

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SOUTH CAROLINA ADMINISTRATIVE LAW COURT

Deborah Brooks Durden, S.C. Administrative Law Judge

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SC Court of Appeals

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

L'Tonya Scott, ... Appellant,

v.

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

RECORD ON APPEAL

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**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

L'Tonya Scott,

Appellant,

vs.

South Carolina Public Employee Benefit
Authority, Employee Insurance Program,

Respondent.

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

ORDER

STATEMENT OF THE CASE

This matter is before the Administrative Law Court (ALC or Court) pursuant to a Notice of Appeal filed by L'Tonya Scott (Appellant). Appellant seeks review of the final decision of the Employee Insurance Program (EIP), part of the South Carolina Public Employee Benefit Authority (PEBA), denying Appellant additional long-term disability (LTD) benefits.

BACKGROUND

Appellant worked for the South Carolina State Ports Authority as a Shipping Order Clerk, which is considered a light occupation. She began working for the Ports Authority in 2001 and ceased working on May 9, 2012, due to her health problems. Appellant has sickle cell anemia, a disease which affects red blood cells. On May 10, 2012, Appellant went to the emergency room for a sickle cell crisis. She remained in the hospital until May 29, 2012. During that time, she experienced severe pain, developed pneumonia with acute chest syndrome, and went into septic shock, among other things. While in the hospital, Appellant also developed heel ulcers. The sickle cell anemia, a left heel ulcer, lower back pain, and hypertension formed the basis for Appellant's disability claim.

Initially, Appellant applied and was approved for basic LTD (BLTD) benefits, based on a date of disability of May 10, 2012. Appellant's claim was processed by the Standard Insurance Company (Standard), the benefits manager and third-party claims administrator for the Basic Long Term Disability Income Benefit Plan (Plan) of the EIP. The Plan dictates the terms under which Appellant is covered for BLTD benefits. Specifically, the Plan defines disability in three ways: Own Occupation Disability, Any Occupation Disability or, Partial Disability. Own Occupation

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March 16, 2017

SC ADMIN. LAW COURT

Disability is the definition applied during the Benefit Waiting Period and the first 24 months of Disability. Any Occupation Disability is the definition applied from the end of the Own Occupation Period to the end of the Maximum Benefit Period. Put simply, a covered employee is disabled from their Own Occupation if he or she cannot perform the material duties of a position in their field for medical reasons.¹ Similarly, a covered employee is disabled from all occupations if he or she cannot perform the duties of a position in any field.

Appellant's initial claim was approved based on the Own Occupation definition. After the 90-day waiting period, Appellant began receiving benefits on November 9, 2012. Standard ceased disbursement of benefits and closed Appellant's file on April 14, 2013 after finding that she no longer met the Own Occupation definition. This closing was based in part on Appellant's anticipated return to work. On July 16, 2013, an attorney for Appellant requested that Standard review its decision and asked to submit additional medical records. Over the course of several months Appellant's records were further developed. On May 1, 2014, Standard upheld its denial on the basis that the records did not show that Appellant's conditions would have prevented her return to work in a sedentary or light level occupation after April 14, 2013. Appellant's attorney appealed to PEBA. The reviewing committee found that Appellant's case was properly closed and no further benefits are payable to Appellant in a decision mailed August 8, 2016. Appellant filed an appeal with the ALC to review the decision of the agency.

STANDARD OF REVIEW

The Board of Directors of PEBA has the authority to establish the exclusive procedure by which EIP decisions are made. See S.C. Code Ann. § 1-11-710(C) (Supp. 2016). Decisions of the EIP are subject to appellate review by the ALC under the standard set forth in South Carolina Code Section 1-23-380. S.C. Code Ann. §§ 1-11-710(C) and 1-23-600(D) (Supp. 2016). Consequently, the Court's review is limited to the record. S.C. Code Ann. § 1-23-380(4) (Supp. 2016). Additionally, the Court may not substitute its judgment for the judgment of the agency as to the weight of the evidence on questions of fact, but may modify or reverse the decision of the agency when substantial rights of the appellant have been prejudiced. S.C. Code Ann. § 1-23-380(5) (Supp. 2016). Substantial rights of the appellant are prejudiced when the agency's decision, including the agency's findings, inferences, and conclusions, are in violation of constitutional or statutory provisions; in excess of the statutory authority of the agency; made upon

¹ The exact language of the Plan may be found on page 28 of the Record on Appeal (Volume 1).

unlawful procedure; affected by other error of law; clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion. Id.

ISSUE ON APPEAL

Whether the EIP's decision to deny Appellant further LTD benefits is supported by substantial evidence.

DISCUSSION

Appellant argues that PEBA's decision is clearly erroneous in view of the reliable, probative, and substantive evidence in the entire record. Appellant further argues that "the weight of the evidence in this case clearly tips in Appellant's favor" However, this is not the standard by which this matter is reviewed. In reviewing an EIP decision, the Court applies the substantial evidence rule. Substantial evidence is "'not a mere scintilla of evidence nor the evidence viewed blindly from one side of the case, but is evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion that the administrative agency reached'" Lark v. Bi-Lo, Inc., 276 S.C. 130, 135, 276 S.E.2d 304, 306 (1981) (citation omitted). Assessing the weight and credibility of the evidence is a task for the fact-finder, and the appellate court will not disturb those findings, absent error of law. See S.C. Code Ann. § 1-23-380(5) (Supp. 2016); see also Houston v. Deloach & Deloach, 378 S.C. 543, 551-52, 663 S.E.2d 85, 89 (Ct. App. 2008) (under the APA, the appellate court does not overturn findings of fact unless there is no reasonable probability that the fact could be as related by the witness). Furthermore, "[t]he possibility of drawing two inconsistent conclusions from the evidence will not mean the agency's conclusion was unsupported by substantial evidence. Waters v. S.C. Land Res. Conservation Comm'n, 321 S.C. 219, 226, 467 S.E.2d 913, 917 (1996) (citation omitted). Lastly, "the burden is on appellants to prove convincingly that the agency's decision is unsupported by the evidence." Id.

Appellant argues that the EIP erred in reaching its decision because (1) it failed to give greater weight to Appellant's healthcare providers, especially her podiatrist, instead of the agency reviewing physician, (2) it failed to assess Appellant for mental health issues, (3) it failed to find that Appellant could not perform the requirements of her job with "reasonable continuity," and (4) it failed to consider Appellant's federal Social Security Disability approval. In response, PEBA points out that the date relevant to consideration of Appellant's case is April 15, 2013. Evidence of Appellant's health at a later time is not directly relevant to the question of whether she continued

to be disabled from her Own Occupation at the close of her case. The agency also argues that the doctor's opinion upon which Appellant relies in her brief stated that she could return to work on the date in question. Further, PEBA notes that it confined its analysis to conditions Appellant claimed made her disabled and did not consider other transient or undocumented issues. Regarding the issue of the Social Security determination, PEBA argues that no specific information regarding the reason for Appellant's favorable disability determination was submitted and included in the record, only the notice of the determination. Additionally, PEBA argues that the records related to the determination, which are part of the record, support its position.

After review of the record, the Court concludes that Appellant has not demonstrated that PEBA erred in closing her file. Substantial evidence supports PEBA's conclusion that Appellant did not continue to meet the definition of disability from her Own Occupation at the time her case was closed. Appellant's medical records and the review by Standard's consulting physician support PEBA's finding that Appellant's sickle cell anemia, while chronic, was fairly well controlled by her medications and fluids and did not prevent her from working in a light occupation such as her duties as Shipping Order Clerk. The record indicates that Appellant's heel ulcer healed and her own podiatrist indicated that she could return to work on April 15, 2013. The agency decision specifically found that Appellant's file showed no objective evidence of symptoms that precluded Appellant from performing her job duties on a reasonably consistent basis on April 14, 2013. This Court must review this case according to the standards set forth above. 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.

ORDER

THEREFORE, IT IS HEREBY ORDERED that PEBA's final agency determination is **AFFIRMED**.

AND IT IS SO ORDERED.

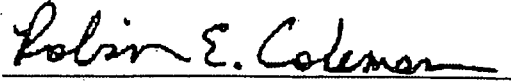


Deborah Brooks Durden, Judge
S.C. Administrative Law Court

March 16, 2017
Columbia, South Carolina

CERTIFICATE OF SERVICE

I, Robin E. Coleman, hereby certify that I have this date served this Order upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, in the Interagency Mail Service, or by electronic mail to the address provided by the party(ies) and/or their attorney(s).



Robin E. Coleman
Judicial Aide to Deborah Brooks Durden

March 16, 2017
Columbia, South Carolina

FILED

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R. 00008

R. 00009

B. Generally, this appeal arises from the denial of Petitioner's claim for disability retirement benefits under the State of South Carolina retirement plan. Petitioner fully exhausted administrative remedies after her claim was denied which resulted in a final denial of her claim by PEBA on August 8, 2016. This claim is subject to South Carolina Code § 1-23-380.

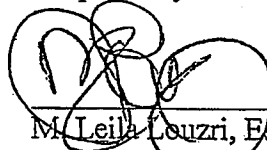
C. A copy of the final decision of August 8, 2016, is attached hereto as exhibit A.

D. There is no transcript that exists relating to this matter and, therefore, none has been ordered.

E. The Certificate of Service of the Notice of Appeal, serving all parties, is attached hereto.

Petitioner respectfully requests all benefits that were due to him from PEBA, attorney's fees and costs, and for such other and further relief as this Court deems just and proper.

Respectfully submitted,



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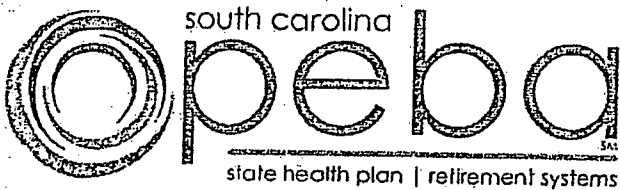
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Attorneys for Petitioner

Date: August 16, 2016



Serving those who serve South Carolina

August 8, 2016

Nathaniel Bax, Esquire
Foster Law Firm, LLC
601 E. McBee Ave, Ste. 104
Greenville, South Carolina 29601

Re: State of South Carolina Basic Long Term Disability Income Benefit Plan
Subscriber: L'Tonya L. Scott
Benefits Identification Number: 09176052

Dear Mr. Bax:

Thank you for your letter to the South Carolina Public Employee Benefit Authority, Insurance Benefits (PEBA Insurance Benefits), in which you appealed the decision of The Standard Insurance Company (The Standard) to close your client's basic long term disability benefits claim. Your appeal was considered by the Long Term Disability Appeals Committee, which consists of three members who have not been involved in any prior decisions to deny your client's claim. The Committee fully considered your client's appeal by reviewing the claim file along with the relevant provisions of the State of South Carolina's Basic Long Term Disability Income Benefit Plan (BLTD Plan). After the review, the Appeals Committee determined the facts and circumstances of your client's claim do not qualify her for additional disability income benefits under the Plan. The Appeals Committee's full decision is enclosed for your information.

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

Your client's right to appeal through PEBA Insurance Benefits has been exhausted. In accordance with instruction from the Administrative Law Court (ALC), the next level of appeal is to the ALC in its appellate jurisdiction pursuant to S.C. Code Ann. § 1-23-600(D). The contact information for the ALC is:

Administrative Law Court
1205 Pendleton Street, Suite 224
Columbia, South Carolina 29201

An appeal is commenced by filing a notice of appeal with the ALC within 30 days of receipt of this letter. If you need any further information regarding your appeal, please contact the ALC at 803.734.0550.

If your client chooses to appeal to the ALC, please note the following address for serving PEBA Insurance Benefits:

Executive Director Peggy G. Boykin, CPA
803.737.6800 | 888.260.9430 | www.peba.sc.gov
202 Arbor Lake Dr., Columbia, SC 29223

health insurance | retirement benefits | 401(k) | 457(b) | vision | dental | life insurance | long term disability | flexible spending accounts

R. 00011

Legal Counsel
PEBA Insurance Benefits
202 Arbor Lake Drive
Columbia, SC 29223

Thank you for allowing PEBA Insurance Benefits the opportunity to review your client's claim. Best wishes to your client for good health now and in the future.

Sincerely,



Stephen R. Van Camp
General Counsel,
South Carolina Public Employee Benefit Authority

SRV/kmc/cek/jcs

Enclosure

cc: Rachel Robinson, Standard Insurance Company

**BEFORE THE SOUTH CAROLINA PUBLIC EMPLOYEE BENEFIT AUTHORITY,
INSURANCE BENEFITS**

Subscriber: L'Tonya Scott

Plan: South Carolina Basic Long Term
Disability Income Benefit Plan

**FINAL DECISION OF
THE APPEALS COMMITTEE**

Introduction

This matter is before the Long Term Disability Appeals Committee of the South Carolina Public Employee Benefit Authority, Insurance Benefits (PEBA Insurance Benefits), pursuant to the appeal of L'Tonya Scott (Claimant), filed by Nathaniel Bax, Esquire (Attorney). As an employee of South Carolina State Ports Authority, Claimant participated in the Basic Long Term Disability Income Benefit Plan (BLTD Plan or Plan). Claimant is appealing the decision of Standard Insurance Company (The Standard), the benefits manager and Third-Party Claims Administrator for the Plan, to close Claimant's Basic Long Term Disability claim. Claimant's claim was closed on April 14, 2013, because she no longer met the Plan's Own Occupation Definition of Disability based on the submitted documentation regarding her medical conditions.¹ The Appeals Committee conducted this *de novo* review.

Findings of Fact

The Appeals Committee carefully considered all of the evidence contained in Claimant's file, including, but not limited to, PEBA Insurance Benefits' records, Claimant's and Attorney's correspondence, documentation provided by Claimant's medical providers, and information provided by The Standard. After taking into account the credibility of the evidence, the Appeals Committee made the following findings.

