Not Reported in F.Supp.2d, 2003 WL 22722954 (S.D.N.Y.)
(Cite as: 2003 WL 22722954 (S.D.N.Y.))

C
Only the Westlaw citation is currently available.

United States District Court,
S.D. New York.
Anne Michele SCANNELL, Plaintiff,
v.
METROPOLITAN LIFE INSURANCE COMPANY, Defendant.

No. 03 Civ.990 SAS.
Nov. 18, 2003.

Background: Employee sue benefits plan administrator under Employee Retirement Income Security Act (ERISA), alleging wrongful failure to pay long-term disability benefits. Administrator moved for summary judgment.

Holding: The District Court, Scheindlin, J., held that denial of benefits was not arbitrary or capricious.

Motion granted.

West Headnotes

[1] Labor and Employment 231H ⚿687

231H Labor and Employment
231HVII Pension and Benefit Plans
231HVII(K) Actions
231HVII(K)5 Actions to Recover Benefits
231Hk684 Standard and Scope of Review
231Hk687 k. Arbitrary and capricious. Most Cited Cases
(Formerly 296k139, 296k136)

Statement in employee benefit plan's summary plan description, that plan administrator would make final decision on all claims, imparted discretion to administrator, whose decision was thus subject only to arbitrary and capricious standard of review.

[2] Labor and Employment 231H ⚿690

231H Labor and Employment
231HVII Pension and Benefit Plans
231HVII(K) Actions
231HVII(K)5 Actions to Recover Benefits
231Hk684 Standard and Scope of Review
231Hk690 k. Effect of administrator's conflict of interest. Most Cited Cases
(Formerly 296k139)

In determining whether denial of benefits by employee benefits plan administrator was arbitrary and capricious, court would not consider extra-record evidence, absent showing of good cause to look beyond administrative record; though claim administrator was also insurer, there was no evidence that potential conflict of interest ever actually existed. Employee Retirement Income Security Act of 1974, § 502(a)(1)(B), 29 U.S.C.A. § 1132 (a)(1)(B).

[3] Labor and Employment 231H ⚿629(2)

231H Labor and Employment
231HVII Pension and Benefit Plans
231HVII(J) Determination of Benefit Claims by Plan
231Hk627 Evidence in Determination or Review Proceeding
231Hk629 Disability Claims
231Hk629(2) k. Weight and sufficiency. Most Cited Cases
(Formerly 296k126)

Employee benefit plan administrator's determination that sedentary employee's claimed headaches and backache were not disabling was not arbitrary or capricious; administrator was not obliged to accord special deference to treating physician's opinion, could rely on reasonable contrary medical opinions, and could consider fact that employee's subjective complaints were not supported by objective medical evidence. Employee Retirement Income Security Act of 1974, § 502(a)(1)(B), 29

U.S.C.A. § 1132(a)(1)(B).

Robert J. Barsch, New York, New York, for Plaintiff.

Andrew P. Karamouzis, Morgan & d'Arcambal, New York, New York, for Defendant.

OPINION AND ORDER

SCHEINDLIN, J.

*1 Anne Michele Scannell brings this action against the claims administrator of her employee benefits plan, Metropolitan Life Insurance Co. ("MetLife"), for failure to pay long-term disability benefits under the Employee Retirement Income Security Act of 1974 ("ERISA").[FN1] MetLife now moves for summary judgment. For the reasons that follow, the motion is granted.

FN1. 29 U.S.C. § 1001 *et seq.*

I. FACTS

The following facts are undisputed, except where otherwise indicated.

Scannell is a 44–year–old woman who worked as a Vice President and Senior Relationship Manager with Bank of America ("BoA") until November 27, 2001, [FN2] when she took a disability leave due to severe headaches and lower back pain.[FN3]

FN2. *See* Defendant's Local Civil Rule 56.1(a) Statement ("Def. 56.1 Stmt.") ¶ 9; Plaintiff's Local Civil Rule 56.1(b) Statement ("Pl. 56.1 Stmt.") ¶ 1.

