

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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APPEAL FROM STATE OF SOUTH CAROLINA
Administrative Law Court

S.C. Supreme Court

Carolyn C. Matthews, Administrative Law Judge

Docket No. 2008-ALJ-30-0412-AP

Gail S. Still Petitioner,

v.

South Carolina Budget and Control Board, Employee Insurance Program..... Respondent.

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SC Court of Appeals

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Gail S. Still, ...Appellant,

v.

South Carolina Budget and Control Board, Employee Insurance
Program, ...Respondent.

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STATE OF SOUTH CAROLINA)

IN THE ADMINISTRATIVE LAW COURT

CASE NUMBER: _____

Gail S. Still,)

Petitioner,)

v.)

State of South Carolina,)

Respondent.)

**Notice of Petition and
Petition for Appellate Review of
Denial of Long Term Disability Benefits**

Now comes the Petitioner, Gail S. Still, by and through her undersigned counsel, moving for appellate review of Respondent's denial of Petitioner's long term disability claim. The basis of this petition is as follows:

Petitioner worked as a Benefits Coordinator with Barnwell School District 45. Through her employment with the State of South Carolina, she is a participating member of the Basic Long Term Disability Income Benefit Plan (BLTD), Identification Number XXX-XX-4789.

Petitioner suffers from multiple health problems including but not limited to rheumatoid arthritis, hepatitis C, asthma, three degenerative lumbar discs, and knee problems due to a left knee replacement in 1989.

Petitioner's rheumatologist, Edwin V. Martinez de Andino, MD, concluded that Petitioner was unable to continue working due to the physical limitations caused by the worsening of her rheumatoid arthritis. Dr. Martinez de Andino wrote a letter to this effect on November 7, 2006. Dr. Martinez de Andino noted moderate to severe range of motion limitation in her wrists secondary to pain, with additional pain in her knuckle, ankle, and subtalar joints. He went on to note that Petitioner's symptoms seemed to

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definitely be aggravated by her job. He indicated that she should use her short-term disability so he could evaluate how her condition and symptoms responded to being out of work. On several occasions that he treated her, Dr. Martinez de Andino noted that Petitioner also suffers from depression. Petitioner also frequently complained of fatigue to Dr. de Andino.

As a result of her disability, Petitioner made a claim against the aforementioned BLTD plan for benefits. Her claim was denied.

To date, Petitioner has exhausted her administrative remedies to obtain LTD benefits.

The decision to deny Petitioner's claim prejudices her substantial rights due to administrative findings, inferences, conclusions and/or decisions that are:

- a. in violation of constitutional or statutory provisions;
- b. in excess of the statutory authority of the agency;
- c. made upon unlawful procedure;
- d. affected by an error of law;
- e. clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; and/or
- f. arbitrary or capricious or characterized by abuse or discretion or clearly unwarranted exercise of discretion.

This Petition is brought pursuant to S.C. Code Ann. § 1-23-380 and such other statutory and common law which might be applicable.

Petitioner moves for a reversal of Respondent's decision to deny benefits and such other and further relief provided by law and deemed necessary and proper by this Court.

PETERS, MURDAUGH, PARKER, ELTZROTH
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August 5, 2008

Hampton, South Carolina

STATE OF SOUTH CAROLINA)

IN THE ADMINISTRATIVE LAW COURT

)

)

CASE NUMBER: _____

Gail S. Still,)

)

Petitioner,)

)

v.)

CERTIFICATE OF SERVICE

)

State of South Carolina,)

)

Respondent.)

)

This is to certify that I, Sandi Clark, legal secretary with the Law Firm of Peters, Murdaugh, Parker, Eltzroth & Detrick, P.A., attorneys for the Petitioner, have this date mailed via the U.S. Postal Service with first class postage prepaid a true and correct copy of the within Notice of Petition and Petition for Appellate Review of Denial of Long Term Disability Benefits to:

Mr. Robin E. Tester, Director
Employee Insurance Program
South Carolina Budget and Control Board
1201 Main Street, Suite 300
Columbia, South Carolina 29201


Sandi Clark

August 5, 2008

Hampton, South Carolina

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Gail S. Still,

Appellant,

v.

South Carolina Budget and Control
Board, Employee Insurance Program,

Respondent.

Docket Number: 08-ALJ-30-0412-AP

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SC ADMIN. LAW COURT

STATEMENT OF THE ISSUES ON APPEAL

WAS THE RESPONDENT CORRECT IN DENYING
APPELLANT'S CLAIM FOR LONG-TERM DISABILITY BENEFITS?

STATEMENT OF THE CASE

This case involves an appeal of the Respondent's¹ decision to deny Appellant Gail S. Still's ("Still") claim for long-term disability benefits.

Still was employed as a Benefits Coordinator, Payroll, for Barnwell School District 45. She ceased working on or about November 21, 2006 due to her claims of disability from multiple health conditions including rheumatoid arthritis, hepatitis C, asthma, three degenerative lumbar discs, and a left knee replacement in 1989. The record does not reflect the job description for a "Benefits Clerk II," but does classify this position as "Sedentary Work" under the U.S. Department of Labor Dictionary of Occupational Titles.² As the record indicates, "Sedentary Work" is defined as follows:

"Exerting up to 10 pounds of force occasionally (Occasionally: activity or condition exists 1/3 of the time) and/or negligible amount of force frequently (Frequently: activity or condition exists from 1/3 to 2/3 of the time) to lift, carry, push, pull, or otherwise move objects, including the human body. Sedentary work involves sitting most of the time, but may involve walking or standing for brief periods of time. NOTE: Jobs are sedentary if walking and standing are required only occasionally and all other sedentary criteria are met." (R 00027)³

Through her employment with the State of South Carolina, she is a participating member of the Basic Long Term Disability Income Benefit Plan (BLTD), Identification Number XXX-XX-4789. The Claims Administrator for this plan is The Standard Insurance Company. (R

¹ For ease of reference, the term "Respondent" is used throughout this brief to refer to the entities involved in the decision to deny Still's claim for disability. It is understood that the entities involved in the decision were The Standard, as third party administrator of the Plan and the State Budget and Control Board, Employee Insurance Program.

² The U.S. Department of Labor Dictionary of Occupational Titles, Fourth Edition, revised 1991.

³ "R ____" refers to the bates page numbers of the administrative record before the Court.

00043) The Standard Insurance plan governs the dispute in this appeal. In pertinent part, it defines "disability" as follows:

"During the Benefit Waiting Period and the Own Occupation Period you are required to be disabled only from your Own Occupation. You are disabled from your Own Occupation if, as a result of Physical Disease, Injury, Pregnancy or Mental Disorder, you are unable to perform with reasonable continuity the Material Duties of your Own Occupation." (R 00057)

The plan defines "Own Occupation" as follows:

"Own Occupation means any employment, business, trade, profession, calling or vocation that involves Material Duties of the same general character as your regular and ordinary employment with the employer. Your Own Occupation is not limited to your job with your Employer." (R 00057)

For Still to qualify for the benefits she seeks in her claim, she must have been disabled, as set forth above, during the 90-day Benefit Waiting Period. (R 00057)

In support of her claim, Still put forth evidence of her disability. Still presented medical evidence from her rheumatologist since 1999, Edwin V. Martinez de Andino, M.D. (R 00153) After treating Still on November 1, 2006, Dr. Martinez de Andino noted she was having problems due to her rheumatoid arthritis and depression including pain and limited range of motion. At that time, Dr. Martinez de Andino noted that Still's symptoms were definitely aggravated by her job and he recommended that she adopt short-term disability status so that he could further evaluate her. (R 00239) Dr. Martinez de Andino wrote a letter on Still's behalf on November 7, 2006. (R 00290) In that letter, Dr. Martinez de Andino opined that Still's rheumatoid arthritis had been worsening and was not expected to improve and that she was unable to return to her employment.

Still also presented medical evidence from her family doctor, William B. Clark, M.D. Dr. Clark completed an Attending Physician's Statement on her behalf on November 28, 2006. Dr. Clark listed her primary diagnosis as rheumatoid arthritis with secondary diagnoses of

chronic asthma and hepatitis C. In that statement, Dr. Clark noted his suggestion to Still that she stop working two years before the time he completed the statement. (R 00291-92)

On January 5, 2007, Dr. Martinez de Andino noted that Still "is doing much better now that she is not working. I do believe that this patient will need a long term disability as the culprit for her symptoms seem to be mostly her occupation." (R 00206)

On January 24, 2007, Dr. Martinez de Andino again suggested that Still remain out of work. His treatment notes from that visit state that she "has been evaluated and suggested to go on disability. I do not see this patient working at this point or in the near future in any gainful way." (R 00205)

Following a visit on June 25, 2007, Dr. Martinez de Andino noted that "this patient is unable to return to work as the duties affect even her activities of daily living with her disease state. She is not retrainable for doing any other type of work." (R 00179)

Still applied for benefits alleging disability beginning November 22, 2006, one day after she last worked. (R 00036) Her claim was denied on February 5, 2007; she appealed on March 7, 2007. The original decision was upheld on October 26, 2007. On December 3, 2007, The Standard wrote to Still's attorney, advising that the Employee Insurance Program ("EIP") had received Still's request to appeal The Standard's denial. (R 00040) The Long Term Disability Appeals Committee of the Employee Insurance Program denied Still's appeal on July 11, 2008. (R 00026) This appeal to the Administrative Law Court followed on August 5, 2008.

During these various appeals of her claim, Respondent hired at least two doctors to review Still's medical records to determine if she met the qualifications for long-term disability benefits. Dr. Shirley Ingram, a physician consultant for The Standard in Rheumatology, and Dr. Ronald Fraback, M.D., also a physician consultant for The Standard in Rheumatology, both reviewed Still's medical records. Neither doctor disputes the findings of Dr. Clark or Dr.

Martínez de Andino; they simply disagree with their medical opinions that Still is unable to work.

ARGUMENT

The denial of Still's claim must be overturned if this Court determines that Respondent's decision to deny her claim (1) violates constitutional or statutory provisions, (2) exceeds the statutory authority of the agency, (3) was based upon unlawful procedure, (4) was affected by an error of law, (5) was clearly erroneous in view of the reliable, probative and substantial evidence on the whole record, or (6) was arbitrary or capricious or characterized by an abuse of discretion or clearly unwarranted exercise of discretion. § 1-23-380(A)(6); *Weaver v. S.C. Coastal Council*, 309 S.C. 368, 374, 423 S.E.2d 340, 343 (1992).

This Court can substitute its own judgment for that of the Respondent if the Respondent's findings were clearly erroneous in view of the reliable, probative and substantial evidence in the record. *Marlboro Park Hosp. v. S.C. Dep't of Health and Envtl. Control*, 358 S.C. 573, 580, 595 S.E.2d 851, 855 (Ct. App. 2004). "Substantial evidence is not a mere scintilla of evidence, but evidence which, considering the record as a whole, would allow reasonable minds to reach the same conclusion the agency reached." *Commissioners of Public Works v. South Carolina Dept. of Health and Environmental Control*, 372 S.C. 351, 358, 641 S.E.2d 763, 766-767 (Ct. App. 2007).

The Respondent's decision to deny Still's claim for benefits was arbitrary and capricious and clearly erroneous in view of the substantial evidence in the record. An "administrative decision is 'arbitrary' if it is without rational basis, is based alone on one's will and not upon any course of reasoning and exercise of judgment, is made at pleasure, without adequate determining principles, or is governed by no fixed rules or standards." *Converse Power Corp. v. South Carolina Dept. of Health and Environmental Control*, 350 S.C. 39, 564 S.E.2d 341 (Ct.

App. 2002) (emphasis added). The decision to deny Still's claim was clearly based on the "will" of the Respondent and its hired doctors and not upon any course of reasoning and exercise of judgment.

A. Still's Attending Physicians

The record before the administrative body contained substantial evidence that Still was disabled. Still's family doctor, Dr. Clark, as well as her rheumatologist, Dr. Martinez de Andino, submitted documentation that unequivocally substantiated Still's claim of disability.

B. Still's Reviewing Doctors

In response to the overwhelming evidence that shows a worsening condition that has now disabled Still, the Respondent retained two doctors to review her medical records. The first was Dr. Shirley Ingram. The next was Dr. Ronald Fraback. Both doctors are board-certified in rheumatology. Neither doctor ever treated or even examined Still; they simply reviewed her medical records. Neither doctor disputed the findings of Dr. Clark or Dr. Martinez de Andino; they simply disagree with the ultimate medical opinion of each doctor regarding the severity of Still's condition.

C. Arbitrary and Capricious

Reliance on the opinions of the doctors hired by The Standard is arbitrary and capricious. Despite the limitations observed and recorded by Drs. Clark and Martinez de Andino regarding the affects of Still's multiple health conditions, Respondent cites the review of records by two hired physicians as sufficient support for denial of her claim. Dr. Martinez de Andino specifically states, on several occasions, that Still is permanently and totally disabled and the basis for that opinion, yet the two consulting physicians conveniently choose to ignore those records and focus instead on what they perceive that the records do not contain. Rather than

consider all available evidence and exercise judgment, Respondent has reached out for any basis to deny Still's claim.

Drs. Ingram and Fraback do not dispute the findings of Still's treating physicians. None of the reports by the consulting physicians dispute that Still suffers from a variety of conditions including but not limited to rheumatoid arthritis, hepatitis C, asthma, three degenerative lumbar discs, and a left knee replacement in 1989. Instead, they assume that Still's complaints of limitations are not valid. Such assumptions are not substantial evidence. The focus of the analysis should be on the conditions and their limitations. Both doctors independently reported that Still suffered significant limitations. Both reported that her conditions would likely not improve. Thus, the record is replete with substantial medical evidence of a disabling condition at the time of her claim for disability.

CONCLUSION

The decision to deny Still's claim was capricious and arbitrary. A thorough examination of the record reveals no substantial evidence to support Respondent's decision. Respondent's actions can only be characterized as an attempt to enforce its will despite the overwhelming evidence supporting Still's claim for disability. Accordingly, the Respondent's decision should be overturned and Still should be awarded long-term disability benefits.

(signature page to follow)

Respectfully Submitted,

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November 24, 2008
Hampton, South Carolina

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

FILED

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SC ADMIN. LAW COURT

Gail S. Still,

Appellant,

v.

South Carolina Budget and Control
Board, Employee Insurance Program,

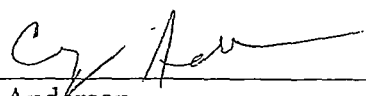
Respondent.

Docket Number: 08-ALJ-30-0412-AP

CERTIFICATE OF SERVICE

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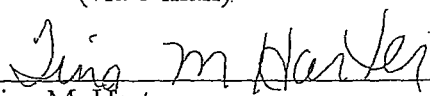
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November 24, 2008
Hampton, South Carolina

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Gail S. Still

Appellant,

vs.

South Carolina Budget and Control
Board, Employee Insurance Program,

Respondent.

Docket No. 08-ALJ-30-0412-AP

RESPONDENT'S BRIEF

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STATEMENT OF ISSUE ON APPEAL

DOES THE SUBSTANTIAL EVIDENCE IN THE RECORD ON APPEAL SUPPORT RESPONDENT SOUTH CAROLINA BUDGET AND CONTROL BOARD, EMPLOYEE INSURANCE PROGRAM'S DECISION TO DENY APPELLANT GAIL STILL'S LONG-TERM DISABILITY CLAIM?

STATEMENT OF THE CASE

This case involves an appeal by Appellant Gail Still ("Still") of Respondent South Carolina Budget and Control Board, Employee Insurance Program's ("EIP") decision to deny her long-term disability ("LTD") claim under the State of South Carolina Long Term Disability Income Benefit Plan (the "Plan"). Pursuant to the statutory mandate of S.C. Code Ann. 1-11-710(C) (2008) and the claims procedures and discretion provided by the Plan,¹ EIP denied Still's claim after determining that her physical and mental conditions did not qualify her for LTD benefits under the Plan. R 27-35.²

Still was formerly employed by Barnwell School District 45 as a benefits coordinator. *Id.* at 158. As an employee of the State of South Carolina, Still participated in the Plan. Still stopped working on November 21, 2006 with diagnoses of rheumatoid arthritis, hepatitis C, asthma, and degenerative disc disease. *Id.* at 152.

Standard Insurance Company ("Standard"), the third-party claims

¹ For a full discussion of EIP's discretionary authority under the Plan and the interaction of Section 1-11-710(C) and S.C. Code Ann. §1-23-380 (2008) in appeals involving the Plan, see Section entitled Allocation of Authority to EIP and the Appropriate Standard of Review, p. 15, *infra*.

² Citations in the form "R ____" are to specific Bates numbered pages of the Record on Appeal filed with the Court.

administrator for the Plan³, compiled and considered the available medical records from Still's health care providers. Prior to making a decision on Still's claim, Standard requested an independent medical opinion from Dr. Ingram, a board-certified rheumatologist, regarding Still's ability to continue to work in her occupation. After obtaining this opinion, on February 5, 2007, Standard informed Still that her claim had been denied because the information she submitted did not satisfy the Plan's Definition of Disability. *Id.* at 59-63. On March 7, 2007, Still appealed Standard's decision. *Id.* at 97. After receiving Still's request, Standard requested that Dr. Ingram reconsider her opinion on two occasions. After considering the additional information submitted by Still and Dr. Ingram's second and third opinions, on September 20, 2007, Standard informed Still that it had upheld the decision to deny her claim. *Id.* at 69-70. Standard also informed Still that its Administrative Review Unit ("ARU") would conduct an independent review of the decision to close her claim. *Id.* at 70.

The ARU independently reviewed Still's file and requested an additional independent medical opinion from a board-certified rheumatologist, Dr. Fraback. *Id.* at 161-63. Based on Still's medical records and the independent medical opinions of Dr. Ingram and Dr. Fraback, on October 26, 2007, the ARU upheld the decision to deny Still's claim. *Id.* at 43-49.

Pursuant to Section 1-11-710(C), which provides authority to EIP to

³ EIP has contracted with Standard to administer claims under the Plan. In its role as third-party claims administrator, Standard has no financial interest in the outcome of decisions under

establish claims procedures for the Plan, Still appealed Standard's decision to the EIP Long Term Disability Appeals Committee (the "Committee") for a *de novo* review of her LTD claim. The three Committee members are employees of the State of South Carolina, have no connection with Standard, and have no financial interest in the financial performance of the Plan.

Based upon the Plan's express terms, Still's medical records, and the independent medical opinions obtained by Standard, the Committee unanimously determined that the medical evidence did not demonstrate that Still qualified for LTD benefits under the terms of the Plan. The Committee informed Still of its decision by letter dated July 11, 2008. *Id.* at 26-35.

Following the Committee's final agency decision, Still filed her Notice of Appeal with this Court. The issue before the Court is whether substantial evidence in the Record on Appeal supports EIP's decision to deny Still's LTD claim.

STATEMENT OF FACTS

I. Applicable Plan Provisions

A. Definition of Disability

The Plan provides as follows:

You are Disabled if you meet one of the following definitions during the period it applies:

A. Own Occupation Definition of Disability

During the [90-day] Benefit Waiting Period and the

the Plan, and applies its experience and expertise in the area of disability claims review.

Own Occupation Period you are required to be Disabled only from your Own Occupation.

You are Disabled from your Own Occupation if, as a result of Physical Disease, Injury, Pregnancy, or Mental Disorder, you are unable to perform with reasonable continuity the Material Duties of your Own Occupation. *Id.* at 9.

Because Still's condition did not satisfy the Own Occupation Definition of Disability during the Plan's 90-day Benefit Waiting Period and beyond, EIP denied her claim.

B. Proof of Loss

The Plan also contains the following provision:

Proof of Loss

Proof of Loss means written proof that you are Disabled and entitled to LTD Benefits. Proof of Loss must be provided at your expense.

For claims of Disability due to conditions other than Mental Disorders, we may require proof of physical impairment that results from anatomical or physiological abnormalities which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques. *Id.* at 19.

Thus, under the terms of the Plan, in order to qualify for LTD benefits, Still must provide objective medical evidence that her condition prevents her from performing the material duties of her occupation.

II. Still's Medical Records

A. Dr. Martinez de Andino

Still's primary treating physician during the relevant time period was Dr. Martinez de Andino, a rheumatologist. The records Still submitted from Dr. Martinez de Andino date back to June 29, 2005, 17 months before she stopped working. On that date Dr. Martinez de Andino observed that Still "has a lot of nonspecific aches and pains, more severe on the right hip area . . . [t]here is no history of numbness, paresthesias or weakness. She does have some chronic low back pain . . . [s]he has a history of depression." *Id.* at 282. Other than the reported symptoms, Dr. Martinez de Andino recorded no other findings on physical exam. He concluded that Still might be having a flare of rheumatoid arthritis, but that it "is likely that most of her symptoms are from depression." *Id.*

On August 31, 2005, Dr. Martinez de Andino observed that Still's rheumatoid arthritis was stable with no changes. *Id.* at 278. On October 25, 2005, Still's "only complaint [was] fatigue." *Id.* at 274. Dr. Martinez de Andino noted that Still's rheumatoid arthritis continued to be "stable," and that she had a history of chronic hepatitis; however, she did not have related symptoms. *Id.* at 274-75. In November 2005, Still had a viral infection that resolved with prednisone. *Id.* at 268-70. By December 19, 2005, Still reported that she felt "great." *Id.* at 266. Dr. Martinez de Andino again noted that her rheumatoid arthritis was stable. *Id.* at 267.

Still next saw Dr. Martinez de Andino on February 28, 2006. She complained of low back pain that radiated down her right leg. *Id.* at 264. On physical exam, Still had normal range of motion and strength, but complained of

pain in her right hip area. *Id.* Dr. Martinez de Andino concluded that Still's rheumatoid arthritis was stable and referred her for an MRI of her pelvis and back. *Id.* at 265.

Still underwent several diagnostic exams on March 3, 2006. Dr. Dacunha, a neurologist, administered and interpreted a "somatosensory evoked potentials" exam of Still's legs. His report states that the results of the test were normal. *Id.* at 261. Dr. Dacunha also interpreted a nerve conduction test and needle EMG of Still's legs. Again, he concluded that the results were normal. *Id.* at 260. Dr. Goltra administered and interpreted MRIs of Still's pelvis and lumbar spine. With respect to Still's pelvis, the MRI demonstrated "nearly normal appearance of the boney pelvis." *Id.* at 259. The lumbar spine MRI demonstrated "some very minimal degenerative disc disease at L1-2 and L2-3 and mild facet hypertrophy at L5-S1." *Id.* at 258.

Still returned to Dr. Martinez de Andino on March 23, 2006. In response to Dr. Goltra's assessment of "very minimal degenerative disc disease," Dr. Martinez de Andino commented that Still had "mild degenerative disc disease" that he planned to treat conservatively. *Id.* at 256. Once again, Dr. Martinez de Andino commented that Still's rheumatoid arthritis was stable. *Id.*

During Still's next office visit on June 14, 2006, Dr. Martinez de Andino recorded that her rheumatoid arthritis was stable and that she had asymptomatic degenerative disc disease. *Id.* at 251. He reported the same findings on August 14, 2006 and noted that Still's "only complaint is of fatigue." *Id.* at 243-44.

On November 1, 2006, for the first time in the medical records Still has provided, Dr. Martinez de Andino reported symptoms associated with Still's rheumatoid arthritis. Specifically, he noted Still complained of "some nonspecific joint pain involving hands, sometimes wrists, sometimes ankles." *Id.* at 238. In other words, Still's rheumatoid arthritis appeared to be flaring. Dr. Martinez de Andino stated that Still's "symptoms seem to definitely be aggravated by her job. I think at this point it is best to give her a short term disability so we can evaluate how she responds." *Id.* at 239.

On November 7, 2006, Dr. Martinez de Andino authored a "To Whom It May Concern" letter in which he stated he had been treating Still for rheumatoid arthritis since August 1999. *Id.* at 290. The letter then stated that "Ms. Still's condition is worsening and will not improve. Ms. Still's condition has not allowed her to return work and she is considered total (sic) disabled at this time." *Id.* Dr. Martinez de Andino's letter (and his chart notes) offer no explanation or basis for his statement that Still's condition "will not improve."

Still next saw Dr. Martinez de Andino on January 5, 2007. In marked contrast to the November 1, 2006 chart note and Dr. Martinez de Andino's November 7, 2006, the January 5, 2007 chart note expressly states that Still's rheumatoid arthritis "is clinically stable. No significant joint pain, swelling or stiffness." *Id.* at 206. Dr. Martinez de Andino commented that Still was doing better "now that she is not working," and further commented, without explanation, that Still's work was the "culprit of her symptoms." *Id.* Dr. Martinez de Andino's

statements are not supported by Still's history of working for at least 7 years with rheumatoid arthritis. Notably, for the period of time from June 29, 2005 through November 1, 2006, there is no information in Dr. Martinez de Andino's records that would even arguably support that Still was incapable of working due to symptoms associated with her rheumatoid arthritis. Still's one-time flare in November 2006 does not satisfy the standard to qualify for LTD benefits under the Plan.

On January 24, 2007, Still complained again of wrist and hand pain. *Id.* at 204. Dr. Martinez de Andino started Still on prednisone and again stated that she could not work presently or in the near future. *Id.* at 205. On February 27, 2007, Dr. Martinez de Andino reported that Still was "moderately improved" with prednisone. *Id.* at 203.

Dr. Martinez de Andino's final note is dated June 25, 2007 and stated that Still's primary complaint was fatigue. *Id.* at 178. While he stated that Still was unable to work, he also stated that her rheumatoid arthritis was once again stable.

B. Other Medical Records

Other than Dr. Martinez de Andino's medical records, Still submitted very little information in support of her claim. As part of her initial application for LTD benefits, she submitted an Attending Physician's Statement ("APS") that was completed by Dr. Clark, a general practitioner. On the APS, Dr. Clark reported a primary diagnosis of rheumatoid arthritis and secondary diagnosis of asthma and

Hepatitis C. *Id.* at 291. Dr. Clark listed Still's symptoms as increased joint pain, joint edema, and decreased mobility. *Id.* Dr. Clark stated that Still had no mental or cognitive limitations. *Id.* at 292. He further stated that Still could frequently lift 10 pounds, walk or stand up to 6 hours during an 8 hour work day, and sit for up to 6 hours in an 8 hour work day. *Id.* at 292.

III. Standard's Consideration and Denial of Still's Claim for LTD Benefits

After receiving Still's application for LTD benefits, Standard Vocational Case Manager Steve Cooper reviewed information about Still's occupation, including her specific job duties, in order to properly identify her occupation and its physical requirements. In a December 7, 2006 memorandum, Mr. Cooper identified Still's occupation as Benefits Clerk II and concluded that this occupation required sedentary level physical strength. *Id.* at 294.

After compiling Still's available medical records and Mr. Cooper's report, Standard requested an independent medical opinion regarding whether Still's conditions prevented her from performing her sedentary occupation. Dr. Ingram, a board-certified rheumatologist⁴, reviewed Still's available medical records and provided her written opinion on January 18, 2007. *Id.* at 211-12.

After discussing Still's available medical records, Dr. Ingram provided the following summary:

These records show ongoing treatment for rheumatoid arthritis, which has been stable over the prior year. Although her rheumatologist states that

⁴ Dr. Ingram's *curriculum vitae* is included in the Record on Appeal at R. 215-16.

her work is aggravating symptoms and on that date there is some noted decreased range in motion of the wrists, there were no signs or symptoms expressed that would be considered to be consistent with acute synovitis or a flare of rheumatoid arthritis and her treatment has not changed

Respect is given to her rheumatologist's advocacy, but these records do not specifically support a change in her medical condition that would limit her ongoing ability to perform her own full-time sedentary occupation with frequently reaching, handling and fingering. *Id.* at 212.⁵

After considering all of Still's medical records and obtaining the vocational report and Dr. Ingram's opinion, on February 5, 2007, Standard informed Still that her claim had been denied. *Id.* at 59-63. Standard's letter acknowledged Still's diagnoses and pain complaints, but explained that "[i]n completing a thorough review of the available medical records, we lack sufficient documentation to support any physical condition that would preclude you from performing sedentary work activity on a full-time basis when you ceased work on November 21, 2006." *Id.* at 61.

After Still appealed Standard's initial decision and submitted a handful of additional records from Dr. Martinez de Andino, Standard requested that Dr. Ingram reconsider her prior opinion. In an April 4, 2007 report, Dr. Ingram discussed the very limited additional information Still had provided and again opined that Still was not disabled from performing her sedentary occupation. *Id.* at 182-83.

⁵ Dr. Ingram also discussed possible accommodations in the workplace to address any

Following up on this review, on April 12, 2007, Dr. Ingram wrote directly to Dr. Martinez de Andino to request clarification of his opinion. *Id.* at 181. Specifically, Dr. Ingram's letter stated as follows:

I cannot ascertain from your records the specific rationale for recommending her to no longer work, since it is common for patients with rheumatoid arthritis to have episodic flares treated with low-dose corticosteroids and if they flare again to change their disease-modifying treatment. It would be helpful to Ms. Still if you have further information in the form of radiographs, grip strengths or specific notations on how her disease changed in November 2006, such that she could no longer work at her sedentary job.

If you would include these with a short narrative discussion, I am hopeful that would clarify your recommendations. Please include a reasonable bill for your time along with your taxpayer ID. *Id.*

Dr. Martinez de Andino never responded to Dr. Ingram's request for information. In a third report dated September 5, 2007, Dr. Ingram noted that Dr. Martinez de Andino had not responded to her letter and also noted that she had received Dr. Martinez de Andino's June 25, 2007 chart note for review. *Id.* at 172. Dr. Ingram commented that the June 25 chart note "confirms the stability of her rheumatoid arthritis . . . [T]he submitted objective information is minimal and does not support the extreme limitations that have been noted by Dr. Martinez de Andino." *Id.* at 173.

After receiving Dr. Ingram's second and third opinions, receiving no clarifying information from Dr. Martinez de Andino, and again reviewing Still's

restrictions with fine manipulation or repetitive action that Still may periodically have. See *id.*

medical records, Standard upheld the decision to deny Still's LTD claim. Standard informed Still's attorney, League Boylston, of its decision in a September 20, 2007 letter. *Id.* at 69-70. Standard's letter informed Ms. Boylston that Standard's Administrative Review Unit would conduct an independent review of Still's claim. *Id.* at 70.

In conjunction with its independent review, the ARU requested a second independent medical opinion from Dr. Fraback, another board-certified rheumatologist.⁶ Dr. Fraback's September 27, 2007 report summarizes all of the medical records Still submitted and provides Dr. Fraback's opinion as follows:

I think it is reasonable that the claimant was precluded from sedentary level work as of the cease-work date due to an increase in her joint symptomatology. She apparently was having flare-ups from November through approximately early February 2007. In a note dated February 23, 2007, Dr. Martinez de Andino indicated that she was improved. Therefore, I think that by mid February 2007 she should have been able to return to regular sedentary level work activities. She may periodically have some difficulty with repetitive hand and wrist motions due to flare-ups of her arthritis. I do not find evidence of a back condition of such severity as to preclude regular sedentary level work. *Id.* at 163.

After reviewing and considering all of the information submitted by Still and the opinions of Dr. Ingram and Dr. Fraback, on October 26, 2007, the ARU informed Ms. Boylston that it had upheld the decision to deny Still's LTD claim. *Id.* at 43-49. The ARU acknowledged Still may have had a flare with her rheumatoid arthritis that prevented her from working from late November through

early February; however, the ARU concluded that Still's condition improved by mid-February, and therefore, she was not disabled throughout and beyond the Plan's 90-day Benefit Waiting Period. *Id.* at 48. The ARU informed Ms. Boylston of Still's right to appeal to EIP for a final agency determination. *Id.* at 49.

IV. EIP's Consideration and Denial of Still's Claim for LTD Benefits

After Still appealed to EIP for a final agency determination, EIP's Long Term Disability Appeals Committee conducted a *de novo* review of her claim to determine if she was entitled to LTD benefits under the Plan. Before meeting as a group, each Committee member reviewed the entire Record on Appeal. *Id.* at 26. In the Committee's July 11, 2008 letter decision, the Committee summarized in significant detail all of the medical information Still submitted. *See id.* at 26-31. The Committee also considered the opinions of Dr. Ingram and Dr. Fraback. *Id.* at 29-31. The Committee also noted the Plan's Proof of Loss provision. *Id.* at 32-33. After considering all of this information, the Committee unanimously determined that Still was not entitled to LTD benefits and provided the following reasons for its decision:

- "After considering all of the medical documentation in the claim file, including the opinions of Petitioner's physicians and the Physician and Vocational Consultants, the Committee found the Petitioner did not meet the Plan's Own Occupation Definition of Disability for the BLTD Plan. In order for Petitioner to be entitled to BLTD Benefits, the medical documentation in the claim file must support that her level of function was impaired to the degree that she is unable to perform the Material Duties of her Own Occupation as a benefits clerk on a full-time basis. Her Own Occupation requires sedentary-level physical demands. The Committee determined that Petitioner

⁶ Dr. Fraback's *curriculum vitae* is included in the Record on Appeal at R. 167-68.

was not disabled from performing her sedentary-level occupation throughout and beyond the 90-day Benefit Waiting Period." *Id.* at 33.

- "The Committee noted that Dr. Martinez de Andino opined that Petitioner was 'unable to perform her expected duties at work' and that she was not 'retrainable' for any other type of work. The Committee disagreed. Although Dr. Martinez de Andino opined Petitioner could not work in any meaningful way, Dr. Ingram noted Dr. Martinez de Andino did not specifically state his rationale for this assessment . . . Dr. Martinez de Andino failed to respond to a letter from Dr. Ingram. Thus, Dr. Martinez de Andino failed to explain how he reached his conclusion concerning Petitioner's disability and failed to point to objective evidence showing that Petitioner was disabled from performing her sedentary-level occupation." *Id.*
- The Committee observed that "Dr. Ingram found that Petitioner's rheumatoid arthritis was stable, and that there was nothing in Petitioner's chart to indicate her arthritis is so severe that it would be rapidly disabling, particularly given the dearth of x-rays showing significant erosions. Dr. Ingram noted Petitioner's musculoskeletal exams were normal and without synoviits." *Id.*
- "The Committee . . . accepts that Petitioner's arthritis symptoms were exacerbated during the period from November 2006 to February 2007, and that Dr. Fraback opined this flare was severe enough to cause Petitioner to be unable work in her sedentary-level occupation from November 2006 to mid-February 2007. Clearly, Petitioner experienced a flare of rheumatoid arthritis in January 2007. But Petitioner's condition was improved by February 2007 after a course of prednisone. Therefore, the Committee agrees with the opinion of Dr. Fraback and finds that Petitioner was not disabled throughout and beyond the 90-day period after she ceased work in November 2006 as a result of a flare of rheumatoid arthritis." *Id.* at 34.
- "[T]he Committee found that Petitioner was not precluded from performing her sedentary-level occupation as a result of back pain . . . There is no evidence that her depression is severe and, in fact, Petitioner reduced her anti-depressant dosage . . . The Committee found that Petitioner was not disabled from performing her sedentary-level occupation as a result of rheumatoid arthritis, back problems, hepatitis C, asthma or depression. None of these

conditions either individually, or taken together, limited Petitioner from performing her sedentary-level occupation." *Id.* at 34-35.

In conclusion, the Committee held that "Petitioner retained the capacity to perform her sedentary level occupation and that The Standard properly denied her BLTD claim." *Id.* at 35.

ALLOCATION OF AUTHORITY TO EIP AND THE APPROPRIATE STANDARD OF REVIEW

The Plan provides EIP with "full and exclusive authority to control and manage the Plan, to administer claims, and to interpret the Plan and resolve all questions arising in the administration, interpretation, and application of the Plan. Our authority includes . . . [T]he right to determine . . . [E]ntitlement to benefits." *Id.* at 21. The Plan further provides: "Any decision we make in the exercise of our authority is conclusive and binding, subject only to appellate judicial review consistent with the standards provided in Section 1-23-380, Code of Laws of South Carolina." *Id.*

Likewise, Section 1-11-710(C), the enabling legislation for the Plan, provides as follows:

Notwithstanding Sections 1-23-310 and 1-23-320 or any other provision of law, claims for benefits under any self-insured plan of insurance offered by the State to state and public school district employees and other eligible individuals must be resolved by procedures established by the [State Budget and Control Board], which shall constitute the exclusive remedy for these claims, subject only to judicial review consistent with the standards provided in Section 1-23-380.

Section 1-23-380 establishes the standard of review for appeals of EIP's

decisions as follows:

The court may not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

- (a) in violation of constitutional or statutory provisions;
- (b) in excess of the statutory authority of the agency;
- (c) made upon unlawful procedure;
- (d) affected by other error of law;
- (e) clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; or
- (f) arbitrary or capricious or characterized by an abuse of discretion or clearly unwarranted exercise of discretion. (Emphasis added).

S.C. Code Ann. §1-23-380(A)(5) (2008).

Under Section 1-23-380, "substantial evidence" is the standard for judicial review of agency decisions. *Hendley v. S.C. State Budget & Control Bd.*, 333 S.C. 455, 510 S.E.2d 421 (1999). "Substantial evidence is not a mere scintilla of evidence, but evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion the agency reached." *Tiller v. National Health Care Center*, 334 S.C. 333, 338, 513 S.E.2d 843, 845 (1999). Under the substantial evidence rule, EIP's decision must be upheld unless it was clearly erroneous in view of the substantial evidence in the record. See *Central Transp., Inc. v. S.C. Public Service Comm'n*, 289 S.C. 267, 346 S.E.2d 25 (1986).

(reversing the Circuit Court when it exceeded the scope of review and substituted its own judicial discretion for that of the Commission).

The South Carolina Court of Appeals has addressed issues similar to those now presented. An agency's finding is supported by substantial evidence even when the record, considered as a whole, presents the possibility of drawing two inconsistent conclusions from the evidence. See *Hargrove v. Titan Textile Co.*, 360 S.C. 276, 289, 599 S.E.2d 604, 611 (Ct. App. 2004). In *Wilson v. State Budget and Control Board Employee Insurance Program*, 374 S.C. 300, 648 S.E.2d 310 (Ct. App. 2007), Wilson presented "some evidence" to support her claim; however, substantial evidence in the record supported EIP's decision to deny Wilson's claim. After the Circuit Court ruled in Wilson's favor, the Court of Appeals reversed and held "[w]hile we recognize that [Wilson's treating physician] and the Social Security Administration found otherwise, we remain cognizant that as an appellate court, we must affirm an agency's decision when substantial evidence supports the decision." 374 S.C. at 305-06, 648 S.E.2d at 313, citing *Converse Power Corp.*, 350 S.C. at 46, 564 S.E.2d at 345.

ARGUMENT

Substantial Evidence Supports EIP's Decision to Deny Still's Claim for LTD Benefits

The evidence in the Record on Appeal supports EIP's decision to deny Still's claim for LTD benefits. The medical and vocational records Still submitted establish that she worked for at least seven years with a diagnosis of stable rheumatoid arthritis. Dr. Martinez de Andino's chart notes from late 2006 and

early 2007 support a finding that Still experienced a flare of her rheumatoid arthritis that caused her hand and wrist pain and may have prevented her from working from late November through mid-February. Dr. Martinez de Andino's chart notes further establish that the flare was controlled with medication and Still's rheumatoid arthritis returned to a stable status, which did not prevent her from working in her occupation. Specifically, Dr. Martinez de Andino's June 25, 2007 chart note expressly states that Still's main complaint is fatigue and that her rheumatoid arthritis was stable. R. 179. Thus, the objective medical information submitted by Still simply does not support a finding that she was disabled from performing her occupation throughout and beyond the Plan's 90-day Benefit Waiting Period. Rather, the medical information provides substantial evidence to the contrary.

In his June 25 note, Dr. Martinez de Andino opined that Still was doing better because she was no longer working; however, this statement is not supported by his 2005 and 2006 medical records, which chronicle Still's stable rheumatoid arthritis while working. Still makes a similarly unsupported statement in her Brief when she asserts that the evidence in the Record on Appeal "shows a worsening condition that has now disabled Still." Appellant's Brief, p. 5. This statement is simply not true. The medical records do not support a conclusion that Still's condition has permanently worsened or that it continued to worsen after February 2007. To the contrary, the overwhelming evidence in Dr. Martinez de Andino's records and the other records Still submitted support a conclusion

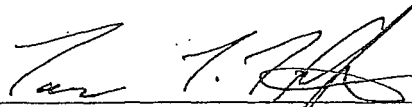
that Still experienced a flare of her rheumatoid arthritis that resolved with medication, and that her condition and physical capabilities after the flare were similar to those before the flare when she was working.

In addition to the fact that Dr. Martinez de Andino's records support EIP's decision, the independent medical opinions of Dr. Ingram and Dr. Fraback support and provide substantial evidence in support of EIP's decision. Moreover, Dr. Ingram specifically requested additional information and clarification from Dr. Martinez de Andino regarding his opinions and explained why she disagreed with his opinion. However, Dr. Martinez de Andino failed to respond with any additional information to support his unsupported conclusions.

In summary, the medical records of Still's treating physicians and the opinions of Dr. Ingram and Dr. Fraback all provide overwhelming evidence to support EIP's decision to deny Still's LTD claim. Because substantial evidence supports EIP's decision, the Court should affirm the decision.

CONCLUSION

For the foregoing reasons, EIP respectfully requests that the Court affirm its decision to deny Still's claim for LTD benefits under the Plan.



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Employee Insurance Program

December 19, 2008
Greenville, South Carolina

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Gail S. Still,

Appellant,

vs.

South Carolina Budget and Control Board,
Employee Insurance Program,

Respondent.

Docket No.: 08-ALJ-30-0412-AP

FINAL ORDER

THE HONORABLE CAROLYN C.
MATTHEWS

Argued July 29, 2009 – Filed August 21, 2009

Appearances:

For Appellant:

Mark D. Ball, Esquire

M. League Boylston, Esquire

For Respondent:

Michael T. Brittingham, Esquire

James T. Hedgepath

FILED

AUG 21 2009

SC ADMIN. LAW COURT

STATEMENT OF THE CASE

This case involves an appeal by Appellant Gail Still ("Still") of Respondent South Carolina Budget and Control Board, Employee Insurance Program's ("EIP") decision to deny her long-term disability ("LTD") claim under the State of South Carolina's Long Term Disability Income Benefit Plan (the "Plan"). Pursuant to the statutory mandate of S.C. Code Ann. 1-11-710(C) (2008) and the claims procedures and discretion provided by the Plan, EIP denied Still's claim after determining that her physical and mental conditions did not qualify her for LTD benefits under the Plan by final decision dated July 11, 2008. Appellant timely appealed that decision to this Court on August 5, 2008.

FACTS

Still was formerly employed by Barnwell School District 45 as a benefits coordinator. As an employee of the State of South Carolina, Still participated in the Plan. The record does not reflect the job description for a "Benefits Clerk II," but does classify this position as "Sedentary Work" under the U.S. Department of Labor Dictionary of Occupational Titles. As the record indicates, "Sedentary Work" is defined as follows:

"Exerting up to 10 pounds of force occasionally (Occasionally: activity or condition exists 1/3 of the time) and/or negligible amount of force frequently (Frequently: activity or condition exists from 1/3 to 2/3 of the time) to lift, carry, push, pull, or otherwise move objects, including the human body. Sedentary work involves sitting most of the time, but may involve walking or standing for brief periods of time. NOTE: Jobs are sedentary if walking and standing are required only occasionally and all other sedentary criteria are met."

She stopped working as a Benefits Clerk on November 21, 2006 with diagnoses of rheumatoid arthritis, hepatitis C, asthma, and degenerative disc disease.

Standard Insurance Company ("Standard"), the third-party claims administrator for the Plan, compiled and considered the available medical records from Still's health care providers. Prior to making a decision on Still's claim, Standard requested an independent medical opinion from Dr. Ingram, a board-certified rheumatologist, regarding Still's ability to continue to work in her occupation. After obtaining this opinion, on February 5, 2007, Standard informed Still that her claim had been denied because the information she submitted did not satisfy the Plan's Definition of Disability.

