§ 1001-1461. Ms. Sciarra brought this action under Section 502(a)(1)(B) of ERISA, 29 U.S.C. § 1132(a)(1)(B),¹ seeking review of the defendant's decision. Both parties submitted memoranda summarizing the evidence and their arguments and supporting judgment in their favor. After hearing oral argument, the court took the matter under advisement. Under Fed. R. Civ. P. 52, the

¹"A civil action may be brought by a participant or beneficiary . . . to recover benefits due to him under the terms of his plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan" 29 U.S.C. §1132(a)(1)(B).

following are the court's findings of fact and conclusions of law.

I. Facts

The following facts are undisputed. Ms. Sciarra's employer, the Conrad-Pyle Company, funded the long term disability component of its employee welfare benefit plan ("Plan") through the purchase of a group long term disability policy ("Policy") from Reliance Standard. Ms. Sciarra was employed at Conrad-Pyle as an Executive Secretary, a position which required typing, filing, and assisting executives. Ex. B at 296.² There is evidence that the job required the lifting and carrying of 1 to 5 pounds, less than two times per day, that 90% of her job was sitting, and that the only significant movement was reaching below her shoulders. Ex. B at 108-9.

The Policy provides benefits if the employee "(1) is Totally Disabled as a result of Sickness or Injury covered in this Policy; (2) is under the regular care of a physician; (3) has completed the Elimination Period; and (4) submits satisfactory proof of Total Disability to us." Ex. A at 7.0. "Totally

²The parties submitted a Joint Statement of Undisputed Material Facts, which references exhibits submitted with the Defendant's Motion for Judgment in Its Favor. Exhibit B compiles the medical records and other correspondence that made up the record before Reliance Standard when it made its decision. These records are also attached to the Plaintiff's Memorandum as Exhibits 1 and 2.

Disabled" and "Total Disability," as defined by the Policy, mean "that as a result of an Injury or Sickness . . . during the Elimination Period and for the first 60 months for which a Monthly Benefit is payable, an Insured cannot perform the material duties of his/her regular occupation" Ex. A at 2.1. The Policy defines Elimination Period as the first consecutive 180 day period after the alleged disability commences. Ex. A at 1.0 and 2.0. In other words, employees must be unable to perform the material duties of their positions during the Elimination Period to be eligible for long-term disability benefits.

On or about January 23, 1994, plaintiff underwent surgery to remove her gall bladder. Wayne Brearly, M.D., performed the surgery, a laparoscopic cholecystectomy, at the Southern Chester County Medical Center. Ex. B at 280, 216-18. A few days after this surgery, Ms. Sciarra fell on ice and reported to Dr. Brearly with complaints of upper quadrant pain. Ex. B at 277-79. She was then readmitted to the hospital for treatment. Ex. B at 277-79. In September 1994, Ms. Sciarra submitted a claim for benefits under the Policy to Reliance Standard. Ex. B at 293. In her claim submission, Ms. Sciarra described her illness as "Gallstones and Gall Bladder Removal resulting in injury to bile ducts and pancreas." Ex. B at 314-15. Ms. Sciarra's alleged disability commenced on January 24, 1994. Ex. B at 132. By

letter dated December 30, 1994, Reliance Standard denied her claim for benefits, on the basis that medical evaluations of plaintiff did not support that she was Totally Disabled as defined by the Policy. The process that led up to that decision developed as follows.

By letter dated September 19, 1994, Reliance Standard wrote to certain physicians listed by plaintiff on her claim form and requested that they transmit their records and provide responses to several questions regarding the bases for plaintiff's condition and how it disabled her and/or prevented her return to work, including:

Have you treated the patient for a condition preventing their return to work . . .? If so, what condition prevents a return to work?

. . .
Was the patient unable to perform substantial regular work duties on the date you first treated them for this condition? Does your patient remain unable to perform the regular duties of their occupation? . . . If disabled, what specific restrictions and limitations prevent a return to work? What objective tests support your findings? Please also detail the patient's subjective complaints and their prognosis for returning to work in their regular job or a[n] alternative occupation.

Ex. B at 303-06.

Reliance Standard also requested that Southern Chester County Medical Center, where the cholecystectomy was performed, forward its admission records for review. Ex. B at 307.