FN3. *See* Def. 56.1 Stmt. ¶ 10; Pl. 56.1 Stmt. ¶¶ 1, 4.

According to Dr. Gerald Smallberg, Scannell had suffered occasionally from acute headaches during the past few years.[FN4] But around mid-September 2001, these headaches became an almost daily occurrence.[FN5] As a result, Scannell was referred to Dr. Smallberg, a neurologist, in October 2001. [FN6] While Dr. Smallberg found Scannell's neurological examination "entirely normal," [FN7] "because of the increasing frequency and severity of her headaches that almost appear[ed] to be 'status migrainous,' " he recommended Propranolol , Imitrex, and Esgic.[FN8] Dr. Smallberg also referred Scannell for a magnetic resonance image ("MRI") of her brain, [FN9] which revealed some areas of hypersensitivity, but was otherwise non-conclusive. [FN10] Dr. Smallberg concluded that Scannell suffered from severe migraine headaches. [FN11]

FN4. *See* 10/2/01 Letter to Dr. William Conkright from Dr. Gerald Smallberg, Ex. G to 7/24/03 Affidavit of Laura Sullivan, Business Consultant for MetLife, in Support of MetLife's Motion for Summary Judgment ("Sullivan Aff."), at A00113.

FN5. *See id.*

FN6. *See id.*

FN7. In fact, Dr. Smallberg stated that on "examination, she was a healthy-appearing woman complaining of headache." *Id.*

FN8. *Id.* at A00114.

FN9. *See* Def. 56.1 Stmt. ¶¶ 19–20.

FN10. *See* 11/1/01 Scannell MRI Report, Ex. H to Sullivan Aff., at A00126. According to the report, the MRI "raise[d] the possibility" of several diagnoses, *id.,* but failed to present evidence upon which to draw conclusions. *See id.*

FN11. *See, e.g.,* 4/24/02 Attending Physician Statement (Dr. Gerald Smallberg), Ex. M to Sullivan Aff., at A00152.

Scannell was also referred to and examined by Drs. Stubgen and Lay for the treatment of her headaches. Unlike Dr. Smallberg, Dr. Stubgen noted the absence of evidence of a "migrainous component to the headache." [FN12] He concluded that Scannell

suffered from tension headaches and felt that she might "benefit from a referral to a psychiatrist to deal with stress and anxiety." [FN13] Dr. Lay, a physician with the Headache Institute, did not definitively agree with either Stubgen or Smallberg. Based on her examinations of Scannell, Dr. Lay allegedly stated that Scannell's headaches were more characteristic of migraines than tension headaches. [FN14] But, in Dr. Lay's opinion, Scannell's primary problem was rebound headaches, triggered by the overuse or misuse of pain relievers or analgesics. [FN15]

FN12. 11/12/01 Letter to Dr. William Conkright from Dr. J. Patrick Stubgen, Ex. I to Sullivan Aff., at A00170.

FN13. *Id.* According to Dr. Grant, Scannell's treating pyschiatrist, Scannell also suffers from severe depression (for which she takes medication), leaving her with intense fatigue, and an inability to perform her usual activities at home and at work. *See* 4/22/02 Attending Physician Statement (Dr. H. Michael Grant), Ex. O to Sullivan Aff., at A00158.

FN14. *See* Def. 56.1 Stmt. ¶ 39.

FN15. *See id.*

Scannell's back pain appears to have resulted from a November 28, 2001 spinal tap,[FN16] which was performed to test for the possibility of infectious etiology for her headaches. The spinal tap results came back negative, but the procedure resulted in a " lumbar puncture, with post-spinal headaches, which necessitated an epidural blood patch." [FN17] Over the next few months, Scannell underwent a series of tests for her back pain,[FN18] which revealed no evidence of infection and some degenerative disk disease.

FN16. *See id.* ¶ 24.