On March 7, 2007, Still appealed Standard's decision. After receiving Still's request, Standard requested that Dr. Ingram reconsider her opinion on two occasions. After considering the additional information submitted by Still and Dr. Ingram's second and third opinions, on September 20, 2007, Standard informed Still that it had upheld the decision to deny her claim. Standard also informed Still that its Administrative Review Unit ("ARU") would conduct an independent review of the decision to close her claim.

The ARU independently reviewed Still's file and requested an additional independent medical opinion from a board-certified rheumatologist, Dr. Fraback. Based on Still's medical records and the independent medical opinions of Dr. Ingram and Dr. Fraback, on October 26,

2007, the ARU upheld the decision to deny Still's claim.

Pursuant to Section 1-11-710(C), which provides authority to EIP to establish claims procedures for the Plan, Still appealed Standard's decision to the EIP Long Term Disability Appeals Committee (the "Committee") for a *de novo* review of her LTD claim. The three Committee members are employees of the State of South Carolina; they have no affiliation with Standard, and have no financial interest in the performance of the Plan.

Based upon the Plan's express terms, Still's medical records, and the independent medical opinions obtained by Standard, the Committee unanimously determined that the medical evidence did not demonstrate that Still qualified for LTD benefits under the terms of the Plan. The Committee informed Still of its decision by letter dated July 11, 2008.

Following the Committee's final agency decision, Still filed her Notice of Appeal with this Court. The issue before the Court is whether substantial evidence in the Record on Appeal supports EIP's decision to deny Still's LTD claim.

ISSUE

DOES SUBSTANTIAL EVIDENCE IN THE RECORD SUPPORT RESPONDENT SOUTH CAROLINA BUDGET AND CONTROL BOARD, EMPLOYEE INSURANCE PROGRAM'S DECISION TO DENY APPELLANT GAIL STILL'S LONG-TERM DISABILITY CLAIM?

ANALYSIS

I. Applicable Plan Provisions

A. Definition of Disability

The Plan provides as follows:

You are Disabled if you meet one of the following definitions during the period it applies:

A. Own Occupation Definition of Disability

During the [90-day] Benefit Waiting Period and the Own Occupation Period you are required to be Disabled only from your Own Occupation.

You are Disabled from your Own Occupation if, as a result of Physical Disease, Injury, Pregnancy, or Mental Disorder, you are unable to perform with reasonable continuity the Material Duties

of your Own Occupation.

Because Still's condition did not satisfy the "Own Occupation Definition of Disability" during the Plan's 90-day Benefit Waiting Period and beyond, EIP denied her claim.

B. Proof of Loss

The Plan also contains the following provision:

Proof of Loss

Proof of Loss means written proof that you are Disabled and entitled to LTD Benefits. Proof of Loss must be provided at your expense.

For claims of Disability due to conditions other than Mental Disorders, we may require proof of physical impairment that results from anatomical or physiological abnormalities which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques.

Thus, under the terms of the Plan, in order to qualify for LTD benefits, Still was required to provide objective medical evidence that her condition prevented her from performing the material duties of her occupation.

II. Still's Medical Records

A. Dr. Martinez de Andino

Still's primary treating physician during the relevant time period was Dr. Martinez de Andino, a rheumatologist. The records Appellant submitted date back to June 29, 2005, 17 months before she stopped working. On that date Dr. Martinez de Andino observed that Still "has a lot of nonspecific aches and pains, more severe on the right hip area . . . [t]here is no history of numbness, paresthesias or weakness. She does have some chronic low back pain . . . [s]he has a history of depression." Other than the reported symptoms, he recorded no other findings. He concluded that Still might be having a flare [sic] of rheumatoid arthritis, but that it "is likely that most of her symptoms are from depression."

On August 31, 2005, Dr. de Andino observed that Still's rheumatoid arthritis was stable with no changes. On October 25, 2005, Still's "only complaint [was] fatigue"; he noted that Still's rheumatoid arthritis continued to be "stable," and that she had a history of chronic hepatitis; however, she did not have related symptoms. In November 2005, Still had a viral

infection that resolved with prednisone. By December 19, 2005, Still reported that she felt "great." Dr. de Andino again noted that her rheumatoid arthritis was stable.

Still next saw Dr. de Andino on February 28, 2006. She complained of low back pain that radiated down her right leg. At that time, Still had normal range of motion and strength, but complained of pain in her right hip area. Dr. de Andino concluded that her rheumatoid arthritis was stable and referred her for an MRI of her pelvis and back.

Still underwent several diagnostic exams on March 3, 2006. Dr. Dacunha, a neurologist, administered and interpreted a "somatosensory evoked potentials" exam of Still's legs. His report stated that the results of the test were normal. Dr. Dacunha also interpreted a nerve conduction test and needle EMG of Still's legs. Again, he concluded that the results were normal. Dr. Goltra administered and interpreted MRIs of Still's pelvis and lumbar spine. With respect to Still's pelvis, the MRI demonstrated "nearly normal appearance of the boney pelvis." The lumbar spine MRI demonstrated "some very minimal degenerative disc disease at L1-2 and L2-3 and mild facet hypertrophy at L5-S1."

Still returned to Dr. Martinez de Andino on March 23, 2006. In response to Dr. Goltra's assessment of "very minimal degenerative disc disease," Dr. de Andino commented that Still had "mild degenerative disc disease" that he planned to treat conservatively. Once again, he commented that Still's rheumatoid arthritis was stable.

During Still's next office visit on June 14, 2006, Dr. de Andino recorded that her rheumatoid arthritis was stable and that she had asymptomatic degenerative disc disease. He reported the same findings on August 14, 2006 and noted that Still's "only complaint is of fatigue."

On November 1, 2006, for the first time in the medical records, Dr. de Andino reported symptoms associated with Still's rheumatoid arthritis. Specifically, he noted "some nonspecific joint pain involving hands, sometimes wrists, sometimes ankles." In other words, Still's rheumatoid arthritis appeared to be flaring. He stated that Still's "symptoms seem to definitely be aggravated by her job. I think at this point it is best to give her a short term disability so we can evaluate how she responds."

On November 7, 2006, Dr. de Andino authored a "To Whom It May Concern" letter in which he stated he had been treating Still for rheumatoid arthritis since August 1999. The letter then stated that "Ms. Still's condition is worsening and will not improve. Ms. Still's condition

has not allowed her to return to work and she is considered total (sic) disabled at this time.” *Id.* Dr. Martinez de Andino’s letter (and his chart notes) offered no explanation or basis for his statement that Still’s condition “will not improve.”

Still next saw Dr. de Andino on January 5, 2007. In marked contrast to the November 1, 2006 chart note and Dr. Martinez de Andino’s November 7, 2006 chart note, the January 5, 2007 chart note expressly stated that Still’s rheumatoid arthritis “is clinically stable. No significant joint pain, swelling or stiffness.” Dr. de Andino commented that Still was doing better “now that she is not working,” and further commented, without explanation, that Still’s work was the “culprit of her symptoms.”

Dr. de Andino’s statements are not supported by Still’s history of working for at least seven years with rheumatoid arthritis. Notably, for the period from June 29, 2005 through November 1, 2006, there is no information in Dr. de Andino’s records which indicates that Still was incapable of working due to symptoms associated with rheumatoid arthritis. Still’s one-time flare in November 2006 does not satisfy the standard to qualify for LTD benefits under the Plan.

On January 24, 2007, Still complained again of wrist and hand pain. Dr. Martinez de Andino started Still on prednisone and again stated that she could not work presently or in the near future. On February 27, 2007, Dr. Martinez de Andino reported that Still was “moderately improved “with prednisone.

Dr. Martinez de Andino’s final note is dated June 25, 2007 and stated that Still’s primary complaint was fatigue. Although he stated that Still was unable to work, he also stated that her rheumatoid arthritis was once again stable.

B. Other Medical Records

Still submitted very little additional information in support of her claim. As part of her initial application for LTD benefits, she submitted an Attending Physician’s Statement (“APS”) that was completed by Dr. Clark, a general practitioner. On the APS, Dr. Clark reported a primary diagnosis of rheumatoid arthritis and secondary diagnosis of asthma and Hepatitis C. Dr. Clark listed Still’s symptoms as increased joint pain, joint edema, and decreased mobility. Dr. Clark stated that Still had no mental or cognitive limitations. He further stated that Still could frequently lift 10 pounds, walk or stand up to 6 hours during an 8 hour work day, and sit for up to 6 hours in an 8 hour work day.

III. Standard's Consideration and Denial of Still's Claim for LTD Benefits

After receiving Still's application for LTD benefits, Standard Vocational Case Manager Steve Cooper reviewed information about Still's occupation, including her specific job duties, in order to properly identify her occupation and its physical requirements. In a December 7, 2006 memorandum, Mr. Cooper identified Still's occupation as Benefits Clerk II and concluded that this occupation required sedentary level physical strength.

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After reviewing Still's medical records, Dr. Ingram provided the following summary:

These records show ongoing treatment for rheumatoid arthritis, which has been stable over the prior year. Although her rheumatologist states that her work is aggravating symptoms and on that date there is some noted decreased range in motion of the wrists, there were no signs or symptoms expressed that would be considered to be consistent with acute synovitis or a flare of rheumatoid arthritis and her treatment has not changed . . .

Respect is given to her rheumatologist's advocacy, but these records do not specifically support a change in her medical condition that would limit her ongoing ability to perform her own full-time sedentary occupation with frequently reaching, handling and fingering.

After considering all Still's medical record, the vocational report, and Dr. Ingram's opinion, on February 5, 2007, Standard informed Still on February 5, 2007 that her claim had been denied. Standard's letter acknowledged Still's diagnoses and pain complaints, but explained that "[i]n completing a thorough review of the available medical records, we lack sufficient documentation to support any physical condition that would preclude you from performing sedentary work activity on a full-time basis when you ceased work on November 21, 2006."

After Still appealed Standard's initial decision and submitted some additional records from Dr. Martinez de Andino, Standard requested that Dr. Ingram reconsider her prior opinion. In an April 4, 2007 report, Dr. Ingram discussed the limited additional information Still had

provided and again opined that Still was not disabled from performing her sedentary occupation.

Following up on this review, on April 12, 2007, Dr. Ingram wrote directly to Dr. Martinez de Andino to request clarification of his opinion. Dr. Ingram's letter stated:

I cannot ascertain from your records the specific rationale for recommending her to no longer work, since it is common for patients with rheumatoid arthritis to have episodic flares treated with low-dose corticosteroids and if they flare again to change their disease-modifying treatment. It would be helpful to Ms. Still if you have further information in the form of radiographs, grip strengths or specific notations on how her disease changed in November 2006, such that she could no longer work at her sedentary job.

If you would include these with a short narrative discussion, I am hopeful that would clarify your recommendations. Please include a reasonable bill for your time along with your taxpayer ID.

Dr. Martinez de Andino never responded to Dr. Ingram's request for information. In a third report dated September 5, 2007, Dr. Ingram noted that he had not responded to her letter and also noted that she had received Dr. de Andino's June 25, 2007 chart note for review. Appellant argues that Dr. de Andino's notes stating that "this patient is unable to return to work as the duties affect even her activities of daily living with her disease state" is evidence that she is Appellant is entitled to disability. However, Dr. Ingram commented that the June 25 chart note "confirms the stability of her rheumatoid arthritis . . . [T]he submitted objective information is minimal and does not support the extreme limitations that have been noted by Dr. Martinez de Andino."

After receiving Dr. Ingram's second and third opinions, receiving no clarifying information from Dr. Martinez de Andino, and again reviewing Still's medical records, Standard upheld the decision to deny Still's LTD claim. Standard informed Still's attorney, League Boylston, of its decision in a letter dated September 20, 2007. Standard's letter informed Ms. Boylston that Standard's Administrative Review Unit would conduct an independent review of Still's claim.

In conjunction with its independent review, the ARU requested a second independent medical opinion from Dr. Fraback, another board-certified rheumatologist. Dr. Fraback's September 27, 2007 report summarized the medical records Still submitted and gave the

following opinion:

I think it is reasonable that the claimant was precluded from sedentary level work as of the cease-work date due to an increase in her joint symptomatology. She apparently was having flare-ups from November through approximately early February 2007. In a note dated February 23, 2007, Dr. Martinez de Andino indicated that she was improved. Therefore, I think that by mid February 2007 she should have been able to return to regular sedentary level work activities. She may periodically have some difficulty with repetitive hand and wrist motions due to flare-ups of her arthritis. I do not find evidence of a back condition of such severity as to preclude regular sedentary level work.

After reviewing and considering all of the information submitted by Still and the opinions of Dr. Ingram and Dr. Fraback, on October 26, 2007, the ARU informed Ms. Boylston that it had upheld the decision to deny Still's LTD claim. The ARU acknowledged Still may have had a flare with her rheumatoid arthritis that prevented her from working from late November through early February; however, the ARU concluded that Still's condition improved by mid-February, and therefore, she was not disabled throughout and beyond the Plan's 90-day Benefit Waiting Period. The ARU informed Ms. Boylston of Still's right to appeal to EIP for a final agency determination.

IV. EIP's Consideration and Denial of Still's Claim for LTD Benefits

After Still appealed to EIP for a final agency determination, EIP's Long Term Disability Appeals Committee conducted a *de novo* review of her claim to determine if she was entitled to LTD benefits under the Plan. In the Committee's July 11, 2008 letter decision, the Committee summarized in significant detail all of the medical information Still had submitted; it also considered the opinions rendered by Dr. Ingram and Dr. Fraback. . The Committee also noted the Plan's Proof of Loss provision.

After considering this information, the Committee unanimously determined that Still was not entitled to LTD benefits and provided the following reasons for its decision:

- "After considering all of the medical documentation in the claim file, including the opinions of Petitioner's physicians and the Physician and Vocational Consultants, the Committee found the Petitioner did not meet the Plan's Own Occupation Definition of Disability for the BLTD Plan. In order for Petitioner to be entitled to BLTD Benefits, the medical documentation in the claim file must support that her level of function was impaired to the degree that she is unable to

perform the Material Duties of her Own Occupation as a benefits clerk on a full-time basis. Her Own Occupation requires sedentary-level physical demands. The Committee determined that Petitioner was not disabled from performing her sedentary-level occupation throughout and beyond the 90-day Benefit Waiting Period.”

- “The Committee noted that Dr. Martinez de Andino opined that Petitioner was ‘unable to perform her expected duties at work’ and that she was not ‘retrainable’ for any other type of work. The Committee disagreed. Although Dr. Martinez de Andino opined Petitioner could not work in any meaningful way, Dr. Ingram noted Dr. Martinez de Andino did not specifically state his rationale for this assessment . . . Dr. Martinez de Andino failed to respond to a letter from Dr. Ingram. Thus, Dr. Martinez de Andino failed to explain how he reached his conclusion concerning Petitioner’s disability and failed to point to objective evidence showing that Petitioner was disabled from performing her sedentary-level occupation.”
- The Committee observed that “Dr. Ingram found that Petitioner’s rheumatoid arthritis was stable, and that there was nothing in Petitioner’s chart to indicate her arthritis is so severe that it would be rapidly disabling, particularly given the dearth of x-rays showing significant erosions. Dr. Ingram noted Petitioner’s musculoskeletal exams were normal and without synoviits.”
- “The Committee . . . accepts that Petitioner’s arthritis symptoms were exacerbated during the period from November 2006 to February 2007, and that Dr. Fraback opined this flare was severe enough to cause Petitioner to be unable work in her sedentary-level occupation from November 2006 to mid-February 2007. Clearly, Petitioner experienced a flare of rheumatoid arthritis in January 2007. But Petitioner’s condition was improved by February 2007 after a course of prednisone. Therefore, the Committee agrees with the opinion of Dr. Fraback and finds that Petitioner was not disabled throughout and beyond the 90-day period after she ceased work in November 2006 as a result of a flare of rheumatoid arthritis.”
- “[T]he Committee found that Petitioner was not precluded from performing her sedentary-level occupation as a result of back pain . . . There is no evidence that her depression is severe and, in fact, Petitioner reduced her anti-depressant dosage . . . The Committee found that Petitioner was not disabled from performing her sedentary-level occupation as a result of rheumatoid arthritis, back problems, hepatitis C, asthma or depression. None of these conditions either individually, or taken together, limited Petitioner from performing her sedentary-level occupation.”

In conclusion, the Committee held that “Ppetitioner retained the capacity to perform her sedentary level occupation and that The Standard properly denied her BLTD claim.”

STANDARD OF REVIEW

The Plan provides EIP with “full and exclusive authority to control and manage the Plan, to administer claims, and to interpret the Plan and resolve all questions arising in the administration, interpretation, and application of the Plan. Our authority includes . . . [T]he right to determine . . . [E]ntitlement to benefits.” The Plan further provides: “Any decision we make in the exercise of our authority is conclusive and binding, subject only to appellate judicial review consistent with the standards provided in Section 1-23-380, Code of Laws of South Carolina.”

Section 1-11-710(C), the enabling legislation for the Plan, provides as follows:

Notwithstanding Sections 1-23-310 and 1-23-320 or any other provision of law, claims for benefits under any self-insured plan of insurance offered by the State to state and public school district employees and other eligible individuals must be resolved by procedures established by the [State Budget and Control Board], which shall constitute the exclusive remedy for these claims, subject only to judicial review consistent with the standards provided in Section 1-23-380.

Section 1-23-380 establishes the standard of review for appeals of EIP’s decisions as follows:

The court may not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

- (a) in violation of constitutional or statutory provisions;
- (b) in excess of the statutory authority of the agency;
- (c) made upon unlawful procedure;
- (d) affected by other error of law;
- (e) clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; or
- (f) arbitrary or capricious or characterized by an abuse of discretion or clearly unwarranted exercise of discretion.
(Emphasis added).

Under Section 1-23-380, "substantial evidence" is the standard for judicial review of agency decisions. *Hendley v. S.C. State Budget & Control Bd.*, 333 S.C. 455, 510 S.E.2d 421 (1999). "Substantial evidence is not a mere scintilla of evidence, but evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion the agency reached." *Tiller v. National Health Care Center*, 334 S.C. 333, 338, 513 S.E.2d 843, 845 (1999). Under the substantial evidence rule, EIP's decision must be upheld unless it was clearly erroneous in view of the substantial evidence in the record. *See Central Transp., Inc. v. S.C. Public Service Comm'n*, 289 S.C. 267, 346 S.E.2d 25 (1986) (reversing the Circuit Court when it exceeded the scope of review and substituted its own judicial discretion for that of the Commission).

The South Carolina Court of Appeals has addressed issues similar to those now presented. An agency's finding is supported by substantial evidence even when the record, considered as a whole, presents the possibility of drawing two inconsistent conclusions from the evidence. *See Hargrove v. Titan Textile Co.*, 360 S.C. 276, 289, 599 S.E.2d 604, 611 (Ct. App. 2004). In *Wilson v. State Budget and Control Board Employee Insurance Program*, 374 S.C. 300, 648 S.E.2d 310 (Ct. App. 2007), Wilson presented "some evidence" to support her claim; however, substantial evidence in the record supported EIP's decision to deny Wilson's claim. After the Circuit Court ruled in Wilson's favor, the Court of Appeals reversed and held "[w]hile we recognize that [Wilson's treating physician] and the Social Security Administration found otherwise, we remain cognizant that as an appellate court, we must affirm an agency's decision when substantial evidence supports the decision." 374 S.C. at 305-06, 648 S.E.2d at 313, *citing Converse Power Corp.*, 350 S.C. at 46, 564 S.E.2d at 345.

DISCUSSION

Substantial Evidence Supports EIP's Decision to Deny Still's Claim for LTD Benefits

The evidence in the Record on Appeal supports EIP's decision to deny Still's claim for LTD benefits. The medical and vocational records Still submitted establish that she worked for at least seven years with a diagnosis of stable rheumatoid arthritis. Dr. Martinez de Andino's chart notes from late 2006 and early 2007 support a finding that Still experienced a flare of her rheumatoid arthritis that caused her hand and wrist pain and may have prevented her from working from late November through mid-February. Dr. Martinez de Andino's chart notes

further establish that the flare was controlled with medication and Still's rheumatoid arthritis returned to a stable status, which did not prevent her from working in her occupation. Specifically, Dr. Martinez de Andino's June 25, 2007 chart note expressly states that Still's main complaint is fatigue and that her rheumatoid arthritis was stable. Thus, the objective medical information submitted by Still simply does not support a finding that she was disabled from performing her occupation throughout and beyond the Plan's 90-day Benefit Waiting Period. Rather, the medical information provides substantial evidence to the contrary.

In his June 25 note, Dr. Martinez de Andino opined that Still was doing better because she was no longer working; however, this statement is not supported by his 2005 and 2006 medical records, which chronicle Still's stable rheumatoid arthritis while working. The medical records do not support a conclusion that Still's condition has permanently worsened or that it continued to worsen after February 2007. To the contrary, the overwhelming evidence in Dr. Martinez de Andino's records and the other records Still submitted support a conclusion that she experienced a flare of rheumatoid arthritis that resolved with medication, and that her condition and physical capabilities afterwards were similar to those when she was working.

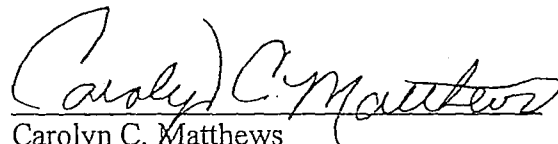
In addition to the fact that Dr. Martinez de Andino's records support EIP's decision, the independent medical opinions of Dr. Ingram and Dr. Fraback support and provide substantial evidence in support of EIP's decision. Moreover, Dr. Ingram specifically requested additional information and clarification from Dr. Martinez de Andino regarding his opinions and explained why she disagreed with his opinion. However, Dr. Martinez de Andino failed to respond with any additional information.

ORDER

The medical records of Still's treating physicians and the opinions of Dr. Ingram and Dr. Fraback all provide substantial evidence to support EIP's decision to deny Still's LTD claim.

THEREFORE, IT IS HEREBY ORDERED that the Decision of the Employee Insurance Program to deny Appellant disability is affirmed.

AND IT IS SO ORDERED.


Carolyn C. Matthews
Administrative Law Judge

August 21, 2009
Columbia, SC

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM STATE OF SOUTH CAROLINA
Administrative Law Court

Carolyn C. Matthews, Administrative Law Judge

Docket No. 2008-ALJ-30-0412-AP

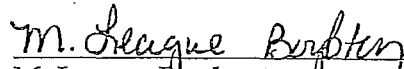
Gail S. Still, ...Appellant,

v.

South Carolina Budget and Control Board, Employee Insurance
Program, ...Respondent.

NOTICE OF APPEAL

Gail S. Stills appeals the order of the Honorable Carolyn C. Matthews, dated August 21, 2009. Appellant received written notice of entry of this order on August 24, 2009.


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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM STATE OF SOUTH CAROLINA
Administrative Law Court

Carolyn C. Matthews, Administrative Law Judge

Docket No. 2008-ALJ-30-0412-AP

Gail S. Still, ...Appellant,

v.

South Carolina Budget and Control Board, Employee Insurance
Program, ...Respondent.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on Respondent by depositing a copy of it in the United States Mail, postage prepaid, on September 23, 2009, addressed to its attorneys of record, Michael T. Brittingham Post Office Drawer 2426 Columbia, South Carolina 29202 and James T. Hedgepath Post Office Drawer 10648 Greenville, South Carolina 29603-0648.

DATE: September 23, 2009

M. League Boylston
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Attorneys for Appellant

State of South Carolina

PLAN DOCUMENT

AMENDED AND RESTATED

BASIC LONG TERM DISABILITY INCOME BENEFIT PLAN

Plan Sponsor has established a long term disability income benefit plan and agrees to provide LTD Benefits according to the terms of this Plan Document. Plan Sponsor is solely responsible for payment of LTD Benefits payable under the terms of this Plan.

Plan Sponsor has appointed Standard Insurance Company to act on its behalf as Claims Administrator for the Plan and has delegated Standard discretionary authority to adjudicate claims for benefits including the right to determine entitlement to benefits and the amount of benefits payable, and to interpret the Plan and resolve all questions arising in the administration, interpretation, and application of the Plan, as described in the Claims and Allocation Of Authority provisions.

Standard has no authority or obligation with respect to management or investment of the assets of the Plan.

This Plan and the individual applications, if any, of the Members constitute the entire Plan. Plan Sponsor has the right at anytime to amend or terminate this Plan or to require or change the amount of Member contributions. No change in this Plan will be valid unless approved by an executive officer of Plan Sponsor and evidenced by an amendment. No agent has authority to change this Plan or to waive any of its provisions.

For purposes of effective dates and ending dates under this Plan, all days begin and end at 12:00 midnight local time at Plan Sponsor's address.

All provisions on this and the following pages are part of this Plan. "You" and "your" mean the Member. "We", "us", and "our" mean Plan Sponsor. Other defined terms appear with their initial letters capitalized. Section headings, and references to them, appear in boldface type.

PLAN SPONSOR

By

Robin L. Geste

ADJUTANT DIRECTOR, SC OFFICE OF INSURANCE SERVICES

Signature(s) and Title(s) of Authorized Representative(s)

PD190-LTD

PLAN DOCUMENT AMENDMENT NO. 2

Attached to and made a part of Plan Document 627284-A issued to
State of South Carolina, State Budget and Control Board
as Plan Sponsor.

Effective September 1, 2000, the Plan Document is amended as follows:

1. Plan Document 627284-A is replaced by Plan Document 627284-B.
2. The Active Work Provisions will not be construed to terminate coverage for any Member who was covered under Plan Document 627284-A as of August 31, 2000.
3. For the purposes of the Incontestability Provisions, Plan Document 627284-B will be deemed to be in effect since September 1995.
4. For purposes of applying the preexisting condition exclusion under Exclusions for any Member who was covered under Plan Document 627284-A on August 31, 2000, the effective date of the Member's coverage under Plan Document 627284-B shall be deemed to be the first day of the last continuous period during which the Member was covered under Plan Document 627284-A.

Any increase in amounts of coverage for a Member who is incapable of Active Work on September 1, 2000 will be deferred until the next day after the Member completes one full day of Active Work.

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COVERAGE FEATURES

This section contains many of the features of your long term disability (LTD) coverage. Other provisions, including exclusions, limitations, and Deductible Income, appear in other sections. Please refer to the text of each section for full details. The Table of Contents and the Index of Defined Terms help locate sections and definitions.

GENERAL PLAN INFORMATION

Plan Sponsor:	State of South Carolina, State Budget and Control Board
Employer:	State of South Carolina, school districts and local entities
Claims Administrator:	Standard Insurance Company
ASO Number:	627284-B
Plan Document Effective Date:	September 1, 2000

BECOMING COVERED

To become covered you must: (a) Be a Member; (b) Complete your Eligibility Waiting Period; and (c) Meet the requirements in Active Work Provisions and When Your Coverage Becomes Effective.

Definition Of Member:

You are a Member if you are:

1. An active permanent full-time employee regularly working at least 30 hours a week for 12 months, or in full-time academic employment, who receives compensation from a department, agency, board, commission or institution of the State; public school districts; county governments (including county council members); and other eligible employers approved by state legislation; or
2. A member of the General Assembly or judges in state courts; and
3. Enrolled in the State Health Insurance Plan or HMO Plan.

You are not a Member if you are:

1. A temporary or seasonal employee; or
2. A full time member of the armed forces of any country.

Class Definition:

Not applicable

Eligibility Waiting Period:

You are eligible on the Plan Document Effective Date if you are a Member on that date.

You are eligible on the first day as a Member, if you become a Member after the Plan Document Effective Date.

SCHEDULE OF COVERAGE

LTD Benefit:

The lesser of:

1. 62.5% of the first \$1,280 of your Predisability Earnings; or
2. 62.5% of your Predisability Earnings, reduced by Deductible Income.

Maximum: \$800.

Benefit Waiting Period: 90 days

Maximum Benefit Period: Determined by your age when Disability begins, as follows:

Age	Maximum Benefit Period
61 or younger	To age 65, or 3 years 6 months, if longer
62.....	3 years 6 months
63.....	3 years
64.....	2 years 6 months
65.....	2 years
66.....	1 year 9 months
67.....	1 year 6 months
68.....	1 year 3 months
69 or older	1 year

DISABILITY PROVISIONS

Own Occupation Period: The Benefit Waiting Period and the first 24 months of Disability.

Any Occupation Period: From the end of the Own Occupation Period to the end of the Maximum Benefit Period.

Partial Disability: Covered

Own Occupation Income Level: 80% of your Indexed Predisability Earnings

Any Occupation Income Level: 65% of your Indexed Predisability Earnings

See Definition of Disability for more information.

EXCLUSIONS AND LIMITATIONS

Preexisting Condition exclusion: Yes

Preexisting Condition Period: The 6 month period prior to the most recent effective date of your coverage under the Employer's self-funded long term disability coverage plan.

Exclusion Period: 12 months while covered under the Plan

Treatment-Free Period:

At least 12 consecutive months during the period that begins at the start of the Preexisting Condition Period and ends on the date you become Disabled.

See Exclusions and Limitations for this and other exclusions and limitations.

DEDUCTIBLE INCOME

Social Security Offset:

Primary Offset

Salary Continuation Offset:

Sick Pay or other salary continuation paid or payable to you by your Employer, but not including vacation pay.

See Deductible Income for this and other Deductible Income.

OTHER BENEFITS

Leave of Absence Period:

30 days or less

Continuity of Coverage:

Yes

Reasonable Accommodation
Expense Benefit:

The expenses incurred for the reasonable accommodation or \$1,000, whichever is less.

Predisability Earnings based on:

Earnings in effect on the January 1 preceding your last full day of Active Work, or on the date you become a Member if you were not a Member on the preceding January 1.

However, if you transfer from one Employer to another, until the January 1 next following the date of transfer, your Predisability Earnings will be based on your earnings in effect on the date of transfer, thereafter, the January 1 preceding your last full day of Active Work.

MEMBER CONTRIBUTIONS

Coverage is:

Noncontributory

STATEMENT OF COVERAGE

If you become Disabled while covered under the Plan, we will pay LTD Benefits according to the terms of the Plan after we receive satisfactory Proof Of Loss. However, our obligation to pay LTD Benefits is subject to appropriation of funds by the Legislature.

ASJC.01X

DEFINITION OF DISABILITY

You are Disabled if you meet one of the following definitions during the period it applies:

- A. Own Occupation Definition of Disability;
- B. Any Occupation Definition of Disability; or
- C. Partial Disability Definition.

A. Own Occupation Definition Of Disability

During the Benefit Waiting Period and the Own Occupation Period you are required to be Disabled only from your Own Occupation.

You are Disabled from your Own Occupation if, as a result of Physical Disease, Injury, Pregnancy or Mental Disorder, you are unable to perform with reasonable continuity the Material Duties of your Own Occupation.

Own Occupation means any employment, business, trade, profession, calling or vocation that involves Material Duties of the same general character as your regular and ordinary employment with the Employer. Your Own Occupation is not limited to your job with your Employer.

Note: You are not Disabled merely because your right to perform your Own Occupation is restricted, including a restriction or loss of license, or because you suffer a loss of Predisability Earnings as a result of disclosure of any Physical Disease, Injury, Pregnancy or Mental Disorder.

B. Any Occupation Definition Of Disability

During the Any Occupation Period you are required to be Disabled from all occupations.

You are Disabled from all occupations if, as a result of Physical Disease, Injury, Pregnancy or Mental Disorder, you are unable to perform with reasonable continuity the Material Duties of Any Occupation.

Any Occupation means any occupation or employment which you are able to perform, whether due to education, training, or experience, which is available at one or more locations in the national economy and in which you can be expected to earn at least 65% of your Indexed Predisability Earnings within twelve months following your return to work, regardless of whether you are working in that or any other occupation.

C. Partial Disability Definition

1. During the Benefit Waiting Period and the Own Occupation Period, you are Partially Disabled when you work in your Own Occupation but, as a result of Physical Disease, Mental Disorder, Injury or Pregnancy, you are unable to earn more than the Own Occupation Income Level.
2. During the Any Occupation Period, you are Partially Disabled when you work in an occupation but, as a result of Physical Disease, Mental Disorder, Injury or Pregnancy, you are unable to earn more than the Any Occupation Income Level in that occupation and in all other occupations for which you are reasonably fitted under the Any Occupation Definition of Disability.

Material Duties means the essential tasks, functions and operations, and the skills, abilities, knowledge, training and experience, generally required by employers from those engaged in a particular occupation.

You may work in another occupation while you meet the Own Occupation Definition of Disability. If you are Disabled from your Own Occupation, there is no limit on your Work Earnings in another occupation. Your Work Earnings may be Deductible Income. See Return To Work Incentive and Deductible Income.

Your Any Occupation Period, Any Occupation Income Level, Own Occupation Period, and Own Occupation Income Level are shown in the Coverage Features.

LTDD.01

RETURN TO WORK PROVISIONS

1. Return To Work Responsibility

During the Own Occupation Period no LTD Benefits will be paid for any period when you are able to work in your Own Occupation and able to earn at least 20% of your Indexed Predisability Earnings, but you elect not to work.

During the Any Occupation Period no LTD Benefits will be payable for any period when you are able to work in Any Occupation and able to earn at least 20% of your Indexed Predisability Earnings, but you elect not to work.

3. Return To Work Incentive

You may serve your Benefit Waiting Period while working if you meet either the Own Occupation Definition Of Disability or the Partial Disability Definition.

You are eligible for the Return To Work Incentive on the first day you work after the Benefit Waiting Period if LTD Benefits are payable on that date. The Return To Work Incentive changes 12 months after that date, as follows:

1. During the first 12 months, your Work Earnings will be Deductible Income as determined below:
 - a. Determine 62.5% of your Predisability Earnings, and add your Work Earnings to that amount.
 - b. Determine 100% of your Indexed Predisability Earnings.
 - c. If a. is greater than b., the difference will be Deductible Income.
2. After those first 12 months, one half of your Work Earnings will be Deductible Income.

2. Work Earnings Definition

Work Earnings means your gross monthly earnings from work you perform while Disabled, plus the earnings you could receive if you worked as much as you are able to, considering your Disability, in work that is reasonably available:

- a. In your Own Occupation during the Own Occupation Period; and
- b. In Any Occupation during the Any Occupation Period.

Work Earnings includes earnings from your Employer, any other employer, or self-employment, and any sick pay, vacation pay, annual or personal leave pay or other salary continuation earned or accrued while working.

Earnings from work you perform will be included in Work Earnings when you have the right to receive them. If you are paid in a lump sum or on a basis other than monthly, we will prorate your

Work Earnings over the period of time to which they apply. If no period of time is stated, we will use a reasonable one.

In determining your Work Earnings we:

1. Will use the financial accounting method you use for income tax purposes, if you use that method on a consistent basis.
2. Will not be limited to the taxable income you report to the Internal Revenue Service.
3. May ignore expenses under section 179 of the IRC as a deduction from your gross earnings.
4. May ignore depreciation as a deduction from your gross earnings.
5. May adjust the financial information you give us in order to clearly reflect your Work Earnings.

If we determine that your earnings vary substantially from month to month, we may determine your Work Earnings by averaging your earnings over the most recent three-month period. During the Own Occupation Period you will no longer be Disabled when your average Work Earnings over the last three months exceed 80% of your Indexed Predisability Earnings. During the Any Occupation Period you will no longer be Disabled when your average Work Earnings over the last three months exceed 65% of your Indexed Predisability Earnings.

LT2.RW.01

REASONABLE ACCOMMODATION EXPENSE BENEFIT

If you are Disabled and return to work in any occupation for any employer, not including self employment, as a result of a reasonable accommodation made by such employer, we will pay that employer a Reasonable Accommodation Expense Benefit as shown in the Coverage Features.

The Reasonable Accommodation Expense Benefit is payable only if the reasonable accommodation is approved by us in writing prior to its implementation.

LT.PA.01

TEMPORARY RECOVERY

You may temporarily recover from your Disability, and then become Disabled again from the same cause or causes, without having to serve a new Benefit Waiting Period. Temporary Recovery means you cease to be Disabled for no longer than the applicable Allowable Period.

A. Allowable Periods

1. During the Benefit Waiting Period: a total of 30 days of recovery.
2. During the Maximum Benefit Period: 180 days for each period of recovery.

B. Effect Of Temporary Recovery

If your Temporary Recovery does not exceed the Allowable Periods, 1 through 5 below will apply.

1. The Predisability Earnings used to determine your LTD Benefit will not change.
2. The period of Temporary Recovery will not count toward your Benefit Waiting Period, your Maximum Benefit Period or your Own Occupation Period.
3. No LTD Benefits will be payable for the period of Temporary Recovery.
4. No LTD Benefits will be payable after benefits become payable to you under any other group long term disability insurance policy under which you become insured during your period of Temporary Recovery.

5. Except as stated above, the provisions of the Group Policy will be applied as if there had been no interruption of your Disability.

LT.TP.08

WHEN LTD BENEFITS END

Your LTD Benefits end automatically on the earliest of 1 through 4 below.

1. The date you are no longer Disabled.
2. The date your Maximum Benefit Period ends.
3. The date you die.
4. The date benefits become payable under any other group long term disability insurance policy under which you become insured during a period of Temporary Recovery.

LT.BE.01

PREDISABILITY EARNINGS

Your Predisability Earnings will be based on your earnings in effect as shown in the Coverage Features. Any subsequent change in your earnings will not affect your Predisability Earnings.

Predisability Earnings means your monthly rate of earnings from your Employer, including:

1. Contributions you make through a salary reduction agreement with your Employer to:
 - a. An Internal Revenue Code (IRC) Section 401(k), 403(b), 408(k), or 457 deferred compensation arrangement; or
 - b. An executive nonqualified deferred compensation arrangement.
2. Longevity pay.
3. Shift differential pay.
4. Amounts contributed to your fringe benefits according to a salary reduction agreement under an IRC Section 125 plan.
5. Compensation earned during regular summer sessions by university teaching staff.

Predisability Earnings does not include:

1. Bonuses.
2. Commissions
3. Overtime pay.
4. Your Employer's contributions on your behalf to any deferred compensation arrangement or pension plan.
5. Any other extra compensation.

If you are paid on an annual contract basis, your monthly rate of earnings is one-twelfth (1/12th) of your annual contract salary.

If you are paid hourly, your monthly rate of earnings is based on your hourly pay rate multiplied by the number of hours you are regularly scheduled to work per month, but not more than 173 hours.

LT.PD.22X

DEDUCTIBLE INCOME

Subject to Exceptions To Deductible Income, Deductible Income means:

1. Sick pay or other salary continuation as shown in the Coverage Features.
2. Your Work Earnings, as described in the Return To Work Incentive.
3. Any amount you receive or are eligible to receive because of your disability under any workers' compensation law or similar law, including amounts for partial or total disability, whether permanent, temporary, or vocational.
4. Any amount you receive or are eligible to receive because of your disability or retirement under:
 - a. The Federal Social Security Act; primary benefits are Deductible Income, but dependents benefits are not.
 - b. The Canada Pension Plan;
 - c. The Quebec Pension Plan; or
 - d. Any similar plan, act, or law.
5. Any amount you receive or are eligible to receive because of your disability under any state disability income benefit law or similar law.
6. Any amount you receive or are eligible to receive because of your disability under any other group insurance coverage through the Employer.
7. Your Deductible Income from your Employer's retirement plan, as described in Retirement Plan Offset.
8. Any amount you receive or are eligible to receive from or on behalf of a third party because of your disability, whether by judgement, settlement or other method. If you notify us before filing suit or settling your claim against such third party, the amount used as Deductible Income will be reduced by a pro rata share of your costs of recovery, including reasonable attorney fees.
9. Any amount you receive by compromise, settlement, or other method as a result of a claim for any of the above, whether disputed or undisputed.

LT.DI.02X

RETIREMENT PLAN OFFSET (RPO)

A. Deductible Income

Subject to the RPO Exceptions and in accordance with the RPO Rules below, your Deductible Income from your Employer's retirement plan will be the benefit determined below which provides the largest monthly reduction in your LTD Benefit even if you elect to receive a different benefit or no benefit. If you receive two or more of these benefits, the benefits will be combined for purposes of determining your Deductible Income.

Any disability benefit or retirement benefit, including service retirement benefit you (1) receive, (2) are eligible to receive, or (3) would have been eligible to receive from the Employer's retirement plan had timely application been made.

Your Employer's retirement plan includes any retirement plan established, maintained or participated in by your Employer and to which you or your Employer make contributions, including a public employee retirement system, a state teacher retirement system or a plan arranged and maintained by a union or employee association for the benefit of its members.

B. RPO Exceptions

Deductible Income from your Employer's retirement plan does not include the amounts below:

1. That portion of any retirement plan benefit attributable to your contributions, determined as follows:
 - a. Multiply the total of your accumulated retirement plan contributions and earnings (as reported by the South Carolina Retirement System) by the applicable conversion factor from the table below.
 - b. Divide the product by 12.
 - c. The result of a. and b. will not be Deductible Income from your Employer's retirement plan.

CONVERSION FACTORS

Age at Disability	Conversion Factor
44 and under	.041
45 through 53	.048
54 through 59	.054
60 through 63	.061
64 through 66	.068
67 through 68	.075
69 through 71	.082
72 through 73	.088
74 through 75	.095
76 and above	.102

2. Any lump sum refund, withdrawal or distribution of your contributions and earnings you receive because you are not vested under the plan.

RPO Rules

1. You will be considered eligible to receive disability benefits from your Employer's retirement plan unless you provide satisfactory written proof that you made timely application, including any appeals we deem appropriate, for such benefits and were denied or that a timely application would have been denied had you applied.
2. If a disability benefit or retirement benefit is your Deductible Income from your Employer's retirement plan because it provides the largest reduction in your LTD Benefit, but you choose not to receive that benefit, your Deductible Income will be the disability benefit or retirement benefit you could have received.
3. If we cannot determine from your Employer's retirement plan the amount of disability benefit or retirement benefit you are or would have been eligible to receive, we will determine your Deductible Income using a lifetime monthly annuity amount, with no survivor income. The annuity will be based on total plan contributions made by you or on your behalf, including your Employer's contributions and rollover contributions, plus earnings, and on the life expectancy of a person your age on the following dates:
 - a. With respect to a disability benefit, the date you first become eligible for a disability benefit;
 - b. With respect to a retirement benefit, the date you first become eligible for a retirement benefit; or
 - c. The date LTD Benefits become payable, if we cannot determine the date in a. or b.

LT.RP.01X

EXCEPTIONS TO DEDUCTIBLE INCOME

Deductible Income does not include:

1. Any cost of living increase in any Deductible Income other than Work Earnings, if the increase becomes effective while you are Disabled and while you are eligible for the Deductible Income.
2. Reimbursement for hospital, medical, or surgical expense.
3. Reasonable attorneys fees incurred in connection with a claim for Deductible Income.
4. Benefits from any individual disability insurance policy.
5. Early retirement benefits under the Federal Social Security Act which are not actually received.
6. Group credit or mortgage disability insurance benefits.
7. Accelerated death benefits paid under a life insurance policy.
8. Benefits from Standard group policies 621144-A or 621144-B.
9. Benefits from a. through e. below.
 - a. Profit sharing plan.
 - b. Thrift or savings plan.
 - c. Plan under IRC Section 401(k), 408(k), or 457.
 - d. Individual Retirement Account (IRA).
 - e. Tax Sheltered Annuity (TSA) under IRC Section 403(b).

LT.ED.06X

RULES FOR DEDUCTIBLE INCOME

A. Monthly Equivalents

Each month we will determine your LTD Benefit using the Deductible Income for the same monthly period, even if you actually receive the Deductible Income in another month.

If you are paid Deductible Income in a lump sum or by a method other than monthly, we will determine your LTD Benefit using a prorated amount. We will use the period of time to which the Deductible Income applies. If no period of time is stated, we will use a reasonable one.

