

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

<u>JOHN TAYLOR, SR.,</u>	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 07cv12049 NG
	)	
METROPOLITAN LIFE INSURANCE	)	
COMPANY,	)	
<u>Defendant.</u>	)	
<u>GERTNER, D.J.:</u>	)	

**MEMORANDUM AND ORDER RE: MOTIONS FOR JUDGMENT ON THE RECORD**

March 31, 2009

**I. INTRODUCTION**

Plaintiff John M. Taylor, Sr. (“Taylor”) brings suit under the Employee Retirement Income Security Act of 1974 (“ERISA”), 29 U.S.C. § 1001 et seq., to challenge the denial of his application for Long Term Disability (“LTD”) benefits by his insurer, Metropolitan Life Insurance Company (“MetLife”). He alleges that low back pain and an anxiety disorder have rendered him disabled under the terms of his insurer’s Long Term Disability Plan (“the Plan”) and that MetLife’s denial of his claim was therefore arbitrary and capricious and not supported by substantial evidence. MetLife responds that it has discretionary authority under the Plan to make determinations in regard to claim applications and that in Taylor’s case it reasonably determined on the basis of substantial evidence that Taylor was not entitled to Plan benefits. Since MetLife is a plan administrator with discretionary authority under ERISA, its determination must be upheld by this Court unless it is found to be arbitrary and capricious.

**II. FACTS**

Taylor was employed as the Technical Supervisor of the Machine Shop for the Chemistry and Geological Sciences Departments of Brown University in Providence, Rhode Island, from

1975 to 2004. Claim File at 138, 146.<sup>1</sup> His responsibilities included managing and stocking the Shop; designing, fabricating, and repairing instruments and components used in the Shop; training and supervising students in machining; estimating costs of needed materials; and ordering materials and equipment. Id. at 148-150. The position required a variety of skills, such as “high-vacuum welding, silver [sic] soldering, vapor de-greasing, acid polishing, micro-drilling and precision plasma cutting,” as well as considerable interpersonal skills in balancing the needs of the many researchers who relied on his services. Id. at 150. He also supervised instrument makers for the Chemistry and Geological Sciences Departments and provided welding services as needed to the faculty from the University of Rhode Island and the Rhode Island School of Design. Id. at 151, 148. His position was described as having “heavy exertion level job duties,” Id. at 50, and being a “heavy occupation.” Id. at 4.

Taylor suffered from problems with his back and an anxiety disorder and initially sought treatment for these conditions in 2002. Id. at 152, 162. On March 10, 2004, Taylor stopped working and on July 4, 2004, he submitted an application for benefits under Brown University’s Long Term Disability Plan to MetLife. Id. at 146, 162-63. Under this Plan, MetLife acts as both the claims fiduciary (meaning it is responsible for processing, reviewing, and deciding claims for benefits) and the insurer (meaning it disburses payment of such benefits). Id. at 174, 187-88, 194-96. The Plan gives MetLife Plan administrators and other Plan fiduciaries discretionary authority to interpret the terms of the Plan and determine eligibility for and entitlement to Plan benefits according to the terms of the Plan. Id. at 196. While ERISA gives the federal courts the power

---

<sup>1</sup> The Claim File is Bates stamped “MET” followed by five digits. For the sake of simplicity, I omit the Bates reference and superfluous digits throughout the opinion.

to review determinations made by MetLife's Plan administrators, see 29 U.S.C. § 1132(e), it also mandates that, when a Plan has discretionary authority, the standard of review requires the Court to uphold the Plan's decision except where it is shown to have been "arbitrary and capricious." Claim File at 196.

To be entitled to LTD benefits, Taylor must meet the Plan's definition of being "disabled." The Plan's definition for "Disability" or "Disabled" is divided into two phases, with a lower standard for meeting the definition during the first 60 months after the date of disability (the "primary benefit period") and a higher standard for meeting the definition of "disabled" after the first 60 months (the "secondary benefit period"). Specifically, in order to be considered disabled within the primary benefit period, Taylor must be "unable to perform each of the material duties of [his] regular job." Id. at 176. To be considered disabled during the secondary benefit period, Taylor must either (1) be "unable to perform each of the material duties of any gainful work or service for which [he is] reasonably qualified taking into consideration [his] training, education, experience and past earnings" (emphasis added) OR (2) be "performing at least one of the material duties of [his] job or any other gainful work or services on a part-time or full-time basis" AND earning "at least 20% less per month than [his] Indexed Basic Monthly Earnings" due to his disability. Id.