FN17. *Id.*

FN18. These tests include: (1) an MRI of Scannell's lumbar spine on December 28, 2001 that revealed a possible right disk herniation, *see* Def. 56.1 Stmt. ¶ 25; 12/28/01 MRI of the Lumbar Spine, Ex. J to Sullivan Aff., at A00127; (2) a second scan of Scannell's lumbar spine revealing mild gaseous degeneration with mild disk bulging, *see* Def. 56.1 Stmt. ¶ 26; 2/6/02 CT Scan of the Lumbar Spine, Ex. J to Sullivan Aff., at A00207; and (3) an isotopic bone scan revealing no abnormalities, *see* Def. 56.1 Stmt. ¶ 27; 2/14/02 Bone Scan, Ex. J to Sullivan Aff., at A00202.

Because of her condition, Scannell allegedly applied for and received New York state disability benefits for the maximum allowable period (six months), from December 5, 2001 to June 4, 2002 . [FN19] On or about April 10, 2002, Scannell submitted a claim form to MetLife,[FN20] seeking benefits from the Long–Term Disability Plan (the "Plan") [FN21] administered and insured by MetLife.[FN22] Under the Plan, "disability" is defined as follows:

FN19. *See* Def. 56.1 Stmt. ¶ 11.

FN20. *See* Long Term Disability Claim Form for Anne M. Scannell, Ex. D to Sullivan Aff.

FN21. It is undisputed by MetLife that the Plan is governed by ERISA. *See* Def. 56.1 Stmt. ¶ 2.

FN22. *See* Pl. 56.1 Stmt. ¶ 4.

***2** "Disability" or "Disabled" means that, due to an Injury or Sickness, you require the Appropriate Care and Treatment of a Doctor unless, in the opinion of a Doctor, future or continued treatment would be of no benefit and:

1. you are unable to perform each of the material duties of your own occupation; and

2. after the first 24 months of benefit payments,

you must also be unable to perform each of the material duties of any gainful work or service for which you are reasonably qualified taking into consideration your training, education, experience and past earnings; or

3. you, while unable to perform all of the material duties of your own occupation on a full-time basis, are:

a. performing at least one of the material duties of your own occupation or any other gainful work or service on a part-time or full-time basis; and

b. earning currently at least 40% less per month than your Indexed Basic Monthly Earnings due to that same Injury or Sickness.[FN23]

FN23. Bank of America Employee Benefit Plan, Ex. A to Sullivan Aff., at A00012–13.

The Plan further provides, under the bold-type heading "Discretionary Authority of Plan Administrator and Other Plan Fiduciaries":

In carrying our their respective responsibilities ... the Plan administrator. and other Plan fiduciaries shall have discretionary authority to interpret the terms of the Plan and to determine eligibility for and entitlement to Plan benefits in accordance with the terms of the Plan.[FN24]

FN24. *Id.* at A00026.

Prior to taking her disability leave, Scannell was also provided with a Summary Plan Description ("SPD") explaining the terms of the Plan.[FN25] The SPD indicates that to receive benefits, employees must file a claim with MetLife, which "makes the final decision on all claims." [FN26]

FN25. *See* Pl. 56.1 Stmt. ¶ 5; Def. 56.1 Stmt. ¶ 6.

FN26. Bank of America Associate Handbook, Ex. A to Affidavit of Anne Michele Scannell in Opposition to Defendant's Motion for Summary Judgment ("Scannell Aff."), at 68. There is some disagreement over which version of the SPD was provided to Scannell. Scannell claims that the "version [she] was issued is not the same as the one annexed to defendant's motion papers." *See* Scannell Aff. ¶ 5. MetLife provided two SPDs—one for NationsBank and one for BoA (2002). *See* NationsBank Associate Handbook, Ex. B to Sullivan Aff.; 2002 Bank of America Associate Handbook, Ex. C to Sullivan Aff. Despite Scannell's assertion to the contrary, the difference between the SPDs is minor. In essence, all three SPDs provide the same language indicating that the final decision as to disability claims rests with the insurance company. *See* Bank of America Associate Handbook at 68; NationsBank Associate Handbook at 13.5–13.6, 13.9; 2002 Bank of America Associate Handbook at 84.

