THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ADMINISTRATIVE LAW COURT

Deborah Brooks Durden, Administrative Law Judge

Docket No. 16-ALJ-30-0293-AP

L'Tonya Scott, ...Appellant,

v.

South Carolina Public Employee Benefit Authority,
Employee Insurance Program,..... Respondent.

RESPONDENT'S FINAL BRIEF

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STATEMENT OF THE CASE

This case involves Appellant L'Tonya Scott's ("Scott") appeal of the Administrative Law Court's ("ALC") decision to affirm Respondent South Carolina Public Employee Benefit Authority, Employee Insurance Program's ("PEBA") decision to close Scott's long-term disability ("LTD") claim under the State of South Carolina Long Term Disability Income Benefit Plan (the "Plan"). Specifically, the issue raised on appeal by Scott is whether PEBA must consider the federal Social Security Administration's ("SSA") award of Social Security disability benefits to a Plan claimant when evaluating a claimant's claim for LTD benefits under the Plan. However, from a practical standpoint, Scott essentially argues that the SSA's decision should be binding on PEBA and the Plan.

Scott was formerly employed by the South Carolina State Ports Authority in the occupation of Shipping Order Clerk, a light strength level occupation. R. pp. 254, 246. As an employee of the State of South Carolina, Scott participated in the Plan. Scott ceased working on May 9, 2012, and filed an application for LTD benefits in which she asserted

that she was unable to continue working due to "sickle cell anemia, (and) left foot heel ulcer." R. pp. 254, 185.

Standard Insurance Company ("Standard"), the third-party claims administrator for the Plan,[1] initially determined that Scott satisfied the Plan's Own Occupation Definition of Disability and approved her claim. Scott received LTD benefits from November 9, 2012 through April 14, 2013.

Based upon updated medical records from Scott's treating physicians, Standard determined that Scott no longer satisfied the Plan's Own Occupation Definition of Disability (defined below) as of April 15, 2013. Accordingly, Standard closed Scott's LTD claim with payment through April 14, 2013. R. pp. 175-76. After Scott appealed Standard's decision and Standard affirmed its closure decision, Standard informed Scott of her right to appeal to PEBA for a final decision. R. p. 174.

Pursuant to the statutory mandate of S.C. Code Ann. 1-11-710(C) (2017) and the claims procedures and discretion provided by the Plan,[2] PEBA considered Scott's claim and determined that she did not qualify for additional LTD benefits under the terms and conditions of the Plan. R. pp. 110-27. PEBA informed Scott's attorney of its decision by letter dated August 8, 2016. R. pp. 108-09.

Scott appealed PEBA's decision to the ALC. By Order filed March 16, 2017, the ALC affirmed PEBA's decision and determined that substantial evidence in the Record

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[1] PEBA 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.

[2] For a full discussion of PEBA's discretionary authority under the Plan and the interaction of Section 1-11-710(C) and S.C. Code Ann. §1-23-380 (2017) in appeals involving the Plan, *see* Section entitled Allocation of Authority to PEBA and the Appropriate Standard of Review, p. 14, *infra*.

on Appeal supported PEBA's decision to close Scott's claim. On or about March 28, 2017, Scott filed her Notice of Appeal with this Court.

STATEMENT OF FACTS

I. Applicable Plan Provisions

During the first 24 months of disability, a claimant is entitled to LTD benefits if disabled from performing her own occupation. The Plan's Own Occupation Definition of Disability provides as follows:

> 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.
>
> 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. 134.

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. p. 143.

Thus, to qualify for LTD benefits beyond April 14, 2013, Scott was required to provide objective medical evidence that her condition prevented her from performing the material duties of her occupation after that date. Scott failed to do so.

II. Scott's Medical Records

Standard determined that Scott satisfied the Plan's Own Occupation Definition of

Disability for the time period from May 10, 2012 through April 14, 2013. Scott ceased working after she experienced a sickle cell event that resulted in her being hospitalized from May 10, 2012 through May 29, 2012. Of further importance, Scott's medical records do not indicate that her condition worsened on a permanent basis after the May 2012 hospitalization. Rather, Scott experienced a medical emergency for a relatively short period of time that was caused by a medical condition that she has lived with and worked with her entire life. Notably, Scott's medical records indicate that she has not experienced an event of similar significance since May 2012.[3]

Following her hospital discharge on May 29, 2012, Scott saw Physician's Assistant Blessing-Feussner on June 13, 2012 for treatment of heel ulcers. PA Blessing-Feussner drained the ulcers and instructed Scott to soak her feet. R. p. 244. PA Blessing-Feussner also discussed ongoing treatment of Scott's sickle cell condition and expressly stated Scott's situation was "[v]ery challenging but her issues, at this time, do not seem to be sickle cell related to the extend (sic) we can consider her disabled." R. p. 244.

Scott saw Dr. Saffer, a podiatrist, on July 9, 2012. Dr. Saffer noted that Scott had some residual dry tissue from her left heel ulcer and that her right heel ulcer had healed. R. p. 221. Dr. Saffer recommended that Scott purchase and wear wider shoes to avoid future ulcers. R. p. 222.

Scott saw an internist/hematologist, Dr. Coker, on July 23, 2012. Dr. Coker noted that while Scott had experienced a significant sickle cell emergency in May, she had experienced no sickle cell crises since her May 29 discharge. R. p. 235.

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[3] In a follow-up visit with Physician's Assistant ("PA") Blessing-Feussner on June 8, 2012, PA Blessing-Feussner noted that Scott's May 2012 sickle cell emergency was "her worst in 10 yrs." R. p. 217.

Scott consulted with Dr. Smith, an internist, on August 29, 2012. Dr. Smith noted that while Scott became tearful when talking about her May hospitalization, she "denies being depressed or hopeless, actually states that she is thankful." R. p. 232. Scott reported "[n]o pain really other than in heel area which was debrided yesterday." R. p. 232.