A. Dr. Brearly

Dr. Brearly sent his records to Reliance Standard as requested. These records, coupled with Ms. Sciarra's hospital records, show that during her hospitalization, Ms. Sciarra received numerous tests, including an upper GI and a CT scan. The test results did not document any hematoma or other objective problem, except for potential pancreatitis which eventually resolved itself. Ex. B at 233-43, 277. In his office progress note from 2/1/94, Dr. Brearly stated that plaintiff could "[r]esume work 2/7/94." Ex. B at 204. Dr. Brearly later released plaintiff, as per his office progress note of 3/16/94, to "[a]ctivity/work as tolerated." Ex. B at 205. Dr. Brearly was unable to identify an objective cause for her pain, and in April 1994, believing that the pain may have been muscular-skeletal in nature, he referred plaintiff to an orthopedist, Michael Pushkarewicz, M.D. Ex. B at 208-09.

In his referral to Dr. Pushkarewicz, Dr. Brearly stated that Ms. Sciarra "complains of a constant dull ache" and outlined the plaintiff's treatment as follows:

A CT Scan was obtained, however, it did not confirm any pathology within the pancreas. There was a suggestion of duodenal hematoma on CT Scan and an upper GI was done which did not confirm the presence of hematoma. No fluid collections or other abnormalities were seen on CT scan and blood count and liver functions were normal as urinalysis." [Approximately 7 weeks later] a repeat CT Scan, "showed resolution of the pancreatic abnormality and questioned the possibility of a right renal cyst or extrarenal pelvis. An IVP was obtained which was normal.

Ex. B at 207-08. Dr. Brearly noted that her discomfort "was exacerbated by lying on her right side and lying flat as well as any type of stretching maneuvers." Id. He concluded that "[a]t this point I cannot explain her continued symptomology on the basis of any pancreatic hematoma findings." Id. Ms. Sciarra did not go to Dr. Pushkarewicz for evaluation or treatment. Ex. B at 85.

B. Dr. Fridberg

Reliance Standard also received the records of Andrew Fridberg, M.D., whose first appointment with Ms. Sciarra was on May 25, 1994. An Attending Physician's Statement ("APS"), completed and signed by Dr. Fridberg, noted subjective symptoms of "severe right-sided mid-abd. [abdominal] pain," an objective finding of only a positive stool hemocult, and a diagnosis of "[c]hronic abdominal pain, status post cholecystectomy." Ex. B at 312-13. Although the APS form notes an objective finding of hemocult for stool, Dr. Fridberg in his August 9, 1994 "Brief Office Visit" note indicated that this test had to be repeated under stricter conditions to ensure its accuracy. Ex. B at 288. The APS also shows that Dr. Fridberg "ordered the patient to cease work because of disability" on "2/8/94," but his first examination of the plaintiff did not occur until "5/25/94" as noted on this same document. Ex. B at 312.

Correspondence internal to Reliance Standard noted "the APS has black marker in the section entitled 'Extend [sic] of Disability.'" Ex. B. at 293. That is, next to the question "Is patient now totally disabled," the boxes labeled "yes" have been selected and circled; the boxes marked "no" have been completely covered with black marks. These heavy marks seeped through to the other side of the paper. Dr. Fridberg's records provided to Reliance Standard do not contain a copy of this APS form and do not contain any entry or other notation that he found plaintiff disabled, unable to work, or that he placed any limitations or restrictions on her ability to work. Ex. B at 110-55. Thus, this APS form seemingly contradicts the other records.

C. Dr. Ma

Ann I. Ma, M.D., another treating physician, also provided records to Reliance Standard. In July 1994, Dr. Ma performed medical tests, specifically, a biliary manometry and ECRP; these tests had normal results. During the biliary manometry, demerol was given because the plaintiff became "agitated and combative." Ex. B at 271. Dr. Ma, purportedly as a result of her limited treatment, would not comment on plaintiff's alleged disability or ongoing treatment. Ex. B at 259, 287, 140-141.

D. Reliance Standard

While Dr. Brearly, Dr. Fridberg, and Dr. Ma provided their medical records, they did not specifically respond to the questions posed by Reliance Standard in its September 19, 1994, letter to each of them. After receiving the medical records, on October 19, 1994, Reliance Standard's claims examiner, Jennifer Voisine, reviewed the file and advised her supervisor, Sarah Lively, that the file should be sent for an in-house medical review by Susan Dioguardi, a registered nurse. Ms. Lively agreed. Ex. B at 164. Ms. Voisine also noted that she found no reason "clmt. [claimant] should not be able to RTW [return to work]." Ex. B at 164. Ms. Dioguardi wrote back on October 20, 1994, that she needed a job description and physical capacities for Ms. Sciarra. Ex. B at 163. She also stated that the medical record "does not clearly support disability we need to address doctor directly regarding work capabilities." Ex. B at 163.