In evaluating Scannell's claim, MetLife first looked at the requirements of her job. According to the description provided by Robin Boyce, a BoA Personnel Analyst,[FN27] Scannell's job was sedentary in nature, requiring her to sit for seven to eight hours per day and to stand or walk one or two hours per day. [FN28] Boyce indicated that Scannell was never required to "climb, twist, reach, bend over, crouch, kneel or balance." [FN29]

FN27. *See* Employee's Job Description, Ex. E to Sullivan Aff.

FN28. *See id.*

FN29. *Id.*

MetLife next obtained and reviewed Scannell's medical records, including the results of all of the MRI and bone scans and the notes and/or records from at least four physicians who had evaluated

Scannell's condition over the preceding year.[FN30] Metlife also asked an independent physician consultant, Dr. Robert Porter, to review and assess these medical records. [FN31] Dr. Porter concluded:

> FN30. Specifically, MetLife alleges that it reviewed: (1) the notes and reports of Dr. Smallberg from October 2, 2001 to April 24, 2002; (2) the Attending Physician's Statement completed by Dr. Smallberg dated April 24, 2002; (3) the MRI results from the November 1, 2001 scan; (4) the MRI results from the December 28, 2001 scan of Scannell's lumbar spine; (5) the results from the February 2002 scan of Scannell's lumbar spine; (6) the results of the February 14, 2002 bone scan; (7) the office notes and intake form of Dr. Lay from March through May of 2002; (8) the November 12, 2001 report of Dr. J. Patrick Stubgen; (9) the office records from Fairfax Physical Therapy and Fitness dated May 1 through May 21 of 2002; (10) the office records of Dr. Bernard Kruger and Dr. William Conkright from October 2000 and September 2001 through January 2002; and (11) the notes, Attending Physician's Statement, and mental status questionnaire of Dr. H. Michael Grant. *See* Def. 56.1 Stmt. ¶ 16.
>
> FN31. *See id.* ¶ 34; 6/13/02 Report of Dr. Robert C. Porter, Independent Physician Consultant for MetLife ("Porter Report"), Ex. P to Sullivan Aff.

She has had headaches for three years and they are of a tension type and not migrainous in nature. She has worked with tension headaches in the past and tension headaches are typically not the type of headaches that are associated with inability to work. Similarly her back pain is not associated with significant pathology that would warrant long term work loss.... It is my opinion that the stress factors may be causing her to concentrate on her pain complaints although impairments and inability to work are not supported by the information.[FN32]

> FN32. Porter Report at A00074.

***3** Dr. Porter also conferred with Drs. Smallberg and Lay about Scannell's condition, and eventually concluded that, based on the evidence, he would "weigh more heavily on the diagnosis of Dr. Stubgen ... regarding the headaches." [FN33] MetLife concluded its evaluation of Scannell's claim by requesting that an independent psychiatric consultant, Dr. Lee H. Becker, conduct a review of Scannell's claim. To that end, Dr. Becker allegedly sought permission to speak with Scannell's psychiatrist, Dr. Grant, but Scannell refused, stating that she was not seeking benefits for depression.[FN34]

> FN33. *Id.* at A00075.
>
> FN34. *See* Def. 56.1 Stmt. ¶ 46.

With all of this information before it, MetLife concluded that Scannell was not disabled within the meaning of the Plan because her inability to work was unsupported objectively by the medical records .[FN35] Scannell appealed the decision and submitted additional information relating to her claim. [FN36] Dr. Alan Grindal, an independent physician consultant, reviewed Scannell's file [FN37] and determined:

> FN35. *See* 6/14/02 Letter to Scannell from Shelley D'Amico, Case Management Specialist for MetLife, Ex. F to Sullivan Aff., at A00069. In particular, the letter explains that the information supports a finding that she suffers from tension headaches, not migraines. It further notes that she exhibits symptoms pertaining to "rebound headaches related to overuse of medication and with modification of [her] medications [she has] the ability to return to work as [she] had for the prior two or three years." *Id.* It also notes that her "back pain is not associated with significant pathology that

would warrant long term work loss." *Id.*

FN36. For instance, Scannell's attorney provided a job description indicating that she was required to travel and procure sales. *See* 8/9/02 Letter to MetLife from Robert J. Barsch, Scannell's counsel, Ex. R to Sullivan Aff., at A00041.