Scott returned to Dr. Smith on September 25, 2012. Scott reported that she had experienced a "mild crisis at home which [she] drank plenty of fluids and used pain meds" to treat. R. p. 226. Scott complained of pain and numbness in her left foot. R. p. 226. Dr. Smith referred Scott to a neurologist for assessment of her left foot numbness. R. p. 227.

At a September 25, 2012 consultation with Scott, Dr. Smith provided a To Whom It May Concern letter, which stated as follows:

> L'Tonya Scott was seen in my clinic on 9/25/2012. It is my medical opinion that Ms. Scott may return to work with desk duty only for the next three months but possibly longer. She is being evaluated and treated for medical conditions that would prohibit her from prolonged standing or extended amounts of walking.

R. p. 231.

Scott saw Dr. Taylor, a general practitioner, on October 12, 2012. Scott apparently moved her care from Dr. Coker and Dr. Smith to Dr. Taylor because she was dissatisfied with their assessment of her alleged disability. Notably, Dr. Coker's office had opined that Scott was not disabled at all, and Dr. Smith had opined that Scott could return to work on light duty. After examining Scott, Dr. Taylor diagnosed her with sickle cell disease and high blood pressure. R. p. 214. Dr. Taylor noted that Scott had "no anxiety, depression, mood swings or psychotic features." R. p. 214.

On November 1, 2012, Scott saw Dr. Nawabi, a hematologist/oncologist, to establish care. Dr. Nawabi noted Scott's May 2012 hospitalization and further noted that Scott had "a hospital admission 10 years ago" for her sickle cell condition. R. p. 215. Scott reported that her left foot ulcer had healed. R. p. 215.

Scott returned to Dr. Saffer on December 4, 2012. She complained of decreased range of motion in her left big toe and plantar fasciitis symptoms.[4] R. p. 223. Dr. Saffer again recommended that Scott purchase and wear wider shoes. R. p. 223.

Based on all of the medical records Scott submitted to Standard and PEBA, she did not receive any medical treatment of any kind, except a visit to Dr. Taylor with nasal congestion, from December 4, 2012 until March 12, 2013, when she returned to Dr. Saffer. Moreover, Scott did not consult with any of her treating physicians except Dr. Saffer until June 25, 2013, when she saw Dr. Taylor. Thus, during the four months before and the two months after her LTD claim was closed, Scott had two doctor visits – one for nasal congestion and the other for ongoing treatment of plantar fasciitis. *See* R. p. 224. Further, although Scott continued to complain of "left drop foot" to Dr. Saffer, Dr. Saffer noted that Scott still "hasn't set up her apt. with the Neurologist Dr. Kelly." R. p. 224.

Following Scott's March 12, 2013 office visit, Dr. Saffer completed an Attending Physician's Statement ("APS") related to Scott's LTD claim. Dr. Saffer identified Scott's primary diagnosis as left foot plantar fasciitis with a secondary diagnosis of left foot drop. R. p. 220. Dr. Saffer also stated that Scott could return to work, with no restrictions listed, on April 15, 2013. R. p. 220.

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[4] A common condition in which the individual experiences "[p]ain and inflammation of a thick band of tissue, called the plantar fascia, which runs across the bottom of the foot and connects the heel bone to the toes." R. p. 113, n. 7.

When Scott returned to see Dr. Taylor on June 25, 2013, more than two months after her LTD claim was closed, her visit could not have gone much better. Dr. Taylor noted Scott "exercises in the form of walking (daily)" and that she "is able to bathe herself (and) clean the house." R. p. 208. Scott saw Dr. Taylor again the next day. Despite reporting no problems the previous day, Scott "complains of dizziness. It was noted 3 weeks ago and was sudden in onset." R. p. 260. Scott reported no other problems and never mentioned the dizziness again to Dr. Taylor.

Scott saw Dr. Saffer on July 1, 2013. Dr. Saffer noted that Scott still had not made an appointment to see a neurologist. R. p. 218. Dr. Saffer's office made an appointment with a neurologist for July 10, 2013; however, Scott apparently did not attend the appointment. R. p. 219.

Scott saw another internist, Dr. Townsend, on July 8, 2013. Scott reported having a "mild sickle cell pain crisis this past weekend that she treated with pain medications at home and fluids. She also reports that she has a diagnosis of left foot drop and is being evaluated for a foot brace." R. p. 201. Dr. Townsend noted that Scott "[r]eports rare pain crisis."[5] R. p. 203.

Another internist, Dr. Martin, saw Scott for the first time, on September 23, 2013, more than five months after Scott's LTD claim was closed. Scott reported that she "uses her pain medications infrequently and only has pain on average of 1-2 times out of the week." R. p. 192. Dr. Martin noted that Scott "denies fever, chills, headache, chest pain,

[5] According to the medical records Scott submitted to Standard and PEBA, she experienced two mild pain crises between her hospital discharge on May 29, 2012 and July 8, 2013. Neither required hospitalization.

[shortness of breath], cough . . . or swelling of her joints . . . she has not had any interval hospitalization or [emergency room] visits." R. p. 192.

Several weeks later, on November 4, 2013, Dr. Martin signed a "Statement" that Scott submitted to Standard to support her LTD claim. Dr. Martin also completed a Social Security Disability Questionnaire (the "Questionnaire") on the same date. Despite the fact that Scott's contemporaneous medical records provide no support for many of the statements in Dr. Martin's Statement, and in fact contradict much of the Statement, and the further fact that Dr. Martin had only seen Scott one time six weeks earlier, the Statement declared that Scott "has difficulty performing activities of daily living"; that she "cannot perform any activity for prolonged periods of time"; that she "is not able to sit, stand or walk for prolonged periods"; and that she "suffers from daily headaches which can be quite debilitating." R. p. 205. Apparently, Dr. Martin simply signed a Statement prepared by Scott or her attorney because her own chart notes expressly state that Scott denied headaches and that she reported walking daily for exercise. In short, Dr. Martin's Statement and the limitations and restrictions that it purports to assign to Scott are refuted by her own contemporaneous medical records.

