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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

DAVID CAPLAN,

No. C 06-5865 CW

Plaintiff,

v.

ORDER GRANTING IN
PART PLAINTIFF'S
MOTION FOR JUDGMENT
AND GRANTING IN PART
DEFENDANTS' CROSS-
MOTION FOR JUDGMENT

CNA FINANCIAL CORPORATION; CNA SHORT
TERM DISABILITY PLAN; CNA LONG TERM
DISABILITY PLAN; and HARTFORD LIFE
GROUP INSURANCE COMPANY,

Defendants.

_____/

Plaintiff David Caplan moves for judgment on his claims for long-term disability benefits and injunctive relief under the Employee Retirement Income Security Act (ERISA). Defendants Hartford Life Group Insurance Company (Hartford) and CNA Long-Term Disability Plan cross-move for judgment on these claims.¹ The matter was heard on March 13, 2008. Having considered oral argument and all of the materials submitted by the parties, the Court grants each party's motion in part. In addition, Plaintiff's claim for long-term disability benefits is remanded in part to

¹The remaining defendants are no longer parties to this action.

1 Hartford for further proceedings.

2 FINDINGS OF FACT

3 I. Plaintiff's Employment

4 Plaintiff began working as a vocational case manager for CNA
5 Financial Corporation in late 1999 or early 2000. In this
6 position, he managed the cases of workers' compensation claimants,
7 reviewing and monitoring their eligibility for vocational
8 rehabilitation. His duties involved sending notices, generating
9 forms, talking to claimants or their attorneys while taking notes,
10 writing position statements for workers' compensation hearings and
11 attending those hearings, and evaluating the ergonomics of workers'
12 jobsites.

13 Plaintiff initially conducted field visits for approximately
14 one and one-half days per week. He spent the rest of his time at
15 his desk, usually for eight hours each day. In 2003, a reduction
16 in available field work caused Plaintiff to start spending more
17 time at the computer. Plaintiff's workload also increased. As a
18 result, Plaintiff began spending eight to eleven hours per day at
19 the computer.

20 II. Plaintiff's Injury

21 In 1988, before he began working for CNA, Plaintiff injured
22 his lumbar spine while trying to move a 600-pound motor. His
23 injury ended his career as an electrician, and he continues to
24 experience chronic lower back pain today. In 1998 -- also before
25 he began working for CNA -- Plaintiff injured the ulnar nerve in
26 his right arm. This injury continues to prevent Plaintiff from
27 writing for long periods of time.

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1 In 2003, Plaintiff injured his cervical spine as a result of
2 performing large amounts of computer work. His injury caused him
3 to experience pain and muscle spasms in his shoulders and upper
4 back. At the same time, he began experiencing problems with his
5 hands due to constant keyboarding.

6 Plaintiff attempted to use voice recognition software in order
7 to reduce the amount of time he spent keyboarding, but the software
8 was incompatible with his need to speak with people while taking
9 notes, and did not allow him to work effectively within the
10 specific programs he used. Additionally, even with the reduced
11 amount of keyboarding, Plaintiff's back, neck and shoulder pain
12 prevented him from being able to spend a full day sitting at the
13 computer in a static posture.

14 Plaintiff attempted to perform his normal duties, working
15 through his pain and taking prescription painkillers such as
16 Vicodin and Tramadol. Eventually, however, the pain became too
17 severe for him to continue working without accommodations. In
18 February, 2004, at the advice of his doctor, Plaintiff was limited
19 to three hours of typing a day. His employer attempted to
20 accommodate this restriction by assigning him to more field visits.
21 However, there was not enough field work to keep Plaintiff occupied
22 full-time, and his productivity declined. In February, 2005,
23 Plaintiff's supervisor advised him that she was no longer able to
24 accommodate the reduced number of hours Plaintiff was billing. In
25 addition, Plaintiff's doctor had recently advised him to restrict
26 himself to three hours of work each day. CNA was not able to grant
27 Plaintiff's request for such an accommodation. Accordingly,

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1 Plaintiff was terminated on or about March 1, 2005.

2 III. The STD and LTD Plans

3 CNA maintains both a short-term disability plan (the STD Plan)
4 and a long-term disability plan (the LTD Plan) for its employees.
5 The STD Plan is self-insured by CNA, and the LTD Plan is insured by
6 Hartford. Hartford is the claims administrator for both plans.