FN37. *See* Def. 56.1 Stmt. ¶ 55.

The records suggest that patient suffers from recurrent headaches and back pain, which are likely related to analgesic use, which appears at times to have been excessive, an underlying emotional pathology. The diagnosis of migraine cannot be clearly established. The back pain is of uncertain etiology. There is ... no objective neurological evidence which would support the patient's inability to work.[FN38]

FN38. 10/27/02 Physician File Review Report by Dr. Alan B. Grindal, Independent Physician Consultant for MetLife ("Grindal Report"), Ex. S to Sullivan Aff. at A00035.

Accordingly, MetLife upheld the original claim determination.[FN39]

FN39. *See* 11/5/02 Letter to Robert J. Barsch, Scannell's counsel, from Kim Maneen, Procedure Analyst for MetLife, Ex. T to Sullivan Aff.

II. STANDARD OF REVIEW

A. Summary Judgment Standard

Summary judgment is permissible "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." [FN40] "An issue of fact is genuine 'if the evidence is such that a jury could return a verdict for the nonmoving party." '[FN41] A fact is material when "it 'might affect the outcome of the suit under the governing law." '[FN42]

FN40. Fed.R.Civ.P. 56(c).

FN41. *Gayle v. Gonyea,* 313 F.3d 677, 682 (2d Cir.2002) (quoting *Anderson v. Liberty Lobby,* 477 U.S. 242, 248, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986)).

FN42. *Gayle,* 313 F.3d at 682 (quoting *Anderson,* 477 U.S." at 248).

The party seeking summary judgment has the burden of demonstrating that no genuine issue of material fact exists.[FN43] In turn, to defeat a motion for summary judgment, the non-moving party must raise a genuine issue of material fact. To do so, it " 'must do more than simply show that there is some metaphysical doubt as to the material facts," '[FN44] and it " 'may not rely on conclusory allegations or unsubstantiated speculation." '[FN45] Rather, the non-moving party must produce admissible evidence that supports its pleadings.[FN46] In this regard, "[t]he 'mere existence of a scintilla of evidence' supporting the non-movant's case is also insufficient to defeat summary judgment." [FN47]

FN43. *See Marvel Characters, Inc. v. Simon,* 310 F.3d 280, 286 (2d Cir.2002) (citing *Adickes v. S.H. Kress & Co.,* 398 U.S. 144, 157, 90 S.Ct. 1598, 26 L.Ed.2d 142 (1970)).

FN44. *Caldarola v. Calabrese,* 298 F.3d 156, 160 (2d Cir.2002) (quoting *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.,* 475 U.S. 574, 586, 106 S.Ct. 1348, 89 L.Ed.2d 538 (1986)).

FN45. *Fujitsu Ltd. v. Federal Express Corp.,* 247 F.3d 423, 428 (2d Cir.2002) (quoting *Scotto v. Almenas,* 143 F.3d 105, 114 (2d Cir.1998)); *see also Gayle,* 313 F.3d at 682.

FN46. *See First Nat'l Bank of Ariz. v. Cities Serv. Co.,* 391 U.S. 253, 289–90, 88 S.Ct. 1575, 20 L.Ed.2d 569 (1968).

FN47. *Niagara Mohawk Power Corp. v. Jones Chem., Inc.,* 315 F.3d 171, 175 (2d Cir.2003) (quoting *Anderson,* 477 U.S. at 252).

In determining whether a genuine issue of material fact exists, the court must construe the evidence in the light most favorable to the non-moving party and draw all inferences in that party's favor. [FN48] Accordingly, the court's task is not to "weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial." [FN49] Summary judgment is therefore inappropriate "if there is any evidence in the record that could reasonably support a jury's verdict for the non-moving party." [FN50]

FN48. *See Niagara Mohawk Power Corp.,* 315 F.3d at 175.

FN49. *Anderson,* 477 U.S. at 249.