In fact, the Questionnaire that Dr. Martin completed on the same day contradicts Dr. Martin's Statement. While the Statement expressly declares that Scott "is not able to sit, stand or walk for prolonged periods," the Questionnaire states that during an 8-hour workday, Scott was capable of walking 2-4 hours; standing 1-2 hours; and sitting 4-6 hours. Dr. Martin also declared in the Statement that Scott was not able to work "eight hours a day, five days per week, for the duration longer than three months" due to "chronic intermittent pain that is worsened by various environmental stimuli." R. p. 257. However,

just six weeks earlier, Dr. Martin stated that Scott "uses her pain medications infrequently and only has pain on average of 1-2 times out of the week," and Dr. Martin had not seen Scott since that time. R. p. 192. While Dr. Martin was clearly advocating for her patient's various disability claims, the significant disparity between Dr. Martin's contemporaneous medical record, her Statement, and the Questionnaire, clearly taints the credibility of Dr. Martin's Statement and the Questionnaire. Additionally, Dr. Martin did not even begin treating Scott until five months after Scott's LTD claim was closed. Therefore, Dr. Martin's unsupported statements provide little, if any, relevant evidence regarding Scott's ability to perform her occupation at the time her LTD claim closed in April 2013.[6]

III. Standard's Consideration, Approval, and Closure of Scott's Claim

When Scott initially filed her LTD claim with Standard, Standard's vocational expert, Sharon Cummins, reviewed information from Scott's employer, including Scott's job description, as well as the Department of Labor's Dictionary of Occupational Titles in order to identify Scott's occupation and its requirements. Based on the available information, Ms. Cummins identified Scott's occupation as Shipping Order Clerk, a light strength level occupation. R. pp. 246-47. Thus, in order to return to work in her occupation, Scott had to be able to perform light strength level job duties. The evidence before PEBA and the ALC demonstrates that Scott was more than capable of performing light strength level job duties as of April 15, 2013.

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[6] Scott submitted additional medical records to PEBA after Standard closed her LTD claim, but before PEBA issued a final decision on her claim. However, the additional medical records provide no additional information relevant to PEBA's closure of her claim because the medical records range in date from February 1, 2014 (almost 10 months after her claim was closed) to May 13, 2015 (more than two years after her claim was closed). The issue before PEBA was whether Scott's medical condition prevented her from returning to work in her occupation as of April 15, 2013, not some subsequent date.

As part of its ongoing management of Scott's claim, Standard requested that Scott have her treating physician(s) complete an Attending Physician's Statement ("APS") in order to determine any ongoing limitations and restrictions caused by her medical condition. The only APS returned to Standard was Dr. Saffer's March 13, 2013 APS, which stated without qualification that Scott could return to work on April 15, 2013. Accordingly, on March 25, 2013, Standard informed Scott that her claim would close with payment through April 14, 2013. R. pp. 175-76.

Scott appealed Standard's decision. In response to Scott's appeal, Standard referred her claim to its Administrative Review Unit for an independent review. The ARU requested an independent medical opinion from a board-certified internist, Dr. Fancher,[7] regarding whether Scott had any limitations or restrictions that would preclude her from working after April 14, 2013. After reviewing all of the available medical information and providing a summary of Scott's medical file through November 26, 2013, Dr. Fancher provided the following opinion: "I cannot identify any condition that would preclude the claimant from performing sedentary or light work after 04/14/2013." R. p. 198.

Subsequently, the ARU received additional medical records from Scott's attorney[8] that post-dated November 26, 2013. The ARU requested that Dr. Fancher review the additional medical records and opine as to whether the additional information impacted his conclusion that Scott could return to work in a sedentary or light occupation.

After reviewing all of the additional information Scott submitted, Dr. Fancher provided the following response:

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7 Dr. Fancher's *curriculum vitae* is included in the Record on Appeal at R. pp. 190-91.

8 Scott's attorney's initial representation letter to Standard was dated July 16, 2013.

> It is apparent that the claimant was seen in the emergency room on February 1, 2014[9] for pain attributed to her sickle cell disease . . . It does not appear that the claimant required admission. She was provided with pain medication . . .
>
> It remains my opinion that the claimant's sickle cell disease is under fairly good control. The claimant is infrequently visiting the emergency room. Her anemia is very mild . . .
>
> The claimant has exhibited some signs of a dysthymic/depressive disorder. She is not seeing a mental health counselor. She recently has been started on Zoloft, which is appropriate.
>
> However, the claimant is described in medical records as having normal judgment, thought content, affect, and behavior. The medical records did not suggest the claimant has a mental health condition of such severity that it would preclude her from performing her usual occupational duties . . .
>
> I could not identify either a physical process or a mental health condition which would preclude the claimant from working in a sedentary or light occupation on a full time basis. R. pp. 188-89.

After considering all of the medical information in Scott's claim file, including the opinion of Dr. Fancher, the ARU upheld the decision to close Scott's LTD claim. The ARU informed Scott's attorney of its decision by letter dated May 1, 2014. R. pp. 161-74. The ARU also informed Scott's attorney of her right to appeal to PEBA for a final review of her claim. R. p. 174. Scott appealed to PEBA.

IV. PEBA's Consideration Of Scott's Claim

In conjunction with Scott's appeal to PEBA, her attorney submitted additional medical records from late 2014 and 2015. In response, PEBA forwarded the additional information to Standard. Standard asked Dr. Fancher to review the additional medical records and opine as to whether the "medical records support any degree of impairment during the period of April 15, 2013 through the present." R. p. 249.

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[9] Almost ten months after Scott's LTD claim was closed.