7 The STD Plan provides benefits for up to twenty-six weeks for
8 employees who are temporarily disabled. An employee is considered
9 disabled if he or she is "continuously unable to perform the
10 Material and Substantial duties of the covered your [sic] Regular
11 Occupation" and is "not working for wages in any occupation for
12 which the Employee is or becomes qualified by education, training
13 or experience." Hasselman Dec. Ex. 33 at STDPLAN0081-82.

14 Alternatively, an employee may be considered disabled if "an Injury
15 or Sickness is causing physical or mental impairment to such a
16 degree of severity that [he or she is] unable to earn more than 80%
17 of [his or her] Monthly Earnings in any occupation for which [he or
18 she is] qualified by education, training or experience." Id. at
19 STDPLAN0082.

20 The LTD Plan provides benefits in the event that an employee's
21 disability extends beyond the twenty-six-week period covered by the
22 STD Plan. For the first twelve months of LTD benefits, the Plan
23 applies a definition of disability identical to the definition in
24 the STD Plan. After the first twelve months of LTD benefits,
25 however, the Plan applies a different definition of disability.
26 Under this definition, an employee must be "continuously unable to
27 engage in any occupation for which [he or she is] or become[s]

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1 qualified by education, training or experience," and must not be
2 "working for wages in any occupation for which [he or she]
3 become[s] qualified by education, training or experience." Id. at
4 STDPLAN0089. Thus, for the first twelve months of benefits, an
5 employee must merely show that he or she is unable to perform the
6 duties of his or her own occupation, whereas after the first twelve
7 months of benefits, the employee must show that he or she is unable
8 to perform the duties of any suitable occupation. In addition, as
9 with the STD Plan, the LTD Plan also provides an alternative
10 definition of disability. Under this alternative definition,
11 benefits are available if "an Injury or Sickness is causing
12 physical or mental impairment to such a degree of severity that [an
13 employee is] unable to earn more than 80% of [his or her] Monthly
14 Earnings in any occupation for which [he or she is] qualified by
15 education, training or experience." Id.

16 III. Plaintiff's Claim for STD Benefits

17 Just prior to his termination on March 1, 2005, Plaintiff
18 applied for STD benefits under the Plan.² He provided medical
19 documentation to support his claim. This documentation included an
20 August, 2004 report written by Dr. Robert E. Markison, an examining
21 physician. The report addressed the injury to Plaintiff's upper
22 extremities. Dr. Markison found that Plaintiff exhibited abnormal
23 hyperextension of the ring and little fingers in his right hand,
24 which was the "product of cumulative trauma-associated volar plate

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26 ²The record apparently does not contain a written claim, but
27 Hartford sent Plaintiff a letter acknowledging receipt of his claim
28 on February 24, 2005.

1 laxity without subluxation of joints." Macko Dec. Ex. B at AR0587.
2 As a result, Plaintiff's hand function was impaired. Dr. Markison
3 concluded that Plaintiff should be "precluded from hands-on
4 keyboard/mouse use for greater than three hours per day on a
5 prophylactic basis in order to avoid worsening of the condition."
6 Id.

7 Plaintiff also submitted workers' compensation reports from
8 his treating physician, Jerel Glassman. Dr. Glassman rated
9 Plaintiff's injuries as permanent and stationary, and stated that
10 Plaintiff was limited in his functional capacity and should be
11 restricted to no more than fifteen minutes of computer work at a
12 time, followed by a five to ten minute break. Id. at AR0764. Dr.
13 Glassman also stated that Plaintiff was unable to sit for more than
14 thirty minutes to one hour at a time. Id. In a letter dated
15 January 18, 2005, Dr. Glassman further stated that Plaintiff had
16 "lost approximately 75% of his work capacity. Before his injury,
17 he was working ten to twelve hours per day; he can now work three
18 hours per day." Id. at AR0768.

19 Prior to issuing a decision on Plaintiff's claim, Hartford
20 asked Reed Review Services (RRS) to review Plaintiff's medical
21 records. On July 1, 2005, Dr. Philip Marion, a physician
22 associated with RRS, prepared a report. Dr. Marion found that the
23 records reflected degenerative spine disease, but he found no
24 support for Dr. Glassman's three hour work day limitation. Id. at
25 AR0777. Instead, Dr. Marion concluded that Plaintiff should be
26 limited to twenty minutes of continuous typing with a five minute
27 break, and limited to one hour of continuous sitting with a five

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1 minute break and the ability to stand and stretch as needed. Id.