FN50. *Marvel Characters, Inc.,* 310 F.3d at 286 (citing *Pinto v.. Allstate Inc.,* 221 F.3d 394, 398 (2d Cir.2000)).

B. ERISA Standard

***4** In *Firestone Tire & Rubber Co. v. Bruch,* the Supreme Court held that "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." [FN51] "Where discretionary authority is afforded an ERISA-regulated plan administrator ... denial of plan benefits is generally reviewed under an 'arbitrary and capricious' standard of review." [FN52]

FN51. 489 U.S. 101, 115, 109 S.Ct. 948, 103 L.Ed.2d 80 (1989).

FN52. *Wagner v. First UNUM Life Ins. Co.,* No. 02 Civ. 9135, 2003 WL 21960997, at *4 (S.D.N.Y. Aug.13, 2003) (citing *Pulvers v. First UNUM Life Ins. Co.,* 210 F.3d 89 (2d Cir.2000)).

[1] The parties disagree as to which standard of review should govern. Scannell argues that this Court should review MetLife's decision *de novo* because the SPD is silent on the amount of discretion given to the plan administrator.[FN53] But the plain language of the SPD grants MetLife discretion to determine eligibility for benefits. The SPD states, "To receive long-term benefits you must first file a claim with the insurance company, which *makes the final decision on all claims."* [FN54] This clearly imparts discretion to the insurance company—MetLife. Accordingly, *de novo* review is inappropriate.

FN53. *See* Pl. Mem. at 4–7 (citing *Burke v. Kodak Ret. Income Plan,* 336 F.3d 103 (2d Cir.2003)). *Burke* involved a plan administrator's decision to deny benefits to a surviving spouse. In *Burke,* the SPD violated ERISA disclosure requirements because it failed to mention that plan participants had to file a joint affidavit to qualify for various benefits. The Second Circuit expressed no view as to whether a *de novo* or a deferential standard should govern in such cases. *See id.* at 110. The court did find that ERISA requires a beneficiary to show that she was prejudiced by the deficient SPD, which in turn requires a showing that she was likely to have been harmed as a result of an inadequate SPD. *See id.* at 112–13. *Burke* does not direct this Court to review MetLife's denial of benefits *de novo* because (1) the SPD does not mislead or fail to inform participants about the Plan; nor does it minimize, or render obscure, language retaining discretion for MetLife in making claims decisions and (2) even assuming, arguendo, that the SPD was inadequate, Scannell cannot seriously

argue that she was likely to have been harmed by the "deficiency" in the SPD.

FN54. *See* Bank of America Associate Handbook at 68 (emphasis added).

Under the arbitrary and capricious standard, a court may overturn a decision to deny benefits " 'only if it was without reason, unsupported by substantial evidence or erroneous as a matter of law." ' [FN55] Thus, while I am required to consider whether MetLife's "decision was based on a consideration of the relevant factors and whether there has been a clear error of judgment," I may not "upset a reasonable interpretation by the administrator" [FN56] or "substitute [my] own judgment for that of [MetLife] as if [I were] considering the issue of eligibility anew." [FN57]

FN55. *Pulvers,* 210 F.3d at 92 (quoting *Pagan v. NYNEX Pension Plan,* 52 F.3d 438, 442 (2d Cir.1995)).

FN56. *Zuckerbrod v. Phoenix Mut. Life Ins. Co.,* 78 F.3d 46, 49 (2d Cir.1996) (citations and quotation marks omitted).

FN57. *Pagan,* 52 F.3d at 442; *see also Peterson v. Continental Cas. Co.,* 282 F.3d 112, 117 (2d Cir.2002) ("It is well established that federal courts have a narrow role in reviewing the discretionary acts of ERISA plan administrators.").

On a summary judgment motion, "the arbitrary and capricious standard requires that we 'ask whether the aggregate evidence, viewed in the light most favorable to the non-moving party, could support a rational determination that the plan administrator acted arbitrarily in denying the claim for benefits." ' [FN58] Put differently, MetLife's "decision will be upheld unless it is not grounded on *any* reasonable basis. The reviewing court need only assure that the administrator's decision falls somewhere on a continuum of reasonableness—even if on the low end." [FN59]

FN58. *Twomey v. Delta Airlines Pilots Pension Plan,* 328 F.3d 27, 31 (1st Cir.2003) (quoting *Leahy v. Raytheon Co.,* 315 F.3d 11, 17 (1st Cir.2002)).