Dr. Fancher reviewed the new information and noted that Scott had received treatment for sickle cell crises on November 18, 2014, January 19, 2015, and March 28, 2015. R. pp. 248-49. Dr. Fancher also noted that Scott was admitted to the hospital on May 8, 2015, but Scott did not provide detailed information about the admission or her subsequent discharge. R. p. 250. Based on his review of all of Scott's medical records, Dr. Fancher opined as follows:

> [T]he frequency of the claimant's sickle cell events, particularly those requiring emergency room visits, would not preclude the claimant from working on a reasonably continuous basis, in a sedentary or light level occupation, following April 13, 2013, up to May 8, 2015 . . .
>
> The claimant would have been unable to work during the days that she was seen in the emergency room, specifically on February 1, 2014, November 18, 2014, November 19, 2014, January 19, 2015, and March 28, 2015. The claimant was impaired due to her hospitalization on May 8, 2015. The claimant's subsequent course is not described in the medical records. The claimant would have been capable of performing sedentary or light work . . .. R. pp. 249-50.

After receiving Dr. Fancher's additional opinion, the Committee conducted a *de novo* review of Scott's claim to determine whether she was entitled to additional LTD benefits. The Committee's decision was very thorough and summarized in significant detail all of the information Scott submitted, as well as Standard's consideration of Scott's claim. *See* R. pp. 110-24. After considering all of the relevant information, the Committee made the following findings:

- The Committee first noted the time period in question was on and after April 14, 2013. As noted in the [Plan], Claimant would have to be precluded from performing [her Own Occupation] . . .. To meet this definition, Claimant must provide Proof of Loss that she was impaired from performing the Material Duties of her Own Occupation with reasonable continuity as of April 14, 2013, and continuing beyond . . . Claimant's medical records must show objective medical proof supporting Claimant was impaired and precluded from doing light-level strength work . . .. R. pp. 124-25.

- Regarding Claimant's sickle cell anemia, with the associated symptoms of fatigue, lower back pain, leg pain, and acute chest syndrome, Claimant was diagnosed with sickle cell anemia when she was a child, well before her cease work date. There was minimal evidence that Claimant's sickle cell anemia prevented Claimant from working full-time in her light Own Occupation as of April 14, 2013. Except for Claimant's admission in May 2012, this chronic condition was usually well-managed with pain medication . . .. The Committee also noted in several physician's appointments before and after April 14, 2013, Claimant reported having rare sickle cell crises and when Claimant did have a crisis, she self-treated with pain medication and fluids . . .. The Committee examined a letter written by Dr. Martin Smith on September 25, 2012 where he indicated, prior to April 14, 2013, Claimant could return to work on desk duty. One year later, on September 23, 2013, Dr. Martin noted Claimant was rarely using pain medication and Claimant had no recent hospitalizations nor emergency room visits. Based on the objective medical information available, the Committee found Claimant's sickle cell anemia and associated symptoms of fatigue, lower back pain, leg pain, and acute chest syndrome, alone or in combination with her other symptoms, did not preclude Claimant from performing the Material Duties of her light Own Occupation on a reasonably consistent basis as of April 14, 2013. R. p. 125.

- Claimant would not have been precluded from working on a reasonably consistent basis from April 14, 2013 through May 9, 2015. The Committee found it was not clear if Claimant would have been precluded from work after May 9, 2015, but this was nearly two years after her BLTD benefits ceased. R. p. 125.

- Regarding Claimant's left heel ulcer, the Committee noted Claimant's file documented no evidence of recurring complications or symptoms from her left heel ulcer after November 2012, well before The Standard ceased paying benefits for Claimant's BLTD claim. R. pp. 125-26.

- The Committee observed Claimant's file referred to a diagnosis by Dr. Saffer of left foot drop. Claimant was diagnosed on August 28, 2012 by Dr. Saffer; Dr. Saffer could not determine the cause of her left foot drop and referred Claimant to a neurologist to have tests done to discover the cause. The Committee noted Claimant had four additional visits with Dr. Saffer and during each visit it was noted Claimant had not seen a neurologist for her left foot drop. On September 8, 2013, Dr. Martin Smith noted Claimant set up an appointment with neurology regarding her left foot drop, but Claimant's file provided no other medical records regarding further testing. The Committee also noted Dr. Fancher found Claimant's foot drop, with or without prescribed . . . brace, would not prevent her from performing the Material Duties of her light Own Occupation. Based on the objective medical information available, the Committee found Claimant's file contained no

medical evidence that her left foot drop, alone or in combination with her other symptoms, precluded Claimant from performing the Material Duties of her light Own Occupation with reasonable continuity as of April 14, 2013 and beyond.[10] R. p. 126.

- The Committee noted Claimant's file referred to depression, anxiety, and insomnia. Claimant was noted to have symptoms of depression, anxiety, and insomnia initially on September 23, 2013 (five months after Scott's LTD claim closed). Claimant's file noted Claimant was prescribed medication for sleeping and depression on March 4, 2014. There was no further mention of worsening symptoms, or of mental health treatment beyond her prescription. Based on the objective medical information available, the Committee found Claimant's file contained no medical evidence that depression, anxiety, or insomnia, alone or in combination with her other symptoms, precluded Claimant from performing the Material Duties of her light Own Occupation with reasonable continuity as of April 14, 2013 and beyond. R. p. 127.

In conclusion, "the Committee determined Claimant's conditions, individually or in combination, did not continue to meet the [Plan's] Own Occupation Definition of Disability . . . after April 14, 2013." R. p. 127.

ALLOCATION OF AUTHORITY TO PEBA AND THE APPROPRIATE STANDARD OF REVIEW

The Plan provides PEBA 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. p. 145. 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. p. 145.

[10] The Committee also determined that Scott's plantar fasciitis did not prevent her from returning to work after April 14, 2013. In doing so, the Committee pointed out that on "March 13, 2013, Dr. Saffer completed an APS which indicated Claimant could return to work on April 15, 2013." R. p. 126.

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 [South Carolina Budget and Control Board],[11] 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 PEBA'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) (2017).