2 Hartford also contacted Plaintiff's supervisor, Patricia
3 Nunez, who stated that CNA had attempted to accommodate Plaintiff's
4 keyboarding restriction by assigning him all of the office's field
5 visits. However, CNA was unable to accommodate a three-hour per
6 day overall work restriction.

7 On July 13, 2005, Hartford sent Plaintiff a letter denying his
8 claim for short term disability benefits. Hartford acknowledged
9 that although some restrictions, including an inability to do
10 continuous typing and continuous sitting without breaks, were
11 supported by Plaintiff's medical records, CNA was able to
12 accommodate these restrictions. Therefore, it stated, these
13 limitations did not prevent Plaintiff from performing the material
14 and substantial duties of his occupation as a vocational case
15 manager. Id. at AR0273-74. Hartford stated that it found no
16 evidence to support a finding that Plaintiff's condition had
17 worsened to the point where he was unable to work for more than
18 three hours a day.

19 IV. Plaintiff's Appeal

20 On February 27, 2006, Plaintiff appealed Hartford's decision
21 denying his claim for STD benefits. His appeal stated that he was
22 "simultaneously request[ing] approval of his claim for Long-Term
23 Disability ("LTD") Benefits." Id. at AR0295.

24 As part of his appeal, Plaintiff submitted additional medical
25 records as well as letters from his treating physicians and
26 declarations from himself and friends who were familiar with his
27 injury. He also submitted the reports of a three-day work
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1 tolerance screening (WTS) and a functional capacity evaluation
2 (FCE) performed by the Center for Career Evaluations. These
3 reports concluded that Plaintiff was not capable of full-time work
4 in a sedentary position. See Hasselman Dec. Ex. 21.

5 Hartford referred Plaintiff's claim to University Disability
6 Consortium (UDC) for a second review of the file. The reviewing
7 physician, Suresh Mahawar, produced a report based on his
8 evaluation of Plaintiff's medical records and other supporting
9 documentation. He did not examine Plaintiff. Dr. Mahawar stated
10 in his report that there were no "objective clinical findings such
11 as disuse muscle atrophy or neurological deficit justifying the
12 degree of restrictions" suggested by Plaintiff's physicians. Macko
13 Dec. Ex. B at AR0011. Dr. Mahawar thus believed that "cumulative
14 trauma disorder of [Plaintiff's] upper extremity could be managed
15 on sound medical grounds by putting restrictions such as no using
16 of keyboard or typing for over one hour at a time without a break
17 of 15 minutes. Restricting one to three hours in a day without any
18 objective clinical back up is unreasonable and unnecessary (without
19 presence of disuse muscle atrophy or neurological deficit)." Id.
20 at AR0012. Dr. Mahawar acknowledged that Plaintiff's colleagues
21 and treating physicians "feel that he is incapable of working in a
22 sedentary job on a full time basis," but he dismissed this as
23 "speculation" because it was "based on subjective symptoms only and
24 without clinically objective findings." Id. Dr. Mahawar stated
25 that if Plaintiff's pain "was really disabling, he would have
26 clinical notable muscle atrophy in his upper and lower extremities.
27 Therefore, he should have the capacity to work in a sedentary job

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1 on a full-time basis." Id. at AR0012-13.

2 On April 21, 2006, Hartford denied Plaintiff's appeal,
3 upholding its previous decision that Plaintiff was ineligible for
4 STD benefits. Even though the denial letter stated that Hartford's
5 decision was "based on the totality of the medical information
6 provided," the only explanation for the denial was Dr. Mahawar's
7 opinions. Id. at AR0003. The letter adopted Dr. Mahawar's view
8 that Plaintiff "has the physical functionality to perform primarily
9 sedentary duties with no lifting greater than 10 pounds, occasional
10 standing and walking, and a 15 minute break after keyboarding for
11 45 minutes." Id. The letter also repeated Dr. Mahawar's opinion
12 that if Plaintiff's pain "was of such severity that it would be
13 considered disabling, he would have notable muscle atrophy in his
14 upper and lower extremities." Id.

15 Plaintiff filed this lawsuit originally seeking both STD and
16 LTD benefits under the Plan. He subsequently settled his claim for
17 STD benefits, and now asserts only a claim for LTD benefits.