B. Your Duty To Pursue Deductible Income

You must pursue Deductible Income for which you may be eligible, including any appeals we deem appropriate. We may ask for written documentation of your pursuit of Deductible Income. You must provide it within 60 days after we mail you our request. Otherwise, we may reduce your LTD Benefits by the amount we estimate you would be eligible to receive upon proper pursuit of the Deductible Income.

C. Pending Deductible Income

We will not deduct pending Deductible Income until it becomes payable. You must notify us of the amount of the Deductible Income when it is approved. You must repay us for the resulting overpayment of your claim.

Overpayment Of Claim

We will notify you of the amount of any overpayment of your claim under the Plan or under Standard group policies 621144-A or 621144-B. You will not receive any LTD Benefits until the overpayment has been repaid in full. In the meantime, any LTD Benefits paid, including any LTD Benefits paid under the Employer's insured long term disability plan, will be applied to reduce the amount of the overpayment. We may charge you interest at the legal rate for any overpayment which is not repaid within 30 days after we first mail you notice of the amount of the overpayment.

AS.RU.01X

BENEFITS AFTER COVERAGE ENDS OR IS CHANGED

During each period of continuous Disability, we will pay LTD Benefits according to the terms of the Plan in effect on the date you become Disabled. Your right to receive LTD Benefits will not be affected

1. Termination of the Plan after you become Disabled; or
2. Any amendment to the Plan that is effective after you become Disabled.

LT.BA.03X

EFFECT OF NEW DISABILITY

If your period of Disability is extended by a new cause while LTD Benefits are payable, LTD Benefits will continue while you remain Disabled. However, 1 and 2 apply.

LTD Benefits will not continue beyond the end of the original Maximum Benefit Period.

All provisions of the Group Policy, including the Exclusions and Limitations sections, will apply to the new cause of Disability.

LT.ND.01

EXCLUSIONS

War

You are not covered for a Disability caused or contributed to by War or any act of War. War means declared or undeclared war, whether civil or international, and any substantial armed conflict between organized forces of a military nature.

Intentionally Self-Inflicted Injury

You are not covered for a Disability caused or contributed to by an intentionally self-inflicted Injury, while sane or insane.

Preexisting Condition

1. Definition

Preexisting Condition means a mental or physical condition for which you have done any of the following at any time during the Preexisting Condition Period shown in the Coverage Features:

- a. Consulted a Physician.
- b. Received medical treatment or services.
- c. Taken prescribed drugs or medications.

2. Exclusion

You are not covered for a Disability caused or contributed to by a Preexisting Condition or medical or surgical treatment of a Preexisting Condition unless, on the date you become Disabled, you:

- a. Have been continuously covered under the Plan for the entire Exclusion Period shown in the Coverage Features; or
- b. Have served the entire Treatment-Free Period shown in the Coverage Features without having done any of the following in connection with the Preexisting Condition:
 1. Consulted a Physician.
 2. Received medical treatment or services.
 3. Taken prescribed drugs or medications.

LT.EX05

DISABILITIES SUBJECT TO LIMITED PAY PERIODS

A. Limitation

No LTD Benefits are payable after you have been Disabled for 24 months during your entire lifetime (exclusive of any Benefit Waiting Periods), if your Disability is caused or contributed to by the following, or medical or surgical treatment of the following:

1. Mental Disorders. However, if you are confined in a Hospital solely because of a Mental Disorder at the end of the 24 months, this limitation will not apply while you are continuously confined. Mental Disorder means any mental, emotional, behavioral, psychological, personality, cognitive, mood or stress-related abnormality, disorder, disturbance, dysfunction or syndrome, regardless of cause (including any biological or biochemical disorder or imbalance of the brain) or the presence of physical symptoms. Mental Disorder includes, but is not limited to, bipolar affective disorder, organic brain syndrome, schizophrenia, psychotic illness, manic depressive illness, depression and depressive disorders, anxiety and anxiety disorders.
2. Substance Abuse. Substance Abuse means use of alcohol, alcoholism, use of any drug, including hallucinogens, or drug addiction.
3. Chronic Fatigue Conditions. Chronic Fatigue Conditions means conditions such as chronic fatigue syndrome, chronic fatigue immunodeficiency syndrome, post viral syndrome, limbic encephalopathy, Epstein-Barr virus infection, herpesvirus type 6 infection, or myalgic encephalomyelitis.
4. Chemical And Environmental Sensitivities. Chemical And Environmental Sensitivities means any allergy or sensitivity to chemicals or the environment such as environmental allergies, sick building syndrome, multiple chemical sensitivity syndrome or chronic toxic encephalopathy.
5. Chronic Pain, -Musculoskeletal And Connective Tissue Conditions. Chronic Pain, Musculoskeletal And Connective Tissue Conditions means conditions such as fibromyalgia, reflex sympathetic dystrophy or myofascial pain, carpal tunnel or repetitive motion syndrome, temporomandibular joint disorder, craniomandibular joint disorder, arthritis, diseases or disorders of the cervical, thoracic, or lumbosacral back and its surrounding soft tissue, and sprains or strains of joints or muscles.

However, Disabilities as a result of the following conditions are not limited: neoplastic diseases, neurologic diseases, endocrine diseases, hematologic diseases, asthma, allergy-induced reactive lung disease, tumors, malignancies, or vascular malformations, demyelinating diseases, lupus, rheumatoid or psoriatic arthritis, herniated discs with neurological abnormalities that are documented by electromyogram and computerized tomography, or magnetic resonance imaging, scoliosis, radiculopathies that are documented by electromyogram, spondylolisthesis, grade II or higher, myelopathies and myelitis, traumatic spinal cord necrosis, osteoporosis, discitis, Paget's disease.

B. Rules For Disabilities Subject To Limited Pay Periods

1. The 24 month limited pay period applies separately to items 1 through 5 above.
2. If you are Disabled as a result of more than one Mental Disorder, Physical Disease or Injury for which LTD Benefits are payable for a limited period of time, the limited pay periods will run concurrently for all limited conditions.
3. If you are Disabled as a result of a Mental Disorder or any Physical Disease or Injury for which payment of LTD Benefits is subject to a limited pay period, and at the same time are Disabled as a result of a Physical Disease, Injury, or Pregnancy that is not subject to such limitation, LTD Benefits will be payable first for conditions that are subject to the limitation.
4. No LTD Benefits will be payable after the end of a limited pay period, unless on that date you continue to be Disabled as a result of a limited condition for which the limited pay period has not ended or as a result of a Physical Disease, Injury, or Pregnancy for which payment of LTD Benefits is not limited, and you are otherwise eligible for LTD Benefits.

LT.LP.OT.1X

LIMITATIONS

A. Care Of A Physician

You may select the Physician of your choice. However, you must be receiving ongoing appropriate care and treatment from a Physician in the appropriate specialty during the Benefit Waiting Period. No LTD Benefits will be paid for any period of Disability when you are not receiving ongoing appropriate care and treatment from a Physician in the appropriate specialty. We will determine the appropriateness of the care and treatment you are receiving and of the Physician treating you according to generally accepted medical standards.

B. Return To Work Responsibility

During the Own Occupation Period no LTD Benefits will be paid for any period of Disability when you are able to work in your Own Occupation and able to earn at least 20% of your Indexed Predisability Earnings, but you elect not to work.

During the Any Occupation Period, no LTD Benefits will be paid for any period of Disability when you are able to work in Any Occupation and able to earn at least 20% of your Indexed Predisability Earnings, but elect not to work.

C. Rehabilitation Program

No LTD Benefits will be paid for any period of Disability when you are not participating in good faith in a plan, program or course of medical treatment or vocational training or education approved by us unless your Disability prevents you from participating.

D. Imprisonment

No LTD Benefits will be paid for any period of Disability when you are confined for any reason in a penal or correctional institution.

LT.LM.OT.1

CLAIMS

A. Filing A Claim

Claims should be filed on our forms. If you do not receive our forms within 15 days after you ask for them, you may submit your claim in a letter to us. The letter should include the date disability began, and the cause and nature of the disability.

B. Time Limits On Filing Proof Of Loss

You must give us Proof Of Loss within 90 days after the end of the Benefit Waiting Period. If you cannot do so, you must give it to us as soon as reasonably possible, but not later than one year after that 90 day period. If Proof Of Loss is filed outside these time limits, your claim will be denied. These limits will not apply while you lack legal capacity.

C. Proof Of Loss

Proof Of Loss means written proof that you are Disabled and entitled to LTD Benefits. Proof Of Loss must be provided at your expense.

For claims of Disability due to conditions other than Mental Disorders, we may require proof of physical impairment that results from anatomical or physiological abnormalities which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques.

D. Documentation

At your expense, you must submit completed claims statements, your signed authorization for us to obtain information, and any other items we may reasonably require in support of your claim. If you do not provide the documentation within 60 days after we mail you our request, your claim may be denied.

E. Investigation Of Claim

We may investigate your claim at any time.

At our expense, we may have you examined at reasonable intervals by specialists of our choice. We may deny or suspend LTD Benefits if you fail to attend an examination or cooperate with the examiner.

F. Time Of Payment

We will pay LTD Benefits within 60 days after you satisfy Proof Of Loss.

LTD Benefits will be paid to you at the end of each month you qualify for them. LTD Benefits remaining unpaid at your death will be paid to your estate.

G. Minimum Claim Payment and Claim Settlement

If your LTD Benefit under the Plan plus the amount of your long term disability benefit under Standard group policy 621144-B, if any, is equal to \$50.00 or less, we may, at our sole discretion, settle your claim in a lump sum equal to the present value of your claim as determined by us.

If there is a subsequent reduction in the amount of your Deductible Income, you have the right to ask for a review of your settlement. When you request a review, you may send us written comments or other items to support your request.

H. Notice Of Decision On Claim

You will receive a written decision on your claim within a reasonable time after we receive your claim.

If you do not receive our decision within 90 days after we receive your claim, you will have an immediate right to request a review as if your claim had been denied.

If we deny any part of your claim, you will receive a written notice of denial containing:

1. The reasons for our decision;
2. Reference to the parts of the Plan on which our decision is based;
3. A description of any additional information needed to support your claim; and
4. Information concerning your right to a review of our decision.

I. Review Procedure

You must request in writing a review of a denial of all or part of your claim within six months after you receive notice of the denial from the Claims Administrator.

When you request a review, you may send the Claims Administrator written comments or other items to support your claim. You may review any non-privileged information that relates to your request for review.

The Claims Administrator will review your claim promptly after receipt of your request. The Claims Administrator will send you a notice of its decision within 60 days after receipt of your request, or within 120 days if special circumstances require an extension. The Claims Administrator will state the reasons for its decision and refer you to the relevant parts of the Plan.

After you receive the Claims Administrator's decision, you may request a final review from the South Carolina Budget And Control Board Office of Insurance Services by submitting written comments or other items to support your claim within 90 days after you receive notice. The Office of Insurance Services will send you a notice of its decision within 30 days after receipt of your request, or within 120 days if special circumstances require an extension.

J. Assignment

The rights and benefits under the Plan are not assignable.

AS.CL.01X

SUBROGATION

If LTD Benefits are paid or payable to you under the Plan as the result of any act or omission of a third party, we will be subrogated to all rights of recovery you may have in respect to such act or omission. You must execute and deliver to us such instruments and papers as may be required and do whatever else is needed to secure such rights. You must avoid doing anything that would prejudice our rights of subrogation.

If you notify us before filing suit or settling your claim against such third party, the amount to which we are subrogated will be reduced by a pro rata share of your costs of recovery, including reasonable attorney fees. If suit or action is filed, we may record a notice of payments of LTD Benefits, and such notice shall constitute a lien on any judgement recovered.

If you or your legal representative fail to bring suit or action promptly against such third party, we may institute such suit or action in our name or in your name. We are entitled to retain from any judgement recovered the amount of LTD Benefits paid or to be paid to you or on your behalf, together with our costs of recovery, including attorney fees. The remainder of such recovery, if any, shall be paid to you or as the court may direct.

LTZ.SG.01X

ALLOCATION OF AUTHORITY

We have full and exclusive authority to control and manage the Plan, to administer claims, and to interpret the Plan and resolve all questions arising in the administration, interpretation, and application of the Plan.

Our authority includes, but is not limited to:

1. The right to resolve all matters when a review has been requested;
2. The right to establish and enforce rules and procedures for the administration of the Plan and any claim under it;
3. The right to determine:
 - a. Eligibility for coverage;
 - b. Entitlement to benefits;
 - c. Amount of benefits payable;
 - d. Sufficiency and the amount of information we may reasonably require to determine a., b., or c., above.

Any decision we make in the exercise of our authority is conclusive and binding, subject only to appellate judicial review consistent with the standards provided in Section 1-23-380, Code of Laws of South Carolina.

ASAL01X

INCONTESTABILITY PROVISIONS

Any statement you make to obtain coverage is a representation and not a warranty.

No misrepresentation by you will be used to reduce or deny your claim or contest the validity of your coverage unless:

1. Your coverage would not have been approved if we had known the truth; and
2. We have given you a copy of a written instrument signed by you, which contains your misrepresentation.

After your coverage has been in effect for two years, we will not use a misrepresentation by you to reduce or deny your claim, unless it was a fraudulent misrepresentation.

AS.IN.01

CONTINUITY OF COVERAGE

A. Members Covered Under Prior Plan

If your Disability is subject to the Preexisting Condition Exclusion, LTD Benefits will be payable if:

1. You were covered under the Prior Plan on the day before the effective date of your Employer's coverage under the Plan;
2. You became covered under the Plan when your coverage under the Prior Plan ceased;
3. You were continuously covered under the Plan from the effective date of your coverage under the Plan through the date you became Disabled from the Preexisting Condition; and
4. Benefits would have been payable under the Prior Plan if it had remained in force, taking into account the preexisting condition exclusion, if any, of the Prior Plan.

Payment of your LTD Benefit will be under the terms of the Prior Plan or the Plan, whichever pays less.

B. All Other Members

If your Disability is subject to the Preexisting Condition Exclusion, we will credit the Exclusion Period with the last continuous period you were covered under a group long term disability coverage plan immediately prior to becoming a Member under the Plan and LTD Benefits will be payable if:

1. You provide satisfactory written proof that you were covered under a group long term disability coverage plan on the day before you became a Member under the Plan; and
2. You become covered under the Plan immediately upon serving the Eligibility Waiting Period and Active Work requirement; and
3. You are continuously covered under the Plan through the date you become Disabled; and
4. The time served under the prior group long term disability coverage plan added to the time served under the Plan equals or exceeds the Exclusion Period shown in Coverage Features.

Payment of your LTD Benefit will be under the terms of the Plan.

LT2.CC.07X

WHEN YOUR COVERAGE BECOMES EFFECTIVE

A. Noncontributory Coverage

Subject to the Active Work Provisions, your Noncontributory coverage becomes effective on the date you become eligible.

B. Takeover Provisions

1. If you were covered under the Prior Plan on the day before the effective date of your Employer's coverage under the Plan, your Eligibility Waiting Period is waived on the effective date of your Employer's coverage under the Plan.
2. You must submit satisfactory Medical History to become covered if you were eligible for coverage under the Prior Plan for more than 31 days but were not covered.

AS.EF.01X

ACTIVE WORK PROVISIONS

A. Active Work Requirement

You must be capable of Active Work on the day before the scheduled effective date of your coverage or your coverage will not become effective as scheduled. If you are incapable of Active Work because of Physical Disease, Injury, Pregnancy or Mental Disorder on the day before the scheduled effective date of your coverage, your coverage will not become effective until the day after you complete one full day of Active Work as an eligible Member.

Active Work and Actively At Work mean performing with reasonable continuity the Material Duties of your Own Occupation at your Employer's usual place of business.

B. Changes In Coverage

This Active Work requirement also applies to any increase in your coverage.

LT2.AW.01X

WHEN YOUR COVERAGE ENDS

Your coverage ends automatically on the earliest of:

1. The date the Plan terminates.
2. The date your employment terminates.
3. The date you cease to be a Member. However, if you cease to be a Member because you are not working the required minimum number of hours, your coverage will be continued during the following periods, unless it ends under 1 or 2 above.
 - a. While your Employer is paying you at least the same Predisability Earnings paid to you immediately before you ceased to be a Member.
 - b. During the Benefit Waiting Period and while LTD Benefits are payable.
 - c. During the first twelve months of an unpaid sabbatical approved by the Employer.
 - d. During a leave of absence if continuation of your coverage under the Plan is required by a state- mandated family or medical leave act or law.
 - e. During any other leave of absence approved by your Employer in advance and in writing and scheduled to last the Leave Of Absence Period shown in the Coverage Features.

LT.EN.2BX

REINSTATEMENT OF COVERAGE

If your coverage ends, you may become covered again as a new Member. However, the following will apply.

1. If your coverage ends because you cease to be a Member, and if you become a Member again within 90 days, the Eligibility Waiting Period will be waived.
2. If your coverage ends because you fail to make a required Member contribution, you must provide a satisfactory Medical History to become covered again.
3. If your coverage ends because you are on federal or state mandated family or medical leave of absence, and you become a Member again immediately following the period allowed, your coverage will be reinstated pursuant to federal or state mandated family or medical leave act or law.
4. The Preexisting Conditions Exclusion will be applied as if there had been no break in coverage in the following instances:
 - a. If you become covered again within 90 days.
 - b. If required by federal or state mandated family or medical leave act or law and you become covered again immediately following the period allowed under the family or medical leave act or law.

AS.RE.01

CLERICAL ERROR AND MISSTATEMENT

A. Clerical Error

Clerical error by the Policyowner, your Employer, or their respective employees or representatives will not:

1. Cause a person to become insured;

2. Invalidate insurance under the Group Policy otherwise validly in force; or
 3. Continue insurance under the Group Policy otherwise validly terminated.
3. Misstatement Of Age

If a person's age has been misstated, we will make an equitable adjustment of premiums, benefits, or both. The adjustment will be based on:

1. The amount of insurance based on the correct age; and
2. The difference between the premiums paid and the premiums which would have been paid if the age had been correctly stated.

TERMINATION OR AMENDMENT OF THE PLAN

Benefits under the Plan are limited to its terms, including any valid amendment. Your Employer and their respective employees or representatives have no right or authority to change or amend the Plan or to waive any of its terms or provisions without our signed written approval.

We may change the Plan in whole or in part when any change in law or governmental regulation affects our obligations under the Plan.

Any such change or amendment of the Plan may apply to current or future Members or to any separate classes or groups of Members.

DEFINITIONS

Benefit Waiting Period means the period you must be continuously Disabled before LTD Benefits become payable. No LTD Benefits are payable for the Benefit Waiting Period. See Coverage Features.

CPI-W means the Consumer Price Index for Urban Wage Earners and Clerical Workers published by the United States Department of Labor. If the CPI-W is discontinued or changed, we may use a comparable index. Where required, we will obtain prior state approval of the new index.

Eligibility Waiting Period means the period you must be a Member before you become eligible for coverage. See Coverage Features.

Hospital means a legally operated hospital providing full-time medical care and treatment under the direction of a full-time staff of licensed physicians. Rest homes, nursing homes, convalescent homes, homes for the aged, and facilities primarily affording custodial, educational, or rehabilitative care are not Hospitals.

Indexed Predisability Earnings means your Predisability Earnings adjusted by the rate of increase in the CPI-W. During your first year of Disability, your Indexed Predisability Earnings are the same as your Predisability Earnings. Thereafter, your Indexed Predisability Earnings are determined on each anniversary of your Disability by increasing the previous year's Indexed Predisability Earnings by the rate of increase in the CPI-W for the prior calendar year. The maximum adjustment in any year is 10%. Your Indexed Predisability Earnings will not decrease, even if the CPI-W decreases.

Injury means an injury to your body.

LTD Benefit means the monthly benefit payable to you under the terms of the Plan.

Maximum Benefit Period means the longest period for which LTD Benefits are payable for any one period of continuous Disability, whether from one or more causes. It begins at the end of the Benefit

Waiting Period. No LTD Benefits are payable after the end of the Maximum Benefit Period, even if you are still Disabled. See Coverage Features.

Noncontributory means the Plan Sponsor or Employer pays the entire cost for your coverage.

Physician means a licensed medical professional, other than yourself, acting within the scope of the license.

Physical Disease means a physical disease entity or process that produces structural or functional changes in your body as diagnosed by a Physician.

Plan means the long term disability income benefit plan established by Plan Sponsor and identified by the ASO Number.

Pregnancy means your pregnancy, childbirth, or related medical conditions, including complications of pregnancy.

Prior Plan means your Employer's long term disability plan in effect on the day before the effective date of your Employer's coverage under the Plan and which is replaced by the Plan.

LT.DF.06X

STATE OF SOUTH CAROLINA
State Budget and Control Board
EMPLOYEE INSURANCE PROGRAM



INFORD, CHAIRMAN
UNOR

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CHAIRMAN, WAYS AND MEANS COMMITTEE

FRANK W. FUSCO
EXECUTIVE DIRECTOR

July 11, 2008

4. League Boylston, Esquire
Peterson Murdaugh Parker Eltzroth & Derrick, PA
P.O. Box 457
Hampton, South Carolina 29924

Re: *Final Decision on Long Term Disability Claim*
Gail S. Still
Identification No: xxx-xx-4789

Dear Ms. Boylston:

The Long Term Disability Appeals Committee of the Employee Insurance Program ("EIP") met to consider Ms. Still's ("Petitioner") appeal regarding the denial of her claim for Basic Long Term Disability ("BLTD") benefits under the State of South Carolina's Basic Long Term Disability Income Benefit Plan¹ ("BLTD Plan"). Each Committee member reviewed Petitioner's claim file and considered the relevant provisions of the BLTD Plan in advance of the meeting. At the meeting, the Committee members thoroughly discussed and considered Petitioner's appeal, specifically considering all of the information contained in her claim file, as well as the terms of the BLTD Plan. Based on the Committee's review, the Committee determined the facts and circumstances of Petitioner's claim do not qualify her for disability income benefits under the BLTD Plan.

1. Background Facts

Petitioner was employed by Barnwell School District 45 as a Benefits Coordinator, Payroll. Steve Cooper, The Standard's Vocational Case Manager, determined the Petitioner's occupation was best classified as a "Benefits Clerk II," which has been classified as "Sedentary Work" by the U.S. Department of Labor Dictionary of Occupational Titles.²

The terms "BLTD" or "BLTD Plan" as used in this letter refer to the Basic Long Term Disability Income Benefit Plan, a self-funded plan sponsored by the State Budget and Control Board. The Standard Insurance Company serves as claims administrator for the Basic Long Term Disability Income Benefit Plan.

The U.S. Department of Labor Dictionary of Occupational Titles, Fourth Edition, revised 1991, describes Sedentary level work is defined as follows:

Petitioner ceased work on November 21, 2006, asserting an inability to continue to work due to rheumatoid arthritis, hepatitis C, asthma, three degenerative lumbar discs and a left knee replacement in 1989. On her Employee's Statement claim form, Petitioner indicated she had been seen and/or treated for these medical conditions by Family Practitioner William B. Clark and Nurse Practitioner Sharon Wise, Rheumatologist Edwin V. Martinez de Andino and Gastroenterologist Matthew Crawford. Later, she also noted she had been seen and/or treated by Orthopedic Surgeon Thomas M. Tranick and Gynecologist W. G. Watson.

In an Attending Physician's (APS) completed by Dr. Clark on November 28, 2006, Petitioner's primary diagnosis was listed as rheumatoid arthritis, with secondary diagnoses listed as chronic asthma and hepatitis C. Symptoms noted included increased joint pain, decreased mobility, joint edema, and increased wheezing. While Dr. Clark indicated he had recommended Petitioner cease work two years prior to when he completed that form, he additionally noted his opinion that she had the physical ability as of that date to lift up to 10 pounds frequently, and occasionally bend, stoop, grasp and reach. Also, he indicated she could walk/stand for up to 2 hours at one time for a total of 6 hours in an 8-hour work day.

Additionally, in a letter dated November 7, 2006, Dr. Martinez de Andino, Petitioner's rheumatologist, indicated that he had been treating Petitioner for rheumatoid arthritis since August of 1999. Dr. Martinez de Andino noted Petitioner's rheumatoid arthritis was worsening, was not expected to improve, and did not allow her to return to work. Dr. Martinez de Andino concluded that letter by providing his opinion that Petitioner "is considered total (sic) disabled at the time."

Petitioner's medical records show that well prior to her cease work date, Petitioner had been diagnosed with rheumatoid arthritis, and had a history of chronic lower back pain, bronchial asthma, depression, and chronic active hepatitis C status post eradication therapy. However, her physical exam findings from as early as June 2005 noted she did not have any joint asymmetry, effusions, or edema in her extremities. Additionally, lab tests completed in July 2005 noted no evidence of a persistent active hepatitis C viral load.

Dr. Martinez de Andino saw Petitioner on June 29, 2005. Dr. Martinez de Andino documented that Petitioner had rheumatoid arthritis, but Dr. Martinez de Andino felt that most of Petitioner's symptoms were due to depression.

A chart note from Dr. Crawford dated July 11, 2005, indicates Petitioner's hepatitis C was deemed stable, that Petitioner's treatment had been completed and there was no evidence of a persistent viral load.

On November 9, 2005, Petitioner was seen by Dr. Martinez de Andino complaining of generalized malaise, postnasal drip, and a sore throat. She also reported some right wrist pain. After examining her, Dr. Martinez de Andino noted his impression as possible mild flare of her rheumatoid arthritis due to a viral infection and prescribed an antibiotic along with a short course of prednisone.

Sedentary Level Work -- Exerting up to 10 pounds of force occasionally (Occasionally: activity or condition exists 1/3 of the time) and/or a negligible amount of force frequently (Frequently: activity or condition exist from 1/3 to 2/3 of the time) to lift, carry, push, pull, or otherwise move objects, including the human body. Sedentary work involves sitting most of the time, but may involve walking or standing for brief periods of time. NOTE: Jobs are sedentary if walking and standing are required only occasionally and all other sedentary criteria are met.

At her next visit on November 21, 2005, Petitioner reported feeling much better, and by December 19, 2005, she reported feeling great, without any joint pain, swelling, or stiffness.

Petitioner was next seen on February 28, 2006, reporting "discomfort in the low back" for the past month radiating down her right leg, and pain just above her right buttock. Dr. Martinez de Andino noted he did not find any neurological deficits upon physical exam and indicated all her joints were without any evidence of synovitis or effusion. Due to differential diagnoses of right sacroiliitis and/or trochanteric bursitis, he recommended magnetic resonance imaging (MRI) scans of her lower back and pelvis.

Those studies occurred on March 3, 2006, with the lumbar spine MRI showing "some very minimal degenerative disc disease at L1-2 and L2-3 and mild facet hypertrophy at L5-S1." An incidental finding of a right adnexal lesion was identified on that scan, as well as the pelvic scan that otherwise showed a "nearly normal" pelvis with "some very subtle hyperintensity at the gluteus medius insertion on the greater trochanter." Following those tests, Petitioner was referred to her gynecologist for additional work-up of the adnexal mass.

Additional tests performed on March 3, 2006, included bilateral lower extremity electromyogram (EMG) and nerve conduction studies, which were noted as normal, and somatosensory evoked potentials (SSEPs) of the lower limbs, which were also noted as normal. In that regard, during her next visit on March 23, 2006, Dr. Martinez de Andino noted diagnoses of degenerative disc disease, for which he recommended physical therapy, mild hypertension, for which he advised her to work on exercise and diet, and stable seropositive rheumatoid arthritis.

On June 14, 2006, Petitioner was noted as having no joint pain, swelling or stiffness, and reported her back symptoms had resolved with the assistance of rehabilitation. Additionally, Dr. Martinez de Andino noted that with regard to her hepatitis C diagnosis, she had normal liver function tests, and that she was losing weight by following the recommended diet.

During the next visit on August 14, 2006, Dr. Martinez de Andino noted her only complaint was of fatigue and feeling "a little down," which he diagnosed as mild depression. Dr. Martinez de Andino advised Petitioner to increase the dose of her previously prescribed anti-depressant medication. With regard to her rheumatoid arthritis, he again noted that this condition was stable, noting her report of no significant joint pain, swelling, or stiffness.

On November 1, 2006, Petitioner was noted as having mild transaminasemia (elevated liver enzymes), for which Dr. Martinez de Andino advised repeat lab tests and a referral to her gastroenterologist if liver enzymes were still elevated. With regard to her mild depression, she reported not tolerating the increased anti-depressant dosage, thus she had returned to her prior dose on her own. With respect to her rheumatoid arthritis, Petitioner reported having some nonspecific joint pain involving her hands, and sometimes involving her wrists and ankles. Dr. Martinez de Andino noted moderate to severe range of motion limitation in her wrists secondary to pain, with additional pain reported at the metacarpophalangeal (knuckle), ankle, and subtalar joints. Dr. Martinez de Andino did not indicate finding any evidence of swelling, synovitis, or joint effusion. Dr. Martinez de Andino indicated that Petitioner's symptoms seemed to definitely be aggravated by her job and, as such, indicated she should take a short-term disability so he could evaluate how her condition and symptoms responded to being off work. As indicated above, available information shows Petitioner continued to work after that visit until November 21, 2006.

As part of the initial review of Petitioner's eligibility for BLTD benefits, Shirley Ingram, M.D., a Physician Consultant board certified in Rheumatology, reviewed Petitioner's file, including the medical information summarized above. Dr. Ingram noted Dr. Martinez de Andino's assessment of rheumatoid arthritis and his conclusion that most of Petitioner's symptoms are from depression, for which he prescribed Lexapro.

Dr. Ingram noted Petitioner's musculoskeletal exams were normal and without synovitis. Office visit notes indicate Petitioner had no peripheral joint symptoms, stiffness or swelling through August 14, 2006. On November 1, 2006, Dr. Ingram noted Petitioner complained of nonspecific joint pains of her hands, wrists and ankles. Examination revealed moderate to severe restriction of flexion and extension of both wrists and some stress pain at the knuckles, ankles and subtalar joints, but no mention of swelling.

Dr. Ingram stated that Petitioner had ongoing treatment of rheumatoid arthritis, which had been stable over the prior year. Although Dr. Martinez de Andino stated Petitioner's work had aggravated Petitioner's symptoms, and had noted in November there was decreased range of motion of the wrists, Dr. Ingram stated there were no signs or symptoms expressed that would be consistent with acute synovitis or a flare of rheumatoid arthritis; Petitioner's treatment did not change nor was she treated for an acute flare. Dr. Ingram noted that there was no indication by x-ray or physical exam that Petitioner was having an acute flare or that her work abilities would be different than the prior year. Dr. Ingram opined that Petitioner's records did not specifically support a change in her medical condition that would limit her ongoing ability to perform her own full-time sedentary occupation with frequent reaching, handling and fingering. Dr. Ingram stated that past wrist joint damage and decreased range of motion did not preclude handling and fingering, particularly keyboard fingering. Dr. Ingram suggested that Petitioner could avoid repetitive pronation, avoid carrying objects with the handgrip alone, and that Petitioner should use the appropriate ergonomic keyboards and pens and pencils.

After Dr. Ingram reviewed Petitioner's claim with regard to her diagnosis of rheumatoid arthritis, the Employee Benefits Department at The Standard had a different Medical Consultant review her file with regard to her hepatitis C, asthma, and depression. Following her review the Medical Consultant noted that based on the medical records, summarized above, she did not find evidence in support of any occupational impairment due to those conditions.

Petitioner saw Dr. Martinez de Andino on January 5, 2007. Petitioner reported no significant joint pain, swelling, or stiffness, although it was noted that she was doing much better since she was no longer working. A physical exam revealed full range of motion of all her joints without evidence of synovitis, effusions, or joint asymmetry. Petitioner's liver function lab tests were normal.

On January 24, 2007, Dr. Martinez de Andino saw Petitioner. Petitioner reported recurrent pain in her wrists and knuckles, with morning stiffness and swelling. Upon examination, Dr. Martinez de Andino noted joint swelling and synovitis of several of Petitioner's knuckles, and bilateral wrist synovitis with positive stress pain. Dr. Martinez de Andino changed none of Petitioner's maintenance medications, but prescribed a short course of prednisone.

Petitioner presented to the emergency room on February 19, 2007, with complaints of dizziness, neck pain and blurred vision. After a work-up, diagnoses were dizziness/acute vertigo, right

otitis media, and dehydration. After treatment, including IV fluids, Petitioner reported feeling better and was released.

After receipt of Dr. Martinez de Andino's notes for January 5, 2007, and January 24, 2007, and the emergency room notes from February 19, 2007, Dr. Ingram once again reviewed Petitioner's file. Dr. Ingram stated that Dr. Martinez de Andino noted joint swelling and synovitis of several of Petitioner's knuckles, and bilateral wrist synovitis with positive stress pain, flexion discomfort beyond 90 degrees in her knees, and that her hepatitis C was stable. Although Dr. Martinez de Andino opined Petitioner could not work in any meaningful way, Dr. Martinez de Andino did not specifically state his rationale for this assessment. Dr. Ingram stated that Petitioner had been on Enbrel treatment (50 mg per week) from 2003 through current. Dr. Ingram indicated that Petitioner's records do not confirm a significant change in her arthritis at the time she stopped working. When Petitioner experienced an intermittent flare in January 2007, Dr. Martinez de Andino prescribed low-dose, short-term corticosteroids. The fact that there was no prednisone prescribed in November when Petitioner ceased work suggested to Dr. Ingram there was not evidence of a flare at that time.

Dr. Ingram noted it was unusual for an arthritis flare to be so severe as to preclude the performance of a sedentary occupation. Flares would not be expected to be long-lasting, particularly with the use of corticosteroids. Thus, Dr. Ingram stated that flares would not interfere with Petitioner's ability to perform a sedentary occupation in a sustainable manner. Nonetheless, Dr. Ingram thought it was reasonable that Petitioner could not use her hands for repetitive gripping and grasping, particularly strong gripping and grasping. Thus, Dr. Ingram found Dr. Martinez de Andino's assessment unusual, and without a rationale, that Petitioner could not work in any gainful employment.

Dr. Ingram stated there was nothing in Petitioner's chart to indicate her arthritis is so severe that it would be rapidly disabling, particularly given the dearth of x-rays showing significant erosions. Petitioner did not have persistent synovitis and she had been very stable until November 2006, on her current drug regimen. Dr. Ingram suggested that Petitioner's subjective perception of her condition may be disproportionate to what has been documented on physical exam, radiography, and laboratory tests. Dr. Ingram wrote a letter to Dr. Martinez de Andino asking for further supporting information.

On June 25, 2007, Petitioner once again saw Dr. Martinez de Andino. Petitioner's main complaint was fatigue. Petitioner also had continued low back pain, for which she received two injections. Dr. Martinez de Andino recommended another injection and physical therapy for Petitioner's lower back. Dr. Martinez de Andino found no edema of the extremities, joint asymmetry, or effusions, with the only range of motion limitation noted being mild restriction of the lower back.

Dr. Ingram once again reviewed Petitioner's file on September 4, 2007. Dr. Ingram stated that Dr. Martinez de Andino had not responded to her request for a narrative support of his notations of severe restrictions of Petitioner's wrist and ankles; Dr. Martinez de Andino found these restrictions despite the absence of synovitis, no radiographs or a significant change in treatment. Dr. Ingram reviewed Dr. Martinez de Andino's office note for June 25, 2007. Dr. Martinez de Andino found that Petitioner was unable to perform her duties at work, that her activities of daily living were limited and that she was not retrainable for any other type of work. Dr. Ingram stated that Dr. Martinez de Andino found mild restriction throughout the range of motion for the lower back, found her seropositive rheumatoid arthritis was stable and continued current treatment.

Dr. Ingram opined that the additional information confirms the stability of Petitioner's rheumatoid arthritis. There were no radiographs and the June 25, 2007, exam showed no neurologic deficits that support low back pain as restricting a full-time sedentary occupation. In Dr. Ingram's opinion, the submitted objective information was minimal and did not support the extreme limitations noted by Dr. Martinez de Andino. Dr. Ingram concluded that the medical documentation did not support that Petitioner was limited or restricted from sedentary work activity as of the time she ceased working. Dr. Ingram indicated that Petitioner's prognosis was relatively good if she has no significant ongoing evidence of synovitis. But Dr. Ingram stated that rheumatoid arthritis was a chronic condition and Petitioner would need to receive ongoing care from a rheumatologist and to receive antirheumatic drug treatment. Dr. Ingram noted the lack of a specific response from Dr. Martinez de Andino to Dr. Ingram's request, along with the lack of specific radiologic, laboratory, and physical exam support for specific physical activity limitations. Dr. Ingram asserted that Dr. Martinez de Andino's statement that Petitioner was not retrainable and that she cannot work were not helpful in determining specific limitations and restrictions and is contrary to Dr. Martinez de Andino's observations in the medical records, except as related to Petitioner's subjective complaints of fatigue and pain.

On September 27, 2007, Ronald Fraback, M.D., board certified in rheumatology, reviewed Petitioner's claim. Dr. Fraback stated that Petitioner suffered from rheumatoid arthritis, asthma, hepatitis C and depression. Dr. Fraback noted that Dr. Martinez de Andino opined that Petitioner was "unable to perform her expected duties at work" and that she was not retrainable for any other type of work. Dr. Fraback further noted that Dr. Martinez de Andino failed to respond to a letter from Dr. Ingram, written on April 12, 2007, asking Dr. Martinez de Andino for further clarification supporting his opinion regarding Petitioner's work capacity.

Dr. Fraback stated that an MRI report of Petitioner's lumbar spine from March 2006 showed minimal degenerative disc disease and NCV and EMG studies of her lower extremities performed in March 2006 were normal. But Dr. Fraback noted that although Dr. Martinez de Andino indicated that Petitioner has erosive disease, there were no x-ray reports of Petitioner's joints in the claim file.

Dr. Fraback did not find evidence of a back condition of such severity that Petitioner would be precluded from regular sedentary work.

Likewise, Dr. Fraback noted that Petitioner had been treated for hepatitis C and that disease was apparently not active.

Dr. Fraback stated that Petitioner has longstanding rheumatoid arthritis and has had intermittent symptoms, predominantly in her upper extremities. Dr. Fraback opined that it is reasonable that Petitioner was precluded from sedentary-level work as of the cease work date due to an increase in her joint symptomatology. Dr. Fraback noted Petitioner apparently had flare-ups from November through approximately early February 2007. In a note dated February 23, 2007, Dr. Martinez de Andino indicated Petitioner was improved. Therefore, Dr. Fraback opined that although Petitioner may periodically have some difficulty with repetitive hand and wrist motions due to flare-ups of her arthritis, by mid-February Petitioner should have been able to return to sedentary-level work activities.

The Standard upheld its decision to deny Petitioner's claim for BLTD benefits. This determination was appealed to EIP.

2. BLTD Plan Provisions

The BLTD Plan provides in relevant part:

Own Occupation Period - The Benefit Waiting Period and the first 24 months of disability

Any Occupation Period - From the end of the Own Occupation Period to the end of the Maximum Benefit Period.

Own Occupation - means any employment, business, trade, profession, calling or vocation that involves Material Duties of the same general character as your regular and ordinary employment with the employer. Your Own Occupation is not limited to your job with your Employer.

Material Duties - means the essential tasks, functions and operations, and the skills, abilities, knowledge, training and experience, generally required by employers from those engaged in a particular occupation.

Benefit Waiting Period - means the period you must be continuously Disabled before the LTD Benefits become payable. No LTD Benefits are payable for the Benefit Waiting Period.

Own Occupation Definition of Disability - During the Benefit Waiting Period and the Own Occupation Period (24 months) you are required to be disabled only from your Own Occupation. You are disabled from your Own Occupation if, as a result of Physical Disease, Injury, Pregnancy or Mental Disorder, you are unable to perform with reasonable continuity the Material Duties of your Own Occupation.

Relative to the Definition of Disability provision, the Proof of Loss provision states:

Any Occupation - During the Any Occupation Period you are required to be Disabled from all occupations.

You are disabled from all occupations if, as a result of Physical Disease, Injury, Pregnancy or Mental Disorder, you are unable to perform with reasonable continuity the Material Duties of Any Occupation.

Any Occupation means any occupation or employment which you are able to perform, whether due to education, training, or experience, which is available at one or more locations in the national economy and in which you can be expected to earn at least 65% of your Indexed Predisability Earnings within twelve months following your return to work, regardless of whether you are working in that or any other occupation.

Proof of Loss

Proof of Loss means written proof that you are Disabled and entitled to LTD Benefits. Proof of Loss must be provided at your expense.

For claims of Disability due to conditions other than Mental Disorders, we may require proof of physical impairment that results from anatomical or physiological abnormalities, which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques.

3. Determination of the Committee

After considering all of the medical documentation in the claim file, including the opinions of Petitioner's physicians and the Physician and Vocational Consultants, the Committee found the Petitioner did not meet the Plan's Own Occupation Definition of Disability for the BLTD Plan. In order for Petitioner to be entitled to BLTD Benefits, the medical documentation in the claim file must support that her level of function was impaired to the degree that she is unable to perform the Material Duties of her Own Occupation as a benefits clerk on a full-time basis. Her Own Occupation requires sedentary-level physical demands. The Committee determined that Petitioner was not disabled from performing her sedentary-level occupation throughout and beyond the 90-day Benefit Waiting Period.

The Committee was persuaded by the opinions of Dr. Ingram and Dr. Fraback that the evidence in Petitioner's claim file did not demonstrate that Petitioner was unable to perform her sedentary-level occupation throughout and beyond the 90-day Benefit Waiting Period.

The Committee noted that Dr. Martinez de Andino opined that Petitioner was "unable to perform her expected duties at work" and that she was not "retrainable" for any other type of work. The Committee disagreed. Although Dr. Martinez de Andino opined Petitioner could not work in any meaningful way, Dr. Ingram noted Dr. Martinez de Andino did not specifically state his rationale for this assessment. Dr. Ingram noted a lack of specific radiologic, laboratory, and physical exam support for specific physical activity limitations for Petitioner and thus Dr. Ingram wrote a letter to Dr. Martinez de Andino on April 12, 2007, asking Dr. Martinez de Andino for further clarification supporting his opinion regarding Petitioner's work capacity. Dr. Martinez de Andino failed to respond to a letter from Dr. Ingram. Thus, Dr. Martinez de Andino failed to explain how he reached his conclusion concerning Petitioner's disability and failed to point to objective evidence showing that Petitioner was disabled from performing her sedentary-level occupation. Based on the opinions of Dr. Ingram and Dr. Fraback, and the Committee's review of the claim file, the Committee found that Dr. Martinez de Andino's opinion was not supported by objective evidence; as detailed below, the objective evidence in Petitioner's file did not demonstrate that Petitioner was unable to perform her sedentary-level occupation as a benefits clerk.

The Committee noted there was no dispute that Petitioner suffered from rheumatoid arthritis for a number of years. Dr. Ingram stated that Petitioner had ongoing treatment of rheumatoid arthritis and that Petitioner had been on Enbrel treatment (50 mg per week) since 2003. Dr. Ingram found that Petitioner's rheumatoid arthritis was stable, and stated there was nothing in Petitioner's chart to indicate her arthritis is so severe that it would be rapidly disabling, particularly given the dearth of x-rays showing significant erosions. Dr. Ingram noted Petitioner's musculoskeletal exams were normal and without synovitis. Petitioner had been very stable until November 2006, on her current drug regimen. Dr. Ingram further suggested that Petitioner's subjective perception of her condition may be disproportionate to what has been documented on physical exam, radiography, and laboratory tests. Dr. Ingram opined that Petitioner's records did not specifically support a change in her medical condition that would limit her ongoing ability to perform her own full-time sedentary occupation with frequent reaching, handling and fingering. Dr. Ingram stated that past wrist joint damage and decreased range of motion did not preclude handling and fingering, particularly keyboard fingering.