Procedural History

On May 10, 2012, Claimant ceased working due to complications from sickle cell anemia.²

Claimant applied and was approved for BLTD benefits. Claimant met the Own Occupation Definition of Disability as outlined in the Plan documents. The Standard determined Claimant's date of disability was May 10, 2012. Claimant began receiving BLTD benefits on November 9, 2012, at the end of her 90-day Benefit Waiting Period. The Standard closed Claimant's BLTD claim on April 14, 2013, because it found she no longer met the Plan's Own Occupation Definition of Disability.

On August 16, 2012, Claimant's employer, South Carolina State Ports Authority (Ports Authority), completed an Employer's Statement. Claimant worked as a Terminal Clerk for Ports Authority. Claimant's BLTD coverage began on January 1, 2011. Claimant's last day of work

¹ The pertinent Plan terms are reprinted and discussed in the subsequent sections of this decision.

² Sickle cell anemia is a condition where there are not enough healthy red blood cells to carry adequate oxygen throughout your body. In sickle cell anemia, the red blood cells are rigid and sticky and are shaped like sickles or crescent moons. See Mayo Clinic, *Sickle Cell Anemia* (2014), <http://www.mayoclinic.org/diseases-conditions/sickle-cell-anemia/basics/definition/con-20019348>.

before disability commenced was May 9, 2012. Claimant had not returned to work. Claimant's employer had not considered allowing Claimant to work in another occupation or with modified job duties because Claimant was unable to work per her physician's orders. Claimant was on family medical leave (FMLA) from May 10, 2012 through August 1, 2012. Claimant's sick leave benefits were paid through May 17, 2012. Claimant was on leave without pay effective May 18, 2012. Claimant had applied for disability retirement benefits, but Claimant's employer did not know whether she received any form of deductible income.

On August 29, 2012, Claimant completed her Employee's Statement. Claimant was 33 years old. Claimant was employed by Ports Authority and worked as a Terminal Clerk. Claimant indicated she assisted truck drivers at a problem resolution booth and also assisted in the operation of a company vehicle to inventory equipment. Claimant indicated her disability was not work-related. Claimant's last full day at work was May 9, 2012. Claimant indicated the date she became unable to work at her occupation as a result of disability was May 10, 2012; she was no longer working. Claimant indicated her sickle cell anemia, first noticed as a child, and her left heel ulcer,³ first noticed during her hospitalization in May 2012, contributed to her being unable to work at her occupation. Claimant explained she experienced extreme pain in her arms and legs.

Claimant listed her treating physician as board-certified physician assistant Carol Blessing-Feussner, P.A. Claimant indicated she was hospitalized at Roper St. Francis Mt. Pleasant Hospital (Roper) on May 10, 2012 and transferred to Medical University of South Carolina (MUSC) from May 10, 2012 through May 29, 2012 for sickle cell crisis⁴ and acute chest syndrome.⁵ Claimant listed sickle cell anemia in her history of illness; she indicated she had been treated several times at Roper and MUSC.

Claimant had applied for two forms of deductible income, Social Security Disability and disability retirement benefits, in June 2012. She was not receiving either. Claimant had been employed by Ports Authority since May 19, 2001.

On September 6, 2012, a vocational consultant found Claimant's Own Occupation of Terminal Clerk most closely matched that of a Shipping Order Clerk, a light strength level occupation.⁶

³ Also known as decubitus ulcers, pressure ulcers, or bedsores; areas of broken skin which can develop in people who have been confined to bed for extended periods of time, are unable to move for short periods of time, or use a wheelchair or bedside chair. Decubitus ulcers are common in people in hospitals or nursing homes; they are from where the weight of the person's body presses the skin against the firm surface of the bed. See Harvard Medical Sch., Harvard Health Publications, *Bedsore (Decubitus Ulcers)* (2014), <http://www.health.harvard.edu/diseases-and-conditions/bedsores-decubitus-ulcers>.

⁴ A sickle cell crisis is a pain episode that occurs in people with sickle cell anemia. See U.S. Dept. of Health & Human Services, Nat'l Heart, Lung, and Blood Inst. [hereinafter Heart, Lung, and Blood Inst.], *What Are the Signs and Symptoms of Sickle Cell Disease?*, <http://www.nhlbi.nih.gov/health/health-topics/topics/sca/signs>.

⁵ Symptoms of acute chest syndrome are similar to pneumonia. Signs and symptoms include chest pain, coughing, difficulty breathing, and fever. See Centers for Disease Control and Prevention (CDC) [hereinafter CDC], *Sickle Cell Disease (SCD)*, <http://www.cdc.gov/ncbddd/sicklecell/treatments.html>.

⁶ The *Dictionary of Occupational Titles* provides the following description of the occupation of Shipping Order Clerk: 219.367-030 SHIPPING-ORDER CLERK

Requisitions transportation from freight carriers to ship plant products: Reads shipping orders to determine quantity and type of transportation needed. Contacts carrier representative to make

On September 18, 2012, Claimant called The Standard for an update on the status of her BLTD claim. Claimant's disability benefits analyst explained The Standard was waiting for records; the analyst also needed to know who Claimant was being treated by since she had been out of work. Claimant's history showed she normally went to the emergency room for her sickle cell anemia and did not have a physician. Claimant listed physicians she had seen since being hospitalized. The week earlier, Claimant had a minor sickle cell crisis and managed it with pain medication and fluids. Claimant stated Ms. Blessing-Feussner would not fill out the disability paperwork for Claimant because Ms. Blessing-Feussner felt it would not be right for Claimant to live off government assistance for the rest of her life at 33 years old. The analyst explained The Standard based its determination on Claimant's actual medical record; it reviewed whether medical records supported limitations that preclude Claimant from her Own Occupation for 90 days and beyond. Claimant noted she could not be in extreme heat or cold; she had many sickle cell crises in the past and she felt she may not go back to work. The analyst explained if Claimant did not have limitations beyond 90 days, The Standard could not approve a claim. Claimant informed the analyst she applied for Social Security Disability and disability retirement benefits but had not heard from either. The analyst advised she would call Claimant once a decision was made.

On September 25, 2012, board-certified internist Martin Smith, M.D., wrote a letter documenting Claimant's visit to his clinic that day. He stated Claimant could return to work on desk duty for the next three months and possibly longer. Dr. Smith further stated Claimant was precluded from prolonged standing or extended amounts of walking.

On November 2, 2012, a nurse case manager at The Standard completed a Nurse Consultant Memo regarding Claimant's BLTD claim. The nurse case manager outlined Claimant's medical records and found Claimant was precluded from more than occasional walking and standing due to recovery from hospitalization and treatment for her left heel ulcer. The nurse case manager recommended following up with Claimant's physicians to clarify whether there were any ongoing limitations and restrictions to full-time light-level work activity.

On November 5, 2012, Claimant called The Standard for a status update on her BLTD benefits claim. Her disability benefits analyst explained to Claimant she received the medical review and there was enough medical evidence to approve her claim based on her foot condition alone; it would take three to five business days to process. Claimant stated she was denied Social

arrangements and to issue instructions for loading products. Annotates shipping orders to inform shipping department of loading location and time of arrival of transportation. May perform other clerical tasks, such as typing and mailing bills, typing correspondence, and keeping files.

U.S. Dep't of Labor, *Dictionary of Occupational Titles* (4th ed. 1991)

Light strength work is defined as:

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 a 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.

U.S. Dep't of Labor, *Dictionary of Occupational Titles* (4th ed. 1991).

Security Disability and disability retirement benefits; Claimant appealed only her Social Security denial. Claimant would move forward with a disability retirement benefits appeal. The analyst agreed to mail Claimant copies of the medical records in her file to assist her in the appeal process. The analyst assured Claimant she would call her once Claimant's BLTD claim was complete.

On November 9, 2012, The Standard, in an internal memo, noted Claimant's BLTD claim should be approved. It was reasonable that Claimant was unable to perform work activity initially due to her sickle cell anemia crisis and continuing due to her left heel ulcer.

Also on November 9, 2012, The Standard sent Claimant a letter indicating her BLTD claim was approved effective August 8, 2012. Her first BLTD check would total \$1,766.38.

On December 18, 2012, The Standard sent Claimant a letter regarding her BLTD benefits and how her benefits are calculated.

On February 5, 2013, The Standard left Claimant a voicemail and requested a return call; The Standard wanted to know if Claimant had been seen by a physician since December 4, 2012. On Claimant's December 4, 2012 chart note, her left foot ulcer was still being treated. The Standard sent Claimant an Attending Physician's Statement (APS) for a physician to complete on her behalf.

On February 7, 2013, Claimant called The Standard; Claimant had not followed up with a physician. Claimant had a podiatrist appointment the following week. Her disability benefits analyst requested that Claimant have an APS completed, and noted if Claimant's disability retirement benefits were approved, she would have an overpayment. Claimant understood.

On March 13, 2013, board-certified podiatrist Andrew Saffer, D.P.M., completed an APS. Dr. Saffer indicated Claimant's diagnoses were plantar fasciitis⁷ in her left foot and a left foot drop.⁸ Dr. Saffer noted Claimant's initial visit was July 9, 2012 and her most recent visit was March 12, 2013; Claimant had monthly visits. Claimant's condition was unchanged. Dr. Saffer described Claimant's physical, mental, and cognitive limitations as left foot pain from prolonged standing. Dr. Saffer recommended a neurology consult. Dr. Saffer anticipated Claimant could return to work on April 15, 2013.

On March 25, 2013, The Standard, in an internal memo, noted Dr. Saffer's APS listed Claimant could return to work on April 15, 2013; therefore, Claimant's claim would close effective April 14, 2013.

Also on March 25, 2013, The Standard sent Claimant a letter. The information in Claimant's BLTD claim indicated she would be able to return to work on April 15, 2013; therefore, her claim would close with payment through April 14, 2013. The letter noted if Claimant had medical reasons why she could not work after April 14, 2013, she could have the enclosed APS

⁷ Pain 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. See Mayo Clinic, *Plantar Fasciitis*, <http://www.mayoclinic.org/diseases-conditions/plantar-fasciitis/basics/definition/con-20025664>.

⁸ General term for difficulty lifting the front part of the foot. See Mayo Clinic, *Foot Drop* (2014), <http://www.mayoclinic.org/diseases-conditions/foot-drop/basics/definition/con-20032918>.

completed by a physician and returned to The Standard with supporting medical records. The Standard would review the medical records and APS once received.

On April 12, 2013, Claimant called The Standard and left a voicemail about her BLTD claim closure. A disability benefits analyst returned Claimant's call and explained if she was unable to return to work, Claimant needed to take an APS to her physician to complete and have the physician fax it to The Standard.

On April 14, 2013, Claimant's BLTD claim closed.

On July 16, 2013, Attorney sent a letter to The Standard requesting a review of the decision to close Claimant's BLTD claim. Attorney was in the process of obtaining additional medical records to be considered in The Standard's review of Claimant's BLTD claim; Attorney asked The Standard not conclude its review until he was able to submit complete copies of Claimant's relevant medical records.⁹ Attorney also requested a complete copy of the documents upon which The Standard based its denial of Claimant's claim.

Between August 2013 and May 2014, The Standard and Attorney exchanged multiple correspondences. The Standard deferred its review, per Attorney's request, until he submitted all of the medical documentation he wanted The Standard to review.

On September 7, 2013, Claimant completed an affidavit. Claimant explained The Standard provided her with BLTD coverage for approximately eight months, but closed her claim because her podiatrist said she should have been able to return to work on April 15, 2013. Claimant listed Dr. Saffer, board-certified internist, Temeia Martin, M.D., board-certified general practitioner Joan Taylor, M.D., and board-certified internist Tabitha Townsend, M.D., as physicians who had treated her. She noted she suffered from sickle cell disease, lower back pain, plantar fasciitis and bursitis¹⁰ in her left foot, acute chest syndrome, and hypertension. Claimant expressed she underwent each and every treatment prescribed to her by her physicians. Claimant was having financial difficulty; Claimant noted going back to work was not an option despite her financial problems. Claimant stated she was completely and totally disabled from performing her prior occupation or any occupation on a full-time and consistent basis.

On November 4, 2013, Dr. Martin completed a Social Security Questionnaire. Dr. Martin documented on the form Claimant was able to walk for two to four hours in total in an eight hour day; Claimant could lift and carry up to 10 pounds occasionally. Dr. Martin did not think Claimant could work eight hours per day, five days per week due to chronic pain worsened by various environmental stimuli (like stress or weather changes). Dr. Martin also felt Claimant needed approximately six to eight rest periods during the day, lasting 20 minutes to an hour. Dr. Martin did not expect Claimant's condition to improve. Dr. Martin noted Claimant had been disabled for 12 months in a row. Claimant could perform sedentary work less than four hours per day.

Also on November 4, 2013, Dr. Martin provided a statement in support of Claimant's claim for BLTD benefits. Dr. Martin noted Claimant suffered from sickle cell anemia, lower back pain, plantar fasciitis and bursitis in her left foot, acute chest syndrome, and hypertension. Dr. Martin

⁹ Medical records considered by The Standard in its review are summarized in the medical background section below.

¹⁰ Bursitis is a condition which affects the small, fluid-filled sacs, called bursae, which cushion bones, tendons, and muscles near one's joints. Bursitis occurs when bursae become inflamed. See Mayo Clinic, *Bursitis* (2014), <http://www.mayoclinic.org/diseases-conditions/bursitis/basics/definition/con-20015102>.

also noted Claimant's daily activities were limited; Claimant had difficulties performing activities of daily living, activities for prolonged periods of time like sitting, standing, or walking. Dr. Martin noted Claimant could not bend, twist, pull, grasp, push, squat, or reach without experiencing pain; Claimant suffered from daily headaches, she often tripped when walking, she felt tired during the day, and she had difficulty falling and staying asleep. Dr. Martin expressed Claimant's subjective complaints and limitations were consistent with her diagnosed medical conditions. Dr. Martin felt Claimant suffered from significant medical conditions which prevented her from working.