18 V. University Disability Consortium

19 UDC provides review services to Hartford pursuant to a
20 contract. As of February, 2006, close to seventy-five percent of
21 UDC's revenue was derived from Hartford. UDC initially charged
22 \$300 per hour for its physicians to review disability files, but
23 its hourly charge to Hartford under a 2002 contract was reduced to
24 \$225 per hour in what UDC owner Jonathan Strang described as a
25 "volume discount type arrangement." Id. at AR0072. UDC's gross
26 revenue increased between fifty and one hundred percent from 2002
27 to 2004 after it signed its contract with Hartford. Id. at AR0181.

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For the Northern District of California

1 Since 2002, Hartford has paid UDC more than thirteen million
2 dollars for review services. Hasselman Dec. Ex. 37 at 4.

3 UDC's marketing material for its independent medical
4 evaluation services states:

5 Disability claims continue to grow for many reasons;
6 [sic] increased supply of benefits with supply chasing
7 demand; increased compensability of many situations and
8 conditions; erosion of the work ethic; increased social
acceptability of disability status and a broadening of
the situations and conditions claimed to be disabling,
such as an increase of "new" or more complex cases.

9 Id. at AR0238. While UDC promises "impartial and objective
10 disability evaluations," it also promotes a focus on "objective
11 signs or impairments" and a de-emphasis on "subjective or self-
12 report factors." Id. at AR0238-39.

13 Dr. Mahawar has performed chart reviews for UDC on a number of
14 occasions, producing 217 evaluations for 202 Hartford claimants
15 between January 1, 2005, and September 30, 2007. A summary of Dr.
16 Mahawar's findings demonstrates that, of these 202 claimants, he
17 found that 193 of them were capable of working full-time in some
18 type of position under appropriate restrictions. See Hasselman
19 Dec. Ex. 3.

20 In a phone conversation with Dr. Glassman about Plaintiff's
21 disability claim, Dr. Mahawar stated his belief that anybody can
22 work in a sedentary occupation. Id. Ex. 30 at P1135. He also
23 expressed his view, which is reflected in his report, that only
24 objective findings such as atrophy are acceptable indications of
25 disability.

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CONCLUSIONS OF LAW

I. Standard of Review

Pursuant to Rule 52 of the Federal Rules of Civil Procedure, each of the parties moves for judgment in its favor on Plaintiff's ERISA claims. Under Rule 52, the court conducts what is essentially a bench trial on the record, evaluating the persuasiveness of conflicting testimony and deciding which is more likely true. Kearney v. Standard Ins. Co., 175 F.3d 1084, 1094-95 (9th Cir. 1999).

The standard of review of a plan administrator's denial of ERISA benefits depends upon the terms of the benefit plan. Absent contrary language in the plan, the denial is reviewed under a de novo standard. Firestone Tire & Rubber Co. v. Bruch, 489 U.S. 101, 115 (1989). However, if "the benefit plan expressly gives the plan administrator or fiduciary discretionary authority to determine eligibility for benefits or to construe the plan's terms," an abuse of discretion standard is applied. Id. at 102. Under this standard, the administrator's decision will be upheld if is reasonable and supported by substantial evidence in the administrative record as a whole. McKenzie v. General Tel. Co. of Cal., 41 F.3d 1310, 1316-17 (9th Cir. 1994).

Here, there is no dispute that the Plan confers discretion upon Hartford. Plaintiff asserts, however, that the Court should nonetheless conduct de novo review. He notes that under Abatie v. Alta Health & Life Insurance Co., 458 F.3d 955 (9th Cir. 2006) (en banc), violations of ERISA procedure that are "so flagrant as to alter the substantive relationship between the employer and

1 employee" will result in de novo review notwithstanding the plan's
2 grant of discretionary authority to the administrator. Id. at 971.

3 Hartford's purported violation of ERISA procedure was its
4 "failure to acknowledge or address" Plaintiff's request for LTD
5 benefits. This request, however, was contained in his appeal of
6 Hartford's denial of his claim for STD benefits. Plaintiff never
7 filed an independent claim for LTD benefits, and thus Hartford had
8 no obligation to render a separate decision on such a claim.
9 Moreover, for the first twelve months of LTD benefits, the
10 definition of disability is identical under both the STD and the
11 LTD plan.³ Thus, Hartford's decision on Plaintiff's appeal was
12 tantamount to a determination that he was not eligible for LTD
13 benefits.⁴ Because Hartford did not commit a flagrant violation of
14 ERISA procedures, there is no basis to apply de novo review.