Taylor maintains that the documentation he submitted in support of his application establishes a "prima facie case of compensable disability" under this primary benefit period definition. Pl.'s Mem. J. on Record at 1 (document # 21). Taylor's primary care physician, Dr. Martin Miner, M.D. ("Dr. Miner") diagnosed Taylor with anxiety, low back pain, and spinal

stenosis<sup>2</sup> on July 9, 2004, and referred MetLife to an attached MRI and x-ray for objective findings. Claim File at 152. He noted Taylor’s subjective symptoms to be “agitation, tearful, insomnia, back pain—chronic, sadness” and put Taylor in the lowest functionality category on a psychological functions scale, describing him as having “significant loss of psychological, physiological, personal and social adjustment (severe limitations).” Id. at 153. Taylor’s chiropractor, Dr. Laura T. Bomback, D.C. (“Dr. Bomback”), diagnosed Taylor as suffering from cervical and lumbar intervertebral disk displacement with accompanying objective findings of bilateral sacroiliac fixations<sup>3</sup> with pelvic torsion, subluxations<sup>4</sup> of lumbar and cervical spine, and decreased C6 and C7 dermatomes<sup>5</sup> as well as subjective symptoms of neck pain, hand numbness, and lower back pain. Id. at 96. Both doctors advised Taylor not to return to work, and Dr. Bomback stated that Taylor was only capable of working 2 to 4 hours per day. Id. at 153, 104.

In addition to the Attending Physician statements from Dr. Miner on July 9, 2004, and Dr. Bomback on July 27, 2004, Taylor also submitted the following documents in support of his application for LTD benefits:

---

<sup>2</sup> Spinal stenosis is the narrowing of the spinal canal caused by excessive bone growth, thickening of tissue in the canal, a herniated disc, or all three. The narrowing can squeeze and irritate the spinal cord itself or the spinal nerve roots. Symptoms most often occur in people older than age 50, and can cause pain, numbness, or weakness in the neck, arms, legs, feet, or buttocks. Mr. Taylor is 61 years old.

<sup>3</sup> The sacroiliac joint is located in the low back and connects the sacrum (the triangular bone at the bottom of the spine) with the pelvis (the iliac crest). It lies between the spine and hip joint. When there is excessive stress on the lumbar intervertebrate discs, the sacroiliac joints can create fixations which limit movement.

<sup>4</sup> Subluxation is partial dislocation.

<sup>5</sup> A dermatome is the area of skin supplied by nerves originating from a single spinal nerve root. In this case, the C6 and C7 spinal nerve roots innervate the wrist and hand.

- (1) Dr. Miner's office notes from January 28, 2004, through July 2, 2004, Claim File at 66-72;
- (2) Dr. Bomback's office notes from May 10, 2004, through July 29, 2004, Id. at 98-99;
- (3) chest radiological report from July 14, 2004, Id. at 77;
- (4) cervical spine radiological report from October 23, 2002, Id. at 101;
- (5) lumbar spine MRI report from August 2, 2004, Id. at 73-76;
- (6) cervical spine MRI report from November 20, 2002, Id. at 78-79;
- (7) lab reports from July 2, 2004, Id. at 80, and June 15, 2004, Id. at 81-82;
- (8) pulmonary function test from July 14, 2004, Id. at 83-89;
- (9) an echocardiogram (2-D Doppler cardiac) report from July 2, 2004, Id. at 90-91;
- (10) a personal profile dated July 26, 2004, Id. at 112-18;
- (11) an employee statement dated July 3, 2004, Id. at 162-164;
- (12) a receipt dated May 7, 2004, acknowledging Taylor's application for Social Security Disability Insurance (SSDI) benefits, Id. at 120.