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

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[11] Pursuant to the South Carolina Restructuring Act of 2014, the South Carolina Budget and Control Board was replaced by the South Carolina Department of Administration. To be consistent with Section 1-11-710(C), this Brief will refer to the "Budget and Control Board."

conclusion the agency reached." *Tiller v. Nat'l Health Care Ctr.*, 334 S.C. 333, 338, 513 S.E.2d 843, 845 (1999). Under the substantial evidence rule, PEBA'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. Pub. Serv. 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 held that when reviewing decisions of the Circuit Court or ALC under the standards of Section 1-23-380, the Court reviews the lower court's "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. S.C. Dep't of Health & Envtl. 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)).

This Court has addressed issues very 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), a case involving PEBA and the Plan, Wilson presented "some evidence," including a favorable Social Security Administration decision to support her claim; however, substantial evidence in the record supported PEBA'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

I. The ALC Properly Determined That Scott Provided No Controlling Law To Support Her Argument That PEBA Erred As A Matter Of Law By Not Including The SSA's Determination In PEBA's Review Of Scott's LTD Claim.

In her Initial Brief, Scott argues that the ALC "erred in finding that [PEBA] was not required to consider Scott's Social Security Disability award when considering" her LTD claim. Initial Brief of Appellant, p. 3. Scott's argument derives from the following statement in the ALC's Order: "This Court must review this case according to the standards set forth [in Section 1-23-380]. Appellant has provided no controlling law to support the argument that PEBA erred as a matter of law by not including the Social Security determination in its analysis under the Plan." R. p. 7.[12] This statement by the ALC was in response to Scott's citation of numerous non-controlling ERISA[13] cases and her failure to cite any precedential South Carolina court decisions in support of her argument that PEBA should have given significant weight to a two-page SSA Notice of Decision that provided no substantive information about Scott's medical condition.

Scott has now made the same argument regarding the application of non-controlling ERISA decisions to this Court. In her Initial Brief, Scott cites and quotes non-controlling ERISA cases and asserts that "while ERISA cases are certainly not binding

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[12] Importantly, there is no evidence that PEBA did not consider the SSA's Notice of Decision (R. pp. 156-57) when considering Scott's LTD claim. The Notice of Decision is a two-page document that informed Scott her Social Security disability claim had been approved. However, the Notice of Decision provided no rationale for the SSA's decision and identified no medical records or other evidence that the SSA considered in making its decision. The Notice of Decision is simply that – a notice.

[13] Employee Retirement Income Security Act, 29 U.S.C. §§ 1001 *et seq.*

law on the [ALC] that court has a significant history of consulting ERISA cases when determining a claimant's eligibility for long-term disability benefits under [the Plan] and, therefore, the court should have, at least, considered the case law cited by Scott."[14] Initial Brief of Appellant, p. 3. Thus, although acknowledging that ERISA case law is not binding, Scott argues that ERISA case law should be binding in this case because the ALC has a history of citing ERISA cases.

Scott's argument both misconstrues the ALC's treatment of citations to ERISA cases and, more importantly, ignores the ALC's negative treatment of non-controlling case law, especially in the Social Security context. Since July 1, 2006,[15] the ALC has issued 41 decisions involving the Plan. In 11 of those 41 decisions, the ALC has cited federal court decisions involving claims under ERISA. Accordingly, PEBA readily acknowledges that the ALC has a history of citing ERISA cases in its decisions.

In the 11 decisions in which the ALC has cited an ERISA case, the primary purpose of the ALC's citation of ERISA cases was either to acknowledge an appellant's citation of the case or to discuss the difference between the SSA's treatment of treating physician opinions and ERISA's treatment of treating physician opinions.[16] In no decision has the

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[14] There is nothing in the ALC's Order to indicate that the ALC did not consider the non-controlling ERISA decisions Scott relied on in her brief to the ALC.

[15] Jurisdiction over appeals from PEBA involving the Plan changed from the South Carolina Circuit Court to the ALC effective July 1, 2006.

[16] Under the federal Social Security regulatory scheme, the SSA's claims adjudicator must give deferential weight to the opinion of a treating physician. This is known as the "treating physician rule." The United States Supreme Court, applying ERISA, has rejected the treating physician rule in the context of employer funded insurance plans, like the Plan at issue in this case. *See Black & Decker Disability Plan v. Nord*, 538 U.S. 822 (2003). Likewise, this Court rejected application of a treating physician rule in *Wilson*. *See* 374 S.C. at 305-06, 648 S.E.2d at 313.

ALC or any other South Carolina court held that PEBA is bound by a court decision interpreting ERISA.[17]

Contrary to Scott's assertions in her Initial Brief, the ALC has not expressed a willingness to apply ERISA cases involving a review of a final agency decision under Section 1-23-380. Rather, the ALC has expressly refused to do so. By way of example, in *Fowler v. South Carolina Public Employee Benefit Authority, Employee Insurance Program*, 2013 WL 5422919 (S.C. Admin. Law Judge Div. Sept. 23, 2013), a case involving the Plan in which Fowler[18] relied on ERISA cases to support her arguments, the ALC stated as follows:

> Appellant's Brief cited and attached several federal court decisions involving LTD claims under ERISA governed plans. As an initial matter, the Court notes that it is bound to apply the standard of review established by Section 1-23-380 and the decisions of the South Carolina Supreme Court and South Carolina Court of Appeals interpreting Section 1-23-380. The cases cited by Fowler are not binding on this Court.

Id. at * 7, n. 2. *See also Alvarez v. S.C. Budget & Control Bd., Employee Ins. Program*, 2012 WL 3159119 at *7 (S.C. Admin. Law Judge Div. June 21, 2012) ("Appellant also cites to an unpublished federal court decision that an insurer's physicians did not adequately consider the side effects of prescription medications upon the claimant, I conclude that this case is neither binding nor applicable to the instant appeal").[19] As these ALC decisions demonstrate, the ALC does not have a significant history of relying on or

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[17] It is very telling that the only South Carolina precedent Scott cites in her Initial Brief is this Court's holding in *Wilson*, which rejects her position that decisions of the SSA should significantly impact or control PEBA's consideration of Plan claims. *See* 374 S.C. at 305-06, 648 S.E.2d at 313. Every other case Scott cites is either a non-controlling ERISA decision or a decision of the ALC.