15 Plaintiff argues in the alternative that, even if de novo
16 review does not apply, the circumstances call for a highly
17 skeptical review of Hartford's decision. This argument is based on
18 Abatie's holding that, in situations where "a plan administrator
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20 ³At the time Hartford rendered its decision, even if
21 Plaintiff's claims had been approved, he would not yet have
exhausted his first twelve months of LTD benefits.

22 ⁴Defendants argue that the Court should not entertain
23 Plaintiff's claim for LTD benefits because he did not properly
24 submit a claim for such benefits or appeal the denial of any such
25 claim. While the procedures followed by both Plaintiff and
26 Hartford were somewhat irregular, the fact remains that Plaintiff
27 fully appealed the denial of his claim for STD benefits and
28 notified Hartford that he sought LTD benefits as well. Hartford
had an opportunity fully to consider the issues presented on
Plaintiff's appeal. Because the relevant definitions of disability
under the STD Plan and the LTD Plan are identical, the Court deems
Plaintiff's claim for LTD benefits to be fully exhausted.

1 denies benefits and (1) the wording of the plan confers discretion
2 on the plan administrator and (2) the plan administrator has a
3 conflict of interest," a court should apply an "abuse of discretion
4 review, tempered by skepticism commensurate with the plan
5 administrator's conflict of interest." Id. at 959. To determine
6 the level of skepticism to apply when a conflict exists, a court
7 must consider "all the facts and circumstances." Id. at 968. As
8 the court explained:

9 The level of skepticism with which a court views a
10 conflicted administrator's decision may be low if a
11 structural conflict of interest is unaccompanied, for
12 example, by any evidence of malice, of self-dealing, or
13 of a parsimonious claims-granting history. A court may
14 weigh a conflict more heavily if, for example, the
15 administrator provides inconsistent reasons for denial,
16 fails adequately to investigate a claim or ask the
17 plaintiff for necessary evidence, fails to credit a
18 claimant's reliable evidence, or has repeatedly denied
19 benefits to deserving participants by interpreting plan
20 terms incorrectly or by making decisions against the
21 weight of evidence in the record.

22 Id. at 968-69.

23 Like the defendant in Abatie, Hartford operates under a
24 structural conflict of interest: it is both the Plan administrator
25 and the funding source for benefits paid under the Plan. As the
26 Ninth Circuit stated, "such an administrator has an incentive to
27 pay as little in benefits as possible to plan participants because
28 the less money the insurer pays out, the more money it retains in
29 its own coffers." Id. at 966.

30 In addition, Hartford's structural conflict of interest is
31 accompanied by its reliance on UDC, a company which Hartford knows
32 benefits financially from doing repeat business with it, collecting
33 more than thirteen million dollars from Hartford since 2002. It

1 follows that Hartford knows that UDC has an incentive to provide it
2 with reports that will increase the chances that Hartford will
3 return to UDC in the future -- in other words, reports upon which
4 Hartford may rely in justifying its decision to deny benefits to a
5 Plan participant. UDC's marketing material also suggests that it
6 offers insurers and plan administrators services that will support
7 a parsimonious approach to administering claims.

8 Dr. Mahawar also stood to benefit financially from the repeat
9 business that might come from providing Hartford with reports that
10 were to its liking. The history of Dr. Mahawar's conclusions
11 provides evidence of this conflict; it demonstrates that he has
12 provided Hartford with reports that frequently support a decision
13 to deny benefits to the claimant.

14 Because Hartford's reliance on these apparently biased sources
15 casts serious doubt on the neutrality of its decision-making
16 process, the Court will view the decision with commensurate
17 skepticism.

18 II. Plaintiff's Claim for Disability Benefits

19 Pursuant to § 502(a)(1)(B) of ERISA, 29 U.S.C.
20 § 1132(a)(1)(B), Plaintiff seeks LTD disability benefits under the
21 Plan. This statute allows a participant "to recover benefits due
22 to him under the terms of his plan, to enforce his rights under the
23 terms of the plan, or to clarify his rights to future benefits
24 under the terms of the plan." Id.

25 Defendants argue that Hartford's decision to terminate
26 Plaintiff's benefits must be upheld because the decision does not
27 represent an abuse of Hartford's discretion, considering the

1 administrative record as a whole. Plaintiff argues, to the
2 contrary, that the record clearly demonstrates that he is totally
3 disabled, and that Hartford's decision was not supported by
4 substantial evidence.