Additionally, Colleen Day, a Senior Leave Specialist in the Benefits Office at Brown University submitted a job description for Taylor's position at Brown as well as an employer statement regarding his LTD application with MetLife. Id. at 145-51.

The most significant objective findings of these reports are that Taylor had, in his cervical spine,<sup>6</sup> broad intervertebral disc bulges leading to narrowing of the neural foramen<sup>7</sup> which the radiological report qualifies as mild to moderate stenosis, Id. at 101, while the MRI report qualifies the stenosis as mild to severe. Id. at 79. He also has a tear in the annulus<sup>8</sup> of one of his

---

<sup>6</sup> The cervical spine consists of the first seven vertebrae of the spine beginning at the base of the skull.

<sup>7</sup> The foramen is the opening in the spinal column through which spinal nerves pass.

<sup>8</sup> The annulus is a layer of fibrous tissue surrounding the soft, gel-like center of the intervertebral disc.

cervical discs. Id. In his lumbar spine,<sup>9</sup> Taylor has two herniated discs and spondylosis.<sup>10</sup> Id. at 75. Taylor is currently taking thirteen different medications daily. Id. at 124.

There are a number of other test results which are less significant. Taylor had a normal chest x-ray, Id. at 77, levels of testosterone slightly higher than the normal range, Id. at 82, and an echocardiogram revealing basically normal ventricle size and function and normal valves “except for aortic sclerosis.” Id. at 90.

While Dr. Miner noted in his statement that Taylor had a Class 2 (Slight Limitation) cardiac functional capacity, Id. at 153, and the echocardiogram revealed some aortic sclerosis, Id. at 90, Taylor did not seek LTD benefits on the basis of a heart condition. Id. at 3. Taylor also alleges he has sleep apnea, Id. at 114, has been diagnosed with dyspnea,<sup>11</sup> Id. at 86, and his pulmonary test results were “consistent with a patient with a form of COPD” (Chronic Obstructive Pulmonary Disease), Id. at 83, but Taylor is not seeking LTD benefits on the basis of a pulmonary condition. Taylor apparently submitted all the recent medical records he had for himself, even though they did not all relate to the two primary conditions forming the basis of his LTD application – his back condition and anxiety disorder.

Based on the evidence Taylor had submitted, MetLife determined that he was not “disabled” under the definition within the primary benefit period of the Plan, denied his claim, and sent him a letter on September 8, 2004, to this effect. Id. at 59-61. This letter acknowledged the findings of Dr. Bomback but noted that physical therapy in the form of chiropractic adjustments

---

<sup>9</sup> The lumbar spine is the part of the spine in the lower back.

<sup>10</sup> Spondylosis is degenerative arthritis of the spinal vertebra and related tissue.

<sup>11</sup> Dyspnea, or shortness of breath, is perceived to be difficulty of breathing or painful breathing.

restored feeling to Taylor's hands by about fifty percent, reduced his neck pain, and improved his segmental function. Id. at 59-60. The letter also acknowledged the findings of herniation, disc bulge, and spondylosis of the lumbar MRI from July 31, 2004, but stated Taylor did not show "cord impingement or compression." Id. at 60. With regards to Dr. Miner's office notes, the letter stated that while Dr. Miner noted back tenderness at lumbar/spinal L4-5 (the location of one of the disc herniations), Taylor's "deep tendon reflexes were within normal limits." Id. The letter also stated that while Dr. Miner indicated some diminished strength in Taylor's right-sided lower back, Dr. Miner failed to note the severity of that symptom and did not document any "gait or station difficulties or range of motion limitations." Id. Summing up the findings regarding Taylor's back condition, MetLife said that the findings from the MRI, "without significant [corollary] physical exam findings" did not provide "evidence of a physical impairment." Id. at 60. With regards to Taylor's psychiatric condition, MetLife's psychiatric clinical specialist concluded that Dr. Miner's office notes did not support a finding of functional impairment because they consisted only of general symptoms and reactions to medications. Id. at 60.