[18] Fowler was represented by the law firm that now represents Scott.

[19] Alvarez was represented by the law firm that now represents Scott.

applying non-binding ERISA case law when reviewing matters under the standard of review established by Section 1-23-380.

Section 1-11-710(C) very clearly states that claims under the Plan "must be resolved" pursuant to procedures established by the Budget and Control Board "subject only to judicial review consistent with the standards provided in Section 1-23-380." In turn, Section 1-23-380 and the jurisprudence of the South Carolina Supreme Court and South Carolina Court of Appeals provide very clear guidance to the ALC regarding the standard of review the ALC must apply. For these reasons, it is not necessary for the ALC or this Court to look to non-binding ERISA decisions when considering an appeal under the Plan.

As demonstrated above, the ALC has correctly acknowledged the inapplicability of ERISA decisions in its prior decisions. Similarly, the ALC correctly noted the inapplicability of ERISA decisions in the present case. Further, Scott expressly acknowledges in her Initial Brief that the decisions are non-controlling. For all of the reasons set forth herein, the ALC properly determined that Scott provided no controlling law to support her argument that PEBA erred as a matter of law by allegedly not considering the SSA's Notice of Decision in its review of Scott's LTD claim under the Plan.

II. PEBA Is Not Required To Give Any Deference To The SSA's Award Of Benefits Under The Federal Social Security Law.

In making the decision to close Scott's LTD claim, PEBA considered all of the medical records and related documents Scott and her attorney submitted to Standard and PEBA. In its final decision, PEBA devoted more than twelve singled spaced pages to discussing Scott's medical history. The length of PEBA's review of Scott's medical history was necessitated by two factors. First, Standard did a very thorough job of obtaining medical records from all of the health care providers that Scott identified during the claims

process. Specifically, from September 2012 through December 2012, Standard made no fewer than eleven requests for records to Scott's treating health care providers. *See* R. pp. 183, 184, 253, 225, 237, 238, 239, 240, 264, 241, 242. Second, from September 2013 through June 2015, Scott's attorney submitted medical records and related documents to Standard and PEBA no fewer than eight times. *See* R. pp. 154, 155, 177, 178, 179, 180, 181, 182.

After Scott's attorney appealed to PEBA, PEBA, on November 17, 2014, sent Scott's attorney an explanation of the appeals process, which stated in relevant part as follows: "If you have any additional information you believe is relevant to your claim, please submit it in writing **within thirty (30) days** of the date of this letter . . .." R. p. 159. (Emphasis in original). The explanation later stated, "you have the right to submit within (30) days of this letter any written information you want the Committee to consider when reviewing your claim." R. p. 160. Notably, PEBA allowed Scott and her attorney more than seven months to submit any additional information Scott wished in support of her appeal.

Exactly seven months after PEBA provided the explanation of Scott's appeal rights, Scott's attorney submitted the SSA's two-page Notice of Decision. The Notice of Decision stated that Scott's Social Security disability claim had been approved. R. pp. 156-57. The Notice of Decision referenced an "enclosed fully favorable decision"; however, Scott's attorney chose to not submit the actual decision to PEBA. Importantly, the Notice of Decision is devoid of (1) any discussion of Scott's medical history; (2) the rationale for the SSA's decision; or (3) any medical records or other evidence the SSA considered. *See* R. pp. 156-57. In Scott's attorney's correspondence to PEBA, he

provided no further information to PEBA, including whether there were additional medical records that Scott submitted to the SSA, but did not submit to Standard or PEBA.

In summary, the Notice of Decision informed PEBA of one thing – the SSA approved Scott's Social Security disability claim. It provides no other substantive or probative information, yet Scott argues that PEBA's decision to close her LTD claim should be reversed because PEBA did not discuss the Notice of Decision in its final decision.

In significant disproportion to the Notice of Decision's substantive value, Scott argues that "Respondent should have at least considered Scott's award of Social Security Disability benefits on review as it constituted substantial and reliable evidence." Initial Brief of Appellant, p. 5. PEBA acknowledges that the Notice of Decision did inform PEBA that Scott's Social Security disability claim had been approved, but the Notice of Decision provided no other evidence of anything.[20] On the other hand, PEBA considered hundreds of pages of contemporaneous medical records and opinions that actually addressed Scott's medical condition and lack of related limitations and restrictions. With minimal exceptions, those medical records support PEBA's decision to close Scott's claim. Perhaps most significantly, Scott has not identified any medical record that PEBA failed to consider. Moreover, Scott does not argue that substantial evidence did not support PEBA's decision – most likely because doing so would be futile given the overwhelming evidence that supports PEBA's decision.

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[20] In her brief to the ALC, Scott used one sentence to describe this "substantial and reliable evidence." Specifically, Scott stated, "[O]n December 29, 2014 Appellant was approved for Social Security Disability benefits." R. p. 39. This statement succinctly captures the substantive value of the Notice of Decision.

It is noteworthy that the ALC has squarely and unequivocally addressed the relevance of SSA determinations on multiple occasions in appeals involving the Plan. In *Eaddy v. South Carolina Public Employee Benefit Authority, Employee Insurance Program*, No. 15-ALJ-30-0561 at p. 7 (S.C. Admin. Law Judge Div. 2016), the ALC held that Eaddy's "Social Security disability claim and its current posture has (sic) no bearing on the case before this Court. The essential question in this appeal is whether substantial evidence supports the decision of the [PEBA] Appeals Committee, which found Appellant" was not disabled.