5 In its letter denying Plaintiff's claim for benefits, Hartford
6 stated that its decision was based on "the totality of the medical
7 information provided." Nonetheless, Hartford's only justification
8 for the denial was Dr. Mahawar's report. Relying exclusively on
9 Dr. Mahawar's opinion, Hartford stated that there were no objective
10 medical findings to support the conclusion that Plaintiff was
11 disabled. Hartford did not discuss any of the evidence that
12 Plaintiff submitted.

13 As discussed above, the reliability of Dr. Mahawar's report as
14 a neutral evaluation of Plaintiff's condition is dubious, given
15 that it was in UDC's and Dr. Mahawar's interest to provide Hartford
16 with a report that would justify denying benefits to Plaintiff.
17 Additionally, the report itself shows a total disregard for the
18 conclusions of Plaintiff's treating physicians and for Plaintiff's
19 subjective reports of pain. While the Court will not evaluate the
20 accuracy of Dr. Mahawar's conclusion that, if Plaintiff's condition
21 "was really disabling, he would have clinical notable muscle
22 atrophy in his upper and lower extremities," the Court nonetheless
23 notes that Plaintiff's treating physicians were not in agreement on
24 this point.

25 In adopting Dr. Mahawar's conclusion, Hartford discounted a
26 wealth of evidence that Plaintiff was not able to perform the
27 duties of his occupation. While some of this evidence was based on

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1 Plaintiff's subjective reports of pain and the observations of
2 people familiar with Plaintiff's injury, there was also objective
3 evidence of Plaintiff's condition, including the results of the
4 WTS/FCE and the results of multiple MRIs. See Hasselman Dec. Exs.
5 12, 13, 21. Moreover, Hartford's approach of disregarding
6 subjective evidence of pain is disapproved in Ninth Circuit
7 precedent. See Saffon v. Wells Fargo & Co. Long Term Disability
8 Plan, 511 F.3d 1206, 1216 (9th Cir. 2008) (noting that "individual
9 reactions to pain are subjective and not easily determined by
10 reference to objective measurements"); Fair v. Bowen, 885 F.2d 597,
11 601 (9th Cir. 1989) ("[D]espite our inability to measure and
12 describe it, pain can have real and severe debilitating effects; it
13 is, without a doubt, capable of entirely precluding a claimant from
14 working. Because pain is a subjective phenomenon, moreover, it is
15 possible to suffer disabling pain even where the degree of pain, as
16 opposed to the mere existence of pain, is unsupported by objective
17 medical findings.").⁵ And while Defendants are correct that
18 Hartford need not "accord special weight to the opinions of a
19 claimant's physician," Hartford nonetheless may not "arbitrarily
20 refuse to credit a claimant's reliable evidence, including the
21 opinions of a treating physician." Black & Decker Disability Plan
22 v. Nord, 538 U.S. 822, 834 (2003).

23 _____
24 ⁵Defendants suggest that Plaintiff's credibility has been
25 tarnished because he was able to take a vacation to India while
26 Hartford was processing his claim. Hartford argues that this
27 provides a reason for discounting Plaintiff's subjective reports of
28 pain. This argument is not convincing because there is no evidence
that, except during his flight, Plaintiff spent eight hours a day
sitting or keyboarding during his vacation. Therefore, his
vacation is not inconsistent with his reports of pain.

1 The Court concludes that it was an abuse of discretion for
2 Hartford to give conclusive weight to Dr. Mahawar's report, given
3 its unreliability as a neutral evaluation of Plaintiff's condition.
4 The Court therefore finds that Plaintiff is eligible for twelve
5 months of LTD benefits. However, Hartford has not yet determined
6 whether Plaintiff has met the higher standard for LTD benefits
7 after the first twelve months. Accordingly, Plaintiff's claim for
8 more than twelve months of LTD benefits is remanded to Hartford so
9 that it can render a decision on this claim.