It appears that MetLife did not review the cervical spine radiological report from October 23, 2002, or the cervical spine MRI from November 20, 2002, that Taylor submitted in support of his claim. This is significant because it was in Taylor's cervical spine that the disc bulges, stenosis, and annular tear were found. MetLife's letter implies that Taylor had no range of motion limitations, and while it is true that Dr. Miner's notes did not document any such limitations, Dr. Bombback's notes did state Taylor's "cervical range of motion was restricted with left and right rotation as well as right lateral flexion." Id. at 98.

There were serious deficiencies in Dr. Miner's "Attending Physician" Statement ("AP"). Id. at 152-153. Given the differences in handwriting between the AP and Dr. Miner's office notes, it appears the AP was completed by an assistant who failed to fill out significant portions of the AP. Dr. Miner left completely blank the section marked "Physical Capabilities," meaning that he failed to state how many hours Taylor was capable of sitting, standing or walking; failed to attest to Taylor's ability to climb, bend, reach above shoulder level, or operate a motor vehicle; failed to evaluate Taylor's ability to lift or carry objects of varying weight; and failed to attest to Taylor's ability to perform repetitively fine finger movements, eye/hand movements, or pushing and pulling. Id. Even more significantly, he failed to answer the questions "In your opinion, why is patient unable to perform job duties?" and "Do you expect improvement in any area? (if so please comment and give dates/timeframes)." Id. He failed to explain, after prompts on the form, why he had advised Taylor not to return to work, how many hours per day he believed Taylor capable of working, and what work/activity restrictions he believed were applicable to Taylor. Id. With regard to Taylor's alleged anxiety disorder, Dr. Miner failed to remark upon his decision to put Taylor in the lowest functionality category on a psychological functions scale. Id. In spite of the seriousness of this estimation, he did not indicate that he was referring Taylor for psychological counseling or otherwise treating him for anxiety, but did prescribe Taylor Clonazepam, Lexapro, and Risperdal. Id. at 113, 152-153. There is also an inconsistency in the form to the extent that, on the first page, "PT" (i.e. physical therapy) is listed as part of Taylor's current and recommended treatment plan, while on the second page, where the form asks whether the physician suggests that the patient become involved in physical therapy and whether this was discussed with the patient, Dr. Miner marked "no." Id. Finally, this one incomplete form, with

virtually illegible office notes from January 28, 2004, to July 23, 2004, was all that Dr. Miner submitted in support of his patient's application. In sum, Dr. Miner's failure to diligently fill out the AP, adequately document his patient's condition, or relate Taylor's condition to his ability to perform his job is extremely prejudicial to Taylor's claim.

It was apparently after this initial denial that Taylor retained counsel, because on March 16, 2005, he submitted an Appeal Request Form to MetLife via an attorney, Daniel Hendrie ("Hendrie"). Id. at 57-58. This initial appeal contained only three sentences advising that Taylor had been notified via telephone that he was approved for SSDI benefits and promising to forward "all documents" upon receipt of written confirmation from the Social Security Administration ("SSA"). Id. The appeal contained no other evidence. Even though the SSA sent Taylor the SSDI award notice on March 14, 2005, Hendrie did not follow up with MetLife by sending in the notice. MetLife sent him a letter on July 12, 2005, informing him that any additional information in connection with Taylor's appeal should be submitted within 30 days, e.g., by August 11, 2005. Id. at 55. Hendrie did not submit the SSDI notice within the 30-day period, and the appeal review began on August 12, 2005. Id. at 6.

On August 18, 2005, Taylor called MetLife to check on the status of his claim and was informed that Hendrie had not yet submitted the SSDI notice. Id. at 7. He told the MetLife representative he would have Hendrie fax a copy of the document. Id. On August 25, 2005, MetLife referred the appeal for an Independent Physician Consultant Review with Dr. Joseph Monkofsky, MD ("Dr. Monkofsky"). Id. at 49. Dr. Monkofsky returned his Review to MetLife on August 31, 2005, and on that date MetLife decided to issue its upholding of the initial denial of Taylor's claim. Id. at 44-45. MetLife did not receive the SSDI Notice of Award from Hendrie

until September 2, 2005, and therefore it did not form part of the claim record at the time of the final decision on the claim. Id. at 8. This notice did not, however, contain specific findings by the SSA as to Taylor's disability, but rather standard form language regarding payment schedules and amounts. Id. at 52-53.