FN59. *Davis v. Commercial Bank of New York,* 275 F.Supp.2d 418, 425 (S.D.N.Y.2003) (quoting *Cirulis v. UNUM Corp.,* 321' F.3d 1010, 1013 (10th Cir.2003) (quotation marks, citations, and alterations omitted)).

III. DISCUSSION

[2] Scannell argues that MetLife's decision was arbitrary and capricious, relying, in part, on documents beyond the administrative record. But, in determining whether the denial of benefits by a plan administrator was arbitrary and capricious, a court may only consider evidence that was before the claims administrator, unless the plaintiff demonstrates that there is "good cause" to look beyond the administrative record.[FN60] "A 'demonstrated conflict of interest in the administrative reviewing body' can constitute 'good cause." ' [FN61] Scannell suggests that there is "good cause" because MetLife is both the insurer and the claims administrator, ergo, there is a conflict of interest. However, she has not introduced any evidence demonstrating that this alleged conflict of interest existed, nor has she indicated where in the administrative record such conflict is reflected. Accordingly, I shall limit my review to the administrative record.[FN62]

FN60. *See Krizek v. Cigna Group Ins.,* 345 F.3d 91, 97 (2d Cir.2003).

FN61. *Id.* at 97 (quoting *DeFelice v. American Int'l Life Assurance Co. of N.Y.,* 112 F.3d 61, 67 (2d Cir.1997)); *see also id.* at 97–98 ("Our case law requires a *'demonstrated* conflict of interest,' which places an affirmative burden on the plaintiff to establish that the plan administrator was sufficiently conflicted so as to expand the administrative record.") (citation omitted)). Moreover, "[e]ven if

the existence of a conflict of interest alone, without any evidence of an effect on the administrative record, could constitute good cause, the Court retains discretion not to expand the administrative record." *Suozzo v. Bergreen,* No. 00 Civ. 9649, 2003 WL 22387083, at *4 (S.D.N.Y. Oct.20, 2003).

FN62. Scannell may not, therefore, rely on her "revised" job description, *see* Scannell Aff. ¶ 3, which she failed to present to MetLife during the pendency of her claim determination, to demonstrate that MetLife's denial of benefits was arbitrary and capricious. Nor may she rely on the newly submitted affidavit of Dr. Smallberg. *See* 8/14/03 Affidavit of Gerald Smallberg, Scannell's treating physician, in Opposition to Defendant's Motion for Summary Judgment.

***5** [3] Scannell argues that MetLife's denial of benefits was arbitrary and capricious because MetLife "required" Scannell to meet a higher level of proof—objective medical evidence—than is described in the SPD, *i.e.,* "written evidence of disability." [FN63] But, the SPD specifically states that the "existence of a disability will be determined by the insurance company based on *medical evidence acceptable to the insurance company.*" [FN64] It is not unreasonable for MetLife to require objective evidence as proof of total disability, particularly because MetLife has discretionary authority to interpret the terms of the plan.[FN65] Accordingly, Scannell has failed to demonstrate that MetLife acted arbitrarily and capriciously by considering the fact that her subjective complaints were not supported by objective evidence. [FN66]

FN63. Pl. Mem. at 12 (citing Bank of America Associate Handbook at 68).

FN64. Bank of America Associate Handbook at 67 (emphasis added).