To get the job information requested by Ms. Dioguardi, Reliance Standard transmitted an Occupational Demand form to Conrad-Pyle, the plaintiff's employer, for completion. Ex. B at 159-162. In response, Conrad-Pyle listed plaintiff's occupational demands, in part, as:

- (a) Lifting and carrying 1-5 pounds twice a day;
- (b) Sitting work 90% of day;
- (c) Reaching below shoulders performed on a significant basis but other functions, like stooping, kneeling or reaching below shoulders at seldom or never;
- (d) Rapid pace work required at 5% of time;
- (e) Very little emotional stress.

Ex. B at 108-9.

To facilitate Ms. Dioguardi's review, on October 31, 1994, Reliance Standard again wrote to Dr. Brearly, Dr. Fridberg, and Dr. Ma and, also, to the plaintiff's new physician, Arthur Milholland, M.D. Reliance Standard included a copy of the completed Occupational Demand form for Ms. Sciarra's position and asked the doctors: "In your opinion is Ms. Sciarra totally disabled from performing these duties? What are her specific restrictions? Please complete the enclosed physical capabilities checklist." Ex. B at 99-106; Occupational Demand Form, Ex. B at 108-9; Physical Capabilities Checklist, Ex. B at 86.

Dr. Brearly, through his Office Manager Jan Andress, responded:

As I explained to you on the phone, Marie Sciarra was last seen in our office on 4/19/94. I am returning your capabilities check list as we are unable to answer these questions. When Ms. Sciarra was last seen in our office she was asked to see an orthopedic doctor, however she did not keep that appointment, she elected to pursue a course of treatment through doctors of her choice in Maryland.

Ex. B at 85.

In response to the letter from Reliance Standard, Dr. Ma stated that she had seen plaintiff only for a biliary manometry, which was normal, that she was not her primary gastroenterologist, and that she had not seen her after this procedure. Ex. B at 94. Dr. Ma also responded that she was unable to assess the plaintiff's long term disability. Ex. B at

59.

On September 19, 1994, Dr. Fridberg, apparently at the suggestion of Dr. Ma, referred plaintiff to the University of Maryland Pain Clinic. Ms. Sciarra had her first appointment there, with Arthur Milholland, M.D., in November 1994, well outside the 180 days of the Elimination Period. Ex. B at 275, 285, 130, 112. Reliance Standard sent Dr. Milholland letters dated October 18, 1998 and October 31, 1994. Dr. Milholland responded by annotating Reliance Standard's October 18, 1994 letter³ as follows:

"For heaven's sake, we have not yet met this patient yet. And I doubt I'll have the ability to answer so many questions when she does come;"

. . .

"I'm really bad at this (answering questions on return to work, etc.). I don't do disability work;"

. . .

"Seriously, I doubt I'll be able to help with these kinds of questions. I'll see the lady in the future, I will try -- but definitely will not be able to give work limitations based on objective tests."

Ex. B at 92. He later completed a Physical Capabilities Checklist, dated November 15, 1994, wherein he advised:

Physical Capabilities Check List

- Client can work 8 hours/day () YES (X) NO If not 8 hours, how many? 0
- 1) In an 8 hour work day client can stand: () None (X) 1-3 hours () 3-5 hours () 5-8 hours
- 2) In an 8 hour work day client can sit: () None (X) 1-3 hours () 3-5 hours () 5-8 hours
- 3) In an 8 hour work day client can walk: () None (X) 1-3 hours () 3-5 hours () 5-8 hours
- 4) In an 8 hour work day client can drive: (X) None (X) 1-3 hours () 3-5 hours () 5-8 hours
- 7) In an 8 hour day, client can lift/carry:

³These comments were handwritten in the side and bottom margins of the letter.

(X) 10% maximum and occasionally carry small objects: SEDENTARY WORK

PHYSICIAN COMMENTS: Patient's attention will be focused on her pain.

Client is released to return to work as of INDEFINITE.

Ex. B at 79; see also B at 45.

By report dated November 7, 1994, Dr. Milholland opined that plaintiff had pain that "appears somatic in type with a very defined skin dermatome, but still appearing to be referred from T8-T11." Ex. B at 72-74. Dr. Milholland saw Ms. Sciarra again on December 12, 1994 for the sole purpose of a repeat nerve block. He did not see or treat plaintiff during the following year, 1995.