Dr. Fraback opined that it is reasonable that Petitioner was precluded from sedentary level work as of the cease work date due to an increase in her joint symptomatology. Dr. Fraback noted Petitioner apparently had flare-ups from November through approximately early February 2007. In a note dated February 23, 2007, Dr. Martinez de Andino indicated Petitioner was improved. Therefore, Dr. Fraback opined that although Petitioner may periodically have some difficulty with repetitive hand and wrist motions due to flare-ups of her arthritis, by mid-February Petitioner should have been able to return to sedentary-level work activities. Moreover, Dr. Ingram noted it was unusual for an arthritis flare to be so severe that it would preclude the performance of a sedentary occupation. Flares would not be expected to be long-lasting, particularly with the use of corticosteroids. Thus, Dr. Ingram stated that flares would not interfere with Petitioner's ability to perform a sedentary occupation in a sustainable manner.

The Committee noted that Dr. Ingram questioned, based on the evidence, whether Petitioner actually experienced a flare of her arthritis at the time she ceased working. Dr. Ingram noted that there was no indication by x-ray or physical exam that Petitioner was having an acute flare or that her work abilities would be different than the prior year in November 2006. Dr. Ingram stated there were no signs or symptoms expressed that would be consistent with acute synovitis or a flare of rheumatoid arthritis; Petitioner's treatment did not change nor was she treated for an acute flare. By contrast, when Petitioner experienced an intermittent flare in January 2007, Dr. De Andino prescribed low-dose, short-term corticosteroids. The fact that there was no prednisone prescribed in November when Petitioner ceased work suggested to Dr. Ingram there was not evidence of a flare at that time.

The Committee, however, accepts that Petitioner's arthritis symptoms were exacerbated during the period from November 2006 to February 2007, and that Dr. Fraback opined this flare was severe enough to cause Petitioner to be unable to work in her sedentary-level occupation from November 2006 to mid-February 2007. Clearly, Petitioner experienced a flare of rheumatoid arthritis in January 2007. But Petitioner's condition was improved by February 2007 after a course of prednisone. Therefore, the Committee agrees with the opinion of Dr. Fraback and finds that Petitioner was not disabled throughout and beyond the 90-day period after she ceased work in November 2006 as a result of a flare of rheumatoid arthritis.

With respect to Petitioner's back pain, Dr. Fraback did not find evidence of a back condition of such severity that Petitioner would be precluded from regular sedentary work. Dr. Fraback stated that an MRI report of Petitioner's lumbar spine from March 2006 showed minimal degenerative disc disease and NCV and EMG studies of her lower extremities performed in March 2006 were normal. Dr. Fraback noted that although Dr. Martinez de Andino indicated that Petitioner has erosive disease, there were no x-ray reports of Petitioner's joints in the claim file. Dr. Ingram also noted there were no radiographs and the June 25, 2007, exam by Dr. Martinez de Andino showed no neurologic deficits that support low back pain as restricting a full-time sedentary occupation. In Dr. Ingram's opinion, the submitted objective information was minimal and did not support the extreme limitations noted by Dr. Martinez de Andino. Accordingly, the Committee found that Petitioner was not precluded from performing her sedentary-level occupation as a result of back pain.

Furthermore, The Standard's medical consultants found no evidence that Petitioner suffered occupational impairment due to hepatitis C, asthma or depression. Dr. Fraback noted that Petitioner had been treated for hepatitis C and that disease was apparently not active. A chart note from Dr. Crawford dated July 11, 2005, indicates Petitioner's hepatitis C was deemed stable, that Petitioner's

treatment had been completed and there was no evidence of a persistent viral load; her liver test in 2007 was normal. Petitioner was prescribed Lexapro for depression, but there were no treatment records indicating that Petitioner was receiving any type of treatment from a psychologist or psychiatrist. There is no evidence that her depression is severe and, in fact, Petitioner reduced her anti-depressant dosage. While Petitioner may have been diagnosed with hepatitis C, asthma and depression, the objective medical evidence in Petitioner's file does not demonstrate that these conditions were so severe that she is unable to perform her sedentary-level occupation as a result of these conditions.

The Committee found that Petitioner was not disabled from performing her sedentary-level occupation as a result of rheumatoid arthritis, back problems, hepatitis C, asthma or depression. None of these conditions either individually, or taken together, limited Petitioner from performing her sedentary-level occupation. Therefore, the Committee found the Petitioner retained the capacity to perform her sedentary-level occupation and that The Standard properly denied her BLTD claim.

This determination has been made in good faith under the terms and conditions of the BLTD Plan. Nothing in this letter should be construed as a waiver of any rights or defenses under the Plan, whether or not specifically mentioned in this letter.

Petitioner's right to appeal through the Employee Insurance Program has been exhausted. In accordance with instruction from the Administrative Law Court (ALC), Petitioner's next level of appeal is to the ALC in its appellate jurisdiction pursuant to S.C. Code Ann. § 1-23-600(D). An appeal is commenced by filing Petitioner's notice of appeal with the ALC within 30 days of receipt of this letter.

If Petitioner chooses to appeal to the Administrative Law Court, please note the following address for the Employee Insurance Program's agent for service:

**Mr. Robin E. Tester, Director
Employee Insurance Program
South Carolina Budget and Control Board
1201 Main Street, Suite 300
Columbia, South Carolina 29201**

Sincerely,



Robin E. Tester
Director of Employee Insurance Program

RET/SRV/dht

cc: Joel Gosse, Standard Insurance Company

LTD Appeals Fact Sheet

Date: 04/04/2008

ELP Committee Member	Approved	Denied	Other
Denise Hunter			
Dewey King			
Michele Lewsky			
Employee:	Gail Still		
Identification No.:	XXX-XX-4789		
Employer:	Barnwell School District 45		
Job Title/ Requirements of Position/Strength Factor:	Benefits Clerk II / Records employee enrollment in benefits programs, answers employee questions, fills out application forms and verifies information on forms / Sedentary, DOT 205.567-010		
Date of Disability:	11/22/2006		
Last Day Worked:	11/21/2006		
Plan Effective Date:	01/01/1997 BLTD; 01/01/2006 SLTD		
Description of Disability:	Rheumatoid Arthritis, asthma, hepatitis C, depression		
Physicians of Record:	Edwin Martinez de Andino, MD, Rheumatology; William Clark, MD, Family Practice Physician Consultants for The Standard: Ronald Fraback, MD, Rheumatology; Shirley Ingram, MD, Rheumatology		
How was residual capacity determined?	Review of medical information on file.		
IMEs:	N/A		
Vocational Opinions:	Own Occupation Review, Steve Cooper, Vocational Case Manager, 12/07/2006		
Does the claimant meet the definition of disability?	(a) Own Occupation? No		(b) Any Occupation? No
Were benefits approved for any period?	No	(a) Benefit Start Date: N/A	(b) Date Benefits Ceased: N/A
If yes:	Reason for initial approval: N/A		Reason for benefits ceasing: N/A
Original Decision Date:	02/05/2007		
Date of Appeal(s):	03/07/2007		
Date and Decision of Standard's ARU:	01/02/2007; Decision of Denial Upheld		
Grounds in Claimant's Petition:			
Grounds for Committee's Decision:			

STATE OF SOUTH CAROLINA
State Budget and Control Board
EMPLOYEE INSURANCE PROGRAM



RK SANFORD, CHAIRMAN
GOVERNOR

VERSE A. CHELLIS III, CPA
STATE TREASURER

HARD ECKSTROM, CPA
COMPTROLLER GENERAL

HUGH K. LEATHERMAN, SR.
CHAIRMAN, SENATE FINANCE COMMITTEE

DANIEL T. COOPER
CHAIRMAN, WAYS AND MEANS COMMITTEE

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EXECUTIVE DIRECTOR

1201 MAIN STREET, SUITE 300
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FAX: (803) 737-0557

December 3, 2007

M. League Boylston, Esquire
Peters, Murdaugh, Parker, Eltzroth & Detrick, PA
101 Mulberry Street East
P.O. Box 457
Hampton, South Carolina 29924-0457

Re: *State of South Carolina*
Your Client: Gail Still
ID#: xxx-xx-4789

Dear Mr. Boylston:

The Employee Insurance Program (EIP) has received your request to appeal The Standard's denial of Ms. Still's claim for basic long term disability.

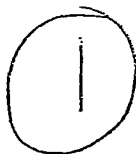
Please be advised that the Appeals Committee of EIP will consider your request within thirty (30) days of receipt of all the requested documentation from the claims administrator. If you have additional information that is pertinent to this review, please submit your written comments or other information as soon as possible.

If further information is required of this office, please contact our appeals coordinator, Deborah Tapp, at (803) 734-3569.

Sincerely,

A handwritten signature in dark ink, appearing to read 'David Burgis', written over a horizontal line.
David Burgis
Program Manager

DB/dht



Claims Administrator
for the State of South Carolina
Long Term Disability Plan

October 26, 2007

Ms. M. League Boylston
Peters, Murdaugh, Parker, Eltzroth & Detrick
PO Box 457
Hampton SC 29924-0457

Re: Gail S. Still
State of South Carolina
LTD Plan No.: 627284
Claim No.: 00VA5341

Dear Ms. Boylston:

As Claims Administrator for the State of South Carolina's Long Term Disability (LTD) Plan, Standard Insurance Company's (The Standard's) Administrative Review Unit has completed a review of the decision to deny the Basic LTD claim of your client, Ms. Gail S. Still. This was an independent review, conducted separately from the individuals who made the original claim determination. After carefully considering all of the information currently contained in her file, we find the correct decision was to deny Ms. Still's Basic LTD claim.

As you may recall, your client's Basic LTD claim was denied because it was determined that she did not meet the State of South Carolina LTD Plan's Definition of Disability as of her cease work date, throughout the required Benefit Waiting Period, and continuing beyond. That decision was explained to Ms. Still in a letter dated February 5, 2007, from Disability Benefits Analyst Nicole Markey. Please refer to that letter, as well as Ms. Markey's more recent letter to you dated September 20, 2007 (copies enclosed), for a complete and thorough explanation of the initial investigation and determination made on your client's Basic LTD claim.

Subsequently, Ms. Still requested a review of that decision. While her Supplemental LTD claim #00VA5363 had also been denied due to the determination that she did not meet the State of South Carolina LTD Plan's Definition of Disability, it was additionally denied under the Preexisting Condition Limitation outlined in the Plan Document. In that regard, Ms. Still specifically noted in her letter dated March 7, 2007, that she was not requesting a review of the decision to deny her Supplemental LTD claim.

In that regard, based on her request, the main focus of our review was to determine whether the documentation available in her file supports that she was impaired from performing her Own Occupation of Benefits Clerk II following her last day of work of November 21, 2006, throughout and continuing beyond the 90-day Benefit Waiting Period, which did not end until February 19, 2007, with regard to her Basic LTD claim only.

In order to make our determination, all the information currently contained in Ms. Still's file was reviewed, including all correspondence regarding the denial of her Basic LTD claim, her letter requesting a review of that decision, and all the information submitted and/or obtained since that request was received. The following is a summary of our findings.

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First, please recall that the State of South Carolina LTD Plan Document defines Disability from an insured's Own Occupation as an inability to perform with reasonable continuity the Material Duties of their Own Occupation as a result of Physical Disease, Injury, Pregnancy or Mental Disorder. In addition, an insured's Own Occupation is defined as any employment, business, trade, profession, calling or vocation that involves the Material Duties of the same general character as their regular and ordinary employment with their Employer (provision enclosed).

However, please note Own Occupation is not limited to a specific job or position that an insured was performing for their Employer immediately prior to their cease work date, but may include any positions within that occupation available with any employer in the national economy.

That means that in order for Ms. Still to have become eligible for Basic LTD benefits under the State of South Carolina LTD Plan, she would have needed to provide satisfactory written evidence that she continuously met the Definition of Disability outlined above as of her cease work date of November 21, 2006, throughout and continuing beyond February 19, 2007.

Therefore, with that in mind, we reviewed all of medical and vocational evidence currently contained in your client's LTD claim file. That information shows that Ms. Still last worked on November 21, 2006, claiming an inability to continue to work after then due to rheumatoid arthritis, hepatitis C, asthma, three degenerative lumbar discs, and a left knee replacement that had been done in 1989.

On her Employee's Statement claim form, Ms. Still indicated she had been seen and/or treated for those medical conditions by Family Practitioner William B. Clark and Nurse Practitioner Sharon Wise, Rheumatologist Edwin V. Martinez De Andino, and Gastroenterologist Matthew Crawford. Later, she also noted she had been seen and/or treated by Orthopedic Surgeon Thomas M. Tranick and Gynecologist W. G. Watson.

As part of the initial review of Ms. Still's eligibility for LTD benefits, the Employee Benefits Department had a Vocational Consultant review her file. As indicated in Ms. Markey's letter dated February 5, 2007, following his review the Vocational Consultant indicated Ms. Still's position of Benefits Coordinator; Payroll with Barnwell School District 45 most closely matched the occupation of Benefits Clerk II, which is found in the U.S. Department of Labor's *Dictionary of Occupational Titles*, Fourth Edition, revised 1991.

According to that publication, the occupation of Benefits Clerk II involves sedentary strength level work as performed in the national economy. Please see Ms. Markey's February 5, 2007 letter for a complete description of Sedentary Work.

With regard to available medical information, we find that submitted along with your client's initial claim forms was an Attending Physician's Statement (APS) completed by Dr. Clark on November 28, 2006. On that form, Ms. Still's primary diagnosis was listed as rheumatoid arthritis, with secondary diagnoses listed as chronic asthma and hepatitis C. Symptoms noted included increased joint pain, decreased mobility, joint edema, and increased wheezing.

While Dr. Clark indicated he had recommended your client cease work two years prior to when he completed that form, he additionally noted his opinion that she had the physical ability as of that date to lift up to 10 pounds frequently, and occasionally bend, stoop, grasp and reach. Also,

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he indicated she could walk/stand for up to 2 hours at one time for a total of 6 hours in an 8-hour work day, and sit for up to 4 hours at one time for a total of 6 hours in an 8-hour work day.

Additionally, in a letter dated November 7, 2006, Dr. De Andino indicated that he had been treating Ms. Still for rheumatoid arthritis since August of 1999, which was worsening, not expected to improve, and did not allow her to return to work. Dr. De Andino concluded that letter by providing his opinion that Ms. Still "is considered total (sic) disabled at this time".

With the above vocational and medical information in mind, in order to obtain a more clear understanding of Ms. Still's medical conditions, and the resulting occupational impairments, if any, caused by those conditions as of her cease work date and continuing beyond, medical records were requested from Drs. Clark, De Andino, Crawford, Tranick, and Watson.

In that regard, the medical records currently available in your client's file show that well prior to her cease work date Ms. Still had been diagnosed with rheumatoid arthritis, and had a history of chronic lower back pain, bronchial asthma, depression, and chronic active hepatitis C status post eradication therapy. However, her physical exam findings from as early as June 2005 noted she did not have any joint asymmetry or effusions, or edema in her extremities. Additionally, lab tests completed in July 2005 noted no evidence of a persistent active hepatitis C viral load.

On November 9, 2005, Ms. Still was seen due to generalized malaise, postnasal drip, and a sore throat. She also reported some right wrist pain. After examining her, Dr. De Andino noted his impression as possible mild flare of her rheumatoid arthritis due to a viral infection. In that regard, he prescribed an antibiotic and a short course of prednisone. At her next visit on November 21, 2005, she reported feeling much better, and by December 19, 2005, she reported feeling great, without any joint pain, swelling, or stiffness.

Ms. Still was next seen on February 28, 2006, reporting "discomfort in the low back" for the past month radiating down her right leg, and pain just above her right buttock. Dr. De Andino noted he did not find any neurological deficits upon physical exam, and indicated all her joints were without any evidence of synovitis or effusion. Due to differential diagnoses of right sacroiliitis and/or trochanteric bursitis, he recommended magnetic resonance imaging (MRI) scans of her lower back and pelvis.

Those studies occurred on March 3, 2006, with the lumbar spine MRI showing "some very minimal degenerative disc disease at L1-2 and L2-3 and mild facet hypertrophy at L5-S1". An incidental finding of a right adnexal lesion was identified on that scan, as well as the pelvic scan that otherwise showed a "nearly normal" pelvis with "some very subtle hyperintensity at the gluteus medius insertion on the greater trochanter". Following those tests, Ms. Still was referred to her gynecologist for additional work up of the adnexal mass.

Additional tests performed on March 3, 2006, included bilateral lower extremity electromyogram (EMG) and nerve conduction studies, which were noted as normal, and somatosensory evoked potentials (SSEPs) of the lower limbs, which were also noted as normal. In that regard, during her next visit on March 23, 2006, Dr. De Andino noted diagnoses of degenerative disc disease, for which he recommended physical therapy, mild hypertension, for which he advised her to work on exercise and diet, and stable seropositive rheumatoid arthritis.

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On June 14, 2006, Ms. Still was noted as having no history of joint pain, swelling, or stiffness, and reported her back symptoms had resolved with the assistance of rehabilitation. Additionally, Dr. De Andino noted that with regard to her hepatitis C diagnosis she had normal liver function tests, and that she was losing weight by following the recommended diet.

During the next visit on August 14, 2006, he noted her only complaint was of fatigue and feeling "a little down", due to which he noted a diagnosis of mild depression. In that regard, he advised she increase the dose of her previously prescribed anti-depressant medication. With regard to her rheumatoid arthritis, he again noted that condition was stable, again noting her report of no significant joint pain, swelling, or stiffness.

Then, on November 1, 2006, Ms. Still was noted as having mild transaminasemia (elevated liver enzymes), for which Dr. De Andino advised repeat lab tests and referral to her gastroenterologist if those were still elevated. With regard to her mild depression, she reported not tolerating the increased anti-depressant dosage, thus she had returned to her prior dose on her own.

With regard to her rheumatoid arthritis, Ms. Still reported having had some nonspecific joint pain involving her hands, and sometimes involving her wrists and ankles. Dr. De Andino noted moderate to severe range of motion limitation in her wrists secondary to pain, with additional pain reported at the metacarpophalangeal (knuckle), ankle, and subtalar joints, though he did not indicate finding any evidence of swelling, synovitis, or joint effusion.

Regardless, Dr. De Andino indicated that Ms. Still's symptoms seemed to definitely be aggravated by her job and, as such, indicated she should take a short term disability so he could evaluate how her condition and symptoms responded to being off work. As indicated above, available information shows Ms. Still continued to work after that visit until November 21, 2006.

As part of the initial review of Ms. Still's eligibility for LTD benefits, the Employee Benefits Department had a Physician Consultant board certified in Rheumatology review her file, including the medical information summarized above.

Following her review, the Physician Consultant noted that the available medical records support ongoing treatment for rheumatoid arthritis, which is documented as being stable over the year prior to Ms. Still's cease work date. She added that while there was some decreased range of motion noted on November 1, 2006, there were no signs or symptoms documented on that date that would be consistent with acute synovitis or rheumatoid arthritis flare, nor were there any changes in her treatment that would support an acute flare.

In that regard, the Physician Consultant concluded her review by noting that the documented physical exam and radiographic evidence does not support that your client was having an acute flare of her rheumatoid arthritis as of her cease work date, or that her physical abilities would be different than they had been the prior year. Therefore, the Physician Consultant indicated her opinion that the available medical evidence did not support Ms. Still would have been precluded from continuing to perform sedentary strength level work requiring frequent reaching, handling, and fingering as she had done in the past.

After the Rheumatology Physician Consultant reviewed Ms. Still's claim with regard to her diagnosis of rheumatoid arthritis, the Employee Benefits Department had a different Medical Consultant review her file with regard to her hepatitis C, asthma, and depression. Following her

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review the Medical Consultant noted that based on the medical records summarized above she did not find evidence in support of any occupational impairment due to those conditions.

Following the denial of your client's LTD claim, and receipt of her letter requesting a review of that decision, additional medical documentation was submitted and obtained. That information included additional records from Dr. De Andino and information regarding an emergency room visit at Barnwell County Hospital.

As such, the additional records show that on January 5, 2007, Ms. Still again reported no significant joint pain, swelling, or stiffness; although it is also noted that she was doing much better since she was no longer working. Upon physical exam she had full range of motion of all her joints without evidence of synovitis, effusions, or joint asymmetry. Additionally, with regard to her hepatitis C diagnosis, Dr. De Andino noted her repeat liver function lab tests were normal.

Then, on January 24, 2007, Ms. Still saw Dr. De Andino again, reporting recurrent pain in her wrists and knuckles, with morning stiffness and swelling. Upon exam, Dr. De Andino noted joint swelling and synovitis of several of her knuckles, and bilateral wrist synovitis with positive stress pain. As such, while he did not change any of her maintenance medications, he prescribed another short course of prednisone.

On February 19, 2007, Ms. Still presented to the emergency room with complaints of dizziness, neck pain and blurred vision. After what appears to have been a thorough work up her diagnoses were listed as dizziness/acute vertigo, right otitis media, and dehydration. However, after treatment including intravenous fluids, your client reported feeling much better and was released.

Finally, the last chart note currently available is of an office visit that occurred on June 25, 2007. During that follow up Dr. De Andino noted Ms. Still's main complaint was of fatigue, though he also indicated facet disease with continued lower back pain following two injections. While he recommended another injection and physical therapy for her lower back, Dr. De Andino noted his physical exam found no edema of the extremities, joint asymmetry, or effusions, with the only range of motion limitation noted being mild restriction of her lower back.

Following receipt of the additional medical documentation noted above, the Employee Benefits Department had the Physician Consultant board certified in Rheumatology review Ms. Still's file again. During that review, the Physician Consultant noted that the available records show she had a modest flare of her rheumatoid arthritis in January 2007, as evidenced by Dr. De Andino having prescribed the short course of prednisone. However, she added that that flare would not be expected to last long, particularly with the use of corticosteroids, such that it should not have interfered with her ability to perform sedentary strength level work in a sustainable manner.

Additionally, the Physician Consultant noted your client's file did not include any radiographic findings, or documentation of any neurologic deficits that would support her lower back condition was of such severity as to preclude full-time, sedentary strength level work either. In that regard, the Physician Consultant concluded her review by noting that the objective medical information provided in Dr. De Andino's medical records does not support the extreme physical limitations that he has indicated Ms. Still has had as of her cease work date through the present.

In fact, due to his incongruent medical opinion in the context of his chart notes, the Physician Consultant sent an inquiry letter to Dr. De Andino dated April 12, 2007, in order to allow him an

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opportunity to provide the rationale for his opinion that Ms. Still was no longer able to work and would be unable to do so at any time in the future. To date, The Standard has not received any response to that letter. Therefore, Physician Consultant indicated her medical opinion that the totality of medical evidence currently available in Ms. Still's file does not support that she was impaired from performing full-time, sedentary strength level work as of November 22, 2006, throughout and continuing beyond February 19, 2007.

As part of the Administrative Review Unit's review of your client's LTD claim, we had our Medical Director, another board certified Rheumatologist, review Ms. Still's file. During his review, our Medical Director noted that your client's records support that she has longstanding rheumatoid arthritis with intermittent symptoms predominantly involving her upper extremities. However, he also noted that throughout most of 2006, the records document she had done well.

The Medical Director indicated that Ms. Still may have had flares of her rheumatoid arthritis causing joint symptoms around the time she ceased work through approximately early February 2007, but noted that the available documentation supports improvement after then.

With regard to her other conditions, the Medical Director indicated the records document her hepatitis C is not apparently active, thus it would not be impairing. He also indicated he did not find evidence in support of a back condition of such severity as to preclude regular sedentary strength level work. Finally, the Medical Director noted that there are references to depression in Ms. Still's records, but indicated he did not find evidence in support of that condition being of such severity as to preclude her from performing full-time work activities either.

Therefore, the Medical Director indicated his medical opinion that the medical evidence currently available in your client's file does not support that she would have been impaired from performing full-time, sedentary strength level work as of November 22, 2006, throughout and beyond February 19, 2007.

In summary, taking into consideration all of the vocational evidence currently contained in her file, we find that Ms. Still's position of Benefits Coordinator, Payroll with Barnwell School District 45 most closely matches the occupation of Benefits Clerk II, which is defined as sedentary strength level work. However, taking into consideration all of the medical evidence contained in her file, we do not find evidence in support of her inability to perform sedentary strength level work on a full-time, reasonably continuous basis as of November 22, 2006, throughout and continuing beyond February 19, 2007.

Therefore, based on a complete and thorough review of all the medical and vocational evidence currently available in your client's LTD claim file, we do not find that Ms. Still met the Own Occupation Definition of Disability as of her cease work date, throughout the required 90-day Benefit Waiting Period and beyond. As such, the Administrative Review Unit has determined that the initial decision to deny Ms. Still's Basic LTD claim was correct and has been upheld.

The decision to deny Ms. Still's Basic LTD claim has been upheld for the reasons outlined above. While we understand that she may still be disappointed with this decision, please assure her that our review was conducted fairly and objectively, taking into consideration all of the information currently available to us and the Plan provisions applicable to her Basic LTD claim.

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If she so requests, we may provide Ms. Still with a copy of her file. Please contact her Disability Benefits Analyst Nicole Markey at (800) 628-9696, Ext. 7320 for this information. Your client is entitled to this information upon request, but may be charged a reasonable fee for such copies.

We also want both you and your client to know that upon further investigation, other valid reasons for limiting, closing or denying Ms. Still's Basic LTD claim, which have not been previously considered, could come to our attention. Therefore, both The Standard and the State of South Carolina reserve the right to assert other valid reasons for limitation, closure or denial of your client's Basic LTD claim should it become necessary to do so in the future.

The South Carolina LTD Plan provides an employer-paid Basic LTD Plan that is self-funded by the State of South Carolina. The Standard administers claims for benefits under the self-funded Basic LTD Plan, but the State of South Carolina is the insurer for Basic LTD benefits and is ultimately responsible for payment or nonpayment of claims under the Basic LTD Plan.

The State of South Carolina LTD Plan provides for one independent review by The Standard. With your receipt of this letter, that review is now complete. However, the Basic LTD Plan provides for an additional review of Basic LTD claims by the State of South Carolina.

If your client wishes to further pursue this decision made on her Basic LTD claim, please address your written correspondence to the following within 90 days:

Ms. Deborah Tapp
South Carolina Budget & Control Board
1201 Main St - Ste 300
Columbia SC 29201-3230

As the Administrative Review Unit's review of Ms. Still's Basic LTD claim is now complete, her file has been returned to Ms. Markey in the Employee Benefits Department. We hope this letter has addressed all of your and your client's concerns regarding the decision to deny her Basic LTD claim.

Sincerely,

Julie A. Fera, FLMI, ACS
Benefits Review Specialist
ISG Legal - Administrative Review

Enclosures: - Copies of letters dated February 5, 2007 & September 20, 2007;
- State of SC Plan Document/Group Policy provisions: Definition of Disability with the applicable portion of Coverage Features.

cc: Employee Insurance Program
Nicole Markey ✓ *For enclosures, please see file copy.*

COVERAGE FEATURES

DISABILITY PROVISIONS

Own Occupation Period:	The Benefit Waiting Period and the first 24 months of Disability.
Any Occupation Period:	From the end of the Own Occupation Period to the end of the Maximum Benefit Period.
Partial Disability:	Covered
Own Occupation Income Level:	80% of your Indexed Predisability Earnings
Any Occupation Income Level:	65% of your Indexed Predisability Earnings
Benefit Waiting Period:	90 days

DEFINITION OF DISABILITY

You are Disabled if you meet one of the following definitions during the period it applies:

- A. Own Occupation Definition of Disability;
- B. Any Occupation Definition of Disability; or
- C. Partial Disability Definition.

A. Own Occupation Definition Of Disability

During the Benefit Waiting Period and the Own Occupation Period you are required to be Disabled only from your Own Occupation.

You are Disabled from your Own Occupation if, as a result of Physical Disease, Injury, Pregnancy or Mental Disorder, you are unable to perform with reasonable continuity the Material Duties of your Own Occupation.

Own Occupation means any employment, business, trade, profession, calling or vocation that involves Material Duties of the same general character as your regular and ordinary employment with the Employer. Your Own Occupation is not limited to your job with your Employer.

Note: You are not Disabled merely because your right to perform your Own Occupation is restricted, including a restriction or loss of license, or because you suffer a loss of Predisability Earnings as a result of disclosure of any Physical Disease, Injury, Pregnancy or Mental Disorder.

B. Any Occupation Definition Of Disability

During the Any Occupation Period you are required to be Disabled from all occupations.

You are Disabled from all occupations if, as a result of Physical Disease, Injury, Pregnancy or Mental Disorder, you are unable to perform with reasonable continuity the Material Duties of Any Occupation.

Any Occupation means any occupation or employment which you are able to perform, whether due to education, training, or experience, which is available at one or more locations in the national economy and in which you can be expected to earn at least 65% of your Indexed Predisability Earnings within twelve months following your return to work, regardless of whether you are working in that or any other occupation.



The Standard™
Positively different.

Claims Administrator
for the State of South Carolina
Long Term Disability Plan

February 5, 2007

Gail S. Still
334 Nappier Rd
Barnwell SC 29812

Re: State of South Carolina
LTD Plan Nos.: 627284, 621144
Claim Nos.: 00VA5341, 00VA5363

Dear Ms. Still:

We are writing in regard to your Long Term Disability (LTD) claim with Standard Insurance Company (The Standard), Claims Administrator for the State of South Carolina LTD Plan. We have completed a thorough review of your claim for benefits and want to inform you that your claim must be denied. This decision is based upon provisions of the State of South Carolina LTD Plan.

We feel it is important for you to understand the Plan's Definition of Disability. In order to be eligible for benefits, you must be disabled as defined by the terms of the Plan.

During the first 24 months of disability following the 90-day benefit waiting period on your Basic and Supplemental claim, you are eligible for benefits if, as a result of physical disease, injury, pregnancy, or mental disorder, you are unable to perform with reasonable continuity the material duties of your own occupation. This is referred to as the Own Occupation Definition of Disability.

The above description of the Own Occupation Definition of Disability has been condensed and does not offer a complete explanation of the Plan provision. We have included a copy of the portion of your Basic Plan which explains the Own Occupation Definition of Disability. We strongly encourage you to read the enclosed information to ensure a full understanding of this Plan provision.

Based on the vocational information in your claim file, our Vocational Consultant has determined that your occupation of Benefits Clerk is classified sedentary work activity as performed in the general economy. The U.S. Department of Labor Dictionary of Occupational Titles, Fourth Edition, describes the strength factors as follows:

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Sedentary Work - Exerting up to 10 pounds of force occasionally (Occasionally: activity or condition exists up to 1/3 of the time) and/or a negligible amount of force frequently (Frequently: activity or condition exists from 1/3 to 2/3 of the time) to lift, carry, push, pull or otherwise move objects, including the human body. Sedentary work involves sitting most of the time, but may involve walking or standing for brief periods of time. Jobs are sedentary if walking and standing are required only occasionally and all other sedentary criteria are met.

File documentation supports that you ceased work on November 21, 2006 due to rheumatoid arthritis, asthma, and hepatitis C. The medical documentation in the claim includes an Attending Physician's Statement completed on November 28, 2006 by Dr. William B. Clark, your Family Practice physician; a letter dated November 7, 2006 from Dr. Edwin V. Martinez De Andino, your rheumatologist; your medical records from January 1, 2005 through November 1, 2006 from Dr. Matthew Crawford (gastroenterologist), the Carolina Musculoskeletal Institute, and Blackville Medical Center; and your pharmacy records. This medical documentation was submitted to a Physician Consultant, board-certified in Rheumatology, prior to completing our review; below is a summary of our findings.

The earliest progress note from Dr. Martinez De Andino is dated June 29, 2005. At that time Dr. Martinez De Andino documented that you did rheumatoid arthritis, though that he felt that most of your symptoms were due to depression. The following office visit notes document normal musculoskeletal exams without synovitis. During your November 1, 2006 office visit, you complained of nonspecific joint pains of hands, wrist, and ankles. On exam Dr. Martinez De Andino stated that you had moderate to severe restrictions of flexion and extension of both wrists and some stress pain at the knuckles, ankles and subular joints. There was no mention of any swelling. Though Dr. Martinez De Andino states that your work is aggravating your symptoms and that you have some decreased range of motion in your wrists, there are no documented signs or symptoms that are consistent with acute synovitis or a flare of rheumatoid arthritis. Your treatment has not changed, and there is no indication by x-ray or physical exam that you are having an acute flare or that your ability to work has changed from the previous year. Wrist joint damage and decreased range of motion would not in and of itself preclude frequent handling, reaching, and fingering, including keyboarding.

The most recent chart note from your gastroenterologist is dated July 11, 2005, during which time your hepatitis C was deemed stable. Your treatment had been completed and there was no evidence of a persistent viral load. During your November 1, 2006 visit, Dr. Martinez De Andino noted that your liver function tests were slightly elevated. The tests were to be repeated and if they were still elevated you were to follow-up with her gastroenterologist. We have no further documentation on this issue and what is available does not support that you would be limited or restricted from sedentary level work activity due to hepatitis C.

Chronic asthma would not typically limit or restrict sedentary level work activity, and there is no indication that your asthma is at a level where it would interfere with her ability to work.

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We feel it is important to explain that although your physicians may indicate that you are unable to work or have certain symptoms, we must evaluate the medical evidence to determine if this recommendation is supported. Such medical evidence must provide ongoing limitations and/or restrictions that prevent you from performing your own occupation of Benefits Clerk.

In completing a thorough review of the available medical records, we lack sufficient documentation to support any physical condition that would preclude you from performing sedentary work activity on a full-time basis when you ceased work on November 21, 2006.

We acknowledge that you have multiple medical conditions for which you are receiving treatment. However, simply having a diagnosis, living with a medical condition, and/or receiving medical treatment does not constitute a disability. In concluding our review we have determined that the medical information does not support limitations or restrictions that would preclude you from performing the material duties of a Benefits Clerk. Therefore, your claim is denied because you do not meet the Plan's Own Occupation Definition of Disability.

Please note that even if you did meet the Plan's Own Occupation Definition of Disability, you would not be eligible for Supplemental benefits for disability based on rheumatoid arthritis, asthma, hepatitis C, or depression. These conditions are subject to the Preexisting Condition Exclusion provision. The State of South Carolina LTD Plan explains the Preexisting Condition Exclusion, in part, as follows:

Preexisting Condition means any mental or physical condition for which you have consulted a physician, received medical treatment or services, and/or taken prescribed drugs or medications at any time during the six-month period just prior to your LTD coverage becoming effective.

According to your Supplemental Plan, you are not covered for a disability caused or contributed to by a Preexisting Condition or medical or surgical treatment of a Preexisting Condition unless, on the date you become Disabled, you have been continuously covered under your Supplemental Plan for 12 months or you have served 12 consecutive months without having consulted a physician, received medical treatment or services, and/or taken prescribed drugs or medications.

The above description of the Preexisting Condition Exclusion has been condensed and does not offer a complete explanation of your plan provisions. We have included copies of the portions of your Supplemental Plan, which explain the Preexisting Condition Exclusion. We strongly encourage you to read the enclosed information to ensure a full understanding of this Plan provision.

Information in your claim file indicates that your coverage under the Supplemental LTD Plan became effective on January 1, 2006. You have claimed disability as of November 22, 2006. Since your Supplemental coverage was not in effect for 12 consecutive months as of November

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22, 2006, we had to investigate whether you consulted a physician, received medical treatment or services, or took prescribed drugs or medications during the six-month period from July 1, 2005 through December 31, 2005. Below is a summary of the results of our investigation.

On July 11, 2005, Dr. Cranford treated you for hepatitis C. On August 31, 2005, Dr. Martinez De Andino documented treating you for depression. On October 25, 2005, Dr. Martinez De Andino treated you for rheumatoid arthritis. On November 9, 2005, Dr. Martinez De Andino treated you for asthma. The available medical documentation supports that your conditions of rheumatoid arthritis, asthma, depression, and hepatitis C are preexisting conditions and would be subject to the Preexisting Conditions Exclusion under the Supplemental plan if these conditions were disabling.

The following is an explanation of your right to a review of our decision.

If you want us to review your claim and this decision, you must send us a written request within six months after you receive this letter. If you request a review, you will have the right to submit additional information in connection with your claim. Additional information that would be helpful to a reconsideration of your claim includes medical information supporting that your limitations and restrictions are greater than understood, or that you are unable to perform the material duties of your own occupation as a Benefits Clerk. This should include objective medical evidence that you are unable to perform at the sedentary work activity level, and that you were not treated for the above preexisting conditions during the exclusion period. Please include any such new information along with your request for review.

If you request a review, it will be conducted by an individual who was not involved in the original decision. If necessary, the person conducting the review will consult with a medical professional with regard to your claim. The medical professional will be someone who was not previously consulted in connection with your claim. The review would be completed within 45 days after we receive your request, unless circumstances beyond our control require an extension of an additional 45 days.

We want to let you know that upon further investigation, other valid reasons for limiting or denying your claim for benefits, which have not been previously considered, could come to our attention. Therefore, Standard Insurance Company reserves the right to consider and assert other reasons for limitation or denial of your claim for benefits should they occur in the future.

Please consult your certificate or Insurance Benefits Guide for a description of your rights under the terms of the State of South Carolina LTD Plan.

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Gail S. Still

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If you have any questions about this letter or your claim, please write or call me.

Sincerely,

Nicole Markey
Disability Benefits Analyst
State of South Carolina Benefits Team
1-800-628-9696, x7504



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The Standard®
Positively different.

September 20, 2007

Administrative Consultants
for State of South Carolina

M. LEAGUE BOYLSTON
PETERS, MURDAUGH, PARKER, ET AL.
P.O. BOX 457
HAMPTON, SC 29924-0457

Re: State of South Carolina
LTD Plan No. 627284
Claim No. 00VA5341

Dear Ms. Boylston:

We are writing in regard to Gail Still's Long Term Disability (LTD) claim with Standard Insurance Company (The Standard), Claims Administrator for the State of South Carolina LTD Plan.

We have completed our review of the decision to deny Ms. Still's Basic LTD claim. We had originally denied her Basic claim because the medical documentation in her claim did not support that Ms. Still met the Plan's Own Occupation Definition of Disability. The records included an Attending Physician's Statement completed by Dr. William B. Clark; a letter from Dr. Edwin V. Martinez de Andino dated November 6, 2006; medical records from Drs. Crawford and Martinez de Andino from January 1, 2005 through November 1, 2006; and Ms. Still's pharmacy records.

After being notified that her LTD claim was denied, Ms. Still provided additional medical records from Dr. Martinez de Andino, as well as from Barnwell County Hospital. The medical documentation was referred to a Physician Consultant, board certified in Rheumatology. On April 12, 2007, the Physician Consultant sent a letter to Dr. Martinez de Andino asking for a short narrative explanation of the rationale behind the opinion that Ms. Still was unable to work. Dr. Martinez de Andino requested payment of \$400.00 before he responded to the letter. On May 22, 2007, we received a voicemail from you stating that you would pay the fee requested by Dr. Martinez de Andino. We had not received a response to the Physician Consultant's letter, however you provided us with a copy of Ms. Still's progress note from her appointment with Dr. Martinez de Andino on June 25, 2007. We have concluded, based on the new information, along with the other documentation in Ms. Still's claim file, that our decision to deny her claim remains appropriate and is upheld. Below is an explanation of how we reached our decision.

As explained in our letter dated February 5, 2007, we completed a review of Ms. Still's LTD claim and determined that the medical and vocational information supported that she was capable of performing the Material Duties of her Own Occupation of Benefits Clerk, an occupation that is considered sedentary in physical demands and as comfort dictates. At the time the claimant

ceased work, her medical records did not document any signs or symptoms that would be consistent with a flare of rheumatoid arthritis. Ms. Still's hepatitis C also appears to be stable. Chronic asthma would not typically limit or restrict sedentary level work activity, and the medical information in her claim file does not indicate that Ms. Still's asthma is at a level where it would interfere with her ability to work.

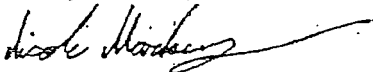
In Ms. Still's request for her review she stated that it is difficult for her to get up on a daily basis and that she has stiffness and incessant flu-like joint pain. The information in Ms. Still's medical records does not corroborate the symptoms she describes. In the progress note dated January 24, 2007, Dr. Martinez de Andino reported that Ms. Still had swelling and stiffness for one hour in the mornings. We have been told by Dr. Martinez de Andino's office that there are no radiographs of Ms. Still's hands more recent than 2001. In a progress note dated June 25, 2007, Dr. Martinez de Andino documented that her main complaint was of fatigue. Ms. Still's cardiopulmonary, abdominal and extremity exam was normal. Ms. Still's musculoskeletal physical exam did note that she had mild restriction throughout the range of motion of her low back. However, there are no neurological deficits documented that would support that Ms. Still's low back pain would prevent her from performing her Own Occupation. Lastly, Dr. Martinez de Andino notes that Ms. Still's rheumatoid arthritis is stable.

In concluding our review, we have determined that our decision to deny Ms. Still's LTD claim remains appropriate and is upheld. Medical records continue to support that she is capable of performing her Own Occupation of Benefits Clerk full-time.

Since our decision is to uphold the denial of Ms. Still's LTD claim, her claim will be immediately referred to the Administrative Review Unit for an independent review. A Benefits Review Specialist not associated with the original claim decision will conduct this review and will be contacting you shortly.

If you have any questions regarding this letter, please write or call me.

Sincerely,



Nicole Markey
Disability Benefits Analyst
800-628-9696 ext. 7320

Cc: GAIL S STILL

(5)

Gail S. Still
334 Nappier Road
Barnwell, South Carolina 29812
803-259-3632

March 7, 2007

The Standard
Attn: Nicole Markey
900 SW Fifth Ave.
Portland Or. 97204-1235

Re: Gail S. Still

Dear Nicole:

I am writing to request a new review of my claim that was denied in your letter dated February 5, 2007. I have since been back to my doctor three times. Also Hospital ER (don't have records for that yet). I have attached the readings for those three visits. I also have an appointment to see my liver specialist in April. I would appreciate it if you would re-examine my medical records for LTD. I'm not asking for SLTD. I am in not shape at all to go back to my job. I have a very difficult time getting up and it's necessary, on a daily basis, to take long hot baths to get my joints to work for the day. It's a painful process just to get up in the morning. The joint pain is almost like having the flu 24 hours a day. with the stiffness, pain and radiating heat of inflammation from that pain. I frequently have nausea and incessant pain due to my illnesses and there is no way I can sit at a desk as required to do the job they expect of me.

If it's necessary to perform additional testing for your records, I will certainly have them done to show the progression of this debilitating disease. However, my physicians are in agreement that at this stage, Rheumatoid Arthritis and my other illnesses are disabling my abilities, which I have no doubt. I live with it daily and know what the eventual outcome of this disease and other problems I live with will bring. I am at a stage where I just hope to maintain with the pain I am currently bearing, however, I know that's not realistic. I know this will progress into a way of life where my husband and family will have to take care of me full time. All I ask is that you reevaluate your decision.

Thank you for your time.

Sincerely,

Gail S. Still

Gail S. Still

Standard Insurance Company

Employee Benefits Department 800.628.9696 Tel 800.437.0961 Fax
PO Box 2800, Portland OR 97208-2800

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State of South Carolina Long Term Disability Benefits Employee's Statement

Please type or print. (Form may be returned for unanswered questions.)

NOTE: Standard Insurance Company is acting only in an administrative capacity for the Basic LTD Plan.

1. CLAIMANT

Full Name: <u>Gail S. Still</u>	Social Security No.: <u>254-92-4789</u>
Address: <u>334 N Appier Rd</u>	City: <u>Barnwell</u> State: <u>SC</u> Zip Code: <u>29812</u>
Phone No.: <u>(803) 259-3632</u>	Birthdate: <u>2-23-53</u>
Sex: ☐ Male ☒ Female Height: <u>5-4</u> Weight: <u>190</u>	Dominant Hand: ☒ Right ☐ Left
Name of Spouse: <u>Stephen L. Still</u>	Birthdate: <u>1-6-55</u>
No. of Children under age 25: <u>0</u> Birthdate of Youngest: <u>0</u>	
Are you enrolled in the State Health Insurance Plan or HMO Plan (required for coverage under Basic LTD Plan)? ☒ Yes ☐ No	
Are you enrolled in the Supplemental LTD Plan and have you paid the required premiums? ☐ Yes ☒ No	
Are you enrolled in another LTD Plan? ☐ Yes ☒ No Name of Carrier: _____	
Address: _____	
Did you receive a Certificate of Coverage or Insurance for each effective coverage? ☒ Yes ☐ No	
Insurance Benefits Guide? ☒ Yes ☐ No	If no, please contact your employer to obtain a copy.