On January 1, 2014, board-certified internist Bradley Fancher, M.D., independently reviewed Claimant's file. Claimant had sickle cell anemia, with infrequent hospitalizations and infrequent emergency room visits. Dr. Fancher noted there was no indication in the claim file that Claimant would have been impaired from her sickle cell anemia following April 2013; Claimant's sickle cell anemia was fairly well controlled. Claimant's left heel ulcer was healed by November 2012; Claimant would not be impaired from working on a full-time basis in a light-level occupation due to her heel ulcer once it was fully healed. Dr. Fancher noted Claimant's left foot drop had an uncertain cause and Claimant had not seen a neurologist; however, with or without her prescribed AFO brace,¹¹ Claimant would not be impaired from performing sedentary or light-level work. Claimant was diagnosed with plantar fasciitis on her left foot; Claimant only had light tenderness upon examination. Dr. Fancher noted this was a commonly encountered condition and could not be expected to interfere with the performance of sedentary or light work. Dr. Fancher further noted Claimant had reported headaches at times; however, the medical information did not support Claimant had debilitating headaches or would be precluded from work due to her headaches. Claimant had been noted to have depression; however, Dr. Fancher noted there were no mental health notes to review nor was Claimant taking anti-depressants. Dr. Fancher felt the medical records did not demonstrate Claimant had a mental health condition of such severity it would interfere with her ability to be gainfully employed. Dr. Fancher felt Claimant would be precluded from performing strenuous physical activity that might be encountered in medium-level work due to subjective complaints of fatigue and her left foot drop; however, Dr. Fancher felt no condition would preclude Claimant from performing sedentary or light-level work after April 14, 2013.

On April 15, 2014, Dr. Fancher independently reviewed additional medical records submitted by Attorney. Dr. Fancher believed Claimant's sickle cell disease was under fairly good control; Claimant infrequently visited the emergency room. Claimant exhibited signs of depressive disorder. Claimant was not seeing a mental health counselor, but Claimant was described in medical records as having normal judgment, thought content, affect, and behavior. Dr. Fancher felt the medical records did not suggest Claimant had a mental health condition of such severity that it would preclude her from performing her usual occupational duties. Dr. Fancher believed Claimant's chronic fatigue may be due to psychosocial circumstances, though the cause of her fatigue had not been identified. Due to a continual complaint of fatigue, Dr. Fancher determined it would be reasonable to preclude her from performing strenuous physical activity that may be encountered in medium-level work. However, Dr. Fancher's opinion remained unchanged; he

¹¹ Ankle and Foot Orthoses (AFOs), or splints, are external devices used to improve or prevent a physical deformity, stabilize a joint or joints, reduce pain, improve mobility or performance, or reduce the risk of injury. See HemiHelp, *Ankle & Foot Splints or Orthoses (AFOs)* (2014), [http://www.hemihelp.org.uk/hemiplegia/treatments/splinting/foot and ankle splints/](http://www.hemihelp.org.uk/hemiplegia/treatments/splinting/foot%20and%20ankle%20splints/).

believed no condition precluded Claimant from working in a sedentary or light occupation on a full-time basis.

On May 1, 2014, The Standard upheld its denial and found the medical information contained in Claimant's file did not support her conditions and/or symptoms of sickle cell anemia with infrequent crises, left foot drop, mild plantar fasciitis, fatigue, headaches or recent depression, alone or in combination, would have impaired Claimant's ability to work in a sedentary or light level occupation after April 14, 2013. The Standard also noted based on the vocational information in Claimant's file, it found Claimant's Own Occupation of Terminal Clerk most closely matched a Shipping Order Clerk, a light level occupation; therefore Claimant was capable of performing the Material Duties of her Own Occupation since April 14, 2013. The Standard found Claimant did not meet the Own Occupation Definition of Disability after April 14, 2013; and its decision to close Claimant's BLTD claim was correct and upheld. Attorney or Claimant could appeal to PEBA Insurance Benefits within 90 days.

On May 29, 2014, PEBA Insurance Benefits received a letter from Attorney notifying PEBA Insurance Benefits he was retained to represent Claimant; Attorney wished to appeal on Claimant's behalf.

On November 17, 2014, PEBA Insurance Benefits sent Attorney a letter acknowledging its receipt of his appeal on behalf of Claimant. The letter included an outline of the appeal process.

On July 6, 2015, PEBA Insurance Benefits received a letter from Attorney; additional medical records from East Cooper Medical Center (East Cooper) were enclosed. These records are summarized in the medical background section below.

On December 4, 2015, Dr. Fancher reviewed the additional medical records submitted to PEBA with Claimant's appeal. Dr. Fancher noted Claimant's newer medical records revealed Claimant had been having a sickle cell crisis roughly once per month; most episodes had been handled by Claimant remaining at home and taking medication, and several other episodes being handled by an emergency room visit. Dr. Fancher believed the frequency of Claimant's sickle cell crises, particularly those requiring emergency room visits, would not have precluded Claimant from working on a reasonably continuous basis in a sedentary or light-level occupation, following April 13, 2013 up to May 9, 2015. Dr. Fancher noted Claimant was admitted to the emergency room on May 9, 2015 for a sickle cell crisis; Claimant's subsequent course was unknown. Dr. Fancher could not assess whether Claimant may have been able to return to gainful employment following her May 9, 2015 hospitalization.

On December 31, 2015, The Standard notified PEBA Insurance Benefits it would be forwarding its updated determination to PEBA Insurance Benefits as soon as it could be compiled.

On January 21, 2016, PEBA Insurance Benefits received Attorney's letter requesting an update on his appeal involving Claimant's BLTD benefits.

On January 25, 2016, PEBA Insurance Benefits notified Attorney the Committee had not yet met to discuss Claimant's appeal.

The Committee reviewed Claimant's file.

Chronological Medical Background

On February 28, 2012, Claimant saw board-certified internist Cindy Feely, M.D., at MUSC in Charleston, SC. Dr. Feely documented Claimant had a history of sickle beta thalassemia¹² with rare sickle cell crises. Dr. Feely noted Claimant had one the previous weekend, likely triggered by a 24-hour diarrheal illness Claimant was treated at the hospital with pain medication and IV hydration. The crisis caused left leg pain and Claimant usually experienced crises with pain in her arms and legs. Claimant's prior crisis was in February 2011, due to a urinary tract infection.¹³ Dr. Feely documented a normal physical examination. Claimant's back pain was likely musculoskeletal in nature; all x-rays were normal and physical therapy did not help much.

On April 10, 2012, Claimant saw board-certified gynecologist David Smith, M.D., at Rhett's Women Center in Mt. Pleasant, SC. Claimant complained of headaches and back pain. Dr. Smith prescribed pain medication.

On May 10, 2012, Claimant went to the emergency room in Roper before being transferred to and admitted at MUSC. She had a sickle cell crisis with chest pain and lower back pain. Claimant reported her typical pain crisis occurred in her legs and arms; the crises were controlled with Oxycodone, an opiate pain medication, every two to three hours. Claimant's course of treatment was complicated by respiratory failure, which was likely related to over sedation with pain medication. Claimant noted her last hospitalization was three years earlier. Claimant's physical examination showed a normal lung and cardiovascular examination. Claimant's musculoskeletal examination documented Claimant as having decreased range of motion in her arms and legs due to pain, but no tenderness on palpation. Her neurologic examination was normal.

During the time she was in the hospital, Claimant increasingly complained of chest pain and difficulty breathing. Claimant was transferred to the intensive care unit and underwent elective intubation and antibiotic treatment. Over the course of her hospitalization, Claimant was anemic,¹⁴ had pneumonia with acute chest syndrome, and subsequent septic shock.¹⁵ In addition, Claimant had increased conjunctivitis¹⁶ in her right eye while she was intubated.

¹² An inherited condition that affects hemoglobin, the protein in red blood cells that carries oxygen to different parts of the body. It is a type of sickle cell disease; affected people have a mutation or a different change in their *HBB* (hemoglobin subunit beta) gene. The *HBB* gene provides instructions for making a protein called beta-globin (a component of hemoglobin). This mutation is one that causes red blood cells to form a "sickle" or crescent shape and reduces the production of hemoglobin. See U.S. Dept. of Health & Human Services, Genetic and Rare Diseases Info. Center (GARD) [hereinafter GARD], *Sickle Beta Thalassemia* (2014), <https://rarediseases.info.nih.gov/gard/10333/sickle-beta-thalassemia/resources/1>.

¹³ An infection in any part of the urinary system (kidneys, ureters, bladder, or urethra). Most infections involve the lower urinary tract (bladder and urethra). See Mayo Clinic, *Urinary Tract Infection (UTI)* (2015), <http://www.mayoclinic.org/diseases-conditions/urinary-tract-infection/basics/definition/con-20037892>.

¹⁴ Anemia is when your blood does not carry enough oxygen to the rest of the body. See A.D.A.M. Medical Encyclopedia, *Anemia*, <https://www.nlm.nih.gov/medlineplus/anemia.html>.

¹⁵ Sepsis happens when the body has an overwhelming immune response to a bacterial infection. Septic shock occurs when blood pressure drops and the heart weakens. See *id.*, *Sepsis*, <https://www.nlm.nih.gov/medlineplus/sepsis.html>.

¹⁶ Also known as pink eye. An inflammation or infection of the transparent membrane (conjunctiva) that lines the eyelid and covers the white part of the eyeball. When small blood vessels in the conjunctiva become inflamed, they are more visible. This is what causes the whites of the eyes to appear a reddish or pink. It is commonly caused by a bacterial infection or viral infection or an allergic reaction. It may affect one or both eyes. See Mayo Clinic, *Pink Eye (Conjunctivitis)* (2015), <http://www.mayoclinic.org/diseases-conditions/pink-eye/basics/definition/con-20022732>.

On May 15, 2012, Claimant's echocardiography (ECG)¹⁷ report confirmed she had normal sinus rhythm throughout the study; Claimant's results from the ECG were normal.

On May 18, 2012, Claimant had a chest x-ray; it showed stable airspace disease with mild improvement and she was weaning off the breathing vent. By discharge, Claimant was breathing well in room air without any issues and her chest x-ray improved. Claimant was to follow up with her primary care physician in one week; she needed to start hydroxyurea, a drug to treat sickle cell anemia, because of her acute chest syndrome.

On May 29, 2012, Claimant was discharged; she was to undergo physical therapy with home health and use a wheeled walker for assistance at home. She had no activity restrictions. Claimant had developed heel ulcers while in the hospital. Multiple notes suggested the ulcers did not have the appearance of a sickle cell lesion.¹⁸

On June 8, 2012, Claimant saw Ms. Blessing-Feussner. One of Claimant's heel ulcers was fluid-filled, but Claimant did not want it drained. Ms. Blessing-Feussner noted Claimant brought FMLA paperwork to begin permanently retiring from work due to her sickle cell diagnosis.

On June 13, 2012, Claimant saw Ms. Blessing-Feussner for her heel ulcers. Ms. Blessing-Feussner previously offered to drain the ulcers, but Claimant's fear of needles prevented it. Claimant's discomfort with weight bearing increased and Claimant wanted the blisters drained. Ms. Blessing-Feussner attempted to drain the ulcers, but was unsuccessful. Ms. Blessing-Feussner recommended Claimant see a podiatrist for ongoing treatment; Claimant declined. Ms. Blessing-Feussner recommended Claimant soak her ulcers for 20 minutes, two to three times a day, in vinegar water to aid in absorption and healing. Ms. Blessing-Feussner listed diagnoses of low back pain, sickle cell beta thalassemia, and elevated blood pressure.

On June 26, 2012, Claimant saw Dr. Taylor in Mt. Pleasant, SC. Claimant complained of a history of dizziness; she was walking on a daily basis. Dr. Taylor's examination of Claimant showed peripheral edema,¹⁹ but Claimant was in no distress. Claimant's musculoskeletal and neurologic exams were normal. Dr. Taylor noted Claimant had ear wax buildup and dysfunction of her Eustachian tube.²⁰ Claimant was prescribed Claritin for allergies.

On July 5, 2012, Claimant saw Dr. David Smith for a follow-up after her UTI. Dr. Smith noted Claimant was recently hospitalized with a sickle cell crisis.

¹⁷ Also called an echo test or heart ultrasound; a test that takes "moving pictures" of the heart with sound waves. See American Heart Ass'n, *What Is Echocardiography?*, https://www.heart.org/idc/groups/heart-public/@wcm/@hcm/documents/downloadable/ucm_300438.pdf.

¹⁸ A complication of sickle cell anemia are skin ulcers; sickle cell anemia can cause open sores. See Mayo Clinic, *Sickle Cell Anemia* (2014), <http://www.mayoclinic.org/diseases-conditions/sickle-cell-anemia/basics/complications/con-20019348>.

¹⁹ Abnormal buildup of fluid in the ankles, feet, and legs can cause swelling. The fluid buildup and swelling is called peripheral edema. See A.D.A.M. Medical Encyclopedia, *Foot, Leg, And Ankle Swelling* (2015), <https://www.nlm.nih.gov/medlineplus/ency/article/003104.htm>.

²⁰ The Eustachian tubes are small passageways which connect the upper part of the throat to the middle ears. Sometimes a Eustachian tube might get plugged. This is called Eustachian tube dysfunction. See Family Doctor.org, *Eustachian Tube Dysfunction* (2014), <http://familydoctor.org/familydoctor/en/diseases-conditions/eustachian-tube-dysfunction.html>.

On July 9, 2012, Claimant saw Dr. Saffer at Carolina Foot Specialists in Mt. Pleasant, SC. Claimant complained of right and left foot pain for weeks, which progressively worsened. Dr. Saffer noted Claimant was recently hospitalized for pneumonia and sickle cell crisis. Claimant developed ulcers on both heels. Dr. Saffer noted Claimant's right heel decubitus ulcer healed. The left heel ulcer was very small; he treated it by debridement.²¹ Dr. Saffer recommended Claimant purchase new shoes with wider-cushioned soles.