Similarly, in *Baker v. South Carolina Budget and Control Board, Employee Insurance Program*, No. 10-ALJ-11-0351 at p. 13 (S.C. Admin. Law Judge Div. 2011), the ALC held as follows:

> Appellant asserts that the decision of the SSA to grant her disability is relevant in this claim, as the standard of awarding benefits in a SSA case is much greater. I disagree. Appellant cites *Mitchell v. Schweiker*, 699 F.2d 185 (4th Cir. 1983) and the federal regulation that requires the SSA to apply the treating physician rule when making decisions on SSDI claims. The federal social security law has no bearing on the State of South Carolina's LTD Plan. As set forth above, the Plan is established pursuant to S.C. Code Ann. § 1-11-710(C), which states that claims for benefits under the Plan "must be resolved by procedures established by the [Budget and Control Board] which shall constitute the exclusive remedy for these claims . . ." Pursuant to the discretion provided by this enabling legislation and the discretionary language in the Plan itself, [PEBA] chose not to apply the treating physician rule. (Emphasis added).

The lack of substantive evidence provided by Scott's submission of the Notice of Decision is further highlighted by Scott in her Initial Brief. Citing *Colter v. South Carolina Budget and Control Board, South Carolina Retirement Systems*, No. 08-ALJ-0551-CC (S.C. Admin. Law Judge Div. 2009), Scott points out that the South Carolina Retirement Systems ("SCRS") approved the plaintiff's state retirement disability claim based upon

"an award of Social Security Disability benefits." Initial Brief of Appellant, p. 6. However, Scott has misconstrued the language of the ALC's Order of Dismissal in *Colter*. The portion of the *Colter* Order of Dismissal that Scott quotes clearly states that SCRS did not rely on an SSA Notice of Decision; rather, SCRS relied on medical records that the SSA relied on in making a disability determination. This contrasts sharply with the present case in which Scott has not identified any medical record that PEBA failed to consider.

Scott next argues that despite the fact that she cannot identify any medical record that PEBA failed to consider, notice of the SSA's disability decision required PEBA to either request further medical records from Scott or go on a fishing expedition to try to uncover additional medical records that Scott and her attorney did not submit. A closer evaluation of Scott's argument demonstrates why it must fail.

Scott alone knows what evidence she submitted to the SSA, and what health care providers provided treatment to her during the relevant time period. She submitted medical records numerous times, but chose not to provide a copy of the SSA's actual substantive decision to PEBA. Further, although Scott bears the burden of providing Proof of Loss pursuant to the express terms of the Plan, she would require PEBA to undertake the time and expense to attempt to locate medical records that would, according to Scott, controvert voluminous medical records already in PEBA's possession which demonstrate overwhelmingly that Scott is not disabled. Placing this burden on PEBA, especially in light of the Plan's requirement that Scott provide Proof of Loss to support her claim, is simply

not equitable. Moreover, Scott cannot cite any controlling law to support imposing such an onerous requirement.[21] Accordingly, Scott's argument must fail.

Finally, the decisions of the SSA have no bearing on PEBA's decisions under the Plan. Scott essentially argues that PEBA should substitute the SSA's discretion for its own discretion when considering Plan claims. Taking this reasoning to its logical conclusion would result in the federal regulatory scheme of the SSA's disability benefit program replacing the terms and conditions of the Plan which were established pursuant to a specific statutory mandate of the General Assembly. Accepting Scott's argument would result in a bizarre situation in which PEBA and the ALC would have no role in the adjudication of Scott's claim under the Plan.[22] Rather, Scott would qualify for LTD benefits under the Plan because her Social Security disability claim was approved. Such a result is clearly inconsistent with Section 1-11-710(C) and the terms of the Plan.

The General Assembly has delegated to the Budget and Control Board the responsibility to establish and maintain self-insured plans for employees of the State. The Plan at issue in this case is such a plan. Section 1-11-710(C) unequivocally states that "claims for benefits" under such a plan "must be resolved by procedures established by the" Budget and Control Board. Moreover, pursuant to this legislative mandate, the

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[21] Importantly, when Scott's attorney submitted the SSA's Notice of Decision to PEBA, his letter stated, "I am still awaiting additional information and I will forward the same to you immediately upon receipt." R. p. 155. Subsequently, Scott's attorney submitted additional medical records to PEBA, did not request any additional time to submit more information, and stated, "[i]t is my hope that the above will persuade you to award" LTD benefits to Scott. R. p. 154. After receiving this correspondence, PEBA moved forward with making a final decision on Scott's claim with the understanding that Scott had no additional information to submit. It is noteworthy that even now, Scott has failed to identify any other medical evidence that PEBA did not consider.

[22] As discussed below, PEBA acknowledges that this is exactly what the General Assembly has done with respect to the SCRS program; however, Scott cannot identify any intent by the General Assembly or PEBA to do the same with respect to the Plan.

Budget and Control Board, through the language of the Plan, has delegated to PEBA, not the SSA, "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." R. p. 145.

Neither the enabling legislation for the Plan nor the Plan itself instructs PEBA to give extra or binding weight to the SSA's decision with respect to a Social Security disability claim. To the contrary, PEBA is bound to interpret and apply the terms of the Plan, not the terms of the federal Social Security scheme.

Scott's final argument attempts to impose the statutory requirements of the SCRS disability retirement scheme on the Plan. Scott points out that the controlling legislation for the SCRS provides that an SCRS member will qualify for SCRS disability retirement benefits if the member's Social Security disability claim is approved by the SSA. Based on this statutory provision, Scott argues as follows:

> [I]n the interest of fluidity and continuity, it stands to reason that if the State of South Carolina requires a Social Security Disability favorable decision in order to draw disability retirement benefits, then such an award should, at the very least, be considered during the appeal of a State of South Carolina employee's long-term disability claim.

Initial Brief of Appellant, p. 11.