FN65. *See Maniatty v. UNUM Provident Corp.,* 218 F.Supp.2d 500, 504 (S.D.N.Y.2002) ("In any event it is hardly unreasonable for the administrator to require an objective component to such proof."), *aff'd,* 62 Fed.App. 413 (2d Cir.2003) (unpublished decision), *cert. denied,* 540 U.S. 966, 124 S.Ct. 431, 157 L.Ed.2d 310, 2003 WL 21947187 (Oct. 20, 2003); *Alakozai v. Allstate Ins. Co.,* No. 98 Civ. 3720, 2000 WL 325685, at *7 (S.D.N.Y. Mar.28, 2000) ("It was not unreasonable for MetLife to require objective evidence as 'proof' of 'total disability.' Given that MetLife has discretionary authority to construe the terms of the Plan, Plaintiff must prove that MetLife's interpretation of 'total disability,' or its 'proof' requirements as applied to this case, were arbitrary or capricious.")).

FN66. Scannell also argues that MetLife's denial of benefits was arbitrary because MetLife "excluded plaintiff for her rebound headaches" and "ignored plaintiff's back injuries." Pl. Mem. at 14. These assertions are not supported by the record. Rather, the record suggests that MetLife considered a number of factors in reaching its decision, including Scannell's back pain. Also among these factors were Scannell's rebound headaches, but the determination did not rest squarely on these headaches. *See* Porter Report at A00073–75; Grindal Report at A00033–35. MetLife concluded that Scannell's rebound headaches did not render her unable to perform each of the material duties required of her by her job. *See id.* at A00035; Porter Report at A00076. MetLife also determined that the MRI and CT scan results, 12/28/01 MRI of the Lumbar Spine; 2/6/02 CT Scan of the Lumbar Spine; 2/14/02 Bone Scan, failed to indicate a debilitating back problem. *See* Porter Report at A00073; Grindal

Report at A00035. Both of these conclusions had support in the record and accordingly, neither was clearly erroneous.

Scannell also argues that MetLife's denial of benefits was arbitrary and capricious because MetLife failed to defer to the opinions of Scannell's treating physicians. This is particularly arbitrary, Scannell contends, because she was never subjected to an independent medical examination. But Scannell's position has no support in legal precedent. The Supreme Court has held that an administrator of an ERISA plan is "not obliged to accord special deference to the opinions of treating physicians." [FN67] The Court further held that "courts [may not] impose on plan administrators a discrete burden of explanation when they credit reliable evidence that conflicts with a treating physician's evaluation." [FN68] Accordingly, it is clear that MetLife is not required to credit the opinions of Drs. Smallberg and Lay [FN69] over the opinion of Dr. Stubgen and the independent medical reviewers. The opinions on which MetLife did rely were not irrational, unreasonable, or the clear product of self-interest on their face.[FN70] Additionally, the record fails to indicate that an independent medical examination was necessary to assess Scannell's claim.[FN71] The independent reviewers evaluated Scannell's test results, medical records, and physicians' notations and also conferred with each of the examining physicians before making a final determination. Accordingly, the Court cannot conclude that MetLife acted in an arbitrary and capricious manner by denying Scannell's claim for long-term benefits.

FN67. *Black & Decker Disability Plan v. Nord,* 538 U.S. 822, ——, 123 S.Ct. 1965, 1967, 155 L.Ed.2d 1034 (2003); *see also Wagner,* 2003 WL 21960997, at *5.

FN68. *Black & Decker Disability Plan,* 538 U.S. at ——, 123 S.Ct. at 1972.

FN69. Moreover, Dr. Lay conveyed to MetLife that she never definitively concluded that Scannell suffered from migraine headaches. Rather, Dr. Lay believed that Scannell's condition was "more characteristic of migraine" but that "it was complicated by the analgesic use and rebound component of her headaches." Porter Report at A00075 (reporting on discussion between Lay and Porter). Accordingly, Dr. Lay relied heavily on Scannell's own assessment of her ability to work. *See id.*

FN70. *See Alakozai,* 2000 WL 325685, at *7.

FN71. *See Wagner,* 2003 WL 21960997, at *5.

IV. CONCLUSION

For the foregoing reasons, MetLife's motion for summary judgment is granted. The Clerk of the Court is directed to close this motion [docket number 12] and this case.

S.D.N.Y.,2003.
Scannell v. Metropolitan Life Ins. Co.
Not Reported in F.Supp.2d, 2003 WL 22722954 (S.D.N.Y.)

END OF DOCUMENT