On July 20, 2012, Claimant saw board-certified hematologist Charles Greenberg, M.D., at MUSC in Charleston, SC. Dr. Greenberg noted Claimant had sickle cell disease complicated by two episodes of acute chest syndrome, with the most recent one requiring exchange transfusion²² and ventilator support. Dr. Greenberg noted Claimant had healing ulcers and Claimant's body ached. He also noted Claimant seemed depressed throughout the exam and interview. Claimant was found to be a good candidate for hydroxyurea.

Also on July 20, 2012, Claimant saw board-certified hematologist Woodrow Coker, M.D., at MUSC in Charleston, SC. Dr. Coker noted Claimant had not had any sickle cell crisis events. Claimant was using Vicodin or Percocet when necessary. Claimant had decreased energy and motivation. She had a depressed mood. Dr. Coker felt Claimant would be an excellent candidate for hydroxyurea to prevent further sickle cell events.

On August 3, 2012, Claimant had a follow-up with Dr. Saffer for her left foot ulcer. Dr. Saffer debrided her left foot ulcer and again recommended Claimant buy new shoes.

On August 13, 2012, Claimant saw Dr. David Smith at Rhett Women's Center for a follow-up. Claimant was regaining her strength after her recent hospitalization.

On August 28, 2012, Claimant saw Dr. Saffer. Her left heel ulcer was smaller. Claimant reported she was unable to move her left big toe up or down. Claimant stated her physical therapist thought she may have signs of foot drop in her left foot. Dr. Saffer examined her left foot and noted Claimant had decreased movement of her foot. Claimant was referred to a neurologist for an electromyography (EMG)²³ and nerve conduction studies to determine the cause of her foot drop.

On August 29, 2012, Claimant saw Dr. Martin Smith at MUSC in Charleston, SC. Dr. Smith outlined her history of acute chest syndrome and decubitus ulcers. Claimant told Dr. Smith she had not started hydroxyurea because she was afraid of the side effects. She reported a few minor sickle cell crises since her hospital discharge in May 2012. Claimant was tearful while discussing her hospitalization, but denied that she was depressed. Claimant wanted her disability paperwork filled out. Claimant stated she had left toe numbness the previous day at the podiatrist; the numbness came and went. Claimant reported no other pain except her heel ulcer. Dr. Smith

²¹ Debridement is the surgical removal of lacerated, devitalized, or contaminated tissue. See *Merriam-Webster's*, <http://www.merriam-webster.com/dictionary/debridement#medicalDictionary>.

²² Exchange transfusion requires one's blood be removed and replaced. It is a potentially life-saving procedure that is done to counteract the effects of changes in the blood due to diseases such as sickle cell anemia. See A.D.A.M. Medical Encyclopedia, *Exchange transfusion* (2015), <https://www.nlm.nih.gov/medlineplus/ency/article/002923.htm>.

²³ EMG is a diagnostic procedure to assess the health of muscles and the nerve cells that control them. See *id.*, *Electromyography (EMG)* (2012), <http://www.mayoclinic.org/tests-procedures/electroconvulsive-therapy/basics/definition/prc-20014183>.

noted Claimant favored her leg when walking. Dr. Smith and Claimant discussed hydroxyurea; Claimant would start it. Dr. Smith prescribed Lisinopril, a blood pressure medication.

On September 25, 2012, Claimant saw Dr. Martin Smith. She was on hydroxyurea for the prior two and a half weeks with no crises, but was having pain in her joints. Claimant complained of having headaches almost daily; Tylenol did not help. Dr. Smith noted her blood pressure was high. Claimant had not returned to work; she had some numbness in her left foot, which was painful and she tripped over her foot sometimes. Dr. Smith noted Claimant had weakness when moving her left foot. He recommended Claimant increase her Lisinopril; her headaches could be related high blood pressure. He prescribed gabapentin, a medication for nerve pain, for her leg numbness and referred her to neurology.

Also on September 25, 2012, Claimant saw Dr. Saffer for a follow-up on her left heel ulcer. Claimant could not move her left great toe up or down. Claimant stated Dr. Martin was referring her to a neurologist for an evaluation of her left foot drop and shooting pains in her left lower leg and foot at night. Dr. Saffer prescribed an evaluation for an AFO brace.

On September 27, 2012, Claimant saw Dr. David Smith at Rhett Women's Center. She was still recovering after her hospitalization in May 2012 and her heel ulcer was not completely healed. Claimant felt she was still unable to work.

On October 11, 2012, Claimant saw Dr. Taylor for an evaluation of the ulcer on her left heel with numbness in her toes, as well as a follow-up for her sickle cell anemia, and issues with elevated blood pressure. Dr. Taylor recommended low impact aerobic exercise and recommended Claimant visit Lowcountry Hematology and Oncology for evaluation.

On November 1, 2012, Claimant visited board-certified hematologist Daud Nawabi, M.D., at Lowcountry Hematology and Oncology in Mt. Pleasant, SC. Claimant had not been hospitalized since May 2012; her prior hospitalization was ten years earlier. Dr. Nawabi noted Claimant had an uneventful summer; but had not been doing well. Claimant was not taking narcotics. Her sickle cell crises were well-controlled by over-the-counter pain medications. Dr. Nawabi noted Claimant went to the emergency room. She had not been able to tolerate the hydroxyurea and stopped taking it. Claimant complained of chronic fatigue; she was unable to explain why. Claimant was no longer able to work full-time because of her fatigue. Dr. Nawabi noted her last pain crisis was in September 2012. Claimant denied difficulty walking, chest pain, shortness of breath, back pain, and headache. Dr. Nawabi noted Claimant would need blood work and administered a flu shot. Dr. Nawabi encouraged Claimant to take folic acid and a multivitamin.

On December 4, 2012, Claimant saw Dr. Saffer; her left decubitus ulcer had healed. Claimant had thickening of her heel's skin and left foot drop with decreased dorsiflexion.²⁴ Dr. Saffer reviewed the types of shoes Claimant should be wearing. He again recommended Claimant see a neurologist and undergo an EMG and nerve conduction studies for her left foot drop.

On February 20, 2013, Claimant saw Dr. Taylor. Claimant complained of nasal congestion, body aches, sore throat, and fatigue. Claimant exercised daily by walking. Dr. Taylor noted

²⁴ Flexion of the foot in an upward direction. See Merriam-Webster's, <http://www.merriam-webster.com/medical/dorsiflexion>.

Claimant was independent in all her activities of daily living, minimally ill-appearing, and her walk was normal without ataxia.²⁵ Dr. Taylor prescribed antibiotics for her common cold.

On March 12, 2013, Claimant saw Dr. Saffer. Claimant reported continued left foot drop, but had not set up a neurology appointment. Claimant had no change since her last visit. Dr. Saffer administered an injection to reduce symptoms, swelling, and pain.

On June 26, 2013, Claimant saw Dr. Taylor for a follow-up. Claimant complained of dizziness over the past three weeks. Claimant reported having imbalance, lightheadedness, and weakness. Claimant walked daily for exercise; she was able to bathe herself, clean the house, converse meaningfully, cook, dress herself, drive, feed herself, find her way home, and live independently.

On July 1, 2013, Claimant saw Dr. Saffer. Claimant did not complain of heel pain but had slight tenderness on palpation of the left heel. Dr. Saffer noted Claimant still had evidence of left foot drop but had not set up an appointment with a neurologist. Dr. Saffer diagnosed plantar fasciitis and prescribed an AFO brace.

On July 8, 2013, Claimant saw Dr. Townsend at MUSC in Charleston, SC. Claimant reported she had been seeing a family practitioner and wanted to get reestablished at MUSC for care. Claimant noted she had a mild sickle cell crisis the prior weekend that she self-treated with pain medication and fluids. Claimant also reported she had a diagnosis of a left foot drop and was being evaluated for a foot brace. Dr. Townsend documented a normal physical examination, other than weakness of movement of Claimant's left ankle and knee. Claimant reported having rare pain crises and she stopped taking hydroxyurea due to nausea and vomiting. Claimant had an appointment with a neurologist later that month for her left foot issues.

On August 22, 2013, Dr. Martin completed a chart note addendum. Dr. Martin saw and examined Claimant. Claimant had sickle cell and a history of acute chest syndrome; her last hospitalization was in May 2012. Claimant had been doing relatively well since her last hospitalization, but had poor access to healthcare due to lack of insurance.

On September 8, 2013, Claimant saw Dr. Martin Smith. Claimant wanted to get reestablished with MUSC; she had a left foot drop. Dr. Smith noted Claimant had weakness of the left ankle and knee. Claimant informed Dr. Smith she had a pain crisis the preceding weekend. Claimant reported having rare pain crises. Claimant's hypertension was under good control. Dr. Smith noted Claimant had an appointment with a neurologist.

On September 23, 2013, Claimant saw Dr. Martin at MUSC in Charleston, SC. Claimant was using pain medications infrequently, about one to two times a week. Claimant had no recent hospitalizations or emergency room visits. Claimant's primary complaint was fatigue and poor sleep patterns. Upon depression screening, Claimant became tearful; Claimant endorsed low mood and low energy. Dr. Martin noted Claimant had symptoms of depression, anxiety, and insomnia secondary to her general medical conditions. Claimant was doing well with pain control for the sickle cell anemia. The cause of Claimant's fatigue was unknown. Dr. Martin hypothesized various

²⁵ A lack of muscle control during voluntary movements, such as walking. See Mayo Clinic, *Ataxia* (2014), <http://www.mayoclinic.org/diseases-conditions/ataxia/basics/definition/con-20030428>.

causes could be thyroid dysfunction, depression, or anemia. Dr. Martin indicated she wanted to do blood work. Dr. Martin prescribed Ambien for insomnia.

On November 26, 2013, Claimant saw Dr. Martin. Claimant reported pain involving her joints and associated it with fatigue. Claimant denied having headaches. Dr. Martin documented Claimant was compliant with her medications; the medications were helpful in the management of her overall pain. Claimant had continued difficulties with sleep, unhappiness, and anxiety. Claimant's blood work was pending.

On February 1, 2014, Claimant went to the emergency room (ER) at East Cooper in Mt. Pleasant, SC, for chest pain. A CT angiogram²⁶ did not reveal pulmonary emboli.²⁷ The CT scan noted mild webbing and a history of prior chronic pulmonary emboli. Claimant was having a sickle cell crisis, but she did not require admission. The ER provided pain medication.

On March 4, 2014, Claimant saw Dr. Martin for a follow-up. Claimant's sickle cell crisis responded fairly well with narcotics. She reported some pain in her arms and legs, continued low mood, insomnia, and fatigue. Dr. Martin started Claimant on Zoloft, as well as trazodone for sleep and depression.

On November 18, 2014, Claimant went to the ER at East Cooper with pain in her right leg. The ER administered the IV opioid pain medication Dilaudid; Claimant improved. She was discharged with oral pain medication the same day.

On November 19, 2014, Claimant returned to the ER at East Cooper for recurrent pain. Claimant had one painful crisis per month; she was normally able to handle her episodes at home using oral medication. The ER placed Claimant on a Dilaudid pump; she progressively improved. Claimant was discharged that day with no activity limitations and given Dilaudid to use as needed.

On January 19, 2015, Claimant went to the ER at East Cooper for leg pain. She was in a sickle cell crisis. The ER administered IV Dilaudid; Claimant responded well. Claimant had run out of Dilaudid at home. Claimant was discharged the same day.

On March 28, 2015, Claimant went to the ER at East Cooper, for low back pain and generalized pain. The ER diagnosed with sickle cell crisis and provided IV Dilaudid. Claimant was discharged on the same day.

On May 8, 2015, Claimant went to the ER at East Cooper for sickle cell crisis. The ER treated Claimant with pain medication; she was discharged on the same day.

On May 9, 2015, Claimant was admitted to East Cooper for low back pain and leg pain. During her hospitalization, Claimant seemed to be responding to Dilaudid. Claimant developed a

²⁶ A computerized tomography (CT) angiogram is an imaging test that looks at the arteries that supply the heart with blood. A CT angiogram relies on an x-ray machine to produce images of the heart and its blood vessels. See Mayo Clinic, *CT Coronary Angiogram* (2014), <http://www.mayoclinic.org/tests-procedures/ct-angiogram/basics/definition/prc-20014596>.

²⁷ Pulmonary embolism occurs when a blood clot gets lodged in an artery in the lung. Blood clots often originate in the legs and travel up through the right side of the heart and into the lungs. See Mayo Clinic, *Pulmonary Embolism*, <http://www.mayoclinic.org/diseases-conditions/pulmonary-embolism/multimedia/pulmonary-embolism/img-20006463>.

temperature of 102 degrees and had difficulty breathing. An x-ray revealed a dense right lung infiltrate.²⁸ It was unclear whether Claimant had developed a hospital-acquired pneumonia or whether it was acute chest syndrome related to her sickle cell anemia.

The Committee reviewed Claimant's file.

Relevant Statutory and Plan Provisions

The Basic Long Term Disability Plan, which was established by the State Budget and Control Board for state employees, provides in relevant part:

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.*

Definition Of Disability [...]

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. [...]

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.

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.*

²⁸ When air sacs or alveoli fill with fluids, these fluids are called infiltrates. See Livestrong, *What Are the Causes of Infiltration of Lungs?* (2011), <http://www.livestrong.com/article/265106-what-are-the-causes-of-infiltration-of-lungs>.

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. [. .]*

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. [...]

Claims [...]

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. [...]

Decision of the Appeals Committee

The Appeals Committee considered all of the evidence in Claimant's file. The Committee then applied all of the reliable and probative evidence to the relevant provisions of the Plan.

The Committee first noted the time period in question was on and after April 14, 2013. As noted in the Plan provisions above, Claimant would have to be precluded from performing the Material Duties of her light-level Own Occupation of Shipping Order Clerk, due to her medical conditions at the time The Standard closed her BLTD claim and beyond. 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.