Jennifer Voisine of Reliance Standard evaluated and summarized the medical evidence of record. She noted that Dr. Brearly, Dr. Fridberg, and Dr. Ma would not comment on the plaintiff's physical capabilities based on their treatment. She also noted that Dr. Milholland, who did complete the physical capabilities form and determined Ms. Sciarra unable to work, did not begin treatment until several months after the Elimination Period. She then recommended a claim denial as the "medical on file does not support a TD [Total Disability]." Ex. B at 53. Sarah Lively, Ms. Voisine's supervisor, and another supervisor, Alberta Hendricks, reviewed the record and concurred with Ms. Voisine's determination that the claim should be denied. Ex. B at 53. By letter dated December 30, 1994, Reliance Standard

advised plaintiff that her claim was denied as the medical information on record did not establish that she was unable to perform the material duties of her Executive Secretary position. Ex. B at 50-51.

Ms. Sciarra appealed this denial by letter dated January 20, 1995. Ex. B at 44. She wrote that nerve damage was the source of her problems, and that the medical information provided by Drs. Brearly, Fridberg and Ma "was obtained to rule out any physical abnormalacy, i.e., gallstones left in any bile ducts, infections of any sort, etc." Ex. B at 44. She also provided a Physical Capabilities Checklist dated January 20, 1995, completed by Dr. Milholland, stating that she was unable to work. Dr. Milholland commented that the "[p]atient has unremitting right flank and abdominal pain that interferes with all mental and physical activity and prevents significant employment for all practical purposes." Ex. B at 45.

During the appeal process, Reliance Standard then requested Medimax, an independent medical referral vendor, to arrange a medical peer review of the medical records to assess plaintiff's disability status. Ex. B at 36. Jordan B. Weiss, M.D. head of Gastroenterology and Deputy Director of the Department of Medicine at Episcopal Hospital performed this medical peer review. Ex. B at 33-35. Dr. Weiss reviewed plaintiff's medical records and issued his findings on July 17 and July 18, 1995.

Ex. B at 33-35. In his July 17, 1995 report, Dr. Weiss stated:

While the patient did have cholelithiasis and chronic cholecystitis which resulted in the surgery of 1/24/94, there was no evidence subsequent to that of any problems with the biliary tree or pancreas other than a post procedure self limited pancreatitis in 7/94. There is no evidence for damage to the bile ducts from the surgery and there is no evidence of retained stone. There is also no evidence of sphincter of oddi dysfunction. None of the patient's tests revealed any gastrointestinal source of the current abdominal pain and there are no objective studies to confirm gastrointestinal distress.

Ex. B at 33-34. In his July 18, 1995 letter to Medimax, Dr.

Weiss further concluded that:

Upon reviewing the records that were given to me, it is hard to say that there is total disability in an objective sense. Some of the records imply that the patient has continued pain but I do not see a full assessment of this to support a determination of total disability. Certainly there is no physical evidence supporting disability on the basis of gastrointestinal tract abnormalities.

Ex. B at 35.

Taking the medical information and peer review in context with plaintiff's job duties and demands, Reliance Standard reaffirmed its denial of plaintiff's claim for benefits under the Policy on June 26, 1995. Ex. B at 26-28. Reliance Standard found that the record as a whole lacked satisfactory proof to establish Ms. Sciarra's inability to perform the material duties of her regular occupation during the Elimination Period. Ex. B

at 26-28.

II. Standard of Review

The threshold issue is the proper standard by which this court should review the defendant's denial of plaintiff's claim for benefits. The parties agree that, as a claim for benefits under an employer-provided plan, this case is governed by ERISA, but they disagree as to the correct standard of review. ERISA itself does not mandate a standard of review. According to the United States Supreme Court, "a denial of benefits challenged under § 1132(a)(1)(B) is to be reviewed under a de novo standard unless the benefit plan gives the administrator or fiduciary discretionary authority to determine eligibility for benefits or to construe the terms of the plan." Firestone Tire and Rubber Co. v. Bruch, 489 U.S. 101, 115 (1989). Where the administrator has such discretion, the more deferential arbitrary and capricious standard applies. Id.