Unlike the initial denial, Dr. Monkofsky's review included all the evidence submitted by Taylor, see supra, including the diagnosis of Chronic Obstructive Pulmonary Disease in the pulmonary function test. Claim File at 47. Dr. Monkofsky is a board-certified physician who specializes in occupational medicine. Id. at 48. Dr. Monkofsky found that there was "insufficient sequential objective clinical examination evidence to corroborate the clinical status and correlate the clinical findings with the imaging reports provided." Id. at 47. In essence, Dr. Monkofsky found that Dr. Miner's and Dr. Bomback's notes from their clinical examinations of Taylor did not sufficiently corroborate the results from Taylor's MRIs and radiological reports. He explained: "it is well known that the existence of positive findings on x-ray/MRI may or may not be clinically significant and the two must be correlated in a timely fashion to clearly establish the clinical picture." Id. In this case, he said, "there is alarming[ly] little objective clinical information in the file to provide a reasonably accurate overall clinical picture." Id. at 46. He went on to state that "absent the correlation, and [sic] objective clinical judgment/ assessment cannot be made." Id. at 47. Thus, in Dr. Monkofsky's view, because of this lack of objective clinical evidence, an ongoing need for "specific restrictions, limitations and/or inability to function" was not established. Id. at 48.

Based on its review of Taylor's file, including Dr. Monkofsky's report – but not the SSDI Notice of Award – MetLife decided to uphold its original denial of Taylor's claim. Id. at 44-45.

In a letter to Taylor dated August 31, 2005, MetLife stated:

There are minimal findings to substantiate the severity of a conditions or conditions(s) that would result in functional impairment preventing occupational functioning as of March 11, 2004 and ongoing. Based on the limited medical documentation submitted, we are unable to conclude by objective clinical evidence that Mr. Taylor is rendered unable to perform each of the material duties of his regular job during the time period in question.

Id. at 45. This letter further informed Taylor that “this review constitutes MetLife's final determination on Appeal in accordance with the Plan and federal law.” Id.

Hendrie submitted additional medical records from Dr. Miner's office to MetLife with a letter dated February 8, 2006. Id. at 18-43. Because Taylor had already exhausted his administrative appeal five months earlier, MetLife had no obligation to review these materials. MetLife did, however, review these materials and concluded they did not provide “compelling evidence of functional impairment, therefore the original appeal determination rendered on August 31, 2005 is unchanged.” Id. at 9. These additional records included office notes for Dr. Miner from October 29, 2004, to October 31, 2005, Id. at 19-27; a chest x-ray from January 12, 2005, Id. at 30-31; a carotid ultrasound report from February 3, 2005, Id. at 28-29; and laboratory reports dating from February 4, 2005, to October 19, 2005, Id. at 32-43. Dr. Miner's notes, which were virtually illegible, mainly documented adjustments to medication amounts and general observations as to Taylor's condition. Id. at 19-27. The chest x-ray was normal with no evidence of pulmonary embolism, Id. at 30-31, and the carotid ultrasound showed minimal plaquing of the

right and left carotid bulb without stenosis. Id. at 28-29. The lab reports show mildly varying levels of testosterone and glucose. Id. at 32-43.

Taylor has not returned to his previous job or any other job, and on July 11, 2007, he filed suit against MetLife in Massachusetts Superior Court, Bristol County, which MetLife removed to this Court. MetLife filed for Judgment on the Record on June 2, 2008, and Taylor filed for Judgment on the Record on June 16, 2008.

### **III. STANDARDS OF REVIEW**

#### **A. Cross Motions for Summary Judgment**

The familiar role of summary judgment is “to pierce the pleadings and to assess the proof in order to see whether there is a genuine need for trial.” Mesnick v. General Elec. Co., 950 F.2d 816, 822 (1st Cir. 1991) (quoting Garside v. Osco Drug, Inc., 895 F.2d 46, 50 (1st Cir.1990)).