The Committee then reviewed the Own Occupation Definition of Disability, which provides Claimant must provide Proof of Loss that she was disabled from performing the Material Duties of her Own Occupation. The Material Duties are "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." The Committee noted Claimant's Own Occupation was a Shipping Order Clerk, which is light strength work as it is performed in the national economy; specific tasks with her specific job with her employer may not be considered in the Material Duties. Claimant must provide Proof of Loss that she was precluded from doing light-level strength work with reasonable continuity as of April 14, 2013, and afterward.

The Committee also emphasized the Plan's Proof of Loss provision, which requires "proof of physical impairment that results from anatomical or physiological abnormalities which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques." Claimant's

medical records must show objective medical proof supporting Claimant was impaired and precluded from doing light-level strength work with reasonable continuity by her symptoms as of April 14, 2013, and continuing beyond.

The Committee noted, in Claimant's application for Basic Long Term Disability Benefits, Claimant and her provider listed sickle cell anemia, left heel ulcer, lower back pain, and hypertension as Claimant's disabling conditions.

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 noted Claimant had infrequent hospitalizations; before May 10, 2012, Claimant's last hospitalization was three years earlier. 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. After the May 2012 hospitalization, Claimant's records showed her crises were manageable outside of a hospital setting. 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. The Committee found Claimant's BLTD benefits were correctly ended on April 14, 2013.

Well after Claimant's BLTD benefits ended on April 14, 2013, Claimant had three ER visits during 2014 for sickle cell anemia crises. However, Claimant was discharged the same day during each ER visit after being treated with IV pain medication. During 2015, Claimant had three ER visits and was discharged the same day during each visit after being treated with IV pain medication. On May 9, 2015, Claimant was admitted to the hospital with a sickle cell crisis and possible acute chest syndrome. However, Dr. Fancher noted Claimant had roughly one sickle cell crisis per month, with most handled at home and several others handled as an emergency room visit with same-day discharge. 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. 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 through May 9, 2015.

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. Claimant's left heel ulcer was effectively treated with frequent visits to her podiatrist, Dr. Saffer. Claimant's records showed she was well-healed by November 2012. The Committee noted Claimant's provider, Dr. Saffer, indicated in his Attending Physician's Statement that he anticipated Claimant could return to work by April 15, 2013. The Committee also noted Dr. Saffer indicated in his visit with Claimant on December 4, 2012 that Claimant's heel ulcer was healed; in Dr. Saffer's July 1, 2013 visit with Claimant, he indicated she had no complaints of heel pain. Based on the objective medical information available, the Committee found Claimant's file contained no medical evidence that her left heel ulcer, alone or in combination with her other symptoms, precluded Claimant from performing the Material Duties of her light Own Occupation on a reasonably consistent basis as of April 14, 2013 and beyond.

Regarding Claimant's hypertension and headaches, the Committee noted Claimant's file documented no evidence of recurring complications or symptoms from hypertension and headaches. These conditions were well-controlled when she took her medication, and there was no evidence these conditions worsened around the time Claimant's BLTD benefits ceased. There was no evidence these conditions prevented Claimant from working full time in her light Own Occupation. The Committee noted in Claimant's visit with Dr. Martin Smith on September 8, 2013, Claimant reported her hypertension was under good control. On November 26, 2013, Claimant saw Dr. Martin, and denied having headaches. Based on the objective medical information available, the Committee found Claimant's file contained no medical evidence that Claimant's hypertension and headaches, alone or in combination with her other symptoms, precluded Claimant from performing the Material Duties of her light Own Occupation on a reasonably consistent basis as of April 14, 2013 and continuing beyond.

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 her prescribed AFO 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.

The Committee noted Claimant's file referred to a diagnosis of plantar fasciitis. Claimant was diagnosed with plantar fasciitis on July 1, 2013 by Dr. Saffer. Dr. Saffer prescribed Claimant with an AFO brace; however, no medical evidence was provided regarding Claimant's use of the AFO brace. On March 13, 2013, Dr. Saffer completed an APS which indicated Claimant could return to work on April 15, 2013. Dr. Fancher subsequently found Claimant would not be precluded from light work because Claimant was reported to only have light tenderness in relation to her plantar fasciitis. Based on the objective medical information available, the Committee found Claimant's file contained no medical evidence that her plantar fasciitis, 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 continuing beyond.

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. 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 continuing beyond.

The Committee noted Claimant's file referred to her other condition of bursitis; however, although the condition was listed, its effects were not discussed in her medical records. Based on the objective medical information available, the Committee found Claimant's file contained no objective medical evidence that this condition, alone or in combination with her other symptoms, was present or precluded Claimant from performing the Material Duties of her light Own Occupation with reasonable continuity as of April 14, 2013, and continuing beyond.

While the Committee sympathizes with Claimant's conditions, the medical documentation in Claimant's file did not support that she was unable to perform the Material Duties of her light-level Own Occupation with reasonable continuity within the national economy after April 14, 2013, which is what the Plan requires for her disability benefits to continue to be paid.

Conclusion

Based on all of the evidence in Claimant's file, the Committee determined Claimant's conditions, individually or in combination, did not continue to meet the Own Occupation Definition of Disability outlined in the South Carolina Basic Long Term Disability Income Benefit Plan after April 14, 2013. Therefore, Claimant's claim was properly closed on April 14, 2013, and no further benefits are payable to Claimant.

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

L'Tonya Scott,

Appellant,

v.

South Carolina Public Employee Benefit
Authority, Employee Insurance Program,

Respondent.

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

APPELLANT'S BRIEF

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FILED

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SC ADMIN. LAW COURT

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

L'Tonya Scott,	)	Docket No.: 16-ALJ-30-0293-AP
	)	
Appellant,	)	
	)	
vs.	)	
	)	APPELLANT'S BRIEF
	)	
South Carolina Public Employee	)	
Benefit Authority, Employee	)	
Insurance Program,	)	
	)	
Respondent.	)	

I. STATEMENT OF ISSUE ON APPEAL

Appellant L'Tonya Scott (hereinafter "Appellant") appeals the decision of Respondent, South Carolina Public Employee Benefit Authority, Employee Insurance Program (hereinafter "PEBA"), under the South Carolina Administrative Procedures Act, S.C. Code Ann. § 1-23-310 *et. seq.* (1986 and Supp. 2006), to deny her claim for basic long term disability benefits (hereinafter "LTD").

This action is one for judicial review by the Administrative Law Court pursuant to South Carolina Code Ann. § 1-23-380 of PEBA's decision under the State of South Carolina LTD Plan (hereinafter "Plan"). The specific issue on appeal is whether Appellant was/is disabled under the terms of the Plan from when Respondent terminated her basic long term disability benefits effective April 14, 2013 and beyond. Appellant requests that the Administrative Law Court reverse PEBA's denial of LTD benefits because the decision was clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record.

II. STATEMENT OF THE CASE

Appellant was employed with South Carolina State Ports Authority as a Terminal Clerk. Appellant's job required that she "prepares, processes, and maintains information and shipping documents associated with container and/or breakbulk cargo services; prepare data need for invoicing; schedule truck/crane appointments as needed; handle general customer inquiries." (R. at 0626.) Physically, appellant's job required that she be able to "work flexible schedule including overtime," be able to work weekends and nights, stand, walk, bend, stoop, kneel, push, pull, lift/carry up to 50 pounds, lift overhead, and be able to stand and walk for long periods of time. (R. at 0627.)¹ As an employee of South Carolina State Ports Authority, Appellant was a participant in the State Basic Long Term Disability Plan. Due to Sickle Cell Disease and related crises, plantar fasciitis, left foot bursitis, depression, and hypertension, Appellant was forced to cease working for South Carolina State Port Authority on May 10, 2012. (R. at 0272.) Appellant's medical conditions will be discussed in further detail below.

After Appellant ceased working as a Terminal Clerk she made a claim for basic LTD benefits with Standard Insurance Company. Standard approved Appellant's claim on or around December 18, 2012. (R. at 0241.) Standard paid Appellant benefits until April 14, 2013. (R. at 0228.) Standard issued a letter denying Appellant's claim beyond April 14, 2013 on March 25, 2013. (Id.) Appellant appealed the decision on July 16, 2013. (R. at 0222-0223.) After exhausting all appeals with Standard, Appellant appealed the denial to PEBA. (R. at 0158.) On August 8, 2016, PEBA issued the final denial for Appellant's LTD claim, stating:

"Based on all of the evidence in [Appellant's] file, the Committee determined [Appellant's] conditions, individually or in combination, did not continue to meet the

¹ In a search of the Dictionary of Occupational Titles, Respondent did not find a job description for "Terminal Clerk," but found that "Shipping Clerk" was the most analogous. According to the DOT, the job required an individual to "exert force to 20 lbs. occasionally or 10 lbs. frequently, or negligible force constantly. May involve significant standing, walking, pushing, and/or pulling." (R. at 0628.)

Own Occupation Definition of Disability outlined in the South Carolina Basic Long Term Disability Income Benefit Plan after April 14, 2013. Therefore, Claimant's claim was properly closed on April 14, 2013, and no further benefits are payable to [Appellant]." (R. 0021.)

Appellant then timely served his Notice of Appeal with this Administrative Law Court.

III. APPLICABLE PLAN TERMS

Appellant believes the following plan terms are relevant:

"DEFINITION OF DISABILITY

...

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.

...

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." (R. at 0028.)

IV. STATEMENT OF SUBSTANTIVE FACTS FROM THE RECORD ON APPEAL

Appellant has an extensive medical history of Sickle Cell Disease which results in frequent Sickle Cell Crisis episodes² and related symptoms of back pain, acute chest syndrome, deep vein thrombosis, anemia, and "extreme pain in the arms or legs." (R. at 0272.) Appellant's "reoccurring crises...impair[] [her] normal mobility and ultimately causes [her] [to] not be able to keep a gainful employment." (R. at 0648.) She also suffers from plantar fasciitis, left foot bursitis, depression, and hypertension, which is documented in the administrative record.

Appellant has been treated by various physicians at MUSC including Dr. Charles Greenberg, Dr. Woodrow Coker, Dr. Temeia Martin, Dr. Tabitha Townsend, and Dr. Martin Smith. Appellant has had several emergency room visits and hospitalizations at East Cooper Medical Center.

Appellant has also treated with Dr. Joan Wynn Taylor, Dr. David Nawabi, and Andrew Saffer, DPM.

MUSC

Appellant's treatment with MUSC dates back to at least July 2012. (R. at 0462.)

MUSC's medical records consistently document the history of Appellant's Sickle Cell Disease and related symptoms.

² "Sickle Cell Anemia is an inherited disease affecting the red blood cells... The most common symptoms of Sickle Cell Anemia is a "Pain Crisis". This occurs when the red blood cell changes shape and causes a blockage of blood flow in the smaller blood vessels. Pain Crisis affects the bones, joints, chest or abdomen. This may occur as a result of dehydration, infection, excess alcohol use, stress or exhaustion. Low oxygen levels in the blood may also be a factor." (R. at 0300.)

- viii) she has difficulty falling and staying asleep at night which contributes to the fatigue she experiences during the day.

Ms. Scott's subjective complaints and limitations are consistent with her diagnosed medical conditions.

3. Ms. Scott is treatment compliant and she currently takes take Lisinopril, Hydrocodone and Temazepam. Her prescription medications cause her to suffer side effects including grogginess and lightheadedness.

...

5. It is further my understanding from Ms. Scott that her disability insurer has terminated benefits to her asserting that she should have been able to return to work on April 15, 2013 and that there are no medical reasons why she cannot return to work after April 14, 2013. With all due respect to the insurer, Ms. Scott does suffer from significant medical conditions, as described above, which prevent her from working.

...

6. It is my opinion, based upon my medical education and experience and based upon my specific knowledge of Ms. Scott's problems and treatment history that she is and has been disabled from performing her own occupation or any occupation consistent with the definition of disability above. I render my opinion based upon Ms. Scott's above described medical conditions and the symptoms she suffers. It is my opinion that she has been so disabled since she ceased working in May, 2012 and that she will remain so indefinitely into the future.

(R. at 0321-24).

Dr. Martin also completed a Social Security Disability Questionnaire on Appellant's behalf and noted a diagnosis of "sickle cell disease and beta thalassemia; onset at birth (congenital)." (R. at 0325.) She also noted that Appellant's ability to walk stand or sit would be impaired, she would only be able to walk for two to four hours, stand for one to two hours, and sit from four to six hours. (R. at 0325-26.) She further opined that Appellant would be unable to work eight hours per day, five days per week because of "chronic/intermittent pain that is worsened by various environmental stimuli (stress, weather changes)." (R. at 0326.) She further opined that Appellant would require six to eight rest periods per day for twenty minutes to one hour at a time. (Id.) She further stated that Appellant had severe pain due to her conditions and

that she had associated symptoms of "pervasive loss of interest in most activities," "sleep disturbance," "crying spells," "decreased energy," "feelings of guilt or worthlessness," "difficulty concentrating or thinking." (R. at 0327.) Finally, Dr. Martin opined that she expected Appellant to be disabled for at least twelve months in a row, and that Appellant was only capable of working in a sedentary occupation for less than four hours per day. (R. at 0327-28.)

ANDREW SAFFER, DPM

Appellant has treated with Dr. Saffer for diagnoses of left foot drop, plantar fasciitis, and left foot bursitis.

Appellant was treated by Dr. Saffer on March 12, 2013 and she complained of "current heel pain is 8/10 (ten being the worst)." (R. at 0386.)

Appellant was seen again by Dr. Saffer on July 1, 2013. She was seen for an "follow-up evaluation of symptomatic left plantar fasciitis with heel spur syndrome, bursitis, and gastrocnemius equinus... Patient states current heel pain is 8/10 (ten being the worst)." (R. at 0387.)

Dr. Saffer completed and the Attending Physicians Statement on Appellant's behalf on March 13, 2013. He listed up Appellant's diagnoses as left foot plantar fasciitis in left foot drop. He also noted that Appellant experienced pain with prolonged standing. (R. at 0469.)