Scott's argument ignores the fact that the South Carolina General Assembly has chosen to establish specific requirements to qualify for SCRS disability retirement benefits while at the same time delegating responsibility for establishing and operating the self-insured disability Plan to the Budget and Control Board, and ultimately to PEBA. This distinction is a legislative function that was put in place for reasons determined by the

General Assembly. It is not this Court's function to usurp the General Assembly's authority "in the interest of fluidity and continuity."

Further, the Plan is governed by the procedures established by PEBA pursuant to Section 1-11-710(C), not a statutory requirement that the General Assembly implemented for SCRS and which has absolutely no relationship to the Plan.[23] In summary, if the General Assembly or PEBA wants the Plan to be bound by SSA disability decisions, then the General Assembly or PEBA can take the necessary action. Such action is not the function of the ALC or this Court. Therefore, for all the reasons set forth herein, PEBA is not required to give any deference to decisions of the SSA.

III. Substantial Evidence Supports PEBA's Decision To Close Scott's Claim.

As an additional sustaining ground, the overwhelming evidence in the Record on Appeal supports PEBA's decision to close Scott's LTD claim. PEBA's decision correctly pointed out that Scott was only entitled to additional LTD benefits if she continued to meet the Plan's Own Occupation Definition of Disability on April 15, 2013. Stated differently, if Scott did not continue to satisfy the Own Occupation Definition of Disability on April 15, 2013, then it would not matter if she once again satisfied the Own Occupation Definition of Disability at some later date.[24] For this reason, while PEBA, Standard, and Dr. Fancher each considered all of Scott's medical records, their focus was on the medical records from the time period in close proximity to April 15, 2013.

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[23] Notably, the SCRS retirement program and the federal Social Security scheme are much more similar than SCRS and the Plan. For example, SCRS and Social Security are funded in significant part by employee contributions. On the other hand, the Plan is funded by employers, not employees. Additionally, SCRS and Social Security are intended primarily as an income stream for retirement while the Plan is designed to replace a qualifying participant's income until the participant reaches retirement age.

[24] The evidence in the Record on Appeal before the ALC does not support a conclusion that Scott satisfied the Own Occupation Definition of Disability at some later date.

Scott saw Dr. Taylor on February 20, 2013, approximately two months before her claim was closed. At that visit, Scott's primary complaint was nasal congestion. In her review of symptoms and medical history, Dr. Taylor noted that Scott had no other current symptoms. R. p. 210. Dr. Taylor noted that Scott "exercises in the form of walking (daily)" and that Scott was able to perform activities of daily living. R. p. 210. Finally, Dr. Taylor reported that Scott had "no anxiety, depression, mood swings or psychotic features." R. p. 211. Thus, the undisputed evidence from this period of time demonstrates that Scott was not experiencing significant pain related to her sickle cell condition; that she was not experiencing debilitating fatigue; and that she was not experiencing depression.

Also during the relevant timeframe, Scott saw Dr. Saffer on March 12, 2013. Dr. Saffer opined that Scott could return to work with no restrictions on April 15, 2013.

Finally, Scott saw Dr. Taylor again on June 25, 2013 and June 26, 2013, more than two months after her LTD claim was closed. Scott had no complaints at the June 25 visit and only complained of dizziness at the June 26 visit; however, dizziness is never mentioned again in Scott's medical records and there has been no claim by Scott that she is disabled due to dizziness. In her chart notes from the June 25 and June 26 appointments, Dr. Taylor expressly noted that Scott was walking daily for exercise and that she had no anxiety or depression. In summary, the contemporaneous medical records of Scott's treating physicians from the relevant timeframe overwhelmingly support PEBA's decision to close her LTD claim and refute any claim that Scott continued to be disabled due to sickle cell disease, fatigue, depression, or any other condition.

Although not from the applicable time period, Dr. Martin's responses to the Social Security Disability Questionnaire demonstrate that Scott was capable of performing the

physical requirements of her light strength level occupation. Specifically, when completing the Questionnaire on November 4, 2013, Dr. Martin opined that during an 8-hour workday, Scott could walk for 2-4 hours per day, stand for 1-2 hours per day, and sit for 4-6 hours per day. R. p. 257. These physical abilities are consistent with the physical requirements of Scott's Shipping Order Clerk occupation.

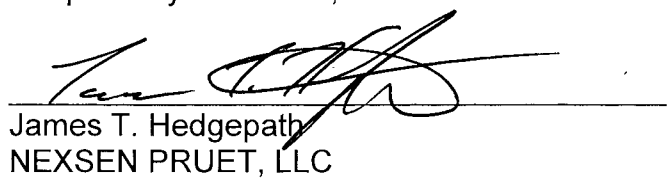
In addition to the objective information in Scott's contemporaneous medical records, the opinion of Dr. Fancher provides support for PEBA's decision. Dr. Fancher consistently opined that Scott's medical conditions did not prevent her from performing a light or sedentary strength level occupation with reasonable continuity. Scott's Own Occupation was a light strength level occupation. In addition, Dr. Fancher's opinions are consistent with the contemporaneous medical records of Scott's treating physicians.

In summary, the objective information in the Record on Appeal clearly demonstrates that Scott was capable of returning to her light strength level occupation after April 14, 2013. Because the substantial evidence in the Record on Appeal supports PEBA's decision to close Scott's LTD claim, the Court should affirm PEBA's decision.

CONCLUSION

For all of the foregoing reasons, PEBA respectfully requests that this Court affirm its decision, and the decision of the ALC, to close Scott's claim for LTD benefits.

Respectfully submitted,



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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ADMINISTRATIVE LAW COURT

Deborah Brooks Durden, Administrative Law Judge

Docket No. 16-ALJ-30-0293-AP

L'Tonya Scott, ...Appellant,

v.

South Carolina Public Employee Benefit Authority,
Employee Insurance Program,..... Respondent.

CERTIFICATE OF COUNSEL

The undersigned certified that Respondent's Final Brief complies with Rule 211(b), SCACR.

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