The moving party bears the burden of showing that, based on the pleadings, discovery and affidavits, there is “no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56 (c). A genuine issue of material fact exists only when the party opposing summary judgment proffers evidence “such that a reasonable jury could return a verdict for the nonmoving party.” Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247-48 (1986). Once the moving party has satisfied its burden, the burden shifts to the non-moving party to set forth specific facts demonstrating a genuine, triable issue. Celotex Corp. v. Catrett, 477 U.S. 317, 324 (1986).

In cases such as this, which come before the Court on cross-motions for summary judgment, the standard is no different. Adria Int’l Group v. Ferre Dev., Inc., 241 F.3d 103, 107 (1st Cir. 2001).

## **B. District Court Review of ERISA Claims**

Because the focus of the Court's review is a final administrative decision, ERISA denial cases are apt for judgment on the record. Leahy v. Raytheon Co., 315 F.3d 11, 17-18 (1st Cir. 2002). The nonmoving party is not entitled to the usual inferences in its favor in this ERISA administrative review context. Orndorf v. Paul Revere Life Ins. Co., 404 F.3d 510, 517 (1st Cir. 2005); Liston v. Unum Corp. Officer Severance Plan, 330 F.3d 19, 24 (1st Cir. 2003).

Taylor, as a participant in an ERISA-governed plan, can bring a civil action "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. ERISA § 502(a)(1)(B), 29 U.S.C. § 1132(a)(1)(B). A district court reviews ERISA claims arising under this provision de novo unless the benefits plan in question confers upon the administrator "discretionary authority to determine eligibility for benefits or to construe the terms of the plan." Firestone Tire & Rubber Co. v. Bruch, 489 U.S. 101, 115 (1989); Recupero v. New England Tel. & Tel. Co., 118 F.3d 820, 823-28 (1st Cir. 1997). When a benefits plan clearly grants discretionary authority to the plan administrator to make interpretive or coverage decisions -- in essence allowing the administrator to interpret terms such as "disabled," -- the Firestone rule has been interpreted to mean that the administrator's decisions will be reviewed deferentially under the arbitrary and capricious standard of review. See Rodriguez-Abreu v. Chase Manhattan Bank, N.A., 986 F.2d 580, 583 (1st Cir. 1993); Diaz v. Seafarers International Union, 13 F.3d 454, 456 (1st Cir. 1994). In this case, the Brown University Group Long Term Disability Plan clearly grants MetLife such discretionary authority over Taylor's claim. Claim File at 196. This deferential standard, however, does not render federal court review a mere rubber stamp of the administrator's

opinion. Jones v. Metropolitan Life Ins. Co., 385 F.3d 654, 661 (6th Cir. 2004). Under this standard, a decision to deny benefits to a beneficiary will be upheld if it was “reasoned and supported by substantial evidence in the record.” Doyle v. Paul Revere Life Ins. Co., 144 F.3d 181, 184 (1st Cir.1998). Evidence is considered substantial when it is “reasonably sufficient to support a conclusion.” Id.

#### **IV. ANALYSIS**

##### **A. Anxiety Disorder**

There are two potential bases for Taylor’s LTD claim: His anxiety disorder and his back condition. The anxiety disorder can be disposed of quickly, because there is virtually no evidence in Taylor’s record as to a psychiatric disability. While Dr. Miner’s primary diagnosis of Taylor was anxiety and he put Taylor in the lowest category on a psychological functions scale, he did not refer Taylor to psychological counseling. Claim File at 152-3. Dr. Miner is a family practitioner and not a psychiatrist. Id. at 154. Furthermore, Taylor does not want to be treated by a psychiatrist and after being referred to one, declined to be seen. Id. at 3. There is no other evidence in the file regarding Taylor’s psychiatric condition, and it was reasonable for MetLife to deny his LTD claim on this basis given the lack of substantial evidence in the record.