EAST COOPER MEDICAL CENTER

Appellant has been hospitalized numerous times at East Cooper Medical Center for sickle cell crisis.

Appellant was seen in the emergency room at East Cooper Medical Center on February 1, 2014 for sickle cell crisis with "chest pain that is located primarily... in the sub sternal area... which is worse with inspiration." (R. at 0056.) Appellant also notify the physician that "she had a

painful crisis earlier this week but relays that it was most prominent in her left hip and lower back which is typical for her painful crisis.” (Id.) Appellant was treated and released that day with instructions to follow up with her primary physician. (R. at 0063.)

Appellant was again seen in the emergency room on November 18, 2014 for sickle cell crisis with “pain in right quadriceps, right knee and right shin pain began 2 days ago is continuous.... reports weakness in right leg.” (R. at 0066.) Appellant was released that day with instructions to follow up as needed. (R. at 0074.)

Later that same day, November 18, 2014, Appellant again went to the emergency room with sickle cell crisis with “pain in right leg and lower back... reports pain and lumbar area, left mid back, right mid back and right leg.... pain currently is 10 out of 10 on the pain scale. Quality of pain is described as aching, stabbing, alleviated by nothing.” (R. at 0076.) Appellant stayed overnight in the hospital and was discharged on November 19, 2014. In the discharge summary the physician noted that Appellant “reports that she usually gets the pain crisis about 1 time per month, which is normally handled at home.” (R. at 0086.) Appellant was discharged with instructions to follow up with her treating physician within the next week. (R. at 0087.)

Appellant was again treated in the emergency room on January 19, 2015 for sickle cell crisis. She reported that she had “really bad fatigue for the last couple of days...complains of pain in left leg pain currently is 6 out of 10... quality of pain is described as aching.” (R. at 0094.) Appellant was discharged with instructions to follow up with her treating physician. (R. at 0103.)

Appellant had another sickle cell crisis and was seen in the emergency room on March 28, 2015. She “developed back pain yesterday, which is consistent with her prior sickle cell crises. The pain is worsening... The patient has experienced similar episodes in the past, multiple

times.” (R. at 0110.) Appellant was again discharged with instructions follow up with her physician. (R. at 0116.)

Appellant had yet another sickle cell crisis on May 8, 2015 and went to the emergency room yet again. The physician noted that Appellant was “admitted yesterday to Roper Mount Pleasant for altered mental state in sickle cell crisis. Pt is having a typical crisis for her. She has pain in her lower back and left leg. This is a usual crisis for her.” (R. at 0123.) Appellant was admitted to the hospital on that date for sickle cell crisis. (R. at 129.) Appellant remained hospitalized until May 13, 2015. (Id.) On May 11, 2015, Appellant “began to develop a significant cough worsening tachycardia to heart rates in the 140s... Later that day she spiked a temperature of 102 and blood cultures were sent. Overnight, [Appellant] deteriorated further.” (Id.) Appellant was discharged with diagnoses of “pneumonia, suspect acute chest syndrome. acute respiratory failure, sickle cell beta thalassemia.” (Id.)

SOCIAL SECURITY DISABILITY

On December 29, 2014 Appellant was approved for Social Security Disability benefits. (R. at 0156-57.)

V. RESPONDENT'S REVIEWING PHYSICIANS

PEBA's plan administrator, Standard Insurance Company, had Dr. Bradley Fancher, an internist, issue opinions regarding Appellant's eligibility for LTD benefits.

Dr. Fancher reviewed Appellant's claim on January 20, 2014. Dr. Fancher noted in his review that Appellant “has sickle cell anemia with infrequent crises. She has not been hospitalized since May of 2012.” (R. at 0305.) He also noted that “she has had infrequent hospitalizations and infrequent emergency room visits because of this diagnosis.” (R. at 0306.) He concluded that “there is no indication in the claim file that the claimant would have been

impaired from her sickle anemia following April 2013. In fact, her sickle cell anemia has been fairly well controlled as noted by Dr. Martin and others.” (Id.)

Dr. Fancher also addressed appellant’s foot diagnoses. With regards to those conditions he found that “claimant would not be impaired from performing sedentary or light-level work due to her left foot drop.” (Id.) He also found that plantar fasciitis “is a commonly encountered condition cannot be expected to interfere with the performance of sedentary or light work.” (Id.)

With regards to Appellant’s complaints of fatigue, Dr. Fancher concluded that “there is no indication that [her fatigue] has changed significantly over time. The records do not support that the claimant has any condition which caused debilitating fatigue with respect to performing a sedentary or light-level occupation.” (Id.)

Dr. Fancher again reviewed Appellant’s claim on April 15, 2014 in light of Appellant’s submission of additional medical records. Dr. Fancher noted in this opinion that “it remains my opinion that the claimant sickle cell disease is under fairly good control. The claimant is infrequently visiting the emergency room. Her anemia is very mild. The claimant’s pain medication appears to be working well for her.” (R. at 0281.)

With regards to Appellant’s reported fatigue, Dr. Fancher concluded that

“given her constitutional complaint of fatigue, and may be reasonable to preclude her from performing strenuous physical exertion such as might be encountered in medium level work. However, I could not identify either a physical disease process or a mental health condition which would preclude the claimant from performing a sedentary or light occupation on a full-time basis.”
(R. at 0282.)

It appears from Respondent Final Decision of the Appeals Committee that Dr. Fancher completed one additional review for Respondent in response to Appellant once again submitting additional medical records. Dr. Fancher noted that:

"[Appellant] had been having a sickle cell crisis roughly once per month; most episodes have been handled by claimant remaining at home and taking medication and several other episodes being handled by emergency room visit. Dr. Fancher believed the frequency of [Appellant's] sickle cell crises, particularly those requiring emergency room visits, would not have precluded [appellant] from working on a reasonably continuous basis in a sedentary or light-level occupation, following April 13, 2013 up to May 9, 2015. Dr. Fancher noted [Appellant] was admitted to the emergency room on May 9, 2015 for a sickle cell crisis; [appellant's] subsequent course was unknown. Dr. Fancher cannot assess whether [Appellant] may have been able to return to gainful employment following her May 9, 2015 hospitalization."
(R. at 0010.)

It is worth noting that the December 4, 2015 opinion of Dr. Fancher is not contained in the record and, therefore, it appears as if the record on appeal is incomplete.

VI. STANDARD OF REVIEW

Section 1-23-380(A)(5) establishes the standard of review for appeals of PEBA's decisions under the Plan, and states as follows:

The court may not substitute its judgment for the judgment 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 and capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

S.C. Code Ann. Section 1-23-380(A)(5) (Supp. 2003, as amended by 2006 S.C. Acts 387, House Bill No. 3285, Ratification No. 398).

"Substantial evidence" is the standard for judicial review of agency decisions. *Hendley v. S.C. Budget & Control Bd.*, 510 S.E.2d 421 (S.C. 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." *McCraw v. Mary Black Hosp.*, 565 S.E.2d 286, 289 (S.C. 2006) (quoting *Tiller v. National Health Care Center*, 513 S.E.2d 843, 845 (S.C. 1999)). "The [Administrative Law] Court may reverse the decision if the administrative findings are clearly erroneous in view of the reliable, probative and substantial evidence on the whole record." *Id.*

VII. ARGUMENT

PEBA's decision to deny Appellant's benefits is clearly erroneous in view of the reliable, probative, and substantive evidence in the entire record. The record clearly demonstrates that Appellant is completely and totally disabled from her own occupation as a result of a combination of Sickle Cell Disease which results in unpredictable episodes of Sickle Cell Crisis and related symptoms, in combination with her plantar fasciitis, left foot drop, left foot bursitis, and depression. Appellant's primary treating physicians have opined on numerous occasions that Appellant is completely and totally disabled from performing her own occupation as a result of these conditions and the subjective symptoms she suffers therefrom.

PEBA's decision making process was severely flawed in many respects. First, it is worth noting that PEBA only had Appellant reviewed by one physician, Dr. Bradley Fancher. While certainly PEBA is not required to have Appellant reviewed by more than one physician, in this case, the one physician's reviews are particularly telling. The weight of the evidence in this case clearly tips in Appellant's favor, as the record on appeal contains numerous medical records and medical opinions concluding the Appellant would be unable to perform her own occupation. Dr. Temeia Martin has opined on numerous occasions that Appellant is completely and totally disabled from performing, not only her own occupation, but any occupation. (R. at 0321-24, 0325-28.). Additionally, Dr. Saffer has opined that Appellant would experience increased pain

with prolonged standing, which her own occupation as a Terminal Clerk clearly required. (R. at 0626-29.) It is true that in these cases this court does not employ the "treating physician rule." However, when the clear weight of the evidence weighs on the side of Appellant's disability from numerous physicians, while Respondent only has one reviewing physician, then the mere weight of the evidence tilts in Appellant's favor.

Second, Dr. Fancher also opines that Appellant's podiatry problems (plantar fasciitis, left foot drop, and left foot bursitis) do not render her disabled. Appellant respectfully submits that Dr. Fancher is not qualified to make such a disability determination as he is board certified in internal medicine, not podiatry. On the other hand, Dr. Andrew Saffer, a board certified podiatrist, stated that Appellant cannot stand for an extended period of time without experiencing increased pain. (R. at 469.) In this case, Dr. Saffer's opinion should be given greater weight here because he is a board certified podiatrist who specializes in such conditions.

Further, the record on appeal is replete with references to Appellant's suffering from depression, however, it does not appear that Respondent ever attempted to have Appellant's claim reviewed by a board certified psychiatrist or psychologist which further leads to the conclusion that Respondent's review process was clearly erroneous. Again, with all due respect to Dr. Fancher, as an internist he is not qualified to give an expert opinion regarding Appellant's psychiatric/psychological issues.

Dr. Fancher's medical opinions are further flawed because he seems to focus on the fact that Appellant has not been hospitalized for sickle cell crises. (R. at 0010, 0305-06, 0281.) The fact that Appellant was not frequently hospitalized for sickle cell crises is not dispositive, as it is clear that the medical records reference on several occasions that she experienced several sickle cell crises at home but, fortunately, she was able to deal with them at home without having to

seek hospitalization. (R. at 0318, 0422, 0410-11.) The very nature of Appellant's disability is such that it is unpredictable. Therefore, it is impossible to know when, how, and to what extent she will experience such crises. Clearly, it would be impossible for Appellant to maintain a consistent schedule as she never knows when she will experience a sickle cell crises. This further supports that Appellant would be unable to perform her own occupation with any "reasonable continuity."

Additionally, with respect to Appellant's fatigue, Dr. Fancher noted on several occasions that the fatigue she experiences would not prevent her from performing her own occupation. Appellant respectfully submits that her fatigue does, in fact, prevent her from performing her own occupation. Appellant's physicians opined on numerous occasions that her fatigue prevented her from completing her daily activities. (R. at 0285, 0287-89, 0313, 0321-24, 0410-11.) In fact, when Dr. Martin completed the questionnaire for Appellant she noted that Appellant would require six to eight rest periods per day for twenty minutes to an hour at a time. (R. at 0326.) Clearly, these restrictions would prevent Appellant from performing her occupation with "reasonable continuity."

Finally, Respondent's review process was flawed as it does not appear that it ever considered Appellant's Social Security Disability approval. Appellant's attorney submitted proof to Respondent that Appellant had been approved for Social Security Disability benefits. (R. at 0155.) The Social Security Notice of Decision is in the record and, therefore, it is clear that Respondent received it, however, it appears as if Respondent did not even acknowledge the fact that Appellant was awarded the benefits. Nowhere in the Final Decision of the Appeals Committee is the award of Social Security Disability benefits referenced. While this court does not have to give special deference to an Appellant's award of Social Security Disability benefits,

prevailing South Carolina law³ demonstrates that Respondent should at least consider the award.⁴

Nowhere in the record on appeal does not appear that Respondent's reviewing physician or the

³ The Honorable Paige Gossett has stated the following in multiple cases, "It is helpful to note that the standard of review in this case is analogous to the standard used in cases arising under the federal Employee Retirement Income Security Act ("ERISA"). See e.g., *Bynum v. Cigna Healthcare of N.C., Inc.*, 287 F.3d 305 (4th Cir. 2002) (holding that an insurer's decision could be overturned if "a coverage decision is unreasonable" and the insurer "abused its discretion"); see also *Booth v. Wal-Mart Stores, Inc. Assocs. Health & Welfare Plan*, 201 F.3d 335, 342 (4th Cir. 2002); *Feder v. Paul Revere Life Ins. Co.*, 228 F.3d 518, 522 (4th Cir. 2000). Accordingly, although no binding, ERISA case law provides guidance in analyzing the issue before the court. *White v. South Carolina Budget and Control Board, Employee Insurance Program*, Docket No. 07-ALJ-30-0567-AP. *Antonelli v. South Carolina Budget and Control Board, Employee Insurance Program*, Docket No. 07-ALJ-30-0034-AP. Both opinions are attached hereto as Exhibits A & B for the Court's convenience.

⁴ In *Timmerman v. Hartford Life & Accident Ins. Co.*, 2010 U.S. Dist. LEXIS 7044 (D.S.C. 2010), the Court found that

"In determining the nature of Plaintiff's job in the general workforce, Defendant relied almost exclusively on the Department of Labor's DOT [§9] in selecting Plaintiff's occupation. However, although Plaintiff filed an affidavit swearing he had been approved for Social Security disability benefits, Defendant never reviewed, nor did it ask Plaintiff to provide, any information regarding Plaintiff's approval for Social Security disability benefits.