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NOV 30 2006
Employee Benefits - LTD

2. EMPLOYMENT

Name of Agency/Institution: <u>Barnwell School Dist. 45</u>	
Address: <u>660 Hagood Ave.</u>	City: <u>Barnwell</u> State: <u>SC</u> Zip Code: <u>29812</u>
Phone No.: <u>(803) 541-1302</u>	
State your job title and describe your duties at work: <u>Benefits Admin. & Pay Roll, TAKE CARE of all 300 employees Benefits & some Retirement, A lot of filing & typing - Key everything on computer, Typing letters & all administrative duties.</u>	
Is your disability work-related? ☐ Yes ☒ No	Date of Injury: _____
Have you filed a Workers' Compensation claim? ☐ Yes ☒ No	If Yes, W.C. Claim No.: _____
Last full day at work: <u>11-21-06</u>	
Date you became unable to work at your occupation as a result of disability: _____	
Are you now working or have you worked at your occupation or any other occupation since the date of your injury? ☐ Yes ☒ No	
If yes, list names of employers, addresses, telephone numbers, and dates of employment. _____	
Are you self-employed at any activity? ☐ Yes ☒ No Monthly Earnings: _____	
Date you resumed part-time work: _____	Work Phone: (____) _____ Extension: _____
Date you resumed full-time work: _____	Work Phone: (____) _____ Extension: _____

3. SICKNESS (Please list all illnesses which contribute to your being unable to work at your occupation.)

Illness: <u>Rheumatoid Arthritis, Hypertension, asthma, 3 deg disk, Knee Replacement (1989)</u>	Date First Noticed: <u>RA - 1998</u>
State what you believe caused your illness: <u>my father had Rheum. Arthritis & I suppose I got it thru him. He died early 60's with RA.</u>	Date First Noticed: _____
Describe your symptoms: <u>Very hard to get up with stiffness, but all joints, Takes time to get going</u>	
Have you ever had the same condition or a related illness before? ☒ Yes ☐ No	Date: <u>she had asthma all my life</u>

Standard Insurance Company

Claim Administrator 800.628.9696 Tel 800.437.0961 Fax
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State of South Carolina
Long Term Disability Benefits
Employee's Statement

4. INJURY

Describe Injuries: N/A **RECEIVED**
Cause of Injuries: _____
Time, Date and Location of Injuries: NOV 30 2006
Employee Benefits - LTD

5. PREGNANCY

Date you expect to cease work: N/A Expected delivery date: _____
Actual delivery date: _____ Expected return to work date: _____
Please indicate any foreseeable complications: _____

6. DISABILITY

Explain how your illness or injury prevents you from working at your occupation: With RA. my bones hurt. I have to sit all day & computer work. I have 3 disks in lower back + sitting hurts. I'm stiff + hard to work. Also very painful.
Do you feel a third party is responsible for your disability, or has made your condition worse? ☐ Yes ☒ No
If yes, please explain, giving name of third party: _____
Do you plan to bring a claim or lawsuit against this third party? ☐ Yes ☒ No

7. ATTENDING PHYSICIAN (List all physicians consulted for this injury or illness. Use separate sheet, if needed.)

Physician's Name: <u>Edwin V. Martinez De Andino, MD</u>	Specialty: <u>yes RA</u>	Phone No.: <u>(803) 649-3333</u>	Fax No.: <u>(803) 649-2299</u>
Address: <u>210 University Parkway, Suite 1400, A</u>		City: <u>Aiken</u>	State: <u>SC</u> Zip Code: <u>29801</u>
Date First Consulted for this injury or illness: <u>8-1999</u>		Date Last Consulted: <u>11-1-06</u>	<u>on going</u>
Physician's Name: <u>SHARON WISE</u>	Specialty: <u>Family Doc</u>	Phone No.: <u>(803) 284-0020</u>	Fax No.: <u>()</u>
Address: <u>Healing Springs</u>		City: <u>Blackville</u>	State: <u>SC</u> Zip Code: <u>29817</u>
Date First Consulted for this injury or illness: <u>years asthma</u>		Date Last Consulted: <u>on going</u>	
Physician's Name: <u>MATTHEW CRANFORD</u>	Specialty: <u>liver specialist</u>	Phone No.: <u>(706) 722-2400</u>	Fax No.: <u>(706) 724-9211</u>
Address: <u>820 St. Sebastian Way, Ste 5</u>		City: <u>Augusta</u>	State: <u>GA</u> Zip Code: <u></u>
Date First Consulted for this injury or illness: <u>4-03 - Hep. C</u>		Date Last Consulted: <u>2005 see him every yr - on going</u>	

8. HOSPITAL

Hospital Name: Richland Memorial Address: Columbia SC
From: 1989 through: 1989 Reason for hospitalization: Knee replacement
From: _____ through: _____ Reason for hospitalization: _____

9. HISTORY List all illnesses or injuries for which you have received treatment over the past five years. Use separate sheet if needed.

Ailment	Date	Medical Professional's Name	Complete Address & Phone No.
<u>Rheumatoid</u>	<u>1999-Present</u>	<u>Dr. Edwin V. Martinez De Andino, MD</u>	<u>210 University Parkway, Suite 1400</u>
<u>Osteoarthritis</u>			<u>Aiken SC 29801 803-649-3333</u>
<u>Asthma</u>	<u>all my life</u>	<u>SAME DOCTOR + SHARON WISE</u>	
<u>Hep. C</u>	<u>2003 - Present</u>	<u>MATTHEW CRANFORD</u>	<u>820 St. Sebastian Way, Ste 5</u>
			<u>Augusta GA 706-724-9211</u>

Standard Insurance Company

Employee Benefits Department 800.628.9696 Tel 800.437.0961 Fax
PO Box 2800 Portland OR 97208-2800

State of South Carolina Long Term Disability Benefits Employee's Statement

10. DEDUCTIBLE INCOME

Have you applied for or are you receiving benefits from:	Applied		Receiving		Date Applied For	Amount Received		Effective Date
	Yes	No	Yes	No		Weekly	Monthly	
a. Social Security	☐	☒	☐	☐				
b. Workers' Compensation	☐	☒	☐	☐				
c. Retirement or Pension (Employer, SCRS, ORP, etc.) Please specify type _____	☐	☒	☐	☐				
d. Leave Pool or Shared Leave	☐	☒	☐	☐				
e. Third party income: weekly time loss, or from judgment, settlement or other award (related to current condition)	☐	☒	☐	☐				
f. Short term or long term disability benefits from another carrier	☐	☒	☐	☐				
g. Other: _____ (e.g., unemployment or union benefits, etc.)	☐	☒	☐	☐				

Please send copies of any letters or notices you have now or receive in the future which approve or deny benefits, to allow us to properly calculate disability payments.

11. VOCATIONAL (Complete the following and/or attach a resume.)

Education Level	Yes	No	If no, last grade attended.	
Grade School Graduate	☐	☐		
High School Graduate	☐	☐		
GED	☐	☐		
College Graduate	☒	☐	Degree <u>AD</u>	Major
Post Graduate	☐	☐	Degree	Major

Have you attended any trade schools or received other special training? ☒ Yes ☐ No
If yes, please describe. Millwright Local Union 1263, Atlanta GA Four years of training 1979-1984 (Construction Work)

Licenses or certificates? ☒ Yes ☐ No
If yes, please describe. Certification

Work Experience: (Complete the following starting with your most recent work experience.)

Job Title & Employer	SCRS Qualified?	Dates of Employment	Duties	Last Salary
1. Benefits Coord. Barnwell School Dist	yes	From: <u>Feb. 1, 1996</u> To: <u>Present 11-21-06</u>	<u>computer work all day, Benefits Admin. assist new employees</u>	<u>29,817</u>
2. National Beverage Screening App. Clerk	no	From: <u>1994</u> To: <u>1996</u>	<u>office work, Acts, payable</u>	<u>CAN'T remember</u>
3. Dixie Narco Acts Admin.	no	From: <u>1994</u> To: <u>1994</u>	<u>TAKING orders for parts on drink machines</u>	<u>11 11</u>
4. <u>Construction to Law Firm Mess, Motley</u>	<u>AD</u>	From: <u>1989</u> To: <u>1990</u>	<u>Paralegal</u>	<u>Can't remember</u>
5. <u>Millwright Local Union Atlanta (Construction)</u>	<u>AD</u>	From: <u>1979</u> To: <u>1988</u>	<u>Installation and maintenance of millwright craft</u>	<u>15.00 hr.</u>

Acknowledgment

I hereby certify that the answers I have made to the foregoing questions are both complete and true to the best of my knowledge and belief. I acknowledge that I have read the applicable fraud notice on page 6 of this form.

Dail S. Still

SIGNATURE

RECEIVED

NOV 30 2006

11-21-06

DATE

Standard Insurance Company

Employee Benefits Department 800.628.9696 Tel 800.437.0961 Fax
PO Box 2800 Portland OR 97208-2800

State of South Carolina Long Term Disability Benefits Employer's Statement

Please type or print. Form may be returned for unanswered questions.

NOTE: Standard Insurance Company is acting only in an administrative capacity for the Basic LTD Plan.

1. EMPLOYEE

Full Name: <u>GAIL S. STILL</u>	Social Security No.: _____
Address: <u>334 NADDER RD.</u>	City: <u>BARNWELL</u> State: <u>SC</u> Zip Code: <u>29817</u>
Phone No.: <u>(803) 259-3632</u>	Birthdate: <u>2-23-53</u>

2. INFORMATION

Job Title: <u>Benefits Coord. Payroll</u> (Please attach a copy of position description.)	Date Employed: <u>11-95</u>
Employee's work location (agency/institution): <u>BARNWELL School Dist. 45</u>	Group No.: <u>506.45</u>
Employee's coverage effective date: ☒ State Basic LTD	☐ Supplemental LTD ☐ 90-day ☐ 180-day Benefit Waiting Period
Is employee currently insured with another carrier for disability coverage? ☐ Yes ☒ No	Carrier: _____
Did employee receive a certificate of coverage for each appropriate plan? ☒ Yes ☐ No ☐ Don't Know	(Please forward Certificate of Coverage for State Basic LTD plan for covered employee when filing disability claim.)
Last day of work before disability commenced: <u>11-21-06</u>	
Date employee returned to work after disability ended: <u>N/A</u>	
Is medical condition due to employment? ☐ Yes ☒ No ☐ Undetermined	
Workers' Compensation claim? ☐ Yes ☒ No	Carrier Name: _____
Claim No.: _____	Address: _____
Have you considered allowing the employee to work in another occupation, or to modify and/or alter the job duties of the current occupation?	
☐ Yes ☒ No Please explain: <u>Health to server</u>	
On FMLA? ☐ Yes ☒ No	Effective date: _____ through: _____
Is employee terminated? ☐ Yes ☒ No	Effective: _____ Reason: _____
Is employment scheduled for termination? ☐ Yes ☒ No	Effective: _____ Reason: _____
Hours worked per week before disability commenced: <u>40</u>	
Date sick leave benefits paid through: <u>Attached sick leave payment</u>	Salary continuation from: <u>11-30-06</u> through: <u>2-28-06</u>
Is Claimant on LWOP? ☐ Yes ☒ No	Effective: _____ through: _____

3. SALARY (Earnings as of last day worked before disability commenced)

Regularly paid <u>40</u> hours per week, excluding overtime.
Please check ONE:
☐ Basic Yearly Earnings \$ _____
☐ Basic Monthly Earnings \$ _____ for _____ months per year
☐ Basic Hourly Earnings \$ _____ for _____ months per year OR _____ days per year
☒ Basic Contract Earnings \$ <u>29,817</u> length of contract: <u>240</u>
☐ Commissions (Please attach list of commissions paid for the period specified in your Group Policy)
☐ Shift Differential ☐ Bonuses
Date of last increase: <u>7-1-05</u> Earnings prior to increase: \$ <u>28,771</u>
Yearly employment schedule, indicate: ☐ 12-month period ☐ Other (i.e. contract days, 9 mos., etc.): <u>12 mth 240 cont. days</u>

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Physician Consultant Memo

Claim Identification

Name: Gail Still

Claim Number: VA5341

Nurse:

MTID #: 1058161

Analyst: Julie Pera

Date Submitted: 9/25/2007

Physician: Ronald Fraback, M.D.

Date Transcribed: 9/27/2007

Opening Synopsis

Ms. Still is a 54-year-old female, benefits clerk, who ceased work on November 21, 2006, with a primary diagnosis of rheumatoid arthritis. Other diagnoses include asthma, history of hepatitis C and depression. The claim has been reviewed several times by Dr. Ingram.

Review of Medical Records

There are multiple chart notes from Dr. Martinez de Andino, rheumatologist. The most current was dated June 25, 2007. It said that her primary complaint was fatigue. There "has been some improvement of her general joint symptoms since she has been out of work." He said it was his impression that with the progression of her underlying rheumatoid arthritis and hepatitis C, she "unable to perform her expected duties at work." He said that her back pain continues. She got improvement with 2 injections and he recommended a 3rd. He said that most of her problem was facet disease. He also prescribed therapy. On examination, he said that she had mild restriction in low back movement. The listed diagnoses are 1) seropositive rheumatoid arthritis- stable, 2) history of hepatitis C, 3) degenerative disc disease of the lumbar spine. He said that since January she had been unable to return to work and she was not retrainable for any other type of work. Dr. Ingram had written a letter to Dr. Martinez de Andino on April 12, 2007, asking for further clarification supporting his opinion regarding work capacity. We have no response.

She was seen in the emergency room in February 2000 with complaints of dizziness. That note indicated that she was taking Enbrel.

In a chart note dated February 23, 2007, Dr. Martinez de Andino said that she was moderately improved with the use of steroids. She complained of intermittent discomfort in her large and small joints. She had a recent URI. On examination, he said that she had no joint effusions. She had some tenderness in her MCPs, PIPs and MTPs. His assessment was 1) seropositive rheumatoid arthritis-some of her discomfort is related to not getting Enbrel, 2) hepatitis C- stable.

On January 24, 2007, he said that she had been having intermittent flares over the past 3 months. Being on short-term disability had helped significantly. She complained of recurrent pain in her wrists and MCP joints and 1 hour of morning stiffness. On examination, she had evidence of synovitis in several MCP joint bilaterally, as well as her wrists. He said that her feet and ankles were normal. His impression was 1) seropositive erosive rheumatoid arthritis with persistent disease activity. He planned to start prednisone 10 mg a day for 2 weeks and then taper her to 5 mg. 2) History of hepatitis C- stable. He said that she has been evaluated and suggested to go on disability. He said, "I do not see this patient working at this point or in the near future in any gainful way."

On January 5, 2007, his chart note said that she was clinically stable and had been doing much better not working. He said that her occupation seemed to be a "culprit" in her symptoms. On examination, he found no evidence of synovitis. His impression was seropositive rheumatoid arthritis, clinically stable. On November 1, 2006, he said that she was having some nonspecific joint pains involving her hands, sometimes wrists and sometimes ankle. She had slight elevation in her liver function tests. He noted her history of hepatitis C; status post interferon treatment. He said that she has a history of depression. On examination, he said that she had some limitation in the range of motion in her wrists of a moderate to severe degree. She had some tenderness in her MCP joints, as well as her ankles and hindfeet. He listed diagnoses of 1) seropositive rheumatoid arthritis. He said her symptoms seemed to be aggravated by her job and it is best to give her short-term disability. 2) Mild elevated liver function tests, and 3) depression.

On August 14, 2006, a chart note said that her only complaint was fatigue. He said that she was a little down due to work stress. He said there was no significant joint pain, swelling or stiffness. He described her musculoskeletal examination as normal. His assessment was rheumatoid arthritis- stable and mild depression. In June 2006, he said that her rheumatoid arthritis was stable and described a normal musculoskeletal examination. On March 23, 2006, he said that she had degenerative disc disease and rheumatoid arthritis- stable.

There was an MRI report of her lumbar spine from March 2006 describing some minimal degenerative disc disease. NCV and EMG studies of her lower extremities performed in March 2006 were normal. On February 28, 2006, his notes said that her primary complaint was low back pain. On December 19, 2005, he said that she felt great.

There was a letter from Dr. Martinez de Andino dated November 7, 2006. It stated that her condition was worsening and will not improve. He said she is "considered totally disabled at this time." There was an APS completed in November 2006 by Dr. Clark, her family practitioner. Dr. Clark listed her primary diagnosis of rheumatoid arthritis and secondary diagnosis of asthma and hepatitis C. He indicated that she could sit 6 hours and walk and stand 6 hours in an 8-hour day. He said that she had great difficulty with fine manipulation.

I noted a letter from the claimant dated March 7, 2007. It said that she was "not in shape at all to return to work." She mentioned pain and stiffness in her joints, as well as frequent nausea and incessant pain.

Page 2

Gail Still

Physician Consultant Memo

09/25/2007

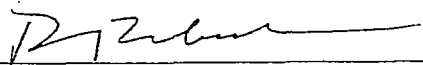
We have no x-ray reports regarding her joints. Dr. Martinez de Andino has indicated that she has erosive disease.

Summary of Pertinent Information

In summary, this woman has longstanding rheumatoid arthritis. She has had intermittent symptoms, predominantly involving her upper extremities. Throughout most of 2006, she seemed to be doing well. She has a history of hepatitis C, which has been treated and is apparently not active. She has had back complaints. She has evidence of fairly minor degenerative disc disease by MRI imaging. There are references to depression.

Response to Questions

I think it is reasonable that the claimant was precluded from sedentary level work as of the cease-work date due to an increase in her joint symptomatology. She apparently was having flare-ups from November through approximately early February 2007. In a note dated February 23, 2007, Dr. Martinez de Andino indicated that she was improved. Therefore, I think that by mid February 2007 she should have been able to return to regular sedentary level work activities. She may periodically have some difficulty with repetitive hand and wrist motions due to flare-ups of her arthritis. I do not find evidence of a back condition of such severity as to preclude regular sedentary level work.


Ronald Fraback, M.D.

RF:ts

Date: 10/8/07

D: 9/25/2007

T: 9/27/2007

Ronald C. Fraback, M.D.

EDUCATION

1969, M.D., University of Oregon Medical School, Portland, Oregon

1966, B.S., University of Oregon, Eugene, Oregon

PROFESSIONAL TRAINING

1977	George C. Griffith Traveling Fellowship-American College Physicians, Royal National Hospital For Rheumatic Diseases in Bath, England.
1975-1977	Fellow in Rheumatology, Harbor-UCLA Medical Center, Torrance, CA.
1973-1975	Resident in Internal and Family Medicine, Harbor-UCLA Medical Center, Torrance, CA.
1970-1971	Resident in Family Medicine, Harbor General Hospital, Torrance, CA.
1969-1970	Rotating Intern, Santa Clara Valley Medical Center, San Jose, CA.

PROFESSIONAL EXPERIENCE

2000-	Medical Director, Standard Insurance Company.
1998-	Clinical Associate Professor, Oregon Health Sciences University, Portland, OR.
1979-	Private Practice-Rheumatology and Internal Medicine, Portland, OR.
1977-1979	Assistant Chief of Medicine, St. Vincent Hospital and Medical Center, Portland, OR.
1971-1973	Medical Officer, U.S. Public Health Service, Indian Health, Chemawa, OR

PROFESSIONAL ACTIVITIES

2002-	Member , Regional Credentials Committee, Providence Health System.
1994-	Member, Credentials Committee, St. Vincent Hospital.
1994-1995	Chairman, Bylaws Committee, St. Vincent Hospital.
1993-1999	Medical Consultant, Standard Insurance Company.
1992-1994	President, Medical Staff, St. Vincent Hospital.
1990-1992	President-elect-Medical Staff, St. Vincent Hospital.
1988-1990	Member, Board of Directors, Good Health Plan, Independent Physicians Association.
1985-1988	Member, Executive Committee, St. Vincent Hospital and Medical Center.

BOARD CERTIFICATION

1988, 1998	Subspecialty of Geriatrics
1987	Advanced Achievement in Internal Medicine and Rheumatology
1975-1978	American Board of Internal Medicine and Rheumatology
1975, 1981, 1987, 1993, 2000	American Board of Family Practice

SOCIETIES AND ASSOCIATIONS

Fellow, American College of Physicians
Fellow, American College of Rheumatology
Member, American Academy of Insurance Medicine
Member, Northwest Rheumatism Association
Member, Oregon Medical Association
Listed in "Guide to America's Top Physicians," 2002, 2003

PUBLICATIONS

Fraback, R.C., Sigmoid volvulus in two patients with progressive systemic sclerosis. Am J Rheumatology, 5:2, 1978.

Louie, J.S., Nies, K.M., Shoji, K.T., Fraback, R.C., et al. Clinical and antibody responses after influenza immunization in systemic lupus erythematosus. Ann Int Med, Vol. 88, No 6, June 1978.

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Physician Consultant Memo

Claim Identification

Name: Gail Still	Claim Number: 00VA5341; 00VA5363
Nurse: Carol Short, RN	MTID #: 1031277
Analyst: Nicole Markey	Date Submitted: 9/4/2007
Physician: Shirley Ingram, M.D. Consulting Physician, Rheumatology	Date Transcribed: 9/5/2007

Opening Synopsis

Ms. Gail Still is a 54-year-old benefits clerk who ceased work November 21, 2006, due to rheumatoid arthritis, chronic asthma and hepatitis C, according to APS by family practitioner William Clark, M.D. I have previously reviewed her medical file; please see my memo dated January 18, 2007, and my follow-up memo of April 3, 2007, reviewing records of rheumatologist Dr. Martinez de Andino from June 2005 through November 1, 2006, which did not support significant limitations from rheumatoid arthritis or changes in treatment. I wrote a letter to Dr. Martinez de Andino on April 12, 2007, asking for a narrative support for his notations of severe restrictions of wrist and ankles, given that there is no assessment of synovitis, no radiographs or significant changes of his treatment of Ms. Still. There is no response to my letter; however, there is another office visit followup dated June 25, 2007, which I am asked to review.

Review of Medical Records

On June 26, 2007, Dr. Martinez de Andino notes that ^{her} ~~there~~ chief complaint is fatigue. He understands she is unable to perform her expected duties at work, which "would even limit her activities of daily living at this point." Her back pain continues and did get benefit with initial 2 injections [there is no information regarding the etiology of her back pain or the assessment and treatment]. He recommends going for a third injection, rehabilitation, abdominal strengthening and low back strengthening and stretching. She denies cough shortness of breath. Physical exam shows she is 191 pounds and in no acute respiratory distress. Cardiopulmonary, abdominal and extremity exam is normal. For musculoskeletal, he notes she only has mild restriction throughout the range of motion of the low back. Assessment is seropositive rheumatoid arthritis, stable, continue present treatment; history of hepatitis C; degenerative disc disease of the lumbar spine and that her lawyer requests him to assist with disability. He states she is not retrainable for any other type of work.

Summary of Pertinent Information

This additional information confirms the stability of her rheumatoid arthritis. There are no radiographs and this exam shows no neurologic deficits that would support low back pain as being restricting from a full-time sedentary occupation. The submitted objective information is minimal and does not support the extreme limitations that have been noted by Dr. Martinez de Andino and her primary care physician who completed the APS in November 2006 (Dr. Clark).

Response to Questions

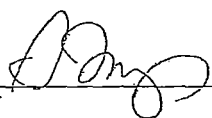
1. Does the new medical documentation support that the claimant is limited or restricted from sedentary level work activity as of her cease-work date?

No.

2. What is the prognosis and duration?

The prognosis is relatively good if she has no significant ongoing evidence of synovitis. Rheumatoid arthritis is a chronic condition and she will probably continue to be under supervision of a rheumatologist and receive ongoing antirheumatic drug treatment.

The lack of more specific response by Dr. Martinez de Andino to my request would seem to support the lack of specific radiologic, laboratory and physical exam support for specific physical activity limitations. His broad statement that she is not retrainable and that she cannot work is not helpful for determining specific limitations and restrictions and is contradictory to his observations in the medical records, except as related to her own subjective complaints of fatigue and pain. Consideration could be given to contacting his office and asking for the actual radiographs, if any exist, of hands if Ms. Still believes that would be helpful information.


Shirley Ingram, M.D.
SI:ts

Date: 9-26-07

D: 9/4/2007

T: 9/5/2007

(15)

Carolina Musculoskeletal Institute - Rheumatology
410 University Parkway
Suite 1400
Aiken, S. C. 29801
Phone (803) 649-3333
Fax (803) 649-2299

June 25, 2007

99521

RE: STILL, GAIL # 12285

Gail returns today for follow-up. Her main complaint is of fatigue. There has been some improvement of her general joint symptoms since she has been out of work. My impression had been that with the progression of her underlying rheumatoid arthritis and hepatitis C she is unable to perform her expected duties at work. Work would limit even her activities of daily living at this point. Her back pain continues. She did get improvement with the initial two injections. Most of her problem is of facet disease. I did suggest to go for a third injection but I am going to add rehab to work on strengthening of abdomen and low back as well as stretching of the lumbar spine and traction. We are going to do this through Hitchcock as she lives in Barnwell. She has no numbness, paresthesias or weakness of the lower extremity. No history of incontinence.

REVIEW OF SYSTEMS:

GENERAL: As above.

HEENT: No history of oral ulcers, increased hair loss or baldness, tinnitus, no canal discharge, no gross visual acuity changes, no history of epistaxis, no post-nasal drip, no hoarseness, no recent hearing loss.

RESPIRATORY: Denied cough, SOB, DOE, hemoptysis or sputum production.

CARDIOVASCULAR: Denied history of chest pain, DOE, PND or orthopnea.

GASTROINTESTINAL: Denied history of nausea, diarrhea, abdominal pain, BRBPR, hematochezia, melena and/or change in bowel habits.

GENITOURINARY: Denied frequency, dysuria, hematuria or nocturia. No history of urethritis.

PERIPHERAL VASCULAR: Denied leg edema, claudication or history of leg ulcers.

MUSCULOSKELETAL: As above.

NEUROLOGIC: Denies dizziness, history of seizures, paresthesias, numbness, limb weakness or paralysis.

MEDICATIONS: Reviewed and prescriptions written.

STILL, GAIL # 12285

June 25, 2007

PAGE 2

BLOOD WORK: From February were reviewed. She needs to go today for follow-up.

PHYSICAL EXAM: WT: 191 BP: 128/78 T: 97.2.

GENERAL APPEARANCE: She is a middle aged female, obese, well-developed otherwise in no acute respiratory distress.

HEENT: Negative for oral ulcers, increased hair loss or baldness, tinnitus, no canal discharge, no gross visual acuity changes, no history of epistaxis, no post-nasal drip, no hoarseness, no recent hearing loss.

RESPIRATORY: Clear to auscultation.

CARDIOVASCULAR: RR, S1-S2, no murmurs, gallops or rubs.

ABDOMEN: + BS, soft and depressible, no masses or splenomegaly.

EXTREMITIES: No edema, clubbing or cyanosis. Symmetrical pulses. No joint asymmetry or joint effusions.

MUSCULOSKELETAL: Significant only for mild restriction throughout range of motion of the low back. Negative straight leg raising.

NEUROMUSCULAR: Alert and oriented x 3. CNII. Sensory exam normal to pin pricking. DTR symmetrical.

IMPRESSION:

1. Seropositive rheumatoid arthritis — stable. Continue present treatment.
2. History of hepatitis C.
3. Degenerative disc disease of lumbar spine. Treatment plan as in history of present illness.
4. The patient has presented me with a letter from her lawyer to assist with disability. As mentioned again in my notes since January, this patient is unable to return to work as the duties affect even her activities of daily living with her disease state. She is not retrainable for doing any other type of work.

Follow-up in two months.

Sincerely,

Edwin V. Martinez de Andino, M.D.

EVM/ng



The StandardTM
Positively different.

April 12, 2007

Edwin V. Martinez de Andino, M.D.
410 University Parkway, Suite 1400
Aiken, SC 29801

Re: Gail S. Still
Claim #: 00VA5341; 00VA5363
DOB: 02/23/1953

Dear Martinez de Andino:

I am a board-certified rheumatologist who has been asked by Ms. Still's long-term disability carrier to review her medical records for conditions that would limit or restrict her own sedentary occupation as a benefits clerk II. I have reviewed your medical records from June 2005 through February 2007 and am appreciative of your excellent care of Ms. Still. My reading and interpretation of your records is that Ms. Still was stable without any synovitis or significant joint complaints for 2005 through August 2006, but she had complaints of joint pains in the hands, wrists and ankles in November 2006. You noted severe restrictions of the wrists and some tenderness, but there is no mention of swelling and there is no change in her disease-modifying-drug regimen, nor are low-dose corticosteroids added. There was concern at that time of whether her hepatitis C had increased activity. Since there are no medications lists included in your records, but there are pharmacy records, I can only conclude that she has been on Enbrel since 2003.

I note that in January 2007 you did start her on low-dose corticosteroids for her several swollen knuckle and wrist joints.

However, I cannot ascertain from your records the specific rationale for recommending her to no longer work, since it is common for patients with rheumatoid arthritis to have episodic flares treated with low-dose corticosteroids and if they flare again then to change their disease-modifying treatment. It would be helpful to Ms. Still if you have further information in the form of radiographs, grip strengths or specific notations on how her disease changed in November 2006, such that she could no longer work at her sedentary job.

If you would include these with a short narrative discussion, I am hopeful that would clarify your recommendations. Please include a reasonable bill for your time along with your taxpayer ID

Gail S. Still
900 SW Fifth Avenue
Portland OR 97204-1235
tel 888.937.4783

16

Physician Consultant Memo

Claim Identification

Name: Gail Still

Claim Number: VA5363

Nurse: Carol Short, NCM

MTID #: 865539

Analyst: Nicole Markey

Date Submitted: 04/03/2007

Physician: Shirley Ingram, M.D.

Date Transcribed: 04/04/2007

Consulting Physician, Rheumatology

Opening Synopsis

Ms. Gail Still is a 53-year-old benefits clerk (sedentary) who ceased work on November 21, 2006, due to rheumatoid arthritis, chronic asthma, and hepatitis C. Please see my prior memo dated January 18, 2007, reviewing Ms. Still's rheumatologist Dr. Edwin Martinez De Andino office visits from June 29, 2005, through November 1, 2006, showing support for treatment for rheumatoid arthritis, but no support for a significant flare that would limit or restrict her occupation at the time of her cease work. At that time, no medications were changed. There was no assessment of swelling on physical exam, though stating that she had significant restrictions of motion at the wrists. There are no radiographs in his records showing any erosions or joint changes. Additional information has been received, which I am asked to review.

Review of Medical Records

Additional information is an emergency department visit on February 19, 2007, for dizziness for 3-4 days. Physical exam shows dullness of the right tympanic membrane. Neurologic examination is normal. Assessment is right otitis media, dehydration, and acute vertigo, treated with Levaquin, and to follow up with her physician.

There is also a followup visit as a routine every 3 months, scheduled visit to Dr. Martinez De Andino on January 24, 2007. He states she has had intermittent flares in the last 3 months and that his placement on short-term disability helped her significantly, but now she complains of recurrent pain in the wrists and MCP joints. He states there is swelling and stiffness for 1 hour in the morning. Physical exam states that she has swelling in the right second and third MCP joints; left second, third, and fourth MCPs; and bilateral wrist synovitis, which is "stress pain." She has no other swelling, but her knees have "flexion discomfort beyond 90 degrees." He assesses persistent disease activity and starts her on prednisone 10 mg daily for 2 weeks and then 5 mg daily and makes no change in her methotrexate and/or Enbrel. He states the history of hepatitis C stable, and he suggests she goes on disability, and "I do not see this patient working

at this point or in the near future in any gainful way." He does not specifically state his rationale for this assessment.

Reviewing medication records that I reviewed last time show that she has been on Enbrel treatment 50 mg per week from 2003 through current.

These records do not confirm a significant change in Ms. Still's arthritis condition at the time of her cease work. The most recent office visit on January 24, 2007, states that she had intermittent flares, but she has improved. Now there is a change in her treatment, with prednisone low-dose begun on a tapering schedule for 2 weeks.

It is very common for rheumatologists to treat with low-dose, short-term corticosteroids for complaints of flare. Since this was not done in November, this reinforces that she did not have a significant flare at this time, at least according to the records. It is common for patients with rheumatoid arthritis to have some swelling and to have intermittent flares treated with low-dose corticosteroids, but it is unusual for these to be so severe as to preclude their own sedentary occupation, but it is reasonable that Ms. Still not use her hands for repetitive gripping and grasping, particularly strong gripping and grasping. Please see my comments in my prior memo.

These records support that Ms. Still had a modest flare seen on January 24, 2007, by her rheumatologist; however, this would not be expected to be long lasting, particularly with the use of corticosteroids, such that it would interfere with her ability to perform her own occupation in a sustainable manner. The assessment by Dr. De Andino is somewhat unusual, and there are no rationales given for his assessment that she cannot work in any gainful employment.

Note is made of Ms. Still's letter for request for a review, dated March 7, 2007. She states that it is difficult for her to get up on a daily basis and needs long baths and complains of stiffness and pain 24 hours per day, with nausea and incessant pain and that she cannot work as required. She states, "I know this will progress into a way of life where my husband and family will have to take care of me full-time."

There is nothing in her chart to assess that her arthritis is so severe as expected to be rapidly disabling, particularly since there are no x-rays showing significant erosions. There has been no persistent significant synovitis, and she was very stable until November 2006, according to her records, on her current drug regimen, which, according to Dr. De Andino's records, includes Enbrel and methotrexate.

This statement suggests that Ms. Still's subjective perception of her condition and illness may be disproportionate to what has been documented on physical exam, radiographically, and by laboratory test.

I will write a letter to Dr. De Andino asking for any further supporting information.

Page 2

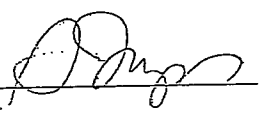
Gail Still

Physician Consultant Memo

04/03/2007

APP 117

117


Shirley Ingram, M.D.
SI:dl

Date: 4-10-07
22

D: 04/03/2007

T: 04/04/2007

Page 3

Gail Still

Physician Consultant Memo

04/03/2007

Carolina Musculoskeletal Institute – Rheumatology
410 University Parkway
Suite 1400
Aiken, S. C. 29801
Phone (803) 649-3333
Fax (803) 649-2299

February 27, 2007

99521

RE: STILL, GAIL # 12285

Gail returns today for follow-up. She is moderately improved with the use of corticosteroids. She is still having intermittent discomfort of large and small joints. Her knee is still giving her intermittent discomfort, being mostly during ambulation at this point. She is now just recovering from a URI and ear infection. She received 7 to 10 days of Levaquin. She denies having any shortness of breath, dyspnea on exertion or cough. No history of fever. She has had to hold her injections due to the above. As per her LFTs, they have been stable. Patient with history of hepatitis.

MEDICATIONS: Reviewed.

PHYSICAL EXAM: WT: 187 BP: 110/72 T: 97.0 P: 95.

GENERAL APPEARANCE: Middle aged female, well-developed in no acute respiratory distress.

HEENT: Negative for oral ulcers, increased hair loss or baldness, tinnitus, no canal discharge, no gross visual acuity changes, no history of epistaxis, no post-nasal drip, no hoarseness, no recent hearing loss.

RESPIRATORY: Clear to auscultation.

CARDIOVASCULAR: RR, S1-S2, no murmurs, gallops or rubs.

ABDOMEN: + BS, soft and depressible, no masses or splenomegaly.

EXTREMITIES: No edema, clubbing or cyanosis. Symmetrical pulses. No joint asymmetry or joint effusions.

MUSCULOSKELETAL: She has stress pain at MCP joints as well as PIP joints, some discomfort at the MTP joints.

IMPRESSION:

1. Seropositive rheumatoid arthritis. Some of her discomfort at this point is from having to hold her TNF alpha injections. We will continue at the present time on present treatment.
2. URI. Observe at the present time.
3. History of hepatitis C – stable.

Sincerely,

RECEIVED
DICTATED BUT NOT APPROVED

Edwin V. Martinez de Andino, M.D.

MAR 13 2007

EVM/ng

APP 119

Please call cell if CAN'T read
Employee Benefits - LTD
119

Carolina Musculoskeletal Institute – Rheumatology
410 University Parkway
Suite 1400
Aiken, S. C. 29801
Phone (803) 649-3333
Fax (803) 649-2299

January 24, 2007

#99521

RE: STILL, GAIL #12285

Gail returns today for follow-up. This is a patient with seropositive erosive rheumatoid arthritis. She has been having intermittent flares in the last three months. I put her on short term disability that helped her significantly. She has developed now recurrent pain in both wrists and MCP joints. There is some swelling in association and morning stiffness for over one hour. No foot, ankle, knee, elbow, or shoulder discomfort. She denies having any shortness of breath, dyspnea on exertion, or cough. There is no history of mucosal ulcerations. She denies having any skin lesions or fever. Her appetite is good.

PAST MEDICAL HISTORY: Significant for hepatitis C that has been stable after treatment.

REVIEW OF SYSTEMS: Otherwise unremarkable.

LAB WORK: From 1/3/07 is reviewed with normal LFTs and a sed rate of 14. Normal CBC.

PHYSICAL EXAM: WT: 189 lb. BP: 131/73. T: 97. P: 86.

GENERAL APPEARANCE: Middle-aged female, well-developed in no acute respiratory distress.

HEENT: Negative for oral ulcers, increased hair loss or baldness, tinnitus, no canal discharge, no gross visual acuity changes, no history of epistaxis, no post-nasal drip, no hoarseness, no recent hearing loss.

RESPIRATORY: Clear to auscultation.

CARDIOVASCULAR: RR, S1-S2, no murmurs, gallops or rubs.

ABDOMEN: + BS, soft and depressible, no masses or splenomegaly.

EXTREMITIES: No edema, clubbing or cyanosis. Symmetrical pulses. No joint asymmetry or joint effusions.

MUSCULOSKELETAL: Significant mostly for both hands and wrists. She has second and third MCP joint swelling and synovitis on the right, and second, third, and fourth on the left. Bilateral wrist synovitis with positive stress pain. No PIP joint findings.

Elbows and shoulders with normal range of motion. She has some crepitus in the right knee and discomfort throughout range of motion. No significant effusion. She is able to extend fully. Flexion discomfort beyond 90 degrees. It was not red or warm. She had normal exam of the ankles and feet.

RECEIVED

MAR 13 2007

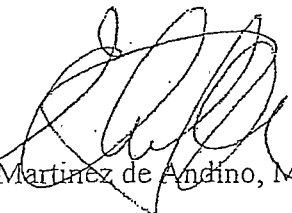
Employee Benefits - LTD

STILL, GAIL #12285
PAGE 2

IMPRESSION:

1. Seropositive erosive rheumatoid arthritis with persistent disease activity. I am going to go ahead and start her on prednisone 10 mg daily for two weeks and then reduce to 5 mg. We have to keep an eye on her LFTs due to history of hepatitis C. No changes in her methotrexate and/or Enbrel.
2. History of hepatitis C, stable.
3. Patient has been evaluated and suggested to go on disability. I do not see this patient working at this point or in the near future in any gainful way.

Sincerely,



Edwin V. Martinez de Andino, M.D.

EVM/ng

RECEIVED

MAR 13 2007

Employee Benefits - LTD

Carolina Musculoskeletal Institute – Rheumatology

410 University Parkway

Suite 1400

Aiken, S. C. 29801

Phone (803) 649-3333

Fax (803) 649-2299

January 5, 2007

#99521

RE: STILL, GAIL # 12285

Mrs. Still comes today for follow-up. Patient with seropositive rheumatoid arthritis. She is clinically stable. No significant joint pain, swelling or stiffness. I was concerned on last evaluation as the patient had elevated LFTs. She does have a history of hepatitis C. Repeat LFTs x 2 have been normal. She doesn't seem to have any concerns at the present time. She is doing much better now that she is not working. I do believe that this patient will need a long term disability as the culprit for her symptoms seem to be mostly her occupation.

In any case, she is doing well. No pulmonary symptoms. She denies having any mucosal ulcerations.

Blood work was reviewed and found to be within normal limits. Patient with history of bronchial asthma. She has been stable without any recurrent symptoms.

MEDICATIONS: Reviewed and prescriptions refilled.

PHYSICAL EXAM: WT: 191 BP: 135/78 T: 97.5 P: 95.

HEENT: Negative for oral ulcers, increased hair loss or baldness, tinnitus, no canal discharge, no gross visual acuity changes, no history of epistaxis, no post-nasal drip, no hoarseness, no recent hearing loss.

SKIN: No skin lesions.

RESPIRATORY: Clear to auscultation.

CARDIOVASCULAR: RR, S1-S2, no murmurs, gallops or rubs.

ABDOMEN: + BS, soft and depressible, no masses or splenomegaly.

EXTREMITIES: No edema, clubbing or cyanosis. Symmetrical pulses. No joint asymmetry or joint effusions.

MUSCULOSKELETAL: Full ROM of all joints on active and passive examination. No evidence of synovitis. Good flexion, extension and lateral flexion of the lumbar spine.

No SI joint tenderness to palpation. Motor strength of all extremities 5/5.

NEUROMUSCULAR: Alert and oriented x 3. CNI. Sensory exam normal to pin pricking. DTR symmetrical.

RECEIVED

MAR 13 2007

Employee Benefits - LTD

STILL, GAIL # 12285

January 5, 2007

PAGE 2

IMPRESSION:

1. Seropositive rheumatoid arthritis – clinically stable. Continue present treatment.
2. History of hepatitis C. Normal LFTs. Follow as scheduled with her gastroenterologist.
3. History of bronchial asthma. Continue present treatment. She is stable.

Follow-up in two months.

Sincerely,



Edwin V. Martinez de Andino, M.D.

EVM/hg

RECEIVED

MAR 13 2007

Employee Benefits • LTD

19

Physician Consultant Memo

Claim Identification

Name: Gail Still

Claim Number: 00VA5341;
00VA5363

Nurse: Carol Short, RN

MTID #: 786308

Analyst: Nicole Markey

Date Submitted: 1/18/2007

Physician: Shirley Ingram, M.D.
Consulting Physician, Rheumatology

Date Transcribed: 1/18/2007

Opening Synopsis

Ms. Gail Still is a 53-year-old benefits clerk (sedentary) who ceased work November 21, 2006, due to rheumatoid arthritis, chronic asthma and hepatitis C, according to APS by family practitioner William Clark, M.D., on November 28, 2006. I am asked to review her medical file for expected restrictions from her rheumatoid arthritis. The entire file is reviewed.

Review of Medical Records

Medical records from Ms. Still's rheumatologist Dr. Edwin Martinez De Andino show office visits from June 29, 2005, through November 1, 2006. On June 29, 2005, she is 186 pounds. She had tenderness at the right greater trochanter and is status post left knee replacement. There is no hand exam. Assessment is rheumatoid arthritis, questionable flare, will observe and likely that most of her symptoms are from depression; acute depression, switch to Effexor from Lexapro, and trochanteric bursitis.

The musculoskeletal exams on subsequent visits, which are approximately every three month, are all normal, specifically without any synovitis. The subjective office visit note states specifically she has no peripheral joint symptoms, stiffness or swelling through August 14, 2006. Medications lists are not included.

Then on November 1, 2006, office visit, she complains of nonspecific joint pains of hands, wrists and ankles. On exam, he states she has moderate to severe restrictions of flexion and extension of both wrists and some stress pain at the knuckles, ankles and subtalar joints. There is no mention of any swelling. He assesses that her symptoms are aggravated by her job and may need short-

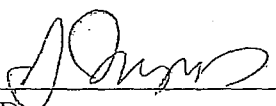
term disability, particularly if she needs retreatment for her hepatitis C. He defers on changing her medication for depression but may need to do this in the future.