##### **B. Back Condition**

MetLife’s treatment of Taylor’s back condition, however, was unreasonable and not based on substantial evidence. MetLife’s initial denial of Taylor’s application was based on Case Manager Nancy Blase’s estimation, after reviewing Taylor’s file, as to whether he was unable to perform each of the material duties of his regular job. This denial was arbitrary and capricious because it erroneously claimed that there were “no clinical findings . . . to support a functional

impairment” preventing Taylor from working. Id. at 60. But Taylor had two treating physicians who advised him not to return to work, diagnosed him with low back pain and intervertebrate disc displacement, and noted objective clinical findings in MRIs and x-rays showing a number of problems with his spine (including narrowing of the spinal canal, disc herniation and bulging, and arthritis, as well as spinal dislocation.) While it is not the role of the court to gauge the severity of these conditions, at the very least it is patently untrue that, as MetLife claims in its denial letter, Taylor presented “no clinical findings” to support a functional impairment. Taylor has clearly presented objective evidence of significant spinal conditions. While these conditions might not be severe enough to render him disabled under the meaning of the Plan, MetLife has not explained why Taylor’s evidence is not sufficient proof of disability or what would be considered “severe enough” to meet the definition.

In its denial letter of September 8, 2004, MetLife offers a series of observations on some of the evidence that Taylor submitted in support of his claim, but never reconciles the observations supporting its position with the evidence contrary to its position. For example, MetLife acknowledges that the July 31, 2004, Lumbar MRI showed Disc Herniation at L4-5 and acknowledges that Dr. Miner’s physical exam of Taylor on July 23, 2004, noted back tenderness at that same point, lumbar/spinal L4-5, but then flatly states that “deep tendon reflexes were within normal limits.” Id. at 60. The existence of a herniated disc (at L4-5) at the same point where a physical exam revealed tenderness would seem to be objective clinical evidence corroborating a claim of physical impairment. MetLife, instead of addressing this reasonable inference, merely states that “deep tendon reflexes were within normal limits” without explaining how that translates into Taylor not being disabled. MetLife makes a series of such observations,

but never explains their significance or reconciles them with the evidence in support of Taylor's claim.

MetLife also failed to address some significant evidence in Taylor's record, including the MRI and x-ray of Taylor's cervical spine area where he had many problems. The cervical MRI showed (1) at C4/5: mild narrowing of the right neural foramen; (2) at C5/6: moderate narrowing of the right neural foramen and moderate to severe narrowing of the left neural foramen; (3) at C6/7: a broad disc bulge with annular tear and mild spinal canal stenosis with moderate narrowing of both the right and left neural foramen. Id. at 79. The cervical x-ray produced essentially the same results, e.g. "mild stenosis of right C4-5 neuroforamina," "moderate stenosis of left C6-C7 neuroforamina," and "mild degenerative changes at each level extending from C4-C5 through C6-C7." Id. at 101. MetLife does not comment at all upon this evidence, even though it was clearly in the record at the moment of Blase's review of Taylor's file. Furthermore, MetLife does acknowledge Dr. Bomback's objective finding of decreased dermatomes at C6 & C7, and this objective finding, coupled with the stenosis visible in the MRI and x-ray at this same point in Taylor's cervical spine, would seem to be objective evidence corroborating his claims of pain in his neck and numbness in his hands. But MetLife does not address this reasonable inference, either. Given the reasonableness of these and other possible inferences from the evidence submitted by Taylor, which could at least partially establish a disability within the meaning of the Plan, it was arbitrary and capricious of MetLife to make conclusory statements that there were "no clinical findings" to support an impairment and ignore important evidence that Taylor did submit.

After Taylor appealed this initial denial, MetLife referred his case to Dr. Monkofsky for an independent physician review. MetLife unreasonably relied on Dr. Monkofsky's review in upholding its original denial of Taylor's claim and failed to address the most relevant portions of Taylor's record. Dr. Monkofsky does review all the documents in Taylor's file, but his conclusions are brief and unclear. He writes, "there was insufficient sequential objective clinical examination evidence to corroborate the clinical status and correlate the clinical findings with the imaging reports provided." Id. at 47. The Court finds two possible ways of interpreting Dr. Monkofsky's conclusion: either (1) that Taylor failed to sufficiently show the cause of his disability, or (2) that there were insufficient objective findings from physical clinical examinations by Dr. Miner and Dr. Bomback to substantiate their diagnoses of him. Either interpretation is unreasonable. Taylor is not required to show the exact cause of his functional limitations, only that he is so impaired that he is unable to perform each of the regular material duties of his job. Thus, if his record demonstrates that he's not capable of performing his job, he is not required to show the exact causal chain between his spinal conditions and his functional limitations.