In *Elliott v. Sara Lee Corp.*, the Fourth Circuit explained that, in reviewing an ERISA plan's denial of disability benefits, consideration of a disability award by the Social Security Administration "should depend, in part, on the presentation of some evidence that the 'disability' definitions of the agency and Plan are similar." 190 F.3d 601, 607 (4th Cir. 1999). Here, the Social Security Administration's definition of disability tracks closely with the definition of disability in the Plan. The Social Security Administration defines disability as an impairment so severe "he is not only unable to do his previous work but cannot . . . engage in any other kind of substantial gainful work which exists in the national economy" See 42 U.S.C. § 423(d)(2)(A). Additionally, the Fourth Circuit has made clear that phrase "unable to do his previous work" in this definition requires a claimant [§10] to show an inability to return to his occupation in the general workplace. *DeLoatch v. Heckler* 715 F.2d 148, 151 (4th Cir. 1983). The Fourth Circuit has also held that using the DOT in Social Security disability cases is an acceptable way to determine a claimant's occupation in the general workforce.

Here, Defendant, as administrator of the Plan, used a resource often used by the Social Security Administration in assessing disability. Moreover, the Plan and the Social Security Administration use a very similar definition of disability. In fact, it would appear that a greater showing is required to show disability under the Social Security definition than the Plan's definition. See, e.g., *Leagon v. Eaton Corp.*, No. CA 7:02-898-20, 2003 WL 23532381, at *3 (D.S.C. July 18, 2003) ("[A]n award of [S]ocial [S]ecurity disability benefits seems to indicate that a person is disabled from performing any occupation . . ."). Yet, Defendant found Plaintiff was not disabled while the Social Security Administration concluded the opposite.

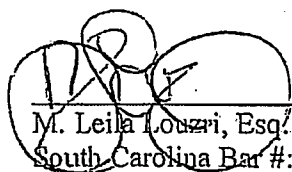
The contrasting Social Security opinion does not inherently render Defendant's decision denying benefits an abuse of discretion. *Elliott*, 190 F.3d at 607. However, [§11] without reviewing the Social Security records, which would shed more light on the chiefly contested issue of the nature of Plaintiff's job in the general workforce, Defendant made its decision without adequate evidence. See *id.* at 609."

reviewing committee even considered the fact that Appellant has been awarded Social Security Disability benefits. Certainly, given Appellant's age (37) her award of Social Security Disability benefits is particularly telling as it is, in part, an age based benefit.⁵ Again, while Appellant realizes that Respondent does not have to give special deference to an award of Social Security Disability benefits, prevailing law dictates that it should have at least considered the award. Nowhere in the record on appeal does it appear that Respondent even considered that Appellant was awarded Social Security Disability benefits.

Therefore, it is clear that Respondent's decision to deny Appellant's claim was clearly erroneous for reasons outlined above.

VIII. CONCLUSION

The record, taken as a whole, clearly demonstrates that Appellant is disabled from her own occupation as a Terminal Clerk, or any occupation. Despite the reliable, probative, and substantial evidence included in the record, PEBA has denied her claim for basic long term disability benefits. Consequently, for the reasons outlined above, Appellant respectfully requests that this Court reverse PEBA's long term disability decision and award her LTD benefits effective March 14, 2013 up until the present and into the future for so long as she remains disabled under the applicable plan terms outlined above.



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The *Timmerman* opinion is attached hereto as exhibit C.

⁵ See <https://www.ssa.gov/planners/disability/dqualify5.html>.

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EXHIBIT A

***WHITE v. SOUTH CAROLINA BUDGET
AND CONTROL BOARD, EMPLOYEE
INSURANCE PROGRAM***

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Lavinia White,

Appellant,

vs.

South Carolina Budget & Control Board,
Employee Insurance Program,

Respondent.

Docket No. 07-ALJ-30-0567-AP

ORDER

APPEARANCES: For the Appellant: Nathaniel W. Bax, Esquire
For the Respondent: James T. Hedgepath, Esquire

This matter is before the Administrative Law Court ("ALC") in its appellate jurisdiction pursuant to S.C. Code Ann. § 1-23-600(D) (as amended by 2008 S.C. Act No. 334)¹ and § 1-11-710(C) (2005). Lavinia White ("White") appeals the decision of the South Carolina Budget and Control Board, Employee Insurance Program ("EIP") closing her claim for basic long-term disability ("LTD") benefits under the State of South Carolina's Basic Long Term Disability Income Benefit Plan ("Plan"). By letter dated October 12, 2007, EIP's Long Term Disability Appeals Committee ("Appeals Committee") informed White that her medical conditions did not qualify her for continued disability income benefits under the terms and conditions of the Plan.

BACKGROUND

White was employed as a communications specialist for the Charleston County Detention Center. Her occupation was considered a sedentary occupation. On February 14, 2004, White was informed that Charleston County could not permanently accommodate her doctor's order for a day-shift work restriction and thereafter terminated White from her position. After filing a claim for LTD benefits, Standard Insurance Company ("Standard"), the third-party claims administrator for the

¹ The Administrative Procedures Act ("APA") was amended and renumbered via 2008 S.C. Act No. 334 (eff. June 16, 2008). Accordingly, all citations to the APA in this Order are to the recently amended and renumbered sections enacted by 2008 S.C. Act No. 334.

Plan, initially approved White for LTD benefits beginning on May 14, 2004 based in part on Dr. Steven Beeson's² medical opinion that he did not believe that White "can work in any occupation that requires significant visual acuity, particularly for fine tasks such as reading." (R. at 00672-73.) However, Dr. Beeson also determined that White's eye conditions "will probably wax and wane over time, and may well be treatable conditions." (Id.) Therefore, Dr. Beeson recommended that White's claim be reviewed again in six months.

On July 2, 2005, upon considering additional medical evidence submitted by White, Dr. Beeson issued a report stating that "[i]t is difficult to find anything that would prevent White from working." (R. at 00513.) Based in part on Dr. Beeson's report, Standard determined that White's condition no longer disabled her from performing her "Own Occupation" under the Plan's definition and therefore closed White's claim for LTD benefits with payment through July 12, 2005. Specifically, Standard concluded that

there is insufficient medical documentation to support continued impairment due to visual acuity and/or restrictions due to hip, back, leg and shoulder pain to preclude [you] from performing your own occupation. Rather, the medical documentation supports that you should be capable of performing the material duties of your own occupation of Police Aide³ with reasonable continuity.

(R. at 00504.) Standard acknowledged that White's vision would prevent her from working in occupations that require *very fine* visual acuity but not in an occupation that required significant visual effort. Standard determined that White's job required frequent near visual acuity, but not *very fine* visual acuity.

Following Standard's decision, White requested that Standard further review its decision and submitted additional medical information. In January 2006, Dr. Beeson reviewed the additional medical evidence submitted and again concluded that White had no limitations on light or sedentary work on a full-time basis. Dr. Beeson stated that White may have difficulty with occupations that require a high level of visual acuity, but that there is no evidence that normal visual requirements would be restricted. (See R. at 00270.) On January 26, 2006, Standard upheld the closure of

² Dr. Beeson is an independent physician consultant hired by Standard to review this claim. Dr. Beeson specializes in internal medicine.

³ Applying the descriptions found in The U.S. Department of Labor Dictionary of Occupational Titles, Standard determined that White's position as communication specialist most closely matched the job description of "police aide." (R. at 00894.)

White's LTD benefits and forwarded White's claim to the Quality Assurance Unit ("QAU") for independent review. QAU requested that another independent physician consultant, Dr. Bradley Fancher, review White's medical records. Dr. Fancher determined that White was not prevented from performing sedentary work, but was uncertain how much her visual impairment affected her ability to perform her job. Dr. Fancher thought it would be helpful to have the ophthalmologist comment on her ability to read computer screens and documents of a normal font size. He also noted that White did not stop working due to a visual impairment and that there was no indication that White's eye condition had worsened; rather, he noted that it may have improved. (See R. at 00255-56.)

Based in part on Dr. Fancher's opinion, on March 1, 2006, Standard notified White that the QAU affirmed the earlier decision to close White's claim. On May 26, 2006, White appealed this decision to EIP and submitted additional medical documentation. EIP forwarded the additional information back to Standard for a follow-up review of White's claim. Standard requested Dr. Fancher to conduct a second review and opine as to White's limitations and restrictions. Upon follow-up review, Dr. Fancher did not change his opinion. On February 13, 2007, Standard informed White that the additional medical evidence did not change Standard's decision to close White's claim. White then submitted a statement from Dr. Frederick H.D. Weidman, III, her treating ophthalmologist. On February 13, 2007, Standard informed White that the review of this statement did not change the decision and that EIP would proceed with its review. Standard then forwarded White's file to EIP to enable the Appeals Committee to conduct a *de novo* review of White's claim. On October 12, 2007, the Appeals Committee unanimously determined, based on White's medical evidence, the relevant provisions of the Plan, and the medical opinions of Standard's physician consultants, that "the facts and circumstances of [White's] claim do not qualify her for continued disability income benefits under the Plan." (R. at 00029.)

Having exhausted her administrative remedies with EIP, White now appeals EIP's decision to this court pursuant to S.C. Code Ann. § 1-23-600(D) (as amended by 2008 S.C. Act No. 334) and § 1-11-710(C) (2005). Upon consideration of the record, the briefs, and oral arguments, the court affirms the decision of EIP to close White's claim for LTD benefits.

ISSUE

Did EIP err in determining that White is no longer disabled from performing her own occupation and therefore not entitled to continued LTD benefits?

STANDARD OF REVIEW

As set forth above, this matter is before the ALC in its appellate jurisdiction pursuant to S.C. Code Ann. § 1-11-710(C) (2005) and § 1-23-600(D) (as amended by 2008 S.C. Act No. 334). Accordingly, the Administrative Procedures Act's standard of review governs this appeal. See S.C. Code Ann. §§ 1-23-600(E), -380 (as amended by 2008 S.C. Act No. 334); see also Byerly Hosp. v. S.C. State Health & Human Servs. Fin. Comm'n, 319 S.C. 225, 229, 460 S.E.2d 383, 385 (1995). The standard used by appellate bodies, including the ALC, to review agency decisions is provided by S.C. Code Ann. § 1-23-380(5) (as amended by 2008 S.C. Act No. 334). See S.C. Code Ann. § 1-23-600(E) (as amended by 2008 S.C. Act No. 334) (directing Administrative Law Judges to conduct appellate review in the same manner prescribed in Section 1-23-380). This section provides:

The court may not substitute its judgment for the judgment 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 [of the agency] 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 abuse of discretion or clearly unwarranted exercise of discretion.

S.C. Code Ann. § 1-23-380(5) (as amended by 2008 S.C. Act No. 334).

A decision is supported by "substantial evidence" when the record as a whole allows reasonable minds to reach the same conclusion reached by the agency. Bilton v. Best Western Royal Motor Lodge, 282 S.C. 634, 321 S.E.2d 63 (Ct. App. 1984). Further, substantial evidence means that a decision will not be set aside simply because reasonable minds may differ on the judgment. Lark v. Bi-Lo, 276 S.C. 130, 276 S.E.2d 304 (1981). Substantial evidence is not a mere scintilla of evidence, nor the evidence viewed blindly from one side of the case, but is evidence that, considering the record as a whole, would allow reasonable minds to reach the conclusion the agency reached in

order to justify its action. Hargrove v. Titan Textile Co., 360 S.C. 276, 289, 599 S.E.2d 604, 611 (Ct. App. 2004). The fact that the record, when considered as a whole, presents the possibility of drawing two inconsistent conclusions from the evidence does not prevent the agency's finding from being supported by substantial evidence. Id.; Waters v. S.C. Land Res. Conservation Comm'n, 321 S.C. 219, 467 S.E.2d 913 (1996); Grant v. S.C. Coastal Council, 319 S.C. 348, 461 S.E.2d 388 (1995). However, § 1-23-380(5) requires the reviewing tribunal to consider not only the amount of evidence, but also the quality of that evidence; it must be both "reliable" and "probative," as well as "substantial." See S.C. Code Ann. § 1-23-380(5) (as amended by 2008 S.C. Act No. 334).

An abuse of discretion occurs when a decision is based upon an error of law, such as application of the wrong legal principle; or, when based upon factual conclusions, the ruling is without evidentiary support; or when the judge is vested with discretion, but the ruling reveals no discretion was exercised; or when the ruling does not fall within the range of permissible decisions applicable in a particular case. Ex Parte Capital U-Drive-It, Inc., 369 S.C. 1, 5, 630 S.E.2d 464, 467 (2006). A decision is arbitrary or capricious when no rational basis for the conclusion exists, when it is based on one's will and not upon any course of reasoning and exercise of judgment. Converse Power Corp. v. S.C. Dep't of Health & Env'tl. Control, 350 S.C. 39, 564 S.E.2d 341 (Ct. App. 2002); Deese v. S.C. State Bd. of Dentistry, 286 S.C. 182, 184-85, 332 S.E.2d 539, 541 (Ct. App. 1985). A decision may be arbitrary or capricious when it is made at one's pleasure without adequate determining principles, or is governed by no fixed rules or principles. Deese, 286 S.C. at 184-85, 332 S.E.2d at 341. Non-uniform, inconsistent, or selective application of authority can indicate arbitrariness. See Mungo v. Smith, 289 S.C. 560, 571, 347 S.E.2d 514, 521 (Ct. App. 1986).

It is helpful to note that the standard of review in this case is analogous to the standard used in cases arising under the federal Employee Retirement Income Security Act ("ERISA"). See, e.g., Bynum v. Cigna Healthcare of N.C., Inc., 287 F.3d 305 (4th Cir. 2002) (holding that an insurer's decision could be overturned if "a coverage decision is unreasonable" and the insurer "abused its discretion"); see also Booth v. Wal-Mart Stores, Inc. Assocs. Health & Welfare Plan, 201 F.3d 335, 342 (4th Cir. 2002); Feder v. Paul Revere Life Ins. Co., 228 F.3d 518, 522 (4th Cir. 2000). Accordingly, although not binding, ERISA case law provides guidance in analyzing the issue before the court.