10 III. Plaintiff's Claim for Breach of Fiduciary Duty

11 Plaintiff claims that, by using UDC (and Dr. Mahawar in
12 particular), Hartford breached its duties as the Plan's fiduciary,
13 thereby violating § 502(a)(3) of ERISA, 29 U.S.C. § 1132(a)(3).
14 This section permits a plan participant to bring a civil action
15 "(A) to enjoin any act or practice which violates any provision of
16 this subchapter or the terms of the plan, or (B) to obtain other
17 appropriate equitable relief (i) to redress such violations or (ii)
18 to enforce any provisions of this subchapter or the terms of the
19 plan." On this claim, Plaintiff requests an injunction prohibiting
20 Hartford from using UDC as a medical record reviewer for five
21 years, as well as removal of Hartford as the Plan's fiduciary for
22 five years.

23 In Varity Corp. v. Howe, 516 U.S. 489, 515 (1996), the Supreme
24 Court held that 29 U.S.C. § 1132(a)(3) authorizes ERISA
25 beneficiaries to bring lawsuits for "'appropriate' equitable
26 relief" for breach of fiduciary obligations where ERISA does not
27 "elsewhere provide[] adequate relief for a beneficiary's injury."

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1 It is expected "that courts, in fashioning 'appropriate' equitable
2 relief, will keep in mind the special nature and purpose of
3 employee benefit plans, and will respect the policy choices
4 reflected in the inclusion of certain remedies and the exclusion of
5 others." Id. (citations and quotations omitted). Thus, it is
6 expected "that where Congress elsewhere provided adequate relief
7 for a beneficiary's injury, there will likely be no need for
8 further equitable relief, in which case such relief normally would
9 not be 'appropriate.'" Id. Section 1132(a)(3) is "a 'catchall'
10 provision, which provides relief only for injuries that are not
11 otherwise adequately provided for." Forsythe v. Humana, Inc., 114
12 F.3d 1467, 1474 (9th Cir. 1997) (citing Varity, 516 U.S. at 512)).
13 The Ninth Circuit interpreted Varity to mean that equitable relief
14 is not appropriate where another subsection of § 1132(a) provides
15 an adequate remedy. Forsythe, 114 F.3d at 1475.

16 In a previous order denying Defendants' motion for summary
17 judgment, the Court declined to determine at that early juncture
18 whether an award of benefits under § 1132(a)(1)(B) would be an
19 adequate remedy, or whether the injunctive relief Plaintiff seeks
20 is available. Now, on a fuller record, the Court finds that
21 § 1132(a)(1)(B) provides Plaintiff with an adequate remedy.
22 Plaintiff has not shown that he or other Plan participants stand to
23 face irreparable harm if injunctive relief is not granted; section
24 1132(a)(1)(B) will continue to provide all Plan participants,
25 including Plaintiff, with the opportunity to challenge Hartford's
26 wrongful denial of benefits.

27 In any event, an injunction prohibiting Hartford from
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1 contracting with UDC or removing Hartford as the Plan's
2 administrator would not be appropriate under the circumstances.
3 Plaintiff has cited no case in which a court has granted such far-
4 reaching injunctive relief under circumstances similar to those
5 here. While several aspects of UDC's relationship with Hartford
6 are troubling, there will always be some degree of conflict when an
7 independent company is paid to review medical records for a claims
8 administrator. While Plaintiff has shown that the conflict in this
9 case is great enough to warrant skeptical treatment of Dr.
10 Mahawar's report, he has not shown that it is so great as to
11 warrant an injunction preventing Hartford from contracting with
12 UDC. Nor has Plaintiff shown that Hartford's use of UDC is a
13 breach of fiduciary duty of the magnitude that would call for
14 Hartford's removal as claims administrator. Accordingly,
15 Plaintiff's claim for injunctive relief under § 1132(a)(3) must be
16 denied.

17 CONCLUSION

18 For the foregoing reasons, Plaintiff's motion for judgment is
19 GRANTED IN PART and DENIED IN PART; Defendant's cross-motion for
20 judgment is also GRANTED IN PART and DENIED IN PART. Defendants
21 are ordered to pay Plaintiff twelve months of long-term disability
22 benefits, beginning on the date his short-term disability benefits
23 would have expired if they had been approved in the first instance.
24 Plaintiff's claim for additional long-term disability benefits is
25 REMANDED to Hartford for further proceedings consistent with this
26 order. Plaintiff's claim for injunctive relief under 29 U.S.C.
27 § 1132(a)(3) is DENIED. The case will be administratively closed
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1 pending Hartford's decision. It may be reopened at either party's
2 request, at which time final judgment may be entered.

3 IT IS SO ORDERED.

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5 Dated: 4/4/08



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CLAUDIA WILKEN
United States District Judge