Medications lists from her pharmacy show, as of November 6, 2006, she was on Effexor, Enbrel, Advair and hydrocodone. For one instance of some complaint of increased joint pain for which he was not sure if it was a flare in November 2003, he treated her with low-dose corticosteroids.

Summary of Pertinent Information

These records show ongoing treatment for rheumatoid arthritis, which has been stable over the prior year. Although her rheumatologist states that her work is aggravating symptoms and on that date there is some noted decreased range of motion of the wrists, there were no signs or symptoms expressed that would be considered to be consistent with acute synovitis or a flare of rheumatoid arthritis and her treatment has not changed, nor is she treated for any acute flare. There is no indication by x-ray or physical exam that she is having an acute flare or that her work abilities would be different than the prior year.

Respect is given to her rheumatologist's advocacy, but these records do not specifically support a change in her medical condition that would limit her ongoing ability to perform her own full-time sedentary occupation with frequently reaching, handling and fingering. Usually, past wrist joint damage and decreased range of motion does not preclude frequent handling and fingering and particularly keyboarding. Job modifications are simple, insofar as avoiding repetitive pronation, avoiding carrying objects with the handgrip alone, as opposed to in the arms and using increased diameter pencils and pens and using appropriate ergonomic keyboards. It is unclear if she needs this, but this would be the first step if it was deemed that she had some difficulties with her job duties. These records do not support such limitations. If more information is available as in radiographs, grip strengths or evidence of synovitis, I would be happy to review that information.


Shirley Ingram, M.D.

SI:ts

Date: 2-6-2007

D: 1/18/2007

T: 1/18/2007

Shirley B. Ingram, M.D.

CERTIFICATION AND LICENSURE

1980	FLEX
1983	American Board of Internal Medicine
1986	Rheumatology Board Certification
1981	Oregon State Medical License
2003	SPEX

EDUCATION

1975	University of Texas, Austin, Texas, B.A. (with high honors),
1975-1976	University of Texas, Austin, Texas, Graduate school, microbiology
1979	Baylor College of Medicine, Houston, Texas, M.D.
1980-1983	Internal Medicine Internship and Residency, Oregon Health Sciences University, Portland, Oregon.
1983-1984	Instructor in Medicine, Oregon Health Sciences University Ambulatory Care Department, Portland Veterans Administration, Oregon
1984-1986	Fellow, Division of Arthritis and Rheumatic Diseases, Oregon Health Sciences University

PROFESSIONAL EXPERIENCE

1980	Clinic physician, University of Houston, Student Health Services, Houston, Texas.
1986-1988	Group practice with the Vancouver Clinic in Rheumatology and Internal Medicine
1988-2000	Group practice, Northwest Rheumatology Associates.
1991-1998	Clinical assistant professor at Oregon Health Sciences University
1995-2000	Physician member of Northwest Osteoporosis Center
2000-present	Rheumatology Physician Consultant

RESEARCH EXPERIENCE

1975-1976	University of Texas, Austin. Isolation and Characterization of Neuraminidase Minus Vibrio Cholerae
1985-1986	Prevalence of Fibrositis in Patients with Raynaud's Disease

SCIENTIFIC PAPERS

- Ingram, SB, Goodnight SH, Bennett RM: An Unusual Syndrome of a Devastating Noninflammatory Vasculopathy Associated with Anticardiolipin Antibodies: Report of two cases. Arthritis and Rheumatism, Vol. 30, No. 10 (October 1987). P. 1167-1172.
 - Ingram, SB, Bennet, RB: Fibrositis Occurrence in Patients with Raynaud's phenomenon. Presented at the National American Rheumatism Association meeting, Washington D.C., June 1987.
-
-

MEMBERSHIPS

American College of Rheumatology
American College of Physicians
Multnomah County Medical Society
Oregon Medical Association

HOSPITAL ASSOCIATION

Emeritus Status: Legacy Hospitals, Good Samaritan, Portland, Oregon
St. Vincent Providence Hospital, Portland, Oregon

Carolina Musculoskeletal Institute - Rheumatology
410 University Parkway
Suite 1400
Aiken, S. C. 29801
Phone (803) 649-3333
Fax (803) 649-2299

November 1, 2006

#99521

RE: STILL, GAIL #12285

Gail returns today for follow-up. Patient with history of seropositive rheumatoid arthritis. She is having some nonspecific joint pain involving hands, sometimes wrists, sometimes ankles. Unfortunately, I have just reviewed that her LFTs are slightly elevated. Patient with history of hepatitis C, status post Interferon treatment in the past. She has been stable until now and they are not even twice the value, so I think it is best to repeat. I did make her aware that if they are still elevated, it probably would be best to follow with GI to see what her viral titers are at this point. We had a lengthy discussion towards the above. Patient also with history of depression. We have talked at last evaluation about increasing her Effexor, which she tried for a few days but due to nausea was unable to maintain the drug dose and is back to 75. She looks depressed but she just got the news of her elevated LFTs so I am not sure which one was triggered first.

REVIEW OF SYSTEMS:

GENERAL: No weight loss, rash, anorexia, fever or night sweats.

HEENT: No history of oral ulcers, increased hair loss or baldness, tinnitus, no canal discharge, no gross visual acuity changes, no history of epistaxis, no post-nasal drip, no hoarseness, no recent hearing loss.

RESPIRATORY: Denied cough, SOB, DOE, hemoptysis or sputum production.

CARDIOVASCULAR: Denied history of chest pain, DOE, PND or orthopnea.

GASTROINTESTINAL: Denied history of nausea, diarrhea, abdominal pain, BRBPR, hematochezia, melena and/or change in bowel habits.

PERIPHERAL VASCULAR: Denied leg edema, claudication or history of leg ulcers.

MUSCULOSKELETAL: As above.

LAB WORK: Reviewed.

PHYSICAL EXAM: WT: 190 lb. BP: 150/89. T: 96.9. P: 90.

GENERAL APPEARANCE: Middle-aged female, well-developed in no acute respiratory distress.

RECEIVED

JAN 02 2007

STILL, GAIL #12285
PAGE 2

HEENT: Negative for oral ulcers, increased hair loss or baldness, tinnitus, no canal discharge, no gross visual acuity changes, no history of epistaxis, no post-nasal drip, no hoarseness, no recent hearing loss.

RESPIRATORY: Clear to auscultation.

CARDIOVASCULAR: RR, S1-S2, no murmurs, gallops or rubs.

ABDOMEN: + BS, soft and depressible, no masses or splenomegaly.

MUSCULOSKELETAL: There is limitation of range of motion of both wrists, flexion and extension to a moderate to severe degree. There is some stress pain at the MCP joints as well as ankle and subtalar joints.

IMPRESSION:

1. Seropositive rheumatoid arthritis. Her symptoms seem to definitely be aggravated by her job. I think at this point it is best to give her a short term disability so we can evaluate how she responds. She may need this as well if she needs to be started back on treatment for her hepatitis C.
2. Mild transaminasemia, rule out secondary to hepatitis C. Will repeat and if elevated, refer to GI.
3. Depression. For now will not change her medication but we may have to in the near future.

Follow-up in two months or earlier if LFTs are elevated.

Sincerely,

DICTATED BUT NOT APPROVED

Edwin V. Martinez de Andino, M.D.

EVM/ng

RECEIVED

JAN 02 2007

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Carolina Musculoskeletal Institute, PA

Edwin Martinez de Andino, MD

Rheumatology & Osteoporosis

410 University Pkwy STE 1400

Tel 803 649-3333 Fax 649-2299



Patient: Gail Still (17285)

Date: 8/14/07

Diagnoses: RA SLE PMR/TA PM/DM OP OA SS SLE UCTD PsA FM Neuropathy Gout

Other FFU

HPI: Only complaint is of fatigue.
"a little down" 2 wk after
was present but pain swelling of
it fingers. No SOB DOE. No change

☒ LABS Reviewed

☐ Records Reviewed

REVIEW OF SYSTEMS:

G/A: WNL Fever chills Wt. Loss Night sweats Fatigue

HEENT: WNL Visual changes Blurring Temporal HA Sicca Red eye

Respiratory: WNL Cough SOB Sputum Wheeze

CV: WNL Chest pain DOE PND Orthopnea Palpitations

GI: WNL N/V diarrhea AP BRBPR melena CBH Dyspepsia

GU: WNL Frequency Dysuria Hematuria Nocturia Urthritis

Extremities: WNL Leg edema Claudication Leg ulcers

MSK: 2/3

Skin: WNL Rash Pruritus Masses

Endocrine: WNL Polyuria Polydipsia Nocturia Change hair

NEURO: WNL HA paresthesia numbness weakness

PMH:

FH/SH: No change Other

Medications: ☒ List Reviewed Arava mg MTX mg/wk HCO mg AZA mg
FolicAc. Prednisone mg/QD/BID/QOD Remicade mg/kg Enbrel Humira Kineret
Fosamax/Actonel Other:

Physical Exam: Wt: 188.8 lb T: 97.3 BP: 136/72 P: 76 RR: RECEIVED

JAN 02 2007

G/A: NARD/A Appearance WNL Acute ill Chronic ill Cushingoid Obese

SKIN: WNL Ecchymoses scleroderma Employee Benefits - LTD

HEENT: WNL/PERLA, EOM intact, sclera anicteric without injection, conjunctiva without hemorrhages, neck supple without thyromegaly or lymphadenopathy.

LUNGS: WNL/clear to auscultation

CARDIOVASCULAR: WNL/RR, S1-S2, no murmurs, gallops or rubs

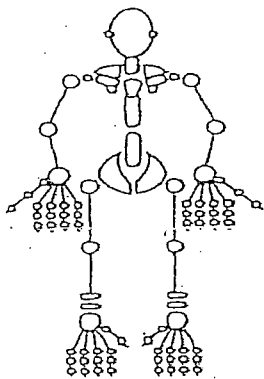
ABDOMEN: WNL/+ BS, soft and depressible, no masses or

hepatosplenomegaly

EXTREMITIES: WNL/No edema, clubbing or cyanosis. No varicose veins. Symmetrical

pulses

MUSCULOSKELETAL: WNL/Full range of motion of all joints on active and passive examination. No evidence of synovitis. Good flexion, extension and lateral flexion of the lumbar spine. No SI joint tenderness to palpation. Motor strength of all extremities was 5/5, proximal and distal.



S/+ : Synovitis

E/+ : Effusion

SP/x : Stress Pain

FC: Flexion Contraction

EC: Extension Contraction

ER: Erythema

W: Warm

NEURO: WNL/Alert and oriented x3. CNII. Sensory exam normal to pinpricking. DTR symmetrical

ASSESSMENT/PLAN:

1) RA - stable no changes
2) Mild depression, 1 Effusion XRTD
150mg QD X 3 mo

TO: 20 M/Wk ☐ Call earlier if no improvement

Record reviewed/requested

labs: ☐ CBC ☐ EFT ☐ BMP/Cr ☐ U/A ☐ U.A. ☐ ESR ☐ ANA 12 ☐ DNA ☐ C3/C4 ☐ RF ☐ CCP ☐ Lyme
CRP ☐ DEXA ☐ XR ☐ MRI

Education & Counseling: ☐ Principles of Joint Protection ☐ Diet/Wt loss ☐ Exercise ☐ Stopping smoking ☐ Disease Course & Prognosis ☐ Osteoporosis Treatment & Prevention ☐ Compliance issues ☐ Family ☐ Depression counseling ☐ Drug Interactions ☐ Treatment Options

PROCEDURE: ☐ UL ☐ UR Arthrocentesis ☐ Knee ☐ Hip ☐ Shoulder ☐ Finger ☐ Toe ☐ Bursa
Depomedrol ☐ 40 mg ☐ 80 mg ☐ 125mg ☐ Lidocaine 1% ☐ cc ☐ Supartz.

vin Martinez de Andino, MD



Carolina Musculoskeletal Institute, PA

Edwin Martínez de Andino, MD

Rheumatology & Osteoporosis

410 University Pkwy STE 1400

Tel 803 649-3333 Fax 649-2299

Patient: Gay, S. L.

Date: 6.14.04

Diagnoses: RA SLE PMR/TA PM/DM OP OA SS SLE UCTD PsA FM Neuropathy Gout

Other: F/u

HPI: Wk joint pain, swelling at joints
Back symptoms involved to ribs
paraspinal
Wk hip CC normal L.R.
forming not a following foot TO
get typical profile before next app

LABS Reviewed 1

Records Reviewed

REVIEW OF SYSTEMS:

G/A: WNL - Fever chills Wt. Loss Night sweats Fatigue

HEENT: WNL - visual changes Blurring Temporal HA Sicca Red eye

Respiratory: WNL - Cough SOB Sputum Wheeze

CV: WNL - Chest pain DOE PND Orthopnea Palpitations

GI: WNL - N/V diarrhea AP BRBPR melena CBH Dyspepsia

GU: WNL - Frequency Dysuria Hematuria Nocturia Urétritis

Extremities: WNL - Leg edema Claudication Leg ulcers

MSK:

Skin: WNL - Rash Pruritus Masses

Endocrine: WNL - Polyuria Polydipsia Nocturia Change hair

NEURO: WNL - HA paresthesia numbness weakness

PMH:

FH/SH: No change Other

Medications: List Reviewed Arava mg MTX mg/wk HCO mg AZA mg
FolicAc. Prednisone mg/QD/BID/QOD Remicade mg/kg Enbrel Humira Kineret
Fosamax/Actonel Other:

Physical Exam: Wt: 173 lb T: 98.2 BP: 139/82 P: 72 RR:

G/A: NARD/Appearance WNL Acute ill Chronic ill Cushingoid Obese

SKIN: WNL ecchymoses scleroderma

HEENT: WNL/PERLA, EOM intact, sclera anicteric without injection, conjunctiva without hemorrhages, neck supple without thyromegaly or lymphadenopathy.

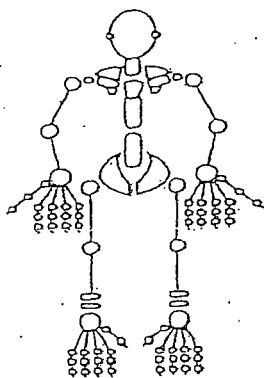
LUNGS: WNL/clear to auscultation

CARDIOVASCULAR: WNL/RR, S1-S2, no murmurs, gallops or rubs

ABDOMEN: WNL/BS, soft and depressible, no masses or hepatosplenomegaly

EXTREMITIES: WNL/No edema, clubbing or cyanosis. No varicose veins. Symmetrical pulses

MUSCULOSKELETAL: WNL/Full range of motion of all joints on active and passive examination. No evidence of synovitis. Good flexion, extension and lateral flexion of the lumbar spine. No SI joint tenderness to palpation. Motor strength of all extremities was 5/5, proximal and distal.



S/+ : Synovitis

E/+ : Effusion

SP/+ : Stress Pain

FC: Flexion Contraction

EC: Extension Contraction

ER: Erythema

W: Warm

NEURO: WNL/Alert and oriented x 3. CNI. Sensory exam normal to pinpricking. DTR symmetrical

ASSESSMENT/PLAN:

① Hx - stable, w/ no previous tx
 ② DDD Lumbar spine asymptomatic
 ③ Abnormal mass, approx 1.5 cm, located in the right lower leg, referred to him.
 ④ LDL - w/ lipid profile before next App.

RTO: 2 M/Wk ☐ Call earlier if no improvement

Record reviewed/requested

Labs: ☐ CBC ☐ LFT ☐ BMP/Cr ☐ U/A ☐ U/A ☐ ESR ☐ ANA 12 ☐ DNA ☐ C3/C4 ☐ RF ☐ CCP ☐ Lyme
☐ CRP ☐ DEXA ☐ XR ☐ Lipid profile ☐ MRI

Education & Counseling: ☐ Principles of Joint Protection ☐ Diet/Wt loss ☐ Exercise ☐ Stopping smoking ☐ Disease Course & Prognosis ☐ Osteoporosis Treatment & Prevention ☐ Compliance issues ☐ Family ☐ Depression counseling ☐ Drug Interactions ☐ Treatment Options

PROCEDURE: ☐ IIR Arthrocentesis ☐ Knee ☐ Hip ☐ Shoulder ☐ Finger ☐ Toe ☐ Bursa
 Depomedrol ☐ 40 mg ☐ 80 mg ☐ 125mg ☐ Lidocaine 1% ☐ cc ☐ Supartz

Erwin Martinez de Andino, MD

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March 23, 2006

RE: STILL, GAIL #12285

Mrs. Still comes today for follow-up. She is still having persistent localized low back to tail bone pain, as she describes it. No history of numbness, paresthesias, or weakness. MRI does show some mild degenerative disc disease as well as facet degenerative disease. Her pelvis does not show any evidence of SI joint involvement. Nerve conduction study was essentially unremarkable. Her inflammatory joint disease otherwise has been stable.

PHYSICAL EXAM:

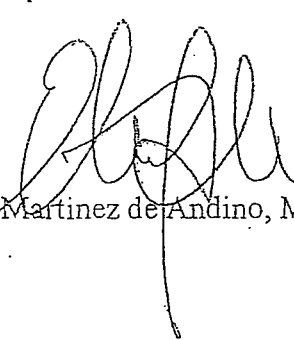
MUSCULOSKELTAL: Again, generalized paraspinous muscle tenderness ____ towards the SI joint. Normal range of motion of both hips.

NEUROMUSCULAR: Alert and oriented x 3. CNI. Sensory exam normal to pin pricking. DTR symmetrical.

IMPRESSION:

1. Degenerative disc disease. Alternatives for treatment were discussed. She wants only to be on conservative treatment, so I am going to send her for rehab. Continue her Vicodin p.r.n. If no improvement, consider facet injections.
2. Adnexal mass, as a coincidental finding on her pelvis MRI. She is already scheduled to be seen by Dr. Boone today.
3. She has brought some paper work from her work where here LDL was elevated as well as her cholesterol. Also, she is having very mild hypertension. We have discussed alternatives for treatment for such. We will work on exercise and diet over the next six weeks. If no significant improvement, we will need to then work with medical treatment.
4. Seropositive rheumatoid arthritis. Continue present management, stable.

Sincerely,


Edwin V. Martinez de Andino, M.D.

EVM/ng

17228

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CMI Orthopedics
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JAMES J. HILL JR., M.D.
TIMOTHY J. SHANNON, M.D.
TY W. CARTER, M.D.
MATTHEW A. GULLICKSON, M.D.

CMI Imaging
DAVID D. GOLTRA JR, M.D.

CMI Rheumatology & Osteoporosis
EDWIN MARTINEZ de ANDINO, M.D.

CMI Pain Management
WILLIAM E. DURRETT JR, M.D.
RUSSELL K. DANIEL, M.D.

PATIENT: Gail Still
DOB: 02-23-1953
FILE #: 99521
PHYSICIAN: Edwin V. Martinez de Andino, M.D.
EXAM: MRI lumbar spine
DATE: 03-03-2006

Page 1 of 2...

CLINICAL INDICATION:
Low back and right hip pain

TECHNIQUE:

The study was performed on the Siemens Magnetom Viva Open MRI Scanner, which performs at 0.2 Tesla. The following pulse sequences were performed: sagittal T2, sagittal T1, sagittal STIR, axial T2, axial T1, and coronal T1. A 3D gradient echo volume pulse sequence was performed and reformatted in sagittal, axial, and coronal planes.

FINDINGS:

Overview: There is a low signal intensity lesion in the right adnexal region, measuring 3cm in size. The renal contours, paraspinous musculature and bone marrow signal within the pelvis and hips are unremarkable.

Thoracic spine: Height and signal is preserved within the intervertebral discs of the lower thoracic spine. No compressive changes are evident. The spinal cord terminates at L1-2 in a normal fashion.

Lumbar spine: There is normal alignment of the lumbar vertebral bodies. No signal abnormality is evident within the osseous elements of the lumbar spine.

Intervertebral discs:

L1-2: There is mild loss of height and signal within the intervertebral disc. No compressive changes are evident.

L2-3: There is a mild diffuse disc bulge and some very subtle reactive endplate changes at this level.

L3-4: There is normal height and signal within the intervertebral disc. No compressive changes are evident at this level.

L4-5: There is normal height and signal within the intervertebral disc. There is a minimal noncompressive disc bulge and mild bilateral facet and ligamentous hypertrophy.

Continued on page 2.....

PATIENT: Gail Still
DOB: 02-23-1953
FILE #: 99521
PHYSICIAN: Edwin V. Martinez de Andino, M.D.
EXAM: MRI lumbar spine
DATE: 03-03-2006

Page 2 of 2...

L5-S1: There is normal height and signal within the intervertebral disc. There is mild facet hypertrophy.

OPINION:

There are some very minimal degenerative disc disease at L1-2 and L2-3 and mild facet hypertrophy at L5-S1. There is a right adnexal lesion, measuring 3cm. Gynecologic evaluation is suggested.

SIGNATURE:



DAVID D. GOLTRA, JR., M.D.
DDG:lis



12285

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CMI Orthopedics

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CMI Pain Management

WILLIAM E. DURRETT JR, M.D.
RUSSELL K. DANIEL, M.D.

PATIENT: Gail Still
DOB: 02-23-1953
FILE #: 99521
PHYSICIAN: Edwin V. Martinez de Andino, M.D.
EXAM: MRI pelvis
DATE: 03-03-2006

CLINICAL INDICATION:

Low back and right hip pain

TECHNIQUE:

The study was performed on the Siemens Magnetom Viva Open MRI Scanner which performs at 0.2 Tesla. The following pulse sequences were performed: coronal T1, axial T2, coronal STIR, coronal T2, and sagittal T2.

FINDINGS:

Once again, the cystic appearing right adnexal lesion is evident. There is no marrow space edema evident within the boney pelvis. The sacroiliac joints are unremarkable in appearance. No labral abnormalities are evident. No fluid signal intensity is evident within the trochanteric bursa. There is some very subtle hyperintensity at the gluteus medius insertion on the greater trochanter.

OPINION:

Nearly normal appearance of the boney pelvis. There is some very subtle hyperintensity at the gluteus medius insertion on the greater trochanter. A cystic right adnexal lesion is evident. Please see above report for details.

SIGNATURE:



DAVID D. GOLTRA, JR., M.D.
DDG:ljs



12285

PHYSICIANS SOUTH NEUROLOGY

ANTHONY DACUNHA, MD

740 Prince Ave #9 Athens GA 30606

Tel 369 50 84 Fax 369 5099

NAME: GAIL STILL

DATE: 3/3/06

AGE: 52 YO

MEDICAL HISTORY: LUMBAR RADICULOPATHY.

NEURODIAGNOSTIC REPORT: NERVE CONDUCTION STUDIES AND NEEDLE EMG: LOWER LIMBS.

DESCRIPTION: NERVE CONDUCTION STUDIES of the lower limbs were done by stimulating the Common Peroneal and the Tibial nerves for the motor studies. The distal latencies, the amplitudes of the CMAPs and the conduction velocities are normal. The F-waves were done in both nerves and the shortest latencies are normal. The H-Reflexes were obtained on the tibial nerves and the latencies were normal in both sides. The sensory testing was done on the sural and saphenous nerves. The distal latencies and the amplitudes of the SNAPs were not recorded.

NEEDLE EMG: The needle EMG was done in both legs and showed normal insertion potentials. No fibrillations or positive sharp waves were seen. The MUAPs showed normal configuration. The recruitment showed normal results.

CONCLUSION: Normal Nerve Conduction Studies and Needle EMG of the lower limbs.

ANTHONY DACUNHA, MD
Board Certified Neurologist

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JAN 02 2007

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PHYSICIANS SOUTH NEUROLOGY

ANTHONY DACUNHA, MD

740 PRINCE AVE- BLDG #9

ATHENS GA 30606

TEL:369 5084 FAX 369 5099

NAME: GAIL STILL

AGE: 52 YO

DATE: 3/3/06

CLINICAL INFORMATION: MYELOPATHY.

**NEURODIAGNOSTIC REPORT:
SOMATOSENSORY EVOKED POTENTIALS OF
THE LOWER LIMBS.**

DESCRIPTION:

SSEPs of the lower limbs were obtained with stimulation of the Tibial nerves at the medial malleolus and recording at the popliteal fossa, thoracic spinal cord and cortex. The PF, N30 and N45 latencies and interpeak latencies were normal.

CONCLUSION: Normal Somatosensory Evoked potentials of the lower limbs.



ANTHONY DACUNHA, MD

Board Certified Neurologist

Carolina Musculoskeletal Institute – Rheumatology
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Suite 1400
Aiken, S. C. 29801
Phone (803) 649-3333
Fax (803) 649-2299

February 28, 2006

RE: STILL, GAIL # 12285

Gail comes today for follow-up. Her main complaint is low back. She refers she has been having discomfort in the low back for the past month. This radiates down her right leg all the way to the bottom of her foot. She has intermittent bouts of paresthesia. No weakness. She also describes pain that radiates to just above the right buttock. This is a different pain that occurs mostly when lying down. There is no history of incontinence. She has no peripheral joint symptoms, no complication with her Enbrel. No recurrent URI symptoms.

PAST MEDICAL HISTORY: Significant for chronic hepatitis C and prior history of depression but is stable on Effexor.

MEDICATIONS: Reviewed.

LAB WORK: Review. Refer today for blood work.

PHYSICAL EXAM: WT: 200 LB. BP: 119/80 T: 98.4 P: 76.

GENERAL APPEARANCE: She is a middle-aged female, obese, well-developed in no acute respiratory distress.

HEENT: Negative for oral ulcers, increased hair loss or baldness, tinnitus, no canal discharge, no gross visual acuity changes, no history of epistaxis, no post-nasal drip, no hoarseness, no recent hearing loss.

RESPIRATORY: Clear to auscultation.

CARDIOVASCULAR: RR, S1-S2, no murmurs, gallops or rubs.

ABDOMEN: + BS, soft and depressible, no masses or splenomegaly.

EXTREMITIES: No edema, clubbing or cyanosis. Symmetrical pulses. No joint asymmetry or joint effusions.

MUSCULOSKELETAL: The patient had reproducible pain to palpation at right SI joint, right trochanter as well as lower lumbar spine. Straight leg raising was equivocal. Motor strength was 5/5 distal and proximal. Sensory exam was normal. Deep tendon reflexes were normal at ankles and knees. Plantars were downgoing. All joints without any evidence of synovitis or joint effusion.

NEUROMUSCULAR: As above.

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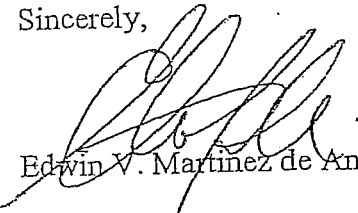
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STILL, GAIL # 12285
PAGE 2

IMPRESSION:

1. Seropositive rheumatoid arthritis – stable. No treatment changes at the present time.
2. Low back pain – rule-out also SI joint pain. Due to her radicular symptoms, I am going to change her to Tylox for pain and refer her for an MRI as well as a pelvis film to rule-out sacroiliitis.
3. Trochanteric bursitis – moderate. We will see how she comes out of her MRI before considering an injection.
4. History of chronic hepatitis C.

Sincerely,



Edwin V. Martinez de Andino, M.D.

EVM/ng

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JAN 02 2007

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Carolina Musculoskeletal Institute, PA

Edwin Martínez de Andino, MD

Rheumatology & Osteoporosis

410 University Pkwy STE 1400

Tel 803 649-3333 Fax 649-2299

Patient: Gail Still (12285) Date: 12.19.05

Diagnoses: RA SLE PMR/TA PM/DM OP OA SS SLE UCTD PsA FM Neuropathy Gout

Other: E/A

HPI: Feels 'gout' symptoms
since recovering from WRT.
No joint pain, swelling or stiffness.
Abnormal vitals. No SOB, edema or

☒ LABS Reviewed 11/1/05 ☐ Records Reviewed

REVIEW OF SYSTEMS:

G/A: WNL - Fever chills Wt. Loss Night sweats Fatigue

HEENT: WNL - visual changes Blurring Temporal HA Sicca Red eye

Respiratory: WNL - Cough SOB Sputum Wheeze

CV: WNL - Chest pain DOE PND Orthopnea Palpitations

GI: WNL - N/V diarrhea AP BRBPR melena CBH Dyspepsia

GU: WNL - Frequency Dysuria Hematuria Nocturia Urethritis

Extremities: WNL - Leg edema Claudication Leg ulcers

MSK: WNL

Skin: WNL - Rash Pruritus Masses

Endocrine: WNL - Polyuria Polydipsia Nocturia Change hair

NEURO: WNL - HA paresthesia numbness weakness

PMH:

FH/SH: No change Other

Medications: List Reviewed Arava mg MTX mg/wk HCO mg AZA mg

FolicAc. Prednisone mg/QD/BID/QOD Remicade mg/kg Enbrel Humira Kineret

Fosamax/Actonel Other: St. John's Wort

Physical Exam: Wt: 197 lb T: 97.2 BP: 132/70 P: 70 RR: RECEIVED

G/A: NARD/Appearance WNL Acute ill Chronic ill Cushingoid Obese

SKIN: WNL ecchymoses scleroderma

JAN 02 2007

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EENT: WNL/PERLA, EOM intact, sclera anicteric without injection, conjunctiva without hemorrhages, neck
 upple without thyromegaly or lymphadenopathy.

UNGS: WNL/clear to auscultation

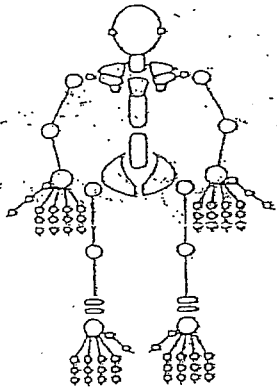
CARDIOVASCULAR: WNL/RR, S1-S2, no murmurs, gallops or rubs

ABDOMEN: WNL/+ BS, soft and depressible, no masses or

epatosplenomegaly

EXTREMITIES: WNL/No edema, clubbing or cyanosis. No varicose veins. Symmetrical
 ulses

MUSCULOSKELETAL: WNL/Full range of motion of all joints on active and passive examination. No evidence
 synovitis. Good flexion, extension and lateral flexion of the lumbar spine. No SI joint tenderness to palpation.
 Motor strength of all extremities was 5/5, proximal and distal.



S/+ : Synovitis

EN: Effusion

SP/x: Stress Pain

FC: Flexion Contraction

EC: Extension Contraction

ER: Erythema

W: Warm

NEURO: WNL/Alert and oriented x3. CNII. Sensory exam normal to pinpricking. DTR symmetrical

ASSESSMENT/PLAN:

1) RA stable. A Enbuf to 50 qwk

2) O/p URT

O: 20 M/Wk ☐ Call earlier if no improvement

Record reviewed/requested

Tests: ☐ CBC ☐ LFT ☐ BMP/Cr ☐ U/A ☐ U.A. ☐ ESR ☐ ANA 12 ☐ DNA ☐ C3/C4 ☐ RF ☐ CCP ☐ Lyme

TRP ☐ DEXA ☐ XR ☐ MRI

Education & Counseling: ☐ Principles of Joint Protection ☐ Diet/Wt loss ☐ Exercise ☐ Stopping
 Smoking ☐ Disease Course & Prognosis ☐ Osteoporosis Treatment & Prevention ☐ Compliance issues
 Family ☐ Depression counseling ☐ Drug Interactions ☐ Treatment Options

PROCEDURE: ☐ L OR Arthrocentesis ☐ Knee ☐ Hip ☐ Shoulder ☐ Finger ☐ Toe ☐ Bursa
 Depomedrol ☐ 40 mg ☐ 80 mg ☐ 125mg ☐ Lidocaine 1% ☐ cc ☐ Supartz



Carolina Musculoskeletal Institute, PA

Edwin Martínez de Andino, MD
Rheumatology & Osteoporosis
410 University Pkwy STE 1400
Tel 803 649-3333 Fax 649-2299

Patient: Gail Still 11/22/05

Date: 11/21/05

Diagnoses: RA SLE PMR/TA PM/DM OP OA SS SLE UCTD PsA FM Neuropathy Gout

Other Flu

HPI: Starting to feel much better
No fever, SOB or cough
Some residual fatigue

☐ LABS Reviewed 11/1/05 (W)

☐ Records Reviewed

REVIEW OF SYSTEMS:

G/A: WNL - Fever chills Wt. Loss Night sweats Fatigue _____

HEENT: WNL - visual changes Blurring Temporal HA Sicca Red eye _____

Respiratory: WNL - Cough SOB Sputum Wheeze _____

CV: WNL - Chest pain DOE PND Orthopnea Palpitations _____

GI: WNL - N/V diarrhea AP BRBPR melena CBH Dyspepsia _____

GU: WNL - Frequency Dysuria Hematuria Nocturia Urethritis _____

Extremities: WNL - Leg edema Claudication Leg ulcers _____

MSK: _____

Skin: WNL - Rash Pruritus Masses _____

Endocrine: WNL - Polyuria Polydipsia Nocturia Change hair _____

NEURO: WNL - HA paresthesia numbness weakness _____

PMH:

FH/SH: No change Other _____

Medications: List Reviewed Arava mg MTX mg/wk HCO mg AZA mg
FolicAc. Prednisone mg/QD/BID/QOD Remicade mg/kg Enbrel Humira Kineret
Fosamax/Actonel Other: _____

Physical Exam: Wt 200 lb T: 97.4 BP: 112/78 P: 72 RR: RECEIVED

JAN 02 2007

G/A: NARD/Appearance WNL Acute ill Chronic ill Cushingoid Obese

SKIN: WNL ecchymoses scleror

Employee Benefits - LTD

HEENT: WNL/PERLA, EOM intact, sclera anicteric without injection, conjunctiva without hemorrhages, neck supple without thyromegaly or lymphadenopathy

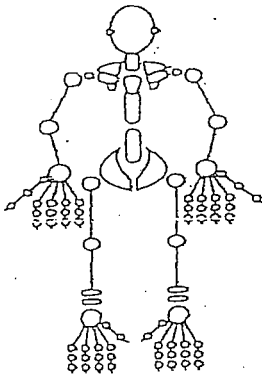
LUNGS: WNL/clear to auscultation

CARDIOVASCULAR: WNL/RR, S1-S2, no murmurs, gallops or rubs

ABDOMEN: WNL/+ BS, soft and depressible, no masses or hepatosplenomegaly

EXTREMITIES: WNL/No edema, clubbing or cyanosis. No varicose veins. Symmetrical pulses

MUSCULOSKELETAL: WNL/Full range of motion of all joints on active and passive examination. No evidence of synovitis. Good flexion, extension and lateral flexion of the lumbar spine. No SI joint tenderness to palpation. Motor strength of all extremities was 5/5, proximal and distal.



S/+ Synovitis

E/+ Effusion

SP/+ Stress Pain

FC: Flexion Contraction

EC: Extension Contraction

ER: Erythema

W: Warm

NEURO: WNL/Alert and oriented x 3. CNII. Sensory exam normal to pinpricking. DTR symmetrical

ASSESSMENT/PLAN:

*RA & HRE - later monitoring
Mont procedure x 2 wks
thru D/C
RTO as scheduled*

RTO: _____ M/Wk ☐ Call earlier if no improvement Record reviewed/requested

Labs: ☐ CBC ☐ LFT ☐ BMP/Cr ☐ U/A ☐ U.A. ☐ ESR ☐ ANA 12 ☐ DNA ☐ C3/C4 ☐ RF ☐ CCP ☐ Lyme
☐ CRP ☐ DEXA (LXR) _____ ☐ MRI _____

Education & Counseling: ☐ Principles of Joint Protection ☐ Diet/Wt loss ☐ Exercise ☐ Stopping Smoking ☐ Disease Course & Prognosis ☐ Osteoporosis Treatment & Prevention ☐ Compliance issues
☐ Family ☐ Depression counseling ☐ Drug Interactions ☐ Treatment Options

PROCEDURE: ☐ ILDR Arthrocentesis ☐ Knee ☐ Hip ☐ Shoulder ☐ Finger _____ ☐ Toe _____ ☐ Bursa _____
[Signature] Depomedrol ☐ 40 mg ☐ 80 mg ☐ 125mg ☐ Lidocaine 1% _____ cc ☐ Supartz

Edwin Martinez de Andino, MD

Carolina Musculoskeletal Institute – Rheumatology
410 University Parkway
Suite 1400
Aiken, S. C. 29801
Phone (803) 649-3333
Fax (803) 649-2299

November 9, 2005

RE: STILL, GAIL #12285

Mrs. Still returns today for follow-up. Patient with history of seropositive rheumatoid arthritis. This is an early evaluation due to generalized malaise. There is no history of fever. This has been over the past two days. She denies any shortness of breath or cough. There is no history of dysuria or frequency. She has a little postnasal drip and a little sore throat. She denies having any headache. She has been having some pain in her right wrist radiating to feet.

PHYSICAL EXAM: WT: 198. T: 97.1.

GENERAL APPEARANCE: She looks acutely ill, in no acute respiratory distress.

HEENT: Negative for oral ulcers, increased hair loss or baldness, tinnitus, no canal discharge, no gross visual acuity changes, no history of epistaxis, no post-nasal drip, no hoarseness, no recent hearing loss.

RESPIRATORY: Clear to auscultation.

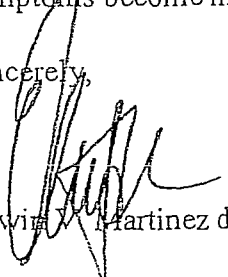
CARDIOVASCULAR: RR, S1-S2, no murmurs, gallops or rubs.

EXTREMITIES: No edema, clubbing or cyanosis. Symmetrical pulses. No joint asymmetry or joint effusions.

MUSCULOSKELETAL: There is synovitis of the right wrist and some MTP tenderness as well.

IMPRESSION: Rule out mild flare from her rheumatoid arthritis due to a viral infection. Considering her pulmonary history, I am going to start her on Amoxil 875 mg twice a day for seven days. Get baseline blood work. Give her 10 mg of prednisone for the next couple of weeks. Re-evaluate here with me in a week. She will call me earlier if symptoms become more severe.

Sincerely,



Edwin W. Martinez de Andino, M.D.

EVM/ng

Carolina Musculoskeletal Institute – Rheumatology
410 University Parkway
Suite 1400
Aiken, S. C. 29801
Phone (803) 649-3333
Fax (803) 649-2299

October 25, 2005

RE: STILL, GAIL #12285

Mrs. Still returns today for follow-up. Her only complaint is fatigue. She is having some discomfort in her wrist, but otherwise she has been asymptomatic. No weight loss. No history of icterus, nausea, or vomiting.

I reviewed her blood work showing that her AST is just slightly elevated at 51. Her ALT was normal as well as total protein and albumin. Her sed rate was only 24. She has no complaint of chest pain, shortness of breath, or dizziness on exertion. Her URI completely resolved after a Z-Pak without complications. She does have some depression and has been on Effexor.

REVIEW OF SYSTEMS:

GENERAL: As above.

HEENT: No history of oral ulcers, increased hair loss or baldness, tinnitus, no canal discharge, no gross visual acuity changes, no history of epistaxis, no post-nasal drip, no hoarseness, no recent hearing loss.

RESPIRATORY: Denied cough, SOB, DOE, hemoptysis or sputum production.

CARDIOVASCULAR: Denied history of chest pain, DOE, PND or orthopnea.

GASTROINTESTINAL: Denied history of nausea, diarrhea, abdominal pain, BRBPR, hematochezia, melena and/or change in bowel habits.

PERIPHERAL VASCULAR: Denied leg edema, claudication or history of leg ulcers.

NEUROLOGIC: Denies dizziness, history of seizures, paresthesias, numbness, limb weakness or paralysis.

PAST MEDICAL HISTORY: Significant for hepatitis and bronchial asthma.

MEDICATIONS: Reviewed and as per the chart.

STILL, GAIL #12285

PAGE 2

PHYSICAL EXAM: BP: 120/82. WT: 200 lb. T: 97.4. P: 89.

GENERAL APPEARANCE: Middle-aged female, obese, well-developed, in no acute respiratory distress.

HEENT: Negative for oral ulcers, increased hair loss or baldness, tinnitus, no canal discharge, no gross visual acuity changes, no history of epistaxis, no post-nasal drip, no hoarseness, no recent hearing loss.

RESPIRATORY: Clear to auscultation.

CARDIOVASCULAR: RR, S1-S2, no murmurs, gallops or rubs.

ABDOMEN: + BS, soft and depressible, no masses or splenomegaly.

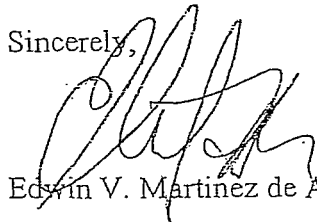
EXTREMITIES: No edema, clubbing or cyanosis. Symmetrical pulses. No joint asymmetry or joint effusions.

MUSCULOSKELETAL: Some stress pain at the wrist, but no obvious synovitis. All other joints within normal limits.

IMPRESSION:

1. Seropositive rheumatoid arthritis. Clinically she seems to be stable. Will keep an eye on her wrist. She will call if increased pain.
2. Depression. Continue Effexor.
3. History of chronic hepatitis. Review her LFTs at next evaluation.

Sincerely,



Edwin V. Martinez de Andino, M.D.

EVM/ng

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JAN 02 2007

Employee Benefits - LTD



Carolina Musculoskeletal Institute, PA

Edwin Martínez de Andino, MD
Rheumatology & Osteoporosis
410 University Pkwy STE 1400
Tel 803 649-3333 Fax 649-2299

Patient: Gail Still Date: 8/31/05

Diagnoses: RA SLE PMR/TA PM/DM OP OA SS SLE UCTD PsA FM Neuropathy Gout

Other PM

HPI:

She has not produced coughed
her first nasal drip & 3 d no fever
no SOB.
She never switch her therapy to
as suggested. We discussed
alt for ty again & she will do as instructed
LRT that were repeated were (u)

☐ LABS Reviewed 1/1

☐ Records Reviewed

REVIEW OF SYSTEMS:

G/A: WNL - Fever chills Wt. Loss Night sweats Fatigue

HEENT: WNL - visual changes Blurring Temporal HA Sicca Red eye

Respiratory: WNL - Cough SOB Sputum Wheeze

CV: WNL - Chest pain DOE PND Orthopnea Palpitations

GI: WNL - N/V diarrhea AP BRBPR melena CBH Dyspepsia

GU: WNL - frequency Dysuria Hematuria Nocturia Urethritis

Extremities: WNL - Leg edema Claudication Leg ulcers

MSK:

Skin: WNL - Rash Pruritus Masses

Endocrine: WNL - Polyuria Polydipsia Nocturia Change hair

NEURO: WNL - HA paresthesia numbness weakness

PMH:

FH/SH: No change Other

Medications: List Reviewed Arava mg MTX mg/wk HCO mg AZA mg
FolicAc. Prednisone mg/QD/BID/QOD Remicade mg/kg Enbrel Humira Kineret
Fosamax/Actonel Other:

Physical Exam: Wt: 198 lb T: 97.8 BP: 145/76 P: 85 RR:

G/A: NARD/Appearance WNL Acute ill Chronic ill Cushingoid Obese

SKIN: WNL ecchymoses scleroderma

HEENT: WNL/PERLA, EOM intact, sclera anicteric without injection, conjunctiva without hemorrhages, neck supple without thyromegaly or lymphadenopathy

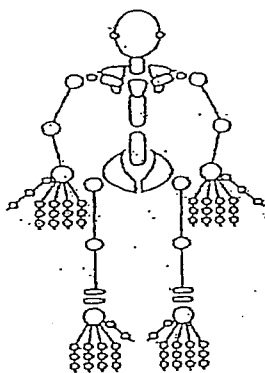
LUNGS: WNL/clear to auscultation

CARDIOVASCULAR: WNL/RR, S1-S2, no murmurs, gallops or rubs

ABDOMEN: WNL/BS, soft and depressible, no masses or hepatosplenomegaly

EXTREMITIES: WNL, No edema, clubbing or cyanosis. No varicose veins. Symmetrical pulses

MUSCULOSKELETAL: WNL/Full range of motion of all joints on active and passive examination. No evidence of synovitis. Good flexion, extension and lateral flexion of the lumbar spine. No SI joint tenderness to palpation. Motor strength of all extremities was 5/5, proximal and distal.