DISCUSSION

I. Applicable Plan Language

The Plan provides LTD benefits for twenty-four months, after a ninety-day waiting period, when it is found that the employee is disabled and may not perform the material duties of her own occupation with reasonable continuity. The Plan further provides:

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. at 00009.) The Plan defines "Material Duties" as "the essential task, functions and operations, and the skills, abilities, knowledge, training and experience, generally required by employers from those engaged in a particular occupation." (R. at 00010.) Based on the evidence presented, the Appeals Committee found that the documentation in White's claim file did not support her claim that she met the "Own Occupation" definition to continue receive benefits under the Plan.

II. Evidence

White asserts that EIP's decision was "clearly erroneous in view of the reliable, probative and substantial evidence on the whole record, was arbitrary and capricious, and was an abuse of discretion." Specifically, White contends that (1) EIP abused its discretion in relying on the opinions of the independent medical consultants over White's treating physicians, and (2) EIP abused its discretion in failing to consider the totality of White's medical conditions.

1. Treating Physician

Under the "treating physician rule," the opinion of the physician treating the patient is entitled to greater deference because of that physician's firsthand knowledge of the patient's specific injury; in other words, a court can afford special weight to the opinion of a claimant's treating physician. See, e.g., Mitchell v. Schweiker, 699 F.2d 185, 187 (4th Cir. 1983). Whether the treating physician rule should be applied can depend on the context of the case. For example, the treating physician rule is applied in determining whether a claimant is entitled to federal social security disability benefits. See 20 C.F.R. § 404.1527(d) ("Generally, we give more weight to opinions from your treating sources, since these sources are likely to be the medical professionals most able to provide a detailed, longitudinal picture of your medical impairment(s) and may bring a unique perspective to the medical evidence that cannot be obtained from the objective medical findings alone or from

reports of individual examinations, such as consultative examinations or brief hospitalizations.”). By contrast, the United States Supreme Court has held that the treating physician rule does *not* apply in ERISA cases. Black & Decker Disability Plan v. Nord, 538 U.S. 822, 834 (2003) (“[C]ourts have no warrant to require administrators automatically to accord special weight to the opinions of a claimant’s physician; nor may courts impose on plan administrators a discrete burden of explanation when they credit *reliable* evidence that conflicts with a treating physician’s evaluation.”) (emphasis added). The Nord Court further explained:

The treating physician rule has not attracted universal adherence outside the Social Security context. Some courts have approved a rule similar to the Social Security Commissioner’s for disability determinations under the Longshore and Harbor Workers’ Compensation Act, and the Secretary of Labor has adopted a version of the rule for benefit determinations under the Black Lung Benefits Act. One Court of Appeals, however, has rejected a treating physician rule for the assessment of claims of entitlement to veterans’ benefits for service-connected disabilities, and another has rejected such a rule for disability determinations under the Railroad Retirement Act of 1974. Furthermore, there appears to be no uniform practice regarding application of a treating physician rule under state workers’ compensation statutes.

Nord, 538 U.S. at 830 n.3 (citations omitted).

Although South Carolina has not expressly addressed whether the treating physician rule should be applied in EIP cases, case law suggests that it may be appropriate in some cases to accord greater weight to opinions of treating physicians. In James v. S.C. Employee Insurance Program, 371 S.C. 637, 640 S.E.2d 474 (Ct. App. 2006), the South Carolina Court of Appeals upheld the circuit court’s determination⁴ of coverage for a medical device known as a Dynamic Orthotic Cranioplasty (“DOC”) Band to correct a claimant’s child’s conditions of plagiocephaly (assymetrical head shape) and torticollis (twisted neck syndrome). In that case, EIP based its denial upon the Plan exclusionary language, finding that the DOC Band treatment was for cosmetic purposes and not medically necessary. The Court of Appeals found that EIP erred in denying coverage, emphasizing the fact that “the only physician who personally examined and treated the [patient] stated unequivocally that the treatment was medically necessary.” James, 371 S.C. at 646, 640 S.E.2d at 479.

⁴ James arose prior the enactment of 2006 S.C. Act No. 387, which changed the appeals process for Employee Insurance Program determinations, providing for appellate review by the ALC rather than the circuit court.

More recently, by contrast, the Court of Appeals implicitly gave no particular deference to the treating physicians of a claimant seeking long-term disability benefits in Wilson v. State Budget and Control Board Employee Insurance Program, 374 S.C. 300, 648 S.E.2d 310 (Ct. App. 2007). In that case, Wilson applied for long-term disability benefits from EIP based upon injuries to her back and knee. Wilson claimed she was unable to continue performing her job duties, which required "light to sedentary work." Wilson, 374 S.C. at 305, 648 S.E.2d at 313. The record in Wilson included opinions from six physicians: three treating physicians, including a family doctor, a radiologist, and a neurologist; another neurologist who examined Wilson's records upon referral from her treating family doctor; an internist who provided an opinion for EIP's third-party insurer; and finally, an independent surgeon who examined Wilson during the pendency of her appeal to the circuit court. This examination was conducted at the court's suggestion and with the agreement of the parties.

The evidence in the record as to whether Wilson was disabled clearly diverged. The tests performed by two of her treating physicians revealed "no abnormalities." Wilson, 374 S.C. at 305, 648 S.E.2d at 313. Although the opinions of the third-party insurer's expert and that of Wilson's treating neurologist flatly contradicted each other, the Court of Appeals noted that "both parties consented to allowing Dr. Johnson to perform an independent medical examination of Wilson for the circuit court's benefit. Dr. Johnson's opinion reaffirmed the opinion of [EIP] that Wilson was capable of performing light work." Id. at 305, 648 S.E.2d at 313. Accordingly, the Court of Appeals found that EIP's determination was supported by substantial evidence.

Reading Wilson and James together, it is apparent that South Carolina has not adopted a rule of *per se* deference to the opinions of treating physicians; rather, the amount of deference that should be given to a treating physician's opinion depends on the evidence and issue presented in a particular case. Accordingly, whether to accord more weight to the opinions of treating physicians than to that of some other medical expert must be determined on a case-by-case basis. On appeal, the ALC must review EIP's determination regarding the medical experts within the parameters of § 1-23-380(5) requiring the evidence, viewed in light of the record as a whole, to be reliable, probative, and substantial.

White contends that the opinion of her treating ophthalmologist, Dr. Weidman, warrants a determination that she is disabled from any occupation.⁵ Dr. Weidman's statement⁶ opines that White is disabled based on various ocular conditions including sarcoidosis, diabetic macular edema, uveitis, and iritis. His opinion is based on treating White from April 2006 through January 2007. White asserts that it was error for EIP to rely on the opinions of Dr. Beeson and Dr. Fancher, who specialize in internal medicine, rather than White's treating ophthalmologist, Dr. Weidman. In response, EIP argues that Dr. Weidman's opinion fails to indicate whether White was disabled as of July 2005 when EIP closed White's claim. EIP further points out that it was Dr. Beeson, not one of White's treating physicians, who initially opined that White's vision would prevent her from working.

The Record on Appeal contains numerous opinions from Dr. Beeson and Dr. Fancher as well as from White's treating physicians. In fact, White submitted medical documentation from numerous physicians who treated White at various points from 2002 through 2007. During that time, White received medical care from four different ophthalmologists regarding her vision, four physicians regarding her pain conditions, and three physicians regarding her sleep disorders—one of which is White's family physician who treats her diabetes. Of those physicians only one, Dr. Weidman, expressly stated that White was disabled from performing any occupation. However, he did not begin treating White until 2006. In 2004, Dr. Peggy S. Lindsey limited White's employment by indicating that White cannot work in an occupation that requires fine visual acuity, but that she anticipated White's condition to improve. Based on that statement, Standard granted White LTD benefits subject to a review in six months. In 2005, White sought treatment from Dr. Pamela S. Chavis who stated that she could not comment on White's ability to return to work, but her report showed improved visual acuity for White. Dr. Beeson considered her report, as well as reports from other doctors, in determining that White could return to work.

Under the facts of this case, the court finds that EIP did not err in accepting the opinions of the non-examining physicians over those of Dr. Weidman. Considering the fact that Dr. Weidman

⁵ The Record on Appeal contains medical records from approximately eleven different doctors. Of those eleven, only Dr. Weidman concluded that White is totally disabled from performing any occupation.

⁶ While Dr. Weidman's statement is entitled "Affidavit," it is actually an undated, signed statement that is not notarized. It appears that the statement was submitted to EIP in January 2007. The Appellant agrees that Dr. Weidman's statement should not be considered sworn testimony despite its title.

did not examine White until six months after EIP determined that White no longer qualified for LTD benefits, his opinion is not entitled to any additional deference. Furthermore, the opinions from other physicians upon which White relies did not unequivocally state whether or not White was able to work. Therefore, the court finds that reversal of EIP's decision is not warranted on this ground.

2. Totality of White's Conditions

White also claims that she entitled to LTD disability benefits based on numerous medical conditions that considered independently or as a whole render her disabled. On appeal, she contends that EIP failed to consider the totality of her conditions and that EIP's decision was "illogical and unreasonable." With regard to White's pain conditions and sleep disorder, most of White's physicians did not comment on whether White was capable of working and one expressly indicated that, from a rheumatology standpoint, White was capable of performing her occupation. (See R. at 489.)

There is no evidence in the record that White's conditions are expected to worsen. In fact, there is evidence that White's eye conditions may improve. Additionally, the record demonstrates that the Appeals Committee reached its determination after considering all of White's medical evidence as well the opinions of Standard's physician consultants. Furthermore, the physician consultants considered all of White's medical conditions in making their determinations. Accordingly, the court determines that EIP did not fail to consider the totality of White's conditions.

CONCLUSION AND ORDER

The court concludes that there is sufficient evidence in the record to demonstrate that EIP's decision to close White's LTD claim was reasonable. Furthermore, there is no evidence that EIP's decision was arbitrary and capricious or an abuse of discretion. It is therefore

ORDERED that EIP's decision to close White's claim for LTD disability benefits is affirmed.

IT IS SO ORDERED.

PAIGE J. GOSSETT
Administrative Law Judge

September 22, 2008
Columbia, South Carolina

EXHIBIT B

***ANTONELLI v. SOUTH CAROLINA
BUDGET AND CONTROL BOARD,
EMPLOYEE INSURANCE PROGRAM***

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Juliana Antonelli,

Appellant,

vs.

South Carolina Budget & Control Board,
Employee Insurance Program,

Respondent.

Docket No. 07-ALJ-30-0034-AP

ORDER

APPEARANCES: For the Appellant: Robert E. Hoskins, Esquire
For the Respondent: Theodore D. Willard, Jr., Esquire

This matter is before the Administrative Law Court ("ALC") in its appellate jurisdiction pursuant to S.C. Code Ann. § 1-11-710(C) (2005) and § 1-23-600(D) (Supp. 2007). Juliana Antonelli ("Antonelli") appeals the decision of the South Carolina Budget & Control Board Employee Insurance Program ("EIP") to deny coverage for a surgical procedure on the spine known as Artificial Disc Replacement ("ADR") using the Charité prosthetic disc.

I. STATEMENT OF THE CASE

Antonelli is a member of the State Health Plan ("Plan") and has a history of significant back problems. Her treating physician, Dr. Donald R. Johnson, II, prescribed ADR using the Charité disc.¹ ADR provides an alternative method of treatment to the traditional procedure of spinal fusion for degenerative disc disease ("DDD"). Spinal fusion removes the diseased tissue resulting from the deteriorating spinal disc and fuses the motion segments of the spine together; by contrast, ADR removes the damaged disc and replaces it with a functioning artificial disc.

The EIP Appeals Committee ("Committee") rejected Antonelli's appeal of the denial of pre-authorization for the procedure by the Plan's third-party administrator, Blue Cross Blue Shield ("BCBS"). The Committee found that ADR is an investigational procedure that is

¹ Although the Charité disc is not the only type of artificial disc available, it was the brand prescribed by Antonelli's physician and the only brand considered by EIP.

excluded from coverage under the Plan. Having exhausted her administrative remedies through EIP, Antonelli now appeals EIP's denial of coverage to this court pursuant to S.C. Code Ann. § 1-11-710(C) (2005), § 1-23-380 (Supp. 2007), and § 1-23-600(D) (Supp. 2007). Antonelli challenges EIP's decision as being unsupported by the relevant medical evidence in the record and based on flawed medical evidence. Upon review of this matter, EIP's decision to deny coverage of ADR for Antonelli is reversed.

II. PROCEDURAL HISTORY

Upon Antonelli's request for pre-authorization from BCBS, the nurse conducting the initial review recommended approving coverage. BCBS's in-house medical director, Dr. Ashby Jordan, a pediatrician by training, then sought an opinion from a service known as National Medical Review, an organization that provides insurance companies with opinions regarding benefit plans. Dr. Daniel Benson, a board-certified orthopedist of the National Medical Review, found that ADR was investigational based solely on a portion of Antonelli's medical records and without reference to her treating physician's documents or the applicable Plan language. Dr. Jordan then adopted Dr. Benson's report and denied coverage.

On appeal to the Committee, Antonelli submitted an affidavit of Dr. Johnson, her treating physician and board-certified orthopedic surgeon; a statement from Dr. Steven Poletti, a board-certified orthopedic surgeon; a report issued by the United States Food and Drug Administration ("FDA") regarding a Phase III clinical trial conducted regarding the Charité artificial disc ("FDA/Dupuy Study"); and other medical literature.² The Committee denied coverage, finding that ADR was investigational because it determined that (1) peer-reviewed medical literature does not permit conclusions concerning its effect on health outcomes; (2) the Charité disc has not been demonstrated to be as beneficial as established alternatives; and (3) the Charité disc has not been demonstrated, to a statistically significant level, to improve net health outcomes. (See R. at 83-88) (EIP Appeals Committee Health Appeal Final Determination Letter). In making these findings, the Committee relied upon: (1) Dr. Benson's opinion; (2) a February 2005 report from BCBS's Technology Evaluation Center ("TEC Assessment"); and