Dr. Monkofsky fails to substantiate the claim that Taylor provided insufficient objective clinical findings to corroborate his clinical status. While he briefly acknowledges the positive findings on Taylor's x-rays and MRIs, he fails to analyze either the objective clinical findings that were present in Taylor's record or the diagnoses of Taylor's treating physicians. He claims there are insufficient objective clinical findings to corroborate Taylor's diagnosis of low back pain, spinal stenosis and intervertebrate disc displacement, but then he fails to comment on documents in the record which specifically note Dr. Bomback's objective findings of bilateral sacroiliac fixations, subluxations of the lumbar and cervical spine, and decreased C6 and C7 dermatomes as

well as the objective findings of MRIs and x-rays (disc bulging, stenosis, annular tear, herniated discs and spondylosis). Dr. Monkofsky fails to comment on these objective findings he claims are missing, fails to explain why they are insufficient to corroborate Taylor's diagnosis, and furthermore fails to analyze why they are insufficient to support a disability claim. It is unreasonable for Dr. Monkofsky to state there is insufficient evidence in the record to establish a disability when he does not even address most of the evidence in the record, much less explain why or how the evidence that is present is insufficient, especially when the objective evidence does seem to corroborate Taylor's diagnosis as well as his subjective symptoms. Moreover, Dr. Monkofsky never specifies what objective evidence he thinks would be sufficient, or presents evidence that Taylor is not disabled – he merely says the record is insufficient to establish the existence of a disability.

Given the cursory nature of Dr. Monkofsky's review, it was arbitrary and capricious to uphold the denial of Taylor's LTD benefits based on his opinion and without addressing the most relevant portions of Taylor's record. In its second denial letter, MetLife references Dr. Monkofsky's review, but does not address the opinions of Taylor's two treating physicians to the effect that he should not return to work. Dr. Bombback states that Taylor cannot return to his previous occupation even on a part-time basis. While MetLife is not required to give deference to treating physicians, *see e.g., Vlass v. Raytheon Employees Disability Trust*, 244 F.3d 27, 30-32 (1st Cir. 2001), *Doyle*, 144 F.3d at 186-87, it is unreasonable to selectively reference that physician's notes and fail to address the sections of her submissions most relevant to the claimant's ability to work. A plan administrator "may not arbitrarily refuse to credit a claimant's

reliable evidence, including the opinions of a treating physician.” Black & Decker Disability Plan v. Nord, 538 U.S. 822, 834 (2003).

### C. **SSDI Benefits**

It bears brief mention that after MetLife’s final decision in Taylor’s case, he was approved for SSDI benefits by the Social Security Administration. Such a determination is not binding on MetLife as a private disability insurer because the criteria for determining SSDI eligibility are substantively different from MetLife’s criteria. Pari-Fasano v. ITT Hartford Life & Acc. Ins. Co., 230 F.3d 415, 420 (1st Cir. 2000). SSDI decisions can be relevant, however, to a private insurer’s determination of eligibility to the extent that the SSA makes specific findings regarding the claimant’s disability. Gannon v. Metropolitan Life Ins. Co., 360 F.3d 211, 215 (1st Cir. 2004). In this case, while the award notice did not explain why the SSA had found Taylor eligible for SSDI benefits, depending on the SSA’s reasoning, the SSDI award could provide some independent evidence of Taylor’s disability. Id.

### V. **CONCLUSION**

Viewing the facts of this case in their totality, John Taylor Sr.'s Motion for Judgment as a Matter of Law (document #20) is **GRANTED**. Metropolitan Life Insurance Company's Motion for Summary Judgment /Judgment on the Record (document #14) is **DENIED**. As the appropriate remedy, I remand the case to the Plan administrator for proceedings consistent with this opinion, including the Plan administrator accepting new evidence for review should any party wish to submit the same. Costs are awarded to Taylor.

**SO ORDERED.**

**Date: March 31, 2009**

*/s/ Nancy Gertner*  
\_\_\_\_\_  
**NANCY GERTNER, U.S.D.C.**