S/+ : Synovitis

E/+ : Effusion

SP/x: Stress Pain

FC: Flexion Contraction

EC: Extension Contraction

ER: Erythema

W: Warm

NEURO: WNL/Alert and oriented x 3. CNII. Sensory exam normal to pinpricking. DTR, symmetrical

ASSESSMENT/PLAN:

- 1) RA stable no change
- 2) MR 2 pack
- 3) Depression 60 on HPI

RTO: 2 ☒ M/Wk ☐ Call earlier if no improvement

Record reviewed/requested

Labs: ☐ CBC ☐ LFT ☐ BMP/Cr ☐ U/A ☐ U.A. ☐ ESR ☐ ANA 12 ☐ DNA ☐ C3/C4 ☐ RF ☐ CCP ☐ Lyme ☐ CRP ☐ DEXA ☐ DXR ☐ MRI

Education & Counseling: ☐ Principles of Joint Protection ☐ Diet/Wt loss ☐ Exercise ☐ Stopping Smoking ☐ Disease Course & Prognosis ☐ Osteoporosis Treatment & Prevention ☐ Compliance issues ☐ Family ☐ Depression counseling ☐ Drug Interactions ☐ Treatment Options

PROCEDURE: ☐ LOR Arthrocentesis ☐ Knee ☐ Hip ☐ Shoulder ☐ Finger ☐ Toe ☐ Bursa ☐ Depomedrol 40 mg ☐ 80 mg ☐ 125mg ☐ Lidocaine 1% ☐ cc ☐ Supartz

Edwin Martinez de Andino, M

Carolina Musculoskeletal Institute – Rheumatology

410 University Parkway

Suite 1400

Aiken, S. C. 29801

Phone (803) 649-3333

Fax (803) 649-2299

June 29, 2005

RE: STILL, GAIL # 12285

Mrs. Still returns today for follow-up. She has a lot of nonspecific aches and pains, more severe on the right hip area at the lateral aspect. It is increased with external rotation. There is no history of numbness, paresthesias or weakness. She does have some chronic low back pain. The patient also has somewhat of a flat affect. She was teary. She has a history of depression. It had worked in the past using Lexapro. She has been on 10 mg instead of 20 and I feel that she has not been responding.

Lab work was reviewed from April.

PHYSICAL EXAM: WT: 186 lb BP: 152/88 T: 97.3 P: 81

GENERAL APPEARANCE: She is a young, obese female, well-developed, in no acute respiratory distress.

HEENT: Negative for oral ulcers, increased hair loss or baldness, tinnitus, no canal discharge, no gross visual acuity changes, no history of epistaxis, no post-nasal drip, no hoarseness, no recent hearing loss.

RESPIRATORY: Clear to auscultation.

CARDIOVASCULAR: RR, S1-S2, no murmurs, gallops or rubs.

ABDOMEN: +BS, soft and depressible, no masses or splenomegaly.

EXTREMITIES: No edema, clubbing or cyanosis. Symmetrical pulses. No joint asymmetry or joint effusions.

MUSCULOSKELETAL: She has reproducible pain on palpation of the right trochanter. Her Patrick's test was negative. She is status-post left knee replacement. Straight leg raising was negative.

NEUROMUSCULAR: Alert and oriented x 3. CNI. Sensory exam normal to pin pricking. DTR symmetrical.

IMPRESSION:

1. RA – questionable flare. We will observe for now. It is likely that most of her symptoms are from depression.
2. Acute depression – I am going to switch her to Effexor over the next few weeks.

'STILL, GAIL # 12285

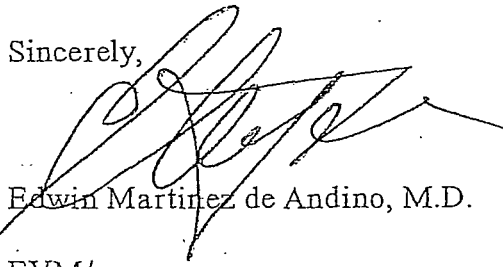
06-29-05

PAGE 2

IMPRESSION (CONTINUED):

3. Trochanteric bursitis – I suggested an injection. She does not want to have this done at the present time, so I have instructed her on how to do ilio-tibial band stretches and apply local heat. Follow-up with me in 6-8 weeks.

Sincerely,



Edwin Martinez de Andino, M.D.

EVM/ng

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JAN 02 2007

Employee Benefits - LTD

Nov 10 06 05:10p

Martinez de Andino, MD

803 649-2299

P.1

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Carolina Musculoskeletal Institute
210 University Parkway, Suite 1400
Aiken, SC 29801

November 7, 2006

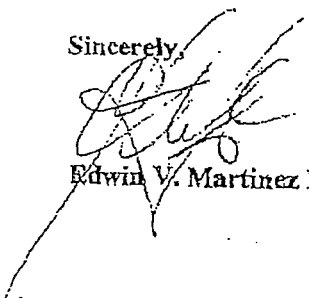
Re: Gail S. Still
SS#254-92-4789

To Whom It May Concern:

Ms. Gail S. Still is a patient of mine who I have been treating for Rheumatoid Arthritis since August of 1999. Unfortunately, Ms. Still's condition is worsening and will not improve. Ms. Still's condition has not allowed her to return to work and she is considered total disabled at this time.

Should you have any questions, please do not hesitate to contact my office at 803-644-3333.

Sincerely,


Edwin V. Martinez De Andino, MD

EMPLOYEE BENEFITS

DEC 6 2006

Standard Insurance Company

Employee Benefits Department 800.628.9696 Tel 800.437.0961 Fax
PO Box 2800 Portland OR 97208-2800

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DEC 02 2006

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State of South Carolina
Long Term Disability Benefits
Attending Physician's Statement

NOTE: Standard Insurance Company is acting only in an administrative capacity for the Basic LTD Plan.

PART A. TO BE COMPLETED BY PATIENT

Full Name: <u>Gail S. Still</u>	Social Security No.: <u>254-92-4789</u>
Other Names Used:	
Address: <u>334 NADDER Rd.</u>	City: <u>BARWELL</u> State: <u>SC</u> Zip Code: <u>29812</u>
Phone No.: <u>(803) 259-3632</u>	Birthdate: <u>2-23-53</u> Patient No.:
Health Plan: <u>BC/BS STATE</u>	

PART B. TO BE COMPLETED BY PHYSICIAN

DEAR DOCTOR: The purpose of this form is to help us determine whether the clinical condition of your patient is disabling. We need documentation of functional impairment. Please include laboratory data and results of special tests (X-rays, CAT scan, EKG, etc.) Please attach copies of any pertinent surgical reports, hospital admitting history, physician discharge summaries, chart notes, and narrative reports.

The patient is responsible for the completion of this form without expense to The Standard. (Forms may be returned due to unanswered questions.)

The following information is needed to document the Patient's inability to work:

1. DIAGNOSIS

A. Primary Diagnosis: <u>Chronic Arthritis</u>	ICDA Classification:
B. Secondary Diagnosis (related to patient's disability): <u>Chronic asthma; Hepatitis C</u>	
C. Current Symptoms: <u>Joint pain; V. mobility; joint edema; wheezing</u>	
D. Objective findings (Clinical Exam, Imaging Studies, Lab Results): <u>enlarged DIP, PIP, wrist knee joints on X-ray</u>	
E. Patient's Height: <u>5'2"</u> Weight: <u>190 lbs</u> Most recent blood pressure: <u>106/70</u> Pulse: <u>78 bpm</u>	

2. PREGNANCY (If applicable.)

Expected date of delivery: <u>X</u>	Anticipated to be normal? ☐ Yes ☐ No
Actual date of delivery: <u>X</u>	Type of delivery: ☐ Vaginal ☐ Caesarean Section

3. HISTORY

A. When did symptoms appear or accident happen? <u>1999 Initial onset</u>
B. Did you recommend to the patient to stop work? ☒ Yes ☐ No If yes, as of what date: <u>Approx. 2 years ago</u> Why: <u>due to pain; V. wheezing & V. exacerbation of asthma & knee SOB.</u>
If no, who recommended that the patient stop work?
C. Has the patient ever had the same or similar condition? ☒ Yes ☐ No If yes, when? <u>ongoing since 1999</u> Describe:
D. Is the condition related to the patient's employment? ☐ Yes ☒ No ☐ Undetermined
E. Did you complete a Workers' Compensation Report for this condition? ☐ Yes ☒ No
F. Who was the patient referred to you by? <u>Family Practice Patient since 1999.</u>

4. TREATMENT

A. Date patient first consulted you for this condition: <u>1999</u> , for any condition: <u>1999</u>
B. Dates of subsequent visits: <u>on-going since this date</u>
C. Date of most recent visit: <u>5/3/06</u> <u>Dr. Under Rheumatologist</u>
D. Treatment Plan (include surgery, physical therapy, psychiatric counseling): <u></u>
E. Medications: <u>Snugglan 10mg qHS (1) Effexor XL 75mg (3) Vicodin 5/1000 PRN (4) Emulgel 1 band (4) (5) Albuterol inhaler (6) Advair disc (7)</u>
F. Response to Treatment Plan: <u>Under Dr. DeArden Rheumatologist, Albuca, SC</u>

Standard Insurance Company

Claims Administrator 800.628.9696 Tel 800.437.0961 Fax
Box 2800 Portland, OR 97208-2800

State of South Carolina
Long Term Disability Benefits
Attending Physician's Statement

PHYSICAL CAPACITIES

Based on the patient's physical limitations and restrictions, he/she can (circle the appropriate level of ability):

Frequently lift (in pounds):	50+	50	20	10	0				
Maximum lift:	50+	50	20	10	0				
Walk/Stand at one time (in hours):	8	7	6	5	4	3	2	1	0
Walk/Stand in an 8-hour work day:	8	7	6	5	4	3	2	1	0
Sit at one time (in hours):	8	7	6	5	4	3	2	1	0
Sit in an 8-hour work day:	8	7	6	5	4	3	2	1	0

Bend/Stoop: ☐ Never ☒ Occasionally ☐ Frequently
Grasp: ☐ Never ☒ Occasionally ☐ Frequently
Reach: ☐ Never ☒ Occasionally ☐ Frequently

Fine Manipulation: Right: ☒ Yes ☐ No
Left: ☒ Yes ☐ No

But to great difficulty

LEVEL OF FUNCTIONAL IMPAIRMENT

The patient is: ☒ Ambulatory ☐ House Confined ☐ Bed Confined ☐ Hospital Confined

Describe the patient's mental and cognitive limitations and restrictions: *none*

Is this patient competent to manage insurance benefits? ☒ Yes ☐ No
If no, is the patient competent to appoint someone to help manage the insurance benefits? ☐ Yes ☐ No

Other impairments (please be specific):

Dominant hand: ☒ Right ☐ Left

HOSPITALIZATION

Date admitted: _____ Date discharged: _____ Date surgical procedure performed: _____

Reason for admittance to hospital: _____

Describe nature of any surgical procedure performed: _____

Outcome: _____

Name of hospital: _____

Address: _____ City: _____ State: _____ Zip Code: _____

OTHER TREATING MEDICAL PROFESSIONALS (if known):

Name: *Dr. Martinez Peandina* Specialty: *Rheumatology*
Address: _____ City: _____ State: _____ Zip Code: _____

Name: *Matthew S. Cranford* Specialty: *Digestive & Liver Disease*
Address: _____ City: _____ State: _____ Zip Code: _____

PROGNOSIS - *poor*

Describe patient's condition since onset of symptoms: ☐ Recovered ☐ Improved ☐ Not Changed ☒ Retrogressed

When do you expect a fundamental or marked change in patient's condition? *ongoing*

☒ Unable to determine, follow up in _____ weeks _____ months ☐ Never

When do you anticipate the patient can return to work?

Full-time: _____ Part-time: _____ (_____ hrs/day, _____ number days/weeks)

☒ Unable to determine, follow up in _____ weeks _____ months ☐ Never

What reasonable work or job site modifications could the employer make to assist the individual to return to work? *none*

Assessment and Treatment are complicated by: ☐ Malingering ☐ Significant exaggeration, inconsistent findings ☐ Dependence on drugs/medications

Please send copies of chart notes, diagnostic, laboratory, and electrodiagnostic findings, as well as operative reports and hospital discharge summaries for the past year.

knowledge

I hereby certify that the answers I have made to the foregoing questions are both complete and true to the best of my knowledge and belief. I acknowledge that I have read the applicable fraud notice on page 13 of this form.

Physician's Signature: *William B. Clark* Date: *11/28/06*
Physician's Name (Please print): *William B. Clark* Specialty: *Family Practice*
Address: *22 Gardner Road* City: *Beaverville* State: *SC* Zip Code: *29817*
Physician's Taxpayer ID No.: _____ Phone No.: *803 784-2041* Fax No.: *803 284-5516*

Return to Standard Insurance Company at the address above.

(26)

MEMORANDUM

TO: Nicole Markey, Disability Benefits Analyst
FROM: Steve Cooper, Vocational Case Manager *SC*
DATE: 12/7/2006
RE: Gail Still, Claim #VA5341

The following U.S. Department of Labor Dictionary of Occupational Titles¹ (DOT) occupation is the claimant's own occupation based on a thorough review of the information listed below and the best match to the material duties described. This occupation is as follows (see: attached *SkillTRAN Job Browser Pro* printout² and the DOT, Physical Demands – Strength Ratings):

Job Title: BENEFITS CLERK II
DOT: 205.567-010
Strength: Sedentary

I hope this information will be of help in your analysis. I am returning the file to you at this time. Please let me know what further assistance, if any, that I can provide in this matter.

FILE DOCUMENTS REVIEWED FOR THIS DETERMINATION:

Employee's Statement
Employee's Resume
Employer's Statement
Job Description

¹ The *Dictionary of Occupational Titles* [DOT] was developed by the US Bureau of Labor, US Employment Service. The occupational definitions are the result of comprehensive studies of how similar jobs are performed in establishments across the nation and are composites of data collected from diverse sources.

205.567-010 BENEFITS CLERK II (clerical)

DESCRIPTION

205.567-010 BENEFITS CLERK II (clerical)

INSURANCE AND BENEFITS CLERK. Answers employees' questions and records employee enrollment in benefits and group insurance programs: Explains and interprets company insurance program to employees and dependents. Answers questions regarding benefits, such as pension and retirement plan, and group insurance, such as life, hospitalization, and workers' compensation. Fills out application forms or verifies information on forms submitted by employees. Mails applications to insurance company. Files records of claims and fills out cancellation forms when employees leave company service. May correspond with or telephone physicians, hospitals, and employees regarding claims.

APTITUDES		PERCENTILE	TYPICAL PERFORMANCE
General Learning Ability	G-3	34 to 65%ile	Average
Verbal	V-3	34 to 65%ile	Average
Numerical	N-3	34 to 65%ile	Average
Spatial Perception	S-5	Under 10%ile	Minimal or none
Form Perception	P-5	Under 10%ile	Minimal or none
Clerical Perception	Q-2	66 to 89%ile	Above Average
Motor Coordination	K-3	34 to 65%ile	Average
Finger Dexterity	F-3	34 to 65%ile	Average
Manual Dexterity	M-3	34 to 65%ile	Average
Eye/Hand/Foot Coordination	E-5	Under 10%ile	Minimal or none
Color Discrimination	C-5	Under 10%ile	Minimal or none

TEMPERAMENTS - (Personal Adaptability) (Situations to which the worker must adapt)

T - Situations requiring the precise attainment of set limits, tolerances, or standards.

P - Dealing with people beyond giving and receiving instructions.

PHYSICAL DEMANDS

STRENGTH: Sedentary

Exert force to 10 lbs. occasionally, or a negligible amount of force frequently to lift, carry, push, pull, or move objects.

OTHER PHYSICAL DEMANDS:

CL - Climbing - Not Present
 BA - Balancing - Not Present
 ST - Stooping - Not Present
 KN - Kneeling - Not Present
 CR - Crouching - Not Present
 CW - Crawling - Not Present
 RE - Reaching - Frequent
 HA - Handling - Frequent
 FI - Fingering - Frequent
 FE - Feeling - Not Present
 TA - Talking - Frequent
 HE - Hearing - Frequent

TS - Tasting/Smelling - Not Present

VISION:

NE - Near Acuity - Frequent
FA - Far Acuity - Not Present
DE - Depth Perception - Not Present
AC - Accommodation - Not Present
CV - Color Vision - Not Present
FV - Field of Vision - Not Present

COMMON ENVIRONMENTAL WORKING CONDITIONS (to which the worker is exposed):

NO - Noise Intensity Level.- Moderate

QUICK VIEW CODES

R M L SVP: 4 Aptitudes: G V N S P Q K F M E C
GED: 3 3 3 Temperaments: T P 3 3 3 5 5 2 3 3 3 5 5
STRENGTH: S

Physical Demands: CL BA ST KN CR CW RE HA FI FE TA HE TS NE FA DE AC CV FV
N N N N N N F F F N F F N F N N N N N

Environmental Conditions: WE CO HO WT NO VI AT MV EL HI RA EX TX OT
N N N N 3 N N N N N N N N N

Physical Demands – Strength Ratings*

S- Sedentary Work – Exerting up to 10 pounds of force occasionally. (Occasionally: activity or condition exist up to 1/3 of the time) and/or a negligible amount force frequently (Frequently: activity or condition exists from 1/3 to 2/3 of the time) to lift, carry, push, pull, or otherwise move objects, including the human body. Sedentary work involves sitting most of the time, but may involve walking or standing for brief periods of time. Jobs are sedentary if walking and standing are required only occasionally and all other sedentary criteria are met.

L- Light Work – Exerting up to 20 pounds of force occasionally, and/or up to 10 pounds of force frequently, and/or a negligible amount of force constantly (Constantly: activity or condition exists 2/3 or more of the time) to move objects. Physical demand requirements are in excess of those for Sedentary Work. Even though the weight lifted may be only a negligible amount, a job should be rated Light Work: (1) when it requires walking or standing to significant degree; or (2) when it requires sitting most of the time but entails pushing and/or pulling of arm or leg controls; and/or (3) when the job requires working at a production rate pace entailing the constant pushing and/or pulling of materials even though the weight of those materials is negligible. NOTE: The constant stress and strain of maintaining a production rate pace, especially in an industrial setting, can be and is physically demanding of a worker even though the amount of force exerted is negligible.

M- Medium Work – Exerting 20 to 50 pounds of force occasionally, and/or 10 to 25 pounds of force frequently, and/or greater than negligible up to 10 pounds of force constantly to move objects. Physical Demand requirements are in excess of those for Light Work.

H- Heavy Work – Exerting 50 to 100 pounds of force occasionally, and/or 25 to 50 pounds of force frequently, and/or 10 to 20 pounds of force constantly to move objects. Physical Demand requirements are in excess of those Medium Work.

V- Very Heavy Work – Exerting to excess of 100 pounds of force occasionally, and/or in excess to 50 pounds of force frequently, and/or in excess of 20 pounds of force constantly to move objects. Physical Demand requirements are in excess of those for Heavy Work.

** As described in the Dictionary of Occupational Titles, Fourth Edition Revised 1991 US Department of Labor Employment and Training Administration.*

Curriculum Vita

<i>Name</i>	Steven R. Cooper
<i>Title</i>	Vocational Case Manager
<i>Office</i>	Benefits
<i>Joined Standard in</i>	August 7, 2006
<i>Positions held at Standard</i>	Vocational Case Manager
<i>Other industry experience</i>	5 years: Vocational Rehabilitation Counselor and Job Developer in the private and public sectors. 3.8 years: Disability Adjudicator for SSI/SSDI claims, State of Oregon.
<i>Other experience</i>	3.5 years: Co-owner/president, Yeoman Services, Inc.: Serving employers and injured workers in job safety and occupational health training. 7 years: Commercial and residential electrician. Wide experience in construction, manufacturing, real estate, and retail.
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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM STATE OF SOUTH CAROLINA
Administrative Law Court

Carolyn C. Matthews, Administrative Law Judge

Docket No. 2008-ALJ-30-0412-AP

Gail S. Still, ...Appellant,

v.

South Carolina Budget and Control Board, Employee Insurance
Program, ...Respondent.

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

- I. DID THE ADMINISTRATIVE LAW COURT ERR IN AFFIRMING THE DENIAL OF APPELLANT'S CLAIM FOR LONG-TERM DISABILITY BENEFITS?

STATEMENT OF THE CASE

Gail Still was employed as a benefits coordinator, payroll, for Barnwell School District 45. She ceased working on or about November 21, 2006 due to her claims of disability from multiple health conditions. Through her employment with the State of South Carolina, Still is a participating member of the Basic Long Term Disability Income Benefit Plan (BLTD), Identification Number XXX-XX-4789. The Claims Administrator for this plan is The Standard Insurance Company. (R. p. 86)

Still applied for benefits alleging disability beginning November 22, 2006, one day after she last worked. (R. p. 84) Her claim was denied on February 5, 2007. (R. p. 94) She appealed on March 7, 2007. (R. p. 101) The original decision was upheld on October 26, 2007. (R. p. 86) On December 3, 2007, The Standard wrote to Still's attorney, advising that the Employee Insurance Program ("EIP") had received Still's request to appeal The Standard's denial. (R. p. 85) The Long Term Disability Appeal Committee of the Employee Insurance Program denied Still's appeal on July 11 2008. (R. p. 74) Still appealed to the Administrative Law Court on August 5, 2008. [Notice of Petition and Petition for Appellate Review of Denial of Long Term Disability Benefits filed August 5, 2008, R. pp. 1-4] Still's appeal was denied on August 21, 2009. [Final Order of Administrative Law Judge Carolyn C. Matthews filed August 21, 2009, R. pp. 35-47] Still timely served a Notice of Appeal on September 23, 2009. [Notice of Appeal served September 23, 2009, R. pp. 48-49]

STATEMENT OF FACTS

This case involves an appeal of the Administrative Law Court's order affirming Respondent's¹ decision to deny Appellant Gail Still's ("Still") claim for long-term disability benefits.

Still ceased working as a benefits coordinator, payroll, for Barnwell School District 45 on or about November 21, 2006 due to her claims of disability from multiple health conditions including rheumatoid arthritis, hepatitis C, asthma, three degenerative lumbar discs, and a left knee replacement in 1989. The record does not reflect the job description for a "Benefits Coordinator, Payroll," but does classify this position as "Sedentary Work" under the U.S. Department of Labor Dictionary of Occupational Titles.² As the record indicates, "Sedentary Work" is defined as follows:

"Exerting up to 10 pounds of force occasionally (Occasionally: activity or condition exists 1/3 of the time) and/or negligible amount of force frequently (Frequently: activity or condition exists from 1/3 to 2/3 of the time) to lift, carry, push, pull, or otherwise move objects, including the human body. Sedentary work involves sitting most of the time, but may involve walking or standing for brief periods of time. NOTE: Jobs are sedentary if walking and standing are required only occasionally and all other sedentary criteria are met." (R. p. 74)

Through her employment with the State of South Carolina, she is a participating member of the Basic Long Term Disability Income Benefit Plan (BLTD), Identification Number XXX-XX-4789. The Claims Administrator for this plan is The Standard

¹ For ease of reference, the term "Respondent" is used throughout this brief to refer to the entities involved in the decision to deny Still's claim for disability. It is understood that the entities involved in the decision were The Standard, as third party administrator of the Plan and the State Budget and Control Board, Employee Insurance Program.

² The U.S. Department of Labor Dictionary of Occupational Titles, Fourth Edition, revised 1991.

Insurance Company. (R. p. 86) The Standard Insurance plan governs the dispute in this appeal. In pertinent part, it defines "disability" as follows:

"During the Benefit Waiting Period and the Own Occupation Period (24 months) you are required to be disabled only from your Own Occupation. You are disabled from your Own Occupation if, as a result of Physical Disease, Injury, Pregnancy or Mental Disorder, you are unable to perform with reasonable continuity the Material Duties of your Own Occupation." (R. p. 93)

The plan defines "Own Occupation" as follows:

"Own Occupation means any employment, business, trade, profession, calling or vocation that involves Material Duties of the same general character as your regular and ordinary employment with the employer. Your Own Occupation is not limited to your job with your Employer." (R. p. 93)

For Still to qualify for the benefits she seeks in her claim, she must have been disabled, as set forth above, during the 90-day Benefit Waiting Period. (R. p. 93)

In support of her claim, Still put forth evidence of her disability. Still presented medical evidence from her rheumatologist since 1999, Edwin V. Martinez de Andino, M.D. (R. p. 103) After treating Still on November 1, 2006, Dr. Martinez de Andino noted she was having problems due to her rheumatoid arthritis and depression including pain and limited range of motion. At that time, Dr. Martinez de Andino noted that Still's symptoms were definitely aggravated by her job and he recommended that she adopt short-term disability status so that he could further evaluate her. (R. p. 129) Dr. Martinez de Andino wrote a letter on Still's behalf on November 7, 2006. (R. p. 153) In that letter, Dr. Martinez de Andino opined that Still's rheumatoid arthritis had been worsening and was not expected to improve and that she was unable to return to her employment.

Still also presented medical evidence from her family doctor, William B. Clark, M.D. Dr. Clark completed an Attending Physician's Statement on her behalf on November 28, 2006. Dr. Clark listed her primary diagnosis as rheumatoid arthritis with secondary diagnoses of chronic asthma and hepatitis C. In that statement, Dr. Clark noted his suggestion to Still that she stop working two years before the time he completed the statement. (R. pp. 154-155)

On January 5, 2007, Dr. Martinez de Andino noted that Still "is doing much better now that she is not working. I do believe that this patient will need a long term disability as the culprit for her symptoms seem to be mostly her occupation." (R. p. 122)

On January 24, 2007, Dr. Martinez de Andino again suggested that Still remain out of work. His treatment notes from that visit state that she "has been evaluated and suggested to go on disability. I do not see this patient working at this point or in the near future in any gainful way." (R. p. 121)

Following a visit on June 25, 2007, Dr. Martinez de Andino noted that "this patient is unable to return to work as the duties affect even her activities of daily living with her disease state. She is not retrainable for doing any other type of work." (R. p. 114)

Still applied for benefits alleging disability beginning November 22, 2006, one day after she last worked. (R. p. 84) Her claim was denied on February 5, 2007; she appealed on March 7, 2007. The original decision was upheld on October 26, 2007. On December 3, 2007, The Standard wrote to Still's attorney, advising that the Employee Insurance Program ("EIP") had received Still's request to appeal The Standard's denial. (R. p. 85) The Long Term Disability Appeals Committee of the Employee Insurance

Program denied Still's appeal on July 11, 2008. (R. p. 74) This appeal to the Administrative Law Court followed on August 5, 2008.

During these various appeals of her claim, Respondent hired at least two doctors to review Still's medical records to determine if she met the qualifications for long-term disability benefits. Dr. Shirley Ingram, a physician consultant for The Standard in Rheumatology, and Dr. Ronald Fraback, M.D., also a physician consultant for The Standard in Rheumatology, both reviewed Still's medical records. Neither doctor disputes the findings of Dr. Clark or Dr. Martinez de Andino; they simply disagree with their medical opinions that Still is unable to work.

ARGUMENT

I. THE ADMINISTRATIVE LAW COURT ERRED IN AFFIRMING THE DENIAL OF APPELLANT'S CLAIM FOR LONG-TERM DISABILITY BENEFITS.

The denial of Still's claim must be overturned if this Court determines that Respondent's decision to deny her claim (1) violates constitutional or statutory provisions, (2) exceeds the statutory authority of the agency, (3) was based upon unlawful procedure, (4) was affected by an error of law, (5) was clearly erroneous in view of the reliable, probative and substantial evidence on the whole record, or (6) was arbitrary or capricious or characterized by an abuse of discretion or clearly unwarranted exercise of discretion. § 1-23-380(A)(6); *Weaver v. S.C. Coastal Council*, 309 S.C. 368, 374, 423 S.E.2d 340, 343 (1992).

This Court can substitute its own judgment for that of the Respondent if the Respondent's findings were clearly erroneous in view of the reliable, probative and substantial evidence in the record. *Marlboro Park Hosp. v. S.C. Dep't of Health and Envtl. Control*, 358 S.C. 573, 580, 595 S.E.2d 851, 855 (Ct. App. 2004). "Substantial evidence is not a mere scintilla of evidence, but evidence which, considering the record as a whole, would allow reasonable minds to reach the same conclusion the agency reached." *Commissioners of Public Works v. South Carolina Dept. of Health and Environmental Control*, 372 S.C. 351, 358, 641 S.E.2d 763, 766-767 (Ct. App. 2007).

In the case at bar, Appellant presented substantial evidence to the Administrative Law Court that Respondent's denial of Appellant's claim for benefits violated South Carolina law.

A. Still Provided Sufficient Evidence for the Administrative Law Judge to Find Respondent's Decision Violated South Carolina Law.

The Respondent's decision to deny Still's claim for benefits was arbitrary and capricious and clearly erroneous in view of the substantial evidence in the record. An "administrative decision is 'arbitrary' if it is without rational basis, **is based alone on one's will** and not upon any course of reasoning and exercise of judgment, is made at pleasure, without adequate determining principles, or is governed by no fixed rules or standards." *Converse Power Corp. v. South Carolina Dept. of Health and Environmental Control*, 350 S.C. 39, 564 S.E.2d 341 (Ct. App. 2002) (emphasis added). The decision to deny Freeman's claim was clearly based on the "will" of the Respondent and its hired doctors and not upon any course of reasoning and exercise of judgment.

a. Still's Attending Physicians

The record before the Administrative Law Court contained substantial evidence that Still was disabled. Still's family doctor, Dr. Clark, as well as her rheumatologist, Dr. Martinez de Andino, submitted documentation that unequivocally substantiated Still's claim of disability.

b. Still's Reviewing Doctors

In response to the overwhelming evidence that shows a worsening condition that has now disabled Still, the Respondent retained two doctors to review her medical records. The first was Dr. Shirley Ingram. The next was Dr. Ronald Fraback. Both doctors are board-certified in rheumatology. Neither doctor ever treated or even examined Still; they simply reviewed her medical records. Neither doctor disputed the findings of Dr. Clark or Dr. Martinez de Andino; they simply disagree with the ultimate medical opinion of each doctor regarding the severity of Still's condition.

c. Arbitrary and Capricious

Reliance on the opinions of the three doctors is arbitrary and capricious. Despite the limitations observed and recorded by Drs. Clark and Martinez de Andino regarding the affects of Still's multiple health conditions, Respondent cites the review of records by three hired physicians as sufficient support for denial of her claim. Dr. Martinez de Andino specifically states, on several occasions, that Still is permanently and totally disabled and the basis for that opinion, yet the two consulting physicians conveniently choose to ignore those records and focus instead on what they perceive that the records do not contain. Rather than consider all available evidence and exercise judgment, Respondent has reached out for any basis to deny Still's claim.

~~Drs. Ingram and Fraback do not dispute the findings of Still's treating physicians.~~

None of the reports by the consulting physicians dispute that Still suffers from a variety of conditions including but not limited to rheumatoid arthritis, hepatitis C, asthma, three degenerative lumbar discs, and a left knee replacement in 1989. Instead, they assume that Still's complaints of limitations are not valid. Such assumptions are not substantial evidence. The focus of the analysis should be on the conditions and their limitations. Both doctors independently reported that Still suffered significant limitations. Both reported that her conditions would likely not improve. Thus, the record is replete with substantial medical evidence of a disabling condition at the time of her claim for disability.

CONCLUSION

The decision to deny Still's claim was arbitrary and capricious. A thorough examination of the record reveals no substantial evidence to support Respondent's

decision. Respondent's actions can only be characterized as an attempt to enforce its will despite the overwhelming evidence supporting Still's claim for disability. Accordingly, this Court should reverse the Administrative Law Court's Order affirming Respondent's denial of Appellant's claim for long term disability benefits.

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February 22, 2010

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

APPEAL FROM ADMINISTRATIVE LAW COURT

Carolyn C. Matthews, Administrative Law Judge

Docket No. 2008-ALJ-30-0412-AP

Gail S. Still, ...Appellant,

v.

**South Carolina Budget and Control Board, Employee
Insurance Program, ... Respondent.**

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STATEMENT OF ISSUE ON APPEAL

DOES SUBSTANTIAL EVIDENCE IN THE RECORD ON APPEAL SUPPORT RESPONDENT SOUTH CAROLINA BUDGET AND CONTROL BOARD, EMPLOYEE INSURANCE PROGRAM'S DECISION TO DENY APPELLANT GAIL STILL'S LONG-TERM DISABILITY CLAIM?

STATEMENT OF THE CASE

This case involves an appeal by Appellant Gail Still ("Still") of the Administrative Law Court's decision to affirm Respondent South Carolina Budget and Control Board, Employee Insurance Program's ("EIP") decision to deny Still's long-term disability ("LTD") claim under the State of South Carolina Long Term Disability Income Benefit Plan (the "Plan"). Specifically, the issue before the Court is whether substantial evidence in the Record on Appeal supports EIP's decision to deny Still's claim. Pursuant to the statutory mandate of S.C. Code Ann. 1-11-710(C) (2008) and the claims procedures and discretion provided by the Plan,¹ EIP denied Still's claim after determining that her physical and mental conditions did not qualify her for LTD benefits under the Plan. R 27-35.²

Still was formerly employed by Barnwell School District 45 as a benefits coordinator. R 158. As an employee of a political subdivision of the State of South Carolina, Still participated in the Plan. Still stopped working on November 21, 2006. On her application for LTD benefits, Still stated she was unable to work due to rheumatoid arthritis, hepatitis C, asthma, degenerative disc disease,

¹ For a full discussion of EIP's discretionary authority under the Plan and the interaction of Section 1-11-710(C) and S.C. Code Ann. §1-23-380 (2008) in appeals involving the Plan, see Section entitled Allocation of Authority to EIP and the Appropriate Standard of Review, p. 14, *infra*.

² Citations in the form "R ____" are to specific Bates numbered pages of the Record on Appeal filed with the ALC.

and a knee replacement in 1989. R 152.

Standard Insurance Company ("Standard"), the third-party claims administrator for the Plan³, compiled and considered the available medical records and opinions from Still's treating physicians. Before making a decision on Still's claim, Standard requested an independent medical opinion from Dr. Ingram, a board-certified rheumatologist, regarding Still's ability to continue to work in her sedentary occupation. After receiving Dr. Ingram's opinion, on February 5, 2007, Standard informed Still that her claim had been denied because the information she submitted did not satisfy the Plan's Definition of Disability. R 59-63. On March 7, 2007, Still appealed Standard's decision and submitted a small number of additional documents for Standard's review. R 97.

After receiving Still's appeal request, Standard requested that Dr. Ingram reconsider her opinion on two occasions. After considering the additional information submitted by Still and Dr. Ingram's second and third opinions, on September 20, 2007, Standard informed Still that it had upheld the decision to deny her claim. R 69-70. Standard also informed Still that its Administrative Review Unit ("ARU") would conduct an independent review of the decision to close her claim. R 70.

The ARU independently reviewed Still's file and requested an additional independent medical opinion from a second board-certified rheumatologist, Dr. Fraback. Based on Still's medical records and the independent medical opinions of Dr. Ingram and Dr. Fraback, on October 26, 2007, the ARU upheld the

³ EIP has contracted with Standard to administer claims under the Plan. In its role as third-party claims administrator, Standard has no financial interest in the outcome of decisions under the Plan, and applies its experience and expertise in the area of disability claims review.

decision to deny Still's claim. *Id.* at 43-49.

Pursuant to Section 1-11-710(C), which provides authority to EIP to establish claims procedures for the Plan, Still appealed Standard's decision to the EIP Long Term Disability Appeals Committee (the "Committee") for a *de novo* agency review of her LTD claim. The three Committee members are employees of the State of South Carolina, have no connection with Standard, and have no financial interest in the financial performance of the Plan.

Based upon the Plan's express terms, the medical records and opinions of Still's treating physicians, and the independent medical opinions of Dr. Ingram and Dr. Fraback, the Committee unanimously determined that the medical evidence did not demonstrate that Still qualified for LTD benefits under the terms of the Plan. The Committee informed Still of its decision by letter dated July 11, 2008. R 26-35.

On or about August 5, 2008, Still filed her Notice of Appeal with the ALC. By Order filed August 21, 2009, the ALC affirmed EIP's decision and determined that substantial evidence in the Record on Appeal supported EIP's decision to deny Still's claim. On or about September 23, 2009, Still filed her Notice of Appeal with this Court. The issue before the Court is whether substantial evidence in the Record on Appeal supports EIP's decision to deny Still's LTD claim.

STATEMENT OF FACTS

I. Applicable Plan Provisions

A. Definition of Disability

The Plan provides as follows:

You are Disabled if you meet one of the following definitions during the period it applies:

A. Own Occupation Definition of Disability

During the [90-day] Benefit Waiting Period and the Own Occupation Period you are required to be Disabled only from your Own Occupation.

You are Disabled from your Own Occupation if, as a result of Physical Disease, Injury, Pregnancy, or Mental Disorder, you are unable to perform with reasonable continuity the Material Duties of your Own Occupation. R 9.

Because Still's condition did not satisfy the Own Occupation Definition of Disability during the Plan's 90-day Benefit Waiting Period and beyond, EIP denied her claim.

B. Proof of Loss

The Plan also contains the following provision:

Proof of Loss

Proof of Loss means written proof that you are Disabled and entitled to LTD Benefits. Proof of Loss must be provided at your expense.

For claims of Disability due to conditions other than Mental Disorders, we may require proof of physical impairment that results from anatomical or physiological abnormalities which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques. R 19.

Thus, under the terms of the Plan, in order to qualify for LTD benefits, Still must provide objective medical evidence that her condition prevented her from performing the material duties of her occupation.

II. Still's Medical Records

A. Dr. Martinez de Andino

Still's primary treating physician during the relevant time period was Dr. Martinez de Andino, a rheumatologist. Dr. Martinez de Andino's records date back to June 29, 2005, 17 months before Still stopped working. On that date Dr. Martinez de Andino observed that Still "has a lot of nonspecific aches and pains, more severe on the right hip area . . . [t]here is no history of numbness, paresthesias or weakness. She does have some chronic low back pain . . . [s]he has a history of depression." R 282. Other than the reported symptoms, Dr. Martinez de Andino recorded no other findings on physical exam. He concluded that Still might be having a flare of rheumatoid arthritis, but that it "is likely that most of her symptoms are from depression."⁴ R 282.

On August 31, 2005, Dr. Martinez de Andino observed that Still's rheumatoid arthritis was stable with no changes. R 278. On October 25, 2005, Still's "only complaint [was] fatigue." R 274. Dr. Martinez de Andino noted that Still's rheumatoid arthritis continued to be "stable," and that she had a history of chronic hepatitis; however, she did not have related symptoms. R 274-75. In November 2005, Still had a viral infection that resolved with prednisone. R 268-70. On December 19, 2005, Still reported that she felt "great." R 266. Dr. Martinez de Andino again noted that her rheumatoid arthritis was stable. R 267.

Still next saw Dr. Martinez de Andino on February 28, 2006. She complained of low back pain that radiated down her right leg. R 264. On

⁴ Still has not submitted any mental health records and there is no evidence in the Record on Appeal that she has ever sought treatment for any alleged mental health condition.

physical exam, Still had normal range of motion and strength, but complained of pain in her right hip area. R 264. Dr. Martinez de Andino concluded that Still's rheumatoid arthritis was stable and referred her for an MRI of her pelvis and back. R 265.

Still underwent several diagnostic exams on March 3, 2006. Dr. Dacunha, a neurologist, administered and interpreted a "somatosensory evoked potentials" exam of Still's legs. His report states that the results of the test were normal. R 261. Dr. Dacunha also interpreted a nerve conduction test and needle EMG of Still's legs. He concluded that the results were normal. R 260.

Dr. Goltra, a neurologist, administered and interpreted MRIs of Still's pelvis and lumbar spine. With respect to Still's pelvis, the MRI demonstrated "nearly normal appearance of the boney pelvis." R 259. The lumbar spine MRI demonstrated "some very minimal degenerative disc disease at L1-2 and L2-3 and mild facet hypertrophy at L5-S1." R 258.

Still returned to Dr. Martinez de Andino on March 23, 2006. In response to Dr. Goltra's assessment of "very minimal degenerative disc disease," Dr. Martinez de Andino commented that Still had "mild degenerative disc disease" that he planned to treat conservatively. R 256. Once again, Dr. Martinez de Andino commented that Still's rheumatoid arthritis was stable. R 256.

During Still's next office visit on June 14, 2006, Dr. Martinez de Andino recorded that her rheumatoid arthritis was stable and that she had asymptomatic degenerative disc disease. R 251. He reported the same findings on August 14, 2006 and noted Still's "only complaint is of fatigue." R 243-44.

On November 1, 2006, for the first time in the medical records Still has provided, Dr. Martinez de Andino reported symptoms associated with Still's rheumatoid arthritis. Specifically, he noted Still complained of "some nonspecific joint pain involving hands, sometimes wrists, sometimes ankles." R 238. In other words, Still's rheumatoid arthritis appeared to be flaring. Dr. Martinez de Andino stated that Still's "symptoms seem to definitely be aggravated by her job. I think at this point it is best to give her a short term disability so we can evaluate how she responds." R 239. Despite this statement, Dr. Martinez de Andino provided no explanation as to how Still's job aggravated her symptoms and also provided no description of any limitations or restrictions that Still's symptoms allegedly caused.

On November 7, 2006, Dr. Martinez de Andino authored a "To Whom It May Concern" letter in which he stated he had been treating Still for rheumatoid arthritis since August 1999. R 290. The letter then stated that "Ms. Still's condition is worsening and will not improve. Ms. Still's condition has not allowed her to return work and she is considered total (sic) disabled at this time." R 290. Dr. Martinez de Andino's letter, like his chart notes, offered no explanation or basis for his statement that Still's condition "will not improve."

Still next saw Dr. Martinez de Andino on January 5, 2007. In marked contrast to the November 1, 2006 chart note and Dr. Martinez de Andino's November-7, 2006 letter, the January 5, 2007 chart note states that Still's rheumatoid arthritis "is clinically stable. No significant joint pain, swelling or stiffness." R 206. Dr. Martinez de Andino commented that Still was doing better

"now that she is not working," and further commented, without explanation, that Still's work was the "culprit of her symptoms." R 206. Dr. Martinez de Andino's statements are not supported by Still's history of working for at least 7 years with rheumatoid arthritis. Notably, for the period of time from June 29, 2005 through November 1, 2006, there is no information in Dr. Martinez de Andino's records that would even arguably support that Still was incapable of working due to symptoms associated with her rheumatoid arthritis or that her condition was deteriorating.

On January 24, 2007, Still complained again of wrist and hand pain. R 204. Dr. Martinez de Andino started Still on prednisone and again stated that she could not work presently or in the near future. R 205. On February 27, 2007, Dr. Martinez de Andino reported Still was "moderately improved" with prednisone. R 203.

Dr. Martinez de Andino's final note is dated June 25, 2007 and stated that Still's primary complaint was fatigue. R 178. While Dr. Martinez de Andino stated that Still was unable to work, he also stated that her rheumatoid arthritis was once again stable.

B. Other Medical Records

Other than Dr. Martinez de Andino's medical records, Still submitted very little information in support of her claim. As part of her initial application for LTD benefits, she submitted an Attending Physician's Statement ("APS") that was completed by Dr. Clark, a general practitioner. On the APS, Dr. Clark reported a primary diagnosis of rheumatoid arthritis and secondary diagnosis of asthma and

Hepatitis C. R 291. Dr. Clark listed Still's symptoms as increased joint pain, joint edema, and decreased mobility. R 291. Dr. Clark stated that Still had no mental or cognitive limitations. R 292. He further stated that Still could frequently lift 10 pounds, walk or stand up to 6 hours during an 8 hour work day, and sit for up to 6 hours in an 8 hour work day. R 292.