A. Grant of Discretion

The Policy at issue in this case does not contain an explicit grant of discretionary authority to interpret the terms of the Policy; however, this does not end the inquiry. The Third Circuit has observed that "a plan's grant of discretion can either be expressed or implied." Heasley v. Belden & Blake

Corp., 2 F.3d 1249, 1254 (3d Cir. 1993) (citing Luby v. Teamsters Health, Welfare, and Pension Trust Funds, 944 F.2d 1176, 1180 (3d Cir. 1991)). The language of a plan may impliedly confer upon its administrator the discretion to make benefit eligibility determinations such that the arbitrary and capricious standard applies. See Nazay v. Miller, 949 F.2d 1323, 1335 (3d Cir. 1991) (finding discretion based on authority to "interpret and construe provisions . . . determine eligibility . . . make and enforce rules . . . decide questions . . ."). In this case, Reliance Standard urges that, because the Policy states that benefits will be paid if the beneficiary "submits satisfactory proof of Total Disability to us," the Policy allocates to Reliance Standard discretionary authority, and so warrants arbitrary and capricious review.

A policy that requires proof of eligibility satisfactory to the administrator has been held to vest an administrator with sufficient discretion to justify the more deferential arbitrary and capricious standard. See, e.g., Miller v. Metropolitan Life Ins. Co., 925 F.2d 979, 983-84 (6th Cir. 1991) (finding arbitrary and capricious standard applied where disability determined "on the basis of medical evidence satisfactory to the Insurance Company"); Donato v. Metropolitan Life Ins. Co., 19 F.3d 375, 379 (7th Cir. 1994) (finding arbitrary and capricious standard applied where policy stated "[a]ll proof must be satisfactory to

us."); Scarinci v. Ciccia, 880 F. Supp. 359, 364 (E.D. Pa. 1995) (finding arbitrary and capricious standard applied where policy required employee to "furnish certification satisfactory to the Company of disability").

Here, the policy conditions the receipt of benefits on the claimant's providing "satisfactory proof of a Total Disability to us" where us refers to Reliance Standard. Ex. A at 8.0. Thus, it does not specify to whom the proof of disability must be satisfactory. Courts have differed on whether policies with language the same as this Policy reserve discretion for the plan administrator.⁴ Cf. Yeager v. Reliance Standard Life Ins. Co., 88 F.3d 376, 381 (6th Cir. 1996) ("It would not be rational to think that the proof would be required to be satisfactory to anyone other than defendant Reliance. . . . Therefore, we conclude that the Plan language granted the administrator discretion to determine eligibility for benefits."), with Irvin v. First Reliance Standard Life Ins. Co., No. 96 Civ. 921, 1997 WL 401813, at *8 n.4 (S.D.N.Y. July 16, 1997) ("The term

⁴Courts also have found the words "due proof" or simply "proof" to convey discretionary authority. See, e.g., Patterson v. Caterpillar, Inc., 70 F.3d 503, 505 (7th Cir. 1995) ("benefits will be payable only upon receipt by the Insurance Carrier or Company of such notice and such due proof, as shall be from time to time required, of such disability"); Bollenbacher v. Helena Chemical Co., 926 F. Supp. 781, 786 (N.D. Ind. 1996) ("benefits will be paid '[w]hen the Company receives proof that the individual is disabled due to sickness or injury and requires regular attendance of a physician'").

'satisfactory' alone does not indicate to whom the proof must be satisfactory, and the plain language of the Policy precludes a reading of the phrase 'to us' as modifying 'satisfactory.');" see also Lynd v. Reliance Standard Life Ins. Co., 94 F.3d 979, 985 (5th Cir. 1996) ("At most, if at all, this provision vests in Reliance some discretion in determining whether the 'proof of the Total Disability' was 'satisfactory.'").

The Sixth Circuit, sitting en banc, recently analyzed whether, in the absence of explicit contractual language requiring the proof of disability to be satisfactory to the insurer or plan administrator, a plan could still constitute a clear grant of discretion. Perez, Jr. v. Aetna Life Ins. Co., --- F.3d ----, No. 95-1111, 1998 WL 347611, at *5 (6th Cir. Jul. 1, 1998). It concluded that it did based on the plain meaning of the provision giving the insurance company the "right to require as part of the proof of claim satisfactory evidence." Id. at *5-6. In so finding, the Sixth Circuit reasoned that:

the right to require as part of the proof of claim satisfactory evidence means, semantically, that the evidence must be satisfactory to [the insurance company], the only named party with the right to require such evidence. It naturally follows that [the insurance company], the receiver of the evidence, would review that evidence to determine if it constitutes satisfactory proof of total disability. It is simply implausible to think that [the insurance company] would merely hold the evidence as a safekeeper or depository for a third party unnamed in the contract to review in making benefits determinations.

Id. at *6 (internal quotations omitted). The Sixth Circuit

concluded that the Plan clearly granted discretion to the insurance company because, "under the only reasonable interpretation of the language," the insurance company retained the authority to determine whether the submitted proof of disability was satisfactory. I find this reasoning persuasive here. Given this reading, the Plan has given Reliance Standard discretion to determine the eligibility of LTD claimants. In light of this reading of the phrase "satisfactory proof" and the Third Circuit's allowance of implied grants of discretion, I find that the terms of the Policy confer discretionary authority upon Reliance Standard to determine eligibility for LTD benefits.⁵ Accordingly, the standard of arbitrary and capricious governs the review of Reliance Standard's denial of Ms. Sciarra's LTD benefits claim.⁶

B. Conflict of Interest

Ms. Sciarra argues, however, that Reliance Standard's

⁵In addition, Ms. Sciarra has not contended that Reliance Standard did not have discretion under the plan. Rather, plaintiff bases her central argument on defendant's alleged conflict of interest.

⁶Even under a de novo review, the result in the present case would be the same. There is substantial evidence, or rather a lack thereof, in the record to support Reliance Standard's determination that Ms. Sciarra failed to satisfy her burden of providing proof to demonstrate that she was unable to perform the material duties of her job.

decision should be reviewed under a heightened standard because it has a "conflict of interest" given its dual role as both the Plan's decisionmaker and the insurer. Under the case law of the Third Circuit, Ms. Sciarra bears the burden of establishing a conflict of interest that would factor into this court's review of Reliance Standard's decision. See Kotrosits v. GATX Corp. Non-Contributory Pension Plan for Salaried Employees, 970 F.2d 1165, 1173 (3d Cir. 1992) ("Where the sponsor of a Plan reserves for the Plan administrators the discretion to interpret the Plan, anyone urging that a court disregard that reservation has the burden of showing some reason to believe the exercise of discretion has been tainted."). Plaintiff submits that this court should, instead, conduct a de novo review of the decision denying her disability insurance benefits. She argues that the arbitrary and capricious standard should never be applied in the context of employee benefit plans when the trustee making the benefit awards decision is also the payor of the benefits.

The Third Circuit has not squarely addressed whether a conflict of interest arises when an insurance company shares the dual role of ERISA fiduciary and the company which wrote the policy that supports the Plan.⁷ Other judges in this circuit

⁷In a case similar to the one at bar, the Court of Appeals for the Third Circuit recently issued an unpublished opinion applying the arbitrary and capricious standard of review but taking into account the potential conflict of interest of the insurer and decisionmaker. Pinto v. Reliance Standard Life Ins.

facing the same issue have followed the teachings of the Eleventh Circuit in Brown v. Blue Cross and Blue Shield of Alabama, Inc., 898 F.2d 1556 (11th Cir. 1990). See, e.g., Irvin v. Metropolitan Life Ins. Co., No. Civ. A. 96-2909, 1998 WL 401690, (E.D. Pa. June 30, 1998) (applying Brown); Morris v. Paul Revere Ins. Group, 986 F. Supp. 872 (D.N.J. 1997) (same); Perri v. Reliance Standard Life Ins. Co., No. Civ. A. 97-1369, 1997 WL 476386 (E.D. Pa., Aug. 19, 1997) (same); Rizzo v. Paul Revere Ins. Group, 925 F. Supp. 302 (D.N.J. 1996), aff'd, 111 F.3d 127 (3d Cir. 1997) (table) (same). In Brown, the Eleventh Circuit found that the insurance company's role as fiduciary was in perpetual conflict with its profit-making role as a business, stating:

Decisions made by the issuing company on behalf of a plan based on a contract of insurance . . . inherently implicate the hobgoblin of self-interest. Adverse benefits determinations save considerable sums that are returned to the fiduciary's corporate coffers. The presumption that the fiduciary is acting for the future stability of the fund cannot be entertained.

Brown, 898 F.2d at 1568; see also Miller, 925 F.2d at 984 (citing

Co., No. 97-5297 (3d Cir. May 28, 1998). However, because this decision is not published, it is not binding in this case according to the Third Circuit's own rules. See Internal Operating Procedures of the United States Court of Appeals for the Third Circuit § 5.8; see also, U.S. v. Flores, 975 F. Supp. 731, 739 (E.D. Pa. 1997) (citing two unpublished opinions of the Third Circuit as instructive, but not binding); Johnakin v. City of Philadelphia, No. Civ. A. 95-1588, 1996 WL 18821, at *6 n.7 (E.D. Pa. Jan. 18, 1996) (noting unpublished Third Circuit opinion on point not binding on district court).

Brown, 898 F.2d at 1561-62) ("Because an insurance company pays out to beneficiaries from its own assets rather than from the assets of a trust, its fiduciary role lies in perpetual conflict with its profit-making role as a business, and the conflict of interest is substantial."). Following this reasoning, I agree with the plaintiff that Reliance Standard's dual role as administrator and insurer of its own plan creates a conflict between its providing benefits to claimants and its own financial status. See Perri v. Reliance Standard Life Ins. Co., No. Civ. A. 97-1369, 1997 WL 476386, at *6 (E.D. Pa. Aug. 19, 1997) ("Reliance Standard's dual role as the Plan's claims administrator and as the insurance company which insures the benefits provided under the Plan certainly creates a genuine or substantial conflict of interest.").

Still, the Eleventh Circuit found that this inherent conflict did not justify adopting a de novo standard. Rather, "the abuse of discretion, or arbitrary and capricious, standard applies to cases such as this one, but the application of the standard is shaped by the circumstances of the inherent conflict of interest." Brown at 1563; see also Miller, 925 F.2d at 984 (citing Brown, 925 F.2d at 1563); Epright v. Environmental Resources Mgt., Inc. Health and Welfare Plan, 81 F.3d 335, 340 (3d Cir. 1996) ("A court may consider conflicts of interest as a factor when deciding if a denial of benefits was arbitrary and

capricious."). Thus, I shall apply the arbitrary and capricious standard, but shall consider the circumstances surrounding the inherent conflict of interest in Reliance Standard's dual roles.

"Under the arbitrary and capricious (or abuse of discretion) standard of review, the district court may overturn a decision of the Plan Administrator only if it is without reason, unsupported by substantial evidence or erroneous as a matter of law."

Abnathya v. Hoffman-La Roche, Inc., 2 F.3d 40, 45 (3d Cir. 1993) (quotations omitted). "This scope of review is narrow, and 'the court is not free to substitute its own judgment for that of the defendants in determining eligibility for plan benefits.'" Id. (quoting Lucash v. Strick Corp., 602 F. Supp. 430, 434 (E.D. Pa. 1984)). Ms. Sciarra maintains that, regardless of the standard of review employed, her long-term disability benefits were wrongfully denied.

III. Discussion

Applying the arbitrary and capricious standard to the facts of this case, and taking into account the insurer's conflict of interest, the court must affirm Reliance Standard's decision to deny Ms. Sciarra LTD benefits. Ms. Sciarra bears the burden of providing medical proof to demonstrate that she qualifies for benefits under the Policy. Reliance Standard determined that Ms. Sciarra had failed to satisfy this burden. I find that Reliance

Standard conducted a thorough review of Ms. Sciarra's claim for LTD benefits and provided cogent reasons why the evidence offered did not satisfy Ms. Sciarra's burden of coming forward with satisfactory proof that she was totally disabled as defined by the Policy, that is, unable to perform the material duties of her regular job.

The record reveals that Reliance Standard applied the proper sections of the Plan and sought and obtained medical records from the medical providers who treated the plaintiff during the Elimination Period, including Southern Chester County Regional Medical Center, Dr. Brearly, Dr. Fridberg, and Dr. Ma. In addition, Ms. Sciarra's claim was reviewed by four persons at varying levels within Reliance Standard, including Jennifer Voisine, her supervisor Sarah Lively, another supervisor Alberta Hendricks, and an in-house nurse, Susan Dioguardi. It is also noteworthy that Reliance Standard sent the plaintiff's medical records for an independent medical peer review to reevaluate the records of the treating physicians. This review confirmed that the medical reports of Ms. Sciarra's treating physicians do not establish that she was totally disabled.

Arguing that it should have been clear by that time that she was not suffering from a gastrointestinal disorder, Ms. Sciarra claims that sending her records to a gastroenterologist shows that the decision to deny benefits was unreasonable. I disagree.

Since the reviewer was to evaluate the records of two gastroenterologists, and since her original claim form described her disability as related to her gall bladder surgery, I do not find that choice to have been unreasonable. Nor did plaintiff choose to see the orthopedist to whom Dr. Brearly referred her, instead going to two gastroenterologists. She cannot now be heard to complain that a gastroenterologist was an improper choice to review these medical records.

Other than the Dr. Fridberg's APS form, there is no evidence in the record that indicates that beginning on January 24, 1994, and continuing for 180 consecutive days thereafter, Ms. Sciarra was unable to perform the material duties of her position at Conrad-Pyle. She underwent a relatively noninvasive form of gall bladder removal surgery and, a few days later, fell outside her home. She has since been examined, tested, and hospitalized; she was treated by a general surgeon, two gastroenterologists, and, according to the plaintiff, also an anesthesiologist and a neurologist. As shown by its December 1994 and January 1995 decision letters, Reliance Standard considered the reports of Dr. Brearly, Dr. Fridberg, and Dr. Ma, the physicians who treated Ms. Sciarra in the Elimination Period. With the exception of the disputed APS from Dr. Fridberg, none of these physicians identified any work limitations or restrictions, expressed any opinions that plaintiff was disabled or stated that she could not

perform the material duties of her regular occupation.⁸ In fact, Dr. Brearly twice noted in early 1994, after her surgery and subsequent fall and hospitalization, that Ms. Sciarra could return to work, although once he gave the caveat "as tolerated." These reports support the defendant's conclusion that Ms. Sciarra did not prove her inability to perform the material duties of her job.

Even though the medical records track a seemingly chronic complaint of abdominal pain, this, in and of itself, does not constitute proof that the plaintiff was disabled during the Elimination Period. See, e.g., Doyle v. Paul Revere Life Ins. Co., 144 F.3d 181, 185-86 (1st Cir. 1998) (concluding evidence concerning claimant's pain was not so overwhelming as to compel finding of total disability where medical reports acknowledged claimant's complaints of pain but expressed no opinion as to whether pain symptoms were sufficiently severe to prevent him from returning to work and one examiner found presently existing

⁸The APS from Dr. Fridberg is somewhat inconsistent with the rest of his medical records. First, it says that Dr. Fridberg found the plaintiff disabled before he first examined her. The only objective ailment on the APS, the blood hemocult, was noted by Dr. Fridberg as needing to be retested under controlled conditions for a more accurate assessment. Ex. B at 288. Aside from this form, Dr. Fridberg did not note any limitations or restrictions for work, nor did he state that Ms. Sciarra was disabled. Given these conflicts, the APS form does not definitively show that Ms. Sciarra qualified as being unable to perform the material duties of her occupation during the Elimination Period.

sedentary work capacity despite pain limitations); Paramore v. Delta Air Lines, Inc., 129 F.3d 1446, 1451 (11th Cir. 1997) (finding denial of LTD benefits reasonable given conflicting information from doctors indicating that employee was capable of sedentary work and also that her pain disorder required LTD disability); Yeager, 88 F.3d at 381-82 (holding denial of LTD benefits was not arbitrary and capricious, where plan "required plaintiff to submit satisfactory proof that she could not perform the material duties of her regular occupation, and defendant had received no medical evidence of any physical condition or anatomic abnormality that would cause plaintiff to be totally disabled," although "no doctor doubted the veracity of plaintiff's subjective complaints of fatigue and joint pain"). Numerous tests, as described above, had normal results. Moreover, her treating physicians, other than Dr. Milholland, did not set forth a work limitation or restriction based upon these subjective complaints. Dr. Milholland's report of November 15, 1994 stated that Ms. Sciarra could not work because her "attention will be focused on her pain." I note that after this finding of total disability, Ms. Sciarra did not receive treatment from Dr. Milholland, or any other physician, during the following year. Thus, even considering this report, it is reasonable to find that this report, when compared with the independent medical review and the reports by Ms. Sciarra's other

treating physicians, does not adequately prove continued disability as required by the Policy.

Based on this record, I cannot say that the decision denying benefits was clearly arbitrary or capricious, an abuse of discretion, without reason, unsupported by substantial evidence, or erroneous as a matter of law. Consequently, even after considering Reliance Standards's conflict of interest, I conclude that its decision is supported by substantial evidence in the record, and I shall affirm Reliance Standard's decision to deny Ms. Sciarra LTD benefits. For all of the foregoing reasons, I hereby find in favor of defendant Reliance Standard and against plaintiff E. Maria Sciarra.