III. Standard's Consideration and Denial of Still's Claim for LTD Benefits

After receiving Still's application for LTD benefits, Standard Vocational Case Manager Steve Cooper reviewed information about Still's occupation, including her specific job duties, in order to properly identify her occupation and its physical requirements. In a December 7, 2006 memorandum, Mr. Cooper identified Still's occupation as Benefits Clerk II and concluded that this occupation required sedentary level physical exertion. R 294.

Standard also requested an independent medical opinion regarding whether Still's conditions prevented her from performing her sedentary occupation. Dr. Ingram, a board-certified rheumatologist⁵, reviewed the medical records Still and her treating physicians submitted and provided a written opinion on January 18, 2007. R 211-12.

In her report, Dr. Ingram provided the following summary of Still's medical records:

These records show ongoing treatment for rheumatoid arthritis, which has been stable over the prior year. Although her rheumatologist states that her work is aggravating symptoms and on that date there is some noted decreased range in motion of the wrists, there were no signs or symptoms expressed

⁵ Dr. Ingram's *curriculum vitae* is included in the Record on Appeal at R 215-16.

that would be considered to be consistent with acute synovitis or a flare of rheumatoid arthritis and her treatment has not changed

Respect is given to her rheumatologist's advocacy, but these records do not specifically support a change in her medical condition that would limit her ongoing ability to perform her own full-time sedentary occupation with frequently reaching, handling and fingering. R 212.⁶

After considering all of Still's medical records and receiving Mr. Cooper's vocational report and Dr. Ingram's opinion, on February 5, 2007, Standard informed Still that her claim had been denied. R 59-63. Standard's letter acknowledged Still's diagnoses and pain complaints, but explained that "[i]n completing a thorough review of the available medical records, we lack sufficient documentation to support any physical condition that would preclude you from performing sedentary work activity on a full-time basis when you ceased work on November 21, 2006." R 61.

Still appealed Standard's initial decision and submitted a handful of additional records from Dr. Martinez de Andino. In response, Standard requested that Dr. Ingram reconsider her prior opinion. In an April 4, 2007 report, Dr. Ingram discussed the very limited additional information Still had provided and again opined that Still was not disabled from performing her sedentary occupation. R 182, 184-85.

Following up on this review, on April 12, 2007, Dr. Ingram wrote directly to Dr. Martinez de Andino to request clarification of his opinion. R 181. Specifically, Dr. Ingram's letter stated as follows:

⁶ Dr. Ingram also discussed possible accommodations in the workplace to address any restrictions with fine manipulation or repetitive action that Still may periodically have. See R 212.

I cannot ascertain from your records the specific rationale for recommending her to no longer work, since it is common for patients with rheumatoid arthritis to have episodic flares treated with low-dose corticosteroids and if they flare again to change their disease-modifying treatment. It would be helpful to Ms. Still if you have further information in the form of radiographs, grip strengths or specific notations on how her disease changed in November 2006, such that she could no longer work at her sedentary job.

If you would include these with a short narrative discussion, I am hopeful that would clarify your recommendations. Please include a reasonable bill for your time along with your taxpayer ID. R 181.

Dr. Martinez de Andino never responded to Dr. Ingram's request for information. In a third report dated September 5, 2007, Dr. Ingram noted that Dr. Martinez de Andino had not responded to her letter and also noted that she had received Dr. Martinez de Andino's June 25, 2007 chart note for review. R 172. Dr. Ingram commented that the June 25 chart note "confirms the stability of her rheumatoid arthritis . . . [T]he submitted objective information is minimal and does not support the extreme limitations that have been noted by Dr. Martinez de Andino." R 173.

After receiving Dr. Ingram's second and third opinions, receiving no clarifying information from Dr. Martinez de Andino, and again reviewing Still's medical records, Standard upheld the decision to deny Still's LTD claim. Standard informed Still's attorney, League Boylston, of its decision in a September 20, 2007 letter. R 69-70. Standard's letter also informed Ms. Boylston that Standard's Administrative Review Unit would conduct an independent review of Still's claim. R 70.

In conjunction with its independent review, the ARU requested a second independent medical opinion from Dr. Fraback, another board-certified rheumatologist.⁷ Dr. Fraback's September 27, 2007 report summarized all of the medical records Still submitted and provided Dr. Fraback's opinion as follows:

I think it is reasonable that the claimant was precluded from sedentary level work as of the cease-work date due to an increase in her joint symptomatology. She apparently was having flare-ups from November through approximately early February 2007. In a note dated February 23, 2007, Dr. Martinez de Andino indicated that she was improved. Therefore, I think that by mid February 2007 she should have been able to return to regular sedentary level work activities. She may periodically have some difficulty with repetitive hand and wrist motions due to flare-ups of her arthritis. I do not find evidence of a back condition of such severity as to preclude regular sedentary level work. R 163.

After reviewing and considering all of the information submitted by Still and the opinions of Dr. Ingram and Dr. Fraback, on October 26, 2007, the ARU informed Ms. Boylston that it had upheld the decision to deny Still's LTD claim. R 43-49. As part of its independent review, the ARU determined that Still may have had a flare with her rheumatoid arthritis that prevented her from working from late November through early February; however, the ARU concluded that Still's condition improved by mid-February, and therefore, she was not disabled throughout and beyond the Plan's 90-day Benefit Waiting Period. R 48. The ARU informed Ms. Boylston of Still's right to appeal to EIP for a final agency determination. R 49.

⁷ Dr. Fraback's *curriculum vitae* is included in the Record on Appeal at R 167-68.

IV. EIP's Consideration and Denial of Still's Claim for LTD Benefits

After Still appealed to EIP for a final agency determination, EIP's Long Term Disability Appeals Committee conducted a *de novo* review of her claim. Before meeting as a group, each Committee member reviewed the entire Record on Appeal. R 26. In the Committee's July 11, 2008 letter decision, the Committee summarized in significant detail all of the medical information Still submitted. R 26-31. The Committee also considered the opinions of Dr. Ingram and Dr. Fraback. R 29-31. The Committee also noted the Plan's Proof of Loss provision. R 32-33. After considering all of this information, the Committee unanimously determined that Still was not entitled to LTD benefits and provided the following reasons for its decision:

- "After considering all of the medical documentation in the claim file, including the opinions of Petitioner's physicians and the Physician and Vocational Consultants, the Committee found the Petitioner did not meet the Plan's Own Occupation Definition of Disability for the BLTD Plan. In order for Petitioner to be entitled to BLTD Benefits, the medical documentation in the claim file must support that her level of function was impaired to the degree that she is unable to perform the Material Duties of her Own Occupation as a benefits clerk on a full-time basis. Her Own Occupation requires sedentary-level physical demands. The Committee determined that Petitioner was not disabled from performing her sedentary-level occupation throughout and beyond the 90-day Benefit Waiting Period." R 33.
- "The Committee noted that Dr. Martinez de Andino opined that Petitioner was 'unable to perform her expected duties at work' and that she was not 'retrainable' for any other type of work. The Committee disagreed. Although Dr. Martinez de Andino opined Petitioner could not work in any meaningful way, Dr. Ingram noted Dr. Martinez de Andino did not specifically state his rationale for this assessment . . . Dr. Martinez de Andino failed to respond to a letter from Dr. Ingram. Thus, Dr. Martinez de Andino failed to explain how he reached his conclusion concerning Petitioner's disability and failed to point to objective evidence showing that Petitioner was disabled from performing her sedentary-level

occupation.” R 33.

- The Committee observed that “Dr. Ingram found that Petitioner’s rheumatoid arthritis was stable, and that there was nothing in Petitioner’s chart to indicate her arthritis is so severe that it would be rapidly disabling, particularly given the dearth of x-rays showing significant erosions. Dr. Ingram noted Petitioner’s musculoskeletal exams were normal and without synovitis.” R 33.
- “The Committee . . . accepts that Petitioner’s arthritis symptoms were exacerbated during the period from November 2006 to February 2007, and that Dr. Fraback opined this flare was severe enough to cause Petitioner to be unable work in her sedentary-level occupation from November 2006 to mid-February 2007. Clearly, Petitioner experienced a flare of rheumatoid arthritis in January 2007. But Petitioner’s condition was improved by February 2007 after a course of prednisone. Therefore, the Committee agrees with the opinion of Dr. Fraback and finds that Petitioner was not disabled throughout and beyond the 90-day period after she ceased work in November 2006 as a result of a flare of rheumatoid arthritis.” R 34.
- “[T]he Committee found that Petitioner was not precluded from performing her sedentary-level occupation as a result of back pain . . . There is no evidence that her depression is severe and, in fact, Petitioner reduced her anti-depressant dosage . . . The Committee found that Petitioner was not disabled from performing her sedentary-level occupation as a result of rheumatoid arthritis, back problems, hepatitis C, asthma or depression. None of these conditions either individually, or taken together, limited Petitioner from performing her sedentary-level occupation.” R 34-35.

In conclusion, the Committee held that “Petitioner retained the capacity to perform her sedentary level occupation and that The Standard properly denied her BLTD claim.” R 35.

ALLOCATION OF AUTHORITY TO EIP AND THE APPROPRIATE STANDARD OF REVIEW

The Plan provides EIP with “full and exclusive authority to control and manage the Plan, to administer claims, and to interpret the Plan and resolve all questions arising in the administration, interpretation, and application of the Plan.

Our authority includes . . . [T]he right to determine . . . [E]ntitlement to benefits.”

R 21. The Plan further provides: “Any decision we make in the exercise of our authority is conclusive and binding, subject only to appellate judicial review consistent with the standards provided in Section 1-23-380, Code of Laws of South Carolina.” R 21.

Likewise, Section 1-11-710(C), the enabling legislation for the Plan, provides as follows:

Notwithstanding Sections 1-23-310 and 1-23-320 or any other provision of law, claims for benefits under any self-insured plan of insurance offered by the State to state and public school district employees and other eligible individuals must be resolved by procedures established by the [State Budget and Control Board], which shall constitute the exclusive remedy for these claims, subject only to judicial review consistent with the standards provided in Section 1-23-380.

Section 1-23-380 establishes the standard of review for appeals of EIP’s decisions as follows:

The court may not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

- (a) in violation of constitutional or statutory provisions;
- (b) in excess of the statutory authority of the agency;
- (c) made upon unlawful procedure;
- (d) affected by other error of law;
- (e) clearly erroneous in view of the reliable, probative and substantial evidence on the

- whole record; or
- (f) arbitrary or capricious or characterized by an abuse of discretion or clearly unwarranted exercise of discretion.

S.C. Code Ann. §1-23-380(A)(5) (2008).

This Court has held that when reviewing decisions of the Circuit Court (the ALC in this case) under the standards of Section 1-23-380, the Court reviews “the circuit court order to determine if it properly applied its standard of review. Our review is also governed by §1-23-380(A)(6) . . . Under our standard of review, we may not substitute our judgment for that of an agency unless the agency’s findings are clearly erroneous in view of the reliable, probative and substantial evidence in the whole record.” *Converse Power Corp. v. South Carolina Dep’t of Health and Env’t Control*, 350 S.C. 39, 46, 564 S.E.2d 341, 345 (Ct. App. 2002) *citing Reliance Ins. Co. v. Smith*, 327 S.C. 528, 489 S.E.2d 674 (Ct. App. 1997).

Under Section 1-23-380, “substantial evidence” is the standard for judicial review of agency decisions. *Hendley v. S.C. State Budget & Control Bd.*, 333 S.C. 455, 510 S.E.2d 421 (1999). “Substantial evidence is not a mere scintilla of evidence, but evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion the agency reached.” *Tiller v. National Health Care Center*, 334 S.C. 333, 338, 513 S.E.2d 843, 845 (1999). Under the substantial evidence rule, EIP’s decision must be upheld unless it was clearly erroneous in view of the substantial evidence in the record. *See Central Transp., Inc. v. S.C. Public Service Comm’n*, 289 S.C. 267, 346 S.E.2d 25 (1986) (reversing the Circuit Court when it exceeded the scope of review and substituted

its own judicial discretion for that of the Commission).

This Court has addressed issues similar to those now presented. In *Wilson v. State Budget and Control Board Employee Insurance Program*, 374 S.C. 300, 648 S.E.2d 310 (Ct. App. 2007), Wilson presented “some evidence” to support her claim; however, substantial evidence in the record supported EIP’s decision to deny Wilson’s claim. After the Circuit Court ruled in Wilson’s favor, the Court of Appeals reversed and held “[w]hile we recognize that [Wilson’s treating physician] and the Social Security Administration found otherwise, we remain cognizant that as an appellate court, we must affirm an agency’s decision when substantial evidence supports the decision.” 374 S.C. at 305-06, 648 S.E.2d at 313, *citing Converse Power Corp.*, 350 S.C. at 46, 564 S.E.2d at 345.

ARGUMENT

Substantial Evidence Supports EIP’s Decision to Deny Still’s Claim for LTD Benefits

The substantial evidence in the Record on Appeal supports EIP’s decision to deny Still’s claim for LTD benefits. The medical and vocational records Still submitted establish that she worked for at least seven years with a diagnosis of stable rheumatoid arthritis. Dr. Martinez de Andino’s chart notes from late 2006 and early 2007 support a finding that Still experienced one or two flares of her rheumatoid arthritis in November 2006 and January 2007 that caused hand and wrist pain and may have prevented her from working from late November through mid-February. However, Dr. Martinez de Andino’s chart notes establish that the flare was controlled with medication and Still’s rheumatoid arthritis returned to a stable status, which did not prevent her from working in her occupation. The

objective medical information submitted by Still simply does not support a finding that she was disabled from performing her occupation throughout and beyond the Plan's 90-day Benefit Waiting Period. Rather, the medical information provides substantial evidence to the contrary.

In his June 25 note, Dr. Martinez de Andino opined that Still was doing better because she was no longer working; however, this statement is not supported by his 2005 and 2006 medical records, which chronicle Still's stable rheumatoid arthritis while working. The medical records do not support a conclusion that Still's condition has permanently worsened or that it continued to worsen after February 2007. To the contrary, the overwhelming evidence in Dr. Martinez de Andino's records and the other records Still submitted support a conclusion that Still experienced a flare of her rheumatoid arthritis that resolved with medication, and that her condition and physical capabilities after the flare were similar to those before the flare when she was working.

In addition to the fact that Dr. Martinez de Andino's records support EIP's decision, the independent medical opinions of Dr. Ingram and Dr. Fraback support and provide substantial evidence in support of EIP's decision. Moreover, Dr. Ingram specifically requested additional information and clarification from Dr. Martinez de Andino regarding his opinions and explained why she disagreed with his opinion. However, Dr. Martinez de Andino failed to respond with any additional information to support his unsupported conclusions, presumably because no such information exists.

Still argues that EIP's "reliance on the opinions of the three⁸ doctors is arbitrary and capricious," because EIP allegedly ignored the "limitations observed and recorded by Drs. Clark and Martinez de Andino regarding the affects (sic) of Still's multiple medical conditions." Initial Brief of Appellant, p. 9. Contrary to Still's argument, neither Dr. Martinez de Andino nor Dr. Clark nor any other treating physician ever provided any record of observing any alleged limitation or restriction. Further, Dr. Martinez de Andino never provided any rationale for his assertion that Still was unable to continue in her sedentary job, despite Dr. Ingram's specific written request that he do so. Thus, Still's assertion has no basis in the Record on Appeal and should be disregarded.

Still also asserts that EIP does not dispute that "Still suffers from a variety of conditions including . . . rheumatoid arthritis, hepatitis C, asthma, three degenerative lower discs, and a left knee replacement in 1989." *Id.* EIP does not dispute that Still has been diagnosed with this list of conditions. However, contrary to the position that Still appears to take, a diagnosis of a condition does not automatically equate to disability. Still completely fails to mention that her own treating physicians specifically stated that she has no symptoms from hepatitis C (R 274-75), and that her degenerative disc condition is asymptomatic (R 251). Moreover, there is never any mention of Still experiencing any limitations or restrictions due to asthma or her knee replacement.

Finally, Still states that the "focus of the [Court's] analysis should be on

⁸ Still's reference to "three" physicians appears to be a typographical error; however, it is repeated throughout the "Argument" portion of her brief. In addition to the records and opinions of Still's treating physicians, the opinions of two, not three, board-certified rheumatologists, Dr. Ingram and Dr. Fraback, were considered by EIP.

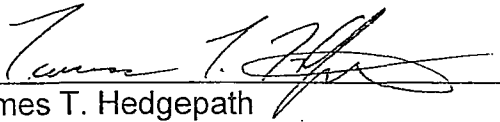
[Still's] conditions and their limitations." Initial Brief of Appellant, p. 9. EIP agrees. The only condition that has caused any alleged limitations or restrictions is Still's rheumatoid arthritis. However, there is no evidence from Still's treating physicians' medical records that Still's rheumatoid arthritis caused any permanent limitations or restrictions. Rather, the evidence, at best, suggests Still may have been unable to work for a period of time in late 2006 and early 2007. This short period of time did not satisfy the Plan's 90-day Benefit Waiting Period and certainly did not continue beyond the 90-day Benefit Waiting Period.

In summary, the medical records of Still's treating physicians and the opinions of Dr. Ingram and Dr. Fraback all provide substantial evidence to support EIP's decision to deny Still's LTD claim. Accordingly, the Court should affirm EIP's decision.

CONCLUSION

Because EIP's decision was based upon the substantial evidence in the Record on Appeal and because a reasonable person could reach the same conclusion reached by EIP, EIP respectfully requests that this Court affirm its decision, and the decision of the ALC, to deny Still's claim for LTD benefits.

December 18, 2009


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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM STATE OF SOUTH CAROLINA
Administrative Law Court

Carolyn C. Matthews, Administrative Law Judge

Docket No. 2008-ALJ-30-0412-AP

Gail S. Still, ...Appellant,

v.

South Carolina Budget and Control Board, Employee Insurance
Program, ...Respondent.

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SC Court of Appeals

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STATEMENT OF ISSUE ON APPEAL

- I. DID THE ADMINISTRATIVE LAW COURT ERR IN AFFIRMING THE DENIAL OF APPELLANT'S CLAIM FOR LONG-TERM DISABILITY BENEFITS?

STATEMENT OF THE CASE

Gail Still was employed as a benefits coordinator, payroll, for Barnwell School District 45. She ceased working on or about November 21, 2006 due to her claims of disability from multiple health conditions. Through her employment with the State of South Carolina, Still is a participating member of the Basic Long Term Disability Income Benefit Plan (BLTD), Identification Number XXX-XX-4789. The Claims Administrator for this plan is The Standard Insurance Company. (R 00043)

Still applied for benefits alleging disability beginning November 22, 2006, one day after she last worked. (R 00036) Her claim was denied on February 5, 2007. (R 00059) She appealed on March 7, 2007. (R 00097) The original decision was upheld on October 26, 2007. (R 00043) On December 3, 2007, The Standard wrote to Still's attorney, advising that the Employee Insurance Program ("EIP") had received Still's request to appeal The Standard's denial. (R 00040) The Long Term Disability Appeal Committee of the Employee Insurance Program denied Still's appeal on July 11 2008. (R 00026) Still appealed to the Administrative Law Court on August 5, 2008. [Notice of Petition and Petition for Appellate Review of Denial of Long Term Disability Benefits filed August 5, 2008] Still's appeal was denied on August 21, 2009. [Final Order of Administrative Law Judge Carolyn C. Matthews filed August 21, 2009] Still timely served a Notice of Appeal on September 23, 2009. [Notice of Appeal served September 23, 2009]

STATEMENT OF FACTS

This case involves an appeal of the Administrative Law Court's order affirming Respondent's¹ decision to deny Appellant Gail Still's ("Still") claim for long-term disability benefits.

Still ceased working as a benefits coordinator, payroll, for Barnwell School District 45 on or about November 21, 2006 due to her claims of disability from multiple health conditions including rheumatoid arthritis, hepatitis C, asthma, three degenerative lumbar discs, and a left knee replacement in 1989. The record does not reflect the job description for a "Benefits Coordinator, Payroll," but does classify this position as "Sedentary Work" under the U.S. Department of Labor Dictionary of Occupational Titles.² As the record indicates, "Sedentary Work" is defined as follows:

"Exerting up to 10 pounds of force occasionally (Occasionally: activity or condition exists 1/3 of the time) and/or negligible amount of force frequently (Frequently: activity or condition exists from 1/3 to 2/3 of the time) to lift, carry, push, pull, or otherwise move objects, including the human body. Sedentary work involves sitting most of the time, but may involve walking or standing for brief periods of time. NOTE: Jobs are sedentary if walking and standing are required only occasionally and all other sedentary criteria are met." (R 00026)

Through her employment with the State of South Carolina, she is a participating member of the Basic Long Term Disability Income Benefit Plan (BLTD), Identification Number XXX-XX-4789. The Claims Administrator for this plan is The Standard

¹ For ease of reference, the term "Respondent" is used throughout this brief to refer to the entities involved in the decision to deny Still's claim for disability. It is understood that the entities involved in the decision were The Standard, as third party administrator of the Plan and the State Budget and Control Board, Employee Insurance Program.

² The U.S. Department of Labor Dictionary of Occupational Titles, Fourth Edition, revised 1991.

Insurance Company. (R 00043) The Standard Insurance plan governs the dispute in this appeal. In pertinent part, it defines "disability" as follows:

"During the Benefit Waiting Period and the Own Occupation Period (24 months) you are required to be disabled only from your Own Occupation. You are disabled from your Own Occupation if, as a result of Physical Disease, Injury, Pregnancy or Mental Disorder, you are unable to perform with reasonable continuity the Material Duties of your Own Occupation." (R 00057)

The plan defines "Own Occupation" as follows:

"Own Occupation means any employment, business, trade, profession, calling or vocation that involves Material Duties of the same general character as your regular and ordinary employment with the employer. Your Own Occupation is not limited to your job with your Employer." (R 00057)

For Still to qualify for the benefits she seeks in her claim, she must have been disabled, as set forth above, during the 90-day Benefit Waiting Period. (R 00057)

In support of her claim, Still put forth evidence of her disability. Still presented medical evidence from her rheumatologist since 1999, Edwin V. Martinez de Andino, M.D. (R 00153) After treating Still on November 1, 2006, Dr. Martinez de Andino noted she was having problems due to her rheumatoid arthritis and depression including pain and limited range of motion. At that time, Dr. Martinez de Andino noted that Still's symptoms were definitely aggravated by her job and he recommended that she adopt short-term disability status so that he could further evaluate her. (R 00239) Dr. Martinez de Andino wrote a letter on Still's behalf on November 7, 2006. (R 00290) In that letter, Dr. Martinez de Andino opined that Still's rheumatoid arthritis had been worsening and was not expected to improve and that she was unable to return to her employment.

Still also presented medical evidence from her family doctor, William B. Clark, M.D. Dr. Clark completed an Attending Physician's Statement on her behalf on November 28, 2006. Dr. Clark listed her primary diagnosis as rheumatoid arthritis with secondary diagnoses of chronic asthma and hepatitis C. In that statement, Dr. Clark noted his suggestion to Still that she stop working two years before the time he completed the statement. (R 00291-92)

On January 5, 2007, Dr. Martinez de Andino noted that Still "is doing much better now that she is not working. I do believe that this patient will need a long term disability as the culprit for her symptoms seem to be mostly her occupation." (R 00206)

On January 24, 2007, Dr. Martinez de Andino again suggested that Still remain out of work. His treatment notes from that visit state that she "has been evaluated and suggested to go on disability. I do not see this patient working at this point or in the near future in any gainful way." (R 00205)

Following a visit on June 25, 2007, Dr. Martinez de Andino noted that "this patient is unable to return to work as the duties affect even her activities of daily living with her disease state. She is not retrainable for doing any other type of work." (R 00179)

Still applied for benefits alleging disability beginning November 22, 2006, one day after she last worked. (R 00036) Her claim was denied on February 5, 2007; she appealed on March 7, 2007. The original decision was upheld on October 26, 2007. On December 3, 2007, The Standard wrote to Still's attorney, advising that the Employee Insurance Program ("EIP") had received Still's request to appeal The Standard's denial. (R 00040) The Long Term Disability Appeals Committee of the Employee Insurance

Program denied Still's appeal on July 11, 2008. (R 00026) This appeal to the Administrative Law Court followed on August 5, 2008.

During these various appeals of her claim, Respondent hired at least two doctors to review Still's medical records to determine if she met the qualifications for long-term disability benefits. Dr. Shirley Ingram, a physician consultant for The Standard in Rheumatology, and Dr. Ronald Fraback, M.D., also a physician consultant for The Standard in Rheumatology, both reviewed Still's medical records. Neither doctor disputes the findings of Dr. Clark or Dr. Martinez de Andino; they simply disagree with their medical opinions that Still is unable to work.

ARGUMENT

I. THE ADMINISTRATIVE LAW COURT ERRED IN AFFIRMING THE DENIAL OF APPELLANT'S CLAIM FOR LONG-TERM DISABILITY BENEFITS.

The denial of Still's claim must be overturned if this Court determines that Respondent's decision to deny her claim (1) violates constitutional or statutory provisions, (2) exceeds the statutory authority of the agency, (3) was based upon unlawful procedure, (4) was affected by an error of law, (5) was clearly erroneous in view of the reliable, probative and substantial evidence on the whole record, or (6) was arbitrary or capricious or characterized by an abuse of discretion or clearly unwarranted exercise of discretion. § 1-23-380(A)(6); *Weaver v. S.C. Coastal Council*, 309 S.C. 368, 374, 423 S.E.2d 340, 343 (1992).

This Court can substitute its own judgment for that of the Respondent if the Respondent's findings were clearly erroneous in view of the reliable, probative and substantial evidence in the record. *Marlboro Park Hosp. v. S.C. Dep't of Health and Envtl. Control*, 358 S.C. 573, 580, 595 S.E.2d 851, 855 (Ct. App. 2004). "Substantial evidence is not a mere scintilla of evidence, but evidence which, considering the record as a whole, would allow reasonable minds to reach the same conclusion the agency reached." *Commissioners of Public Works v. South Carolina Dept. of Health and Environmental Control*, 372 S.C. 351, 358, 641 S.E.2d 763, 766-767 (Ct. App. 2007).

In the case at bar, Appellant presented substantial evidence to the Administrative Law Court that Respondent's denial of Appellant's claim for benefits violated South Carolina law.

A. Still Provided Sufficient Evidence for the Administrative Law Judge to Find Respondent's Decision Violated South Carolina Law.

The Respondent's decision to deny Still's claim for benefits was arbitrary and capricious and clearly erroneous in view of the substantial evidence in the record. An "administrative decision is 'arbitrary' if it is without rational basis, is **based alone on one's will** and not upon any course of reasoning and exercise of judgment, is made at pleasure, without adequate determining principles, or is governed by no fixed rules or standards." *Converse Power Corp. v. South Carolina Dept. of Health and Environmental Control*, 350 S.C. 39, 564 S.E.2d 341 (Ct. App. 2002) (emphasis added). The decision to deny Freeman's claim was clearly based on the "will" of the Respondent and its hired doctors and not upon any course of reasoning and exercise of judgment.

a. Still's Attending Physicians

The record before the Administrative Law Court contained substantial evidence that Still was disabled. Still's family doctor, Dr. Clark, as well as her rheumatologist, Dr. Martinez de Andino, submitted documentation that unequivocally substantiated Still's claim of disability.

b. Still's Reviewing Doctors

In response to the overwhelming evidence that shows a worsening condition that has now disabled Still, the Respondent retained two doctors to review her medical records. The first was Dr. Shirley Ingram. The next was Dr. Ronald Fraback. Both doctors are board-certified in rheumatology. Neither doctor ever treated or even examined Still; they simply reviewed her medical records. Neither doctor disputed the findings of Dr. Clark or Dr. Martinez de Andino; they simply disagree with the ultimate medical opinion of each doctor regarding the severity of Still's condition.

c. Arbitrary and Capricious

Reliance on the opinions of the three doctors is arbitrary and capricious. Despite the limitations observed and recorded by Drs. Clark and Martinez de Andino regarding the affects of Still's multiple health conditions, Respondent cites the review of records by three hired physicians as sufficient support for denial of her claim. Dr. Martinez de Andino specifically states, on several occasions, that Still is permanently and totally disabled and the basis for that opinion, yet the two consulting physicians conveniently choose to ignore those records and focus instead on what they perceive that the records do not contain. Rather than consider all available evidence and exercise judgment, Respondent has reached out for any basis to deny Still's claim.

Drs. Ingram and Fraback do not dispute the findings of Still's treating physicians. None of the reports by the consulting physicians dispute that Still suffers from a variety of conditions including but not limited to rheumatoid arthritis, hepatitis C, asthma, three degenerative lumbar discs, and a left knee replacement in 1989. Instead, they assume that Still's complaints of limitations are not valid. Such assumptions are not substantial evidence. The focus of the analysis should be on the conditions and their limitations. Both doctors independently reported that Still suffered significant limitations. Both reported that her conditions would likely not improve. Thus, the record is replete with substantial medical evidence of a disabling condition at the time of her claim for disability.

CONCLUSION

The decision to deny Still's claim was arbitrary and capricious. A thorough examination of the record reveals no substantial evidence to support Respondent's

decision. Respondent's actions can only be characterized as an attempt to enforce its will despite the overwhelming evidence supporting Still's claim for disability. Accordingly, this Court should reverse the Administrative Law Court's Order affirming Respondent's denial of Appellant's claim for long term disability benefits.

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November 23, 2009

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM STATE OF SOUTH CAROLINA
Administrative Law Court

Carolyn C. Matthews, Administrative Law Judge

Docket No. 2008-ALJ-30-0412-AP

Gail S. Still, ...Appellant,

v.

South Carolina Budget and Control Board, Employee Insurance
Program, ...Respondent.

**APPELLANT'S DESIGNATION OF MATTER TO BE INCLUDED IN THE
RECORD ON APPEAL**

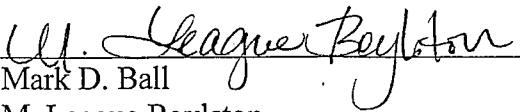
Appellant proposes the following to be included in the Record on Appeal:

1. Record on Appeal before Administrative Law Court, pp. 26, 36, 40, 43, 57, 59, 97, 153, 179, 205-206, 239, 290-292
2. Notice of Petition and Petition for Appellate Review of Denial of Long Term Disability Benefits filed August 5, 2008
3. Final Order of Administrative Law Judge Carolyn C. Matthews filed August 21, 2009
4. Notice of Appeal and Proof of Service served September 23, 2009

Counsel for Appellant certifies that this Designation contains no matter that is irrelevant to this appeal.

PETERS MURDAUGH PARKER
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By:


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November 23, 2009

ATTORNEYS FOR APPELLANT

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM STATE OF SOUTH CAROLINA
Administrative Law Court

Carolyn C. Matthews, Administrative Law Judge

Docket No. 2008-ALJ-30-0412-AP

Gail S. Still, ...Appellant,

v.

South Carolina Budget and Control Board, Employee Insurance
Program, ...Respondent.

PROOF OF SERVICE

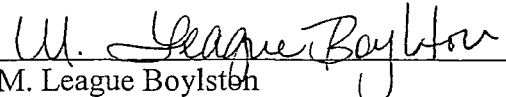
I certify that I have served Appellant's Initial Brief and Designation of Matter to be Included in the Record on Appeal on Respondent South Carolina Budget and Control Board, Employee Insurance Program by serving copies of same on November 23, upon Respondent's attorneys of record:

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ATTORNEYS FOR APPELLANT

November 23, 2009

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

Gail S. Still, Appellant,

v.

South Carolina Budget and
Control Board, Employee
Insurance Program, Respondent.

Appeal from the Administrative Law Court
Carolyn C. Matthews, Administrative Law Court Judge

Unpublished Opinion No. 2011-UP-329
Submitted June 1, 2011 – Filed June 27, 2011

AFFIRMED

Mark D. Ball and M. League Boylston, both of
Hampton, for Appellant.

James T. Hedgepath, of Greenville, and Michael T.
Brittingham, of Columbia, for Respondent.

PER CURIAM: Gail S. Still appeals the Administrative Law Court's (ALC) order, which affirmed the Employee Insurance Program's (the Insurance Program) denial of her claim for long-term disability benefits. On appeal, Still argues substantial evidence in the record exists proving she was disabled. We affirm.¹

This court will affirm the decision of the ALC if it is supported by substantial evidence. S.C. Code Ann. § 1-23-380(5)(e) (Supp. 2010). "Substantial evidence is not a mere scintilla of evidence, but evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion the agency reached." Converse Power Corp. v. S.C. Dep't of Health & Env'tl. Control, 350 S.C. 39, 46, 564 S.E.2d 341, 345 (Ct. App. 2002). "The court may not substitute its judgment for the judgment of the agency as to the weight of the evidence on questions of fact." S.C. Code Ann. § 1-23-380(5) (Supp. 2010). "The mere possibility of drawing two inconsistent conclusions from the evidence does not prevent a finding from being supported by substantial evidence." DuRant v. S.C. Dep't of Health & Env'tl. Control, 361 S.C. 416, 420, 604 S.E.2d 704, 707 (Ct. App. 2004). However, this court may reverse or modify a decision if it is affected by an error of law or is arbitrary or capricious. S.C. Code Ann. § 1-23-380(5)(d), (f) (Supp. 2010).

Here, we hold substantial evidence supports the ALC's decision to affirm the Insurance Program's denial of Still's claim for long-term disability. See Wilson v. State Budget & Control Bd. Emp. Ins. Program, 374 S.C. 300, 305, 648 S.E.2d 310, 313 (Ct. App. 2007) (finding this court must affirm the agency's decision when substantial evidence exists refuting claimant's disability claims by several physicians).

Although Still presented evidence that she suffered from several chronic illnesses, substantial evidence exists to support a finding that the illnesses do not preclude her from performing the material duties of her job. See DuRant, 361 S.C. at 420, 604 S.E.2d at 707. The doctors acknowledged Still suffered from rheumatoid arthritis and Still would most likely suffer from periodic flare-ups. However, the medical records indicated Still's

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

arthritis was relatively stable and she had only suffered from two flare-ups in 2006. The records also indicated her arthritis symptoms improved in 2007. Moreover, Still worked for almost seven years after her rheumatoid arthritis diagnosis and nothing in the record indicated a substantial change in her arthritis occurred that prevented her from performing her sedentary work. Additionally, substantial evidence in the record exists to support the finding that Still's asthma and hepatitis C were stable and did not affect Still's ability to perform her job.

AFFIRMED.

SHORT, KONDUROS, and GEATHERS, JJ., concur.

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM STATE OF SOUTH CAROLINA
Administrative Law Court

Carolyn C. Matthews, Administrative Law Judge

Docket No. 2008-ALJ-30-0412-AP

RECEIVED
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S.C. Court of Appeals

Gail S. Still, ...Appellant,

v.

South Carolina Budget and Control Board, Employee Insurance
Program, ...Respondent.

APPELLANT'S PETITION FOR REHEARING

Pursuant to Rule 221(a) of the South Carolina Rules of Civil Procedure, the Appellant respectfully moves the Court for Rehearing and/or to alter its Unpublished Opinion No. 2011-UP-329 of June 27, 2011, which affirmed the lower court's denial of Appellant's claim for long-term disability benefits. For the reasons that follow, the Appellant respectfully seeks rehearing and review of the Opinion below.

The Court Erred By Concluding that Substantial Evidence Exists to Support the Denial of Appellant's Long Term Disability Benefits

The Court of Appeals' decision centered upon the standard of review applied by the Administrative Law Court, specifically the court's findings related to the sufficiency of medical evidence the Respondent used to deny benefits to the Appellant. The Court of Appeals held that the Respondent's denial of benefits to the Appellant was supported by "substantial evidence" within the record.

With regard to the medical evidence of record, in support of her claim Appellant clearly put forth evidence of her disability. Appellant presented medical evidence from her rheumatologist since 1999, Edwin V. Martinez de Andino, M.D. (R. p. 103). After treating Appellant on November 1, 2006, Dr. Martinez de Andino noted she was having problems due to her rheumatoid arthritis and depression, including pain and limited range of motion. At that time, Dr. Martinez de Andino noted that Appellant's symptoms were definitely aggravated by her job and he recommended that she adopt short-term disability status so that he could further evaluate her. (R. p. 129). Dr. Martinez de Andino wrote a letter on Appellant's behalf on November 7, 2006. (R. p. 153). In that letter, Dr. Martinez de Andino opined that Appellant's rheumatoid arthritis had been worsening and was not expected to improve and that she was unable to return to her employment.

Appellant also presented medical evidence from her family doctor, William B. Clark, M.D. Dr. Clark completed an Attending Physician's Statement on her behalf on November 28, 2006. Dr. Clark listed her primary diagnosis as rheumatoid arthritis with secondary diagnoses of chronic asthma and hepatitis C. In that statement, Dr. Clark noted his suggestion to Appellant that she stop working two years before the time he completed the statement. (R. pp. 154-155).

On January 5, 2007, Dr. Martinez de Andino noted that Appellant "is doing much better now that she is not working. I do believe that this patient will need a long term disability as the culprit for her symptoms seem to be mostly her occupation." (R. p. 122).

On January 24, 2007, Dr. Martinez de Andino again suggested that Appellant remain out of work. His treatment notes from that visit state that she "has been evaluated and suggested to go on disability. I do not see this patient working at this point or in the near future in any gainful way." (R. p. 121).

Following a visit on June 25, 2007, Dr. Martinez de Andino noted that “this patient is unable to return to work as the duties affect even her activities of daily living with her disease state. She is not retrainable for doing any other type of work.” (R. p. 114).

Appellant applied for benefits alleging disability beginning November 22, 2006, one day after she last worked. (R. p. 84). Her claim was denied on February 5, 2007; she appealed on March 7, 2007. The original decision was upheld on October 26, 2007. On December 3, 2007, The Standard wrote to Appellant’s attorney, advising that the Employee Insurance Program (“EIP”) had received Appellant’s request to appeal The Standard’s denial. (R. p. 85). The Long Term Disability Appeals Committee of the Employee Insurance Program denied the appeal on July 11, 2008. (R. p. 74). An appeal to the Administrative Law Court followed on August 5, 2008. Following the denial of benefits by the Administrative Law Court, an appeal to the South Carolina Court of Appeals followed.

During the various appeals of her claim, Respondent hired at least two doctors to review Appellant’s medical records to determine if she met the qualifications for long-term disability benefits. Dr. Shirley Ingram, a physician consultant for The Standard in Rheumatology, and Dr. Ronald Fraback, M.D., also a physician consultant for The Standard in Rheumatology, both reviewed Appellant’s medical records. Neither doctor disputes the findings of Dr. Clark or Dr. Martinez de Andino; they simply disagree with their medical opinions that Appellant is unable to work.

Respondent has relied upon the commentary of the retained doctors in reaching its decision to deny the claim.

The Court of Appeals' decision appears to define "substantial evidence" in a manner that could easily serve as a complete barrier to proving disability under the plan. Drs. Clark and Martinez de Andino treated Appellant for a number of years. Both doctors submitted documentation that unequivocally substantiated Appellant's claim of disability. The doctors hired by the disability plan, however, simply disagree with the ultimate medical opinion of each doctor regarding the severity of Appellant's condition. The Court of Appeals did not address this disagreement among Appellant's treating physicians and those hired by Respondent, but instead opined simply that "substantial evidence" exists upon which the Respondents properly based a denial of benefits.

The Court of Appeals' conclusion, however, applies an alarming analysis to disability claims. If the analysis applied here is followed in the future, claimants will have an impossible task of proving their disability. In fact, insurance plans would only need to retain a doctor who simply disagrees with the approach of the treating doctors to provide "substantial evidence" that a person is not disabled. Unfortunately, the decision below and the standard applied by the Court of Appeals is a vehicle for arriving at this unfair and untenable result.

The decision below ignores a key tenet of "substantial evidence" analysis. "Substantial evidence is not a mere scintilla of evidence, but evidence which, **considering the record as a whole**, would allow reasonable minds to reach the conclusion the agency reached." *Commissioners of Public Works v. South Carolina Dept. of Health and Environmental Control*, 372 S.C. 351, 358, 641 S.E.2d 763, 766 - 767 (Ct. App. 2007) (emphasis added). The doctors hired by the Respondent, as well as the Court's decision below, failed to consider the record as a whole in this case. The only two doctors to ever see, examine, and treat Appellant both concluded that she was

disabled. The plan's doctors never saw Appellant and never asked to examine her. The only basis for their "opinions" that she was not disabled is their disagreement with the opinions of Drs. Clark and Martinez de Andino.

The Respondent's decision to deny Appellant's claim was clearly arbitrary and capricious. Recently this Court held that the Parole Board's failure to document consideration of statutory requirements and other required criteria was sufficient to find that the denial of parole could only be viewed as arbitrary and capricious. *Cooper v. S.C. Dept. of Probation, Parole and Pardon Services*, 377 S.C. 489, 661 S.E.2d 106 (S.C. 2008). In the present case, the hired doctors have failed to document any substantial evidence that tends to prove that the Appellant is able to perform the functions of her own occupation. They point to no evidence of her ability to work.

The decision below stands in sharp contrast to a recent Court of Appeals decision addressing similar issues, *Wilson v. State Budget and Control Bd. Employee Ins. Program*, 374 S.C. 300, 648 S.E.2d 310 (Ct. App., 2007). In *Wilson*, the Court of Appeals reversed the Circuit Court's award of benefits to the claimant. However, the evidence cited in the *Wilson* opinion certainly meets to the "substantial evidence" standard discussed above. There, the doctors whose opinions were relied upon in denying the claim had either examined the claimant (Dr. Johnson) or had reviewed medical records which provided some basis for their opinion. In fact in *Wilson*, the claimant's own treating physicians had differing opinions as to the extent of the claimant's disability. In contrast, in the case at bar, even those doctors hired by the plan agreed with the diagnosis of the Appellant's treating physician; their sole basis for disagreement was that the hired Plan doctors, who have never seen the Appellant, advocated different treatment methods. This is the sole evidence and issue relied upon by

the Respondent to deny the benefits and this difference in opinion does not justify the Respondent's denial of benefits or provide substantial evidence for the denial. The Court of Appeals' affirmation of the lower court's denial of benefits to Appellant is therefore erroneous.

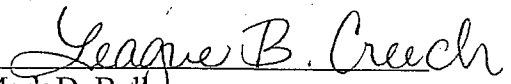
Accordingly, the Administrative Law Court's finding that the Respondent's decision to deny Appellant's claim for disability was supported by substantial evidence should have been reversed by the Court of Appeals.

CONCLUSION

For the foregoing reasons, the Court's Opinion of June 27, 2011, should be altered and/or rehearing is appropriate.

Respectfully submitted,

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ATTORNEYS FOR APPELLANT

The South Carolina Court of Appeals

Gail S. Still,

Appellant

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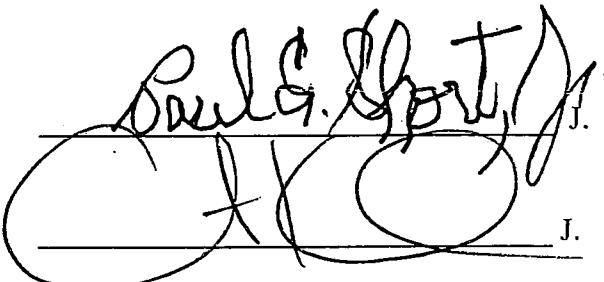
South Carolina Budget and Control
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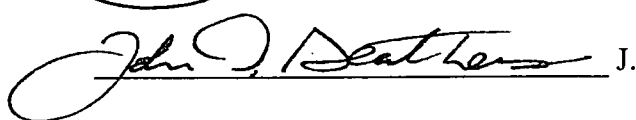
Respondent.

The Honorable Carolyn C. Matthews
Richland County
Trial Court Case No. 2008-AL-30-00412

ORDER DENYING PETITION FOR REHEARING

After a careful consideration of the Petition for Rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded and hence, there is no basis for granting a rehearing. It is, therefore, ordered that the Petition for Rehearing be denied.



J.


J.

Columbia, South Carolina

APP 223

FILED

August 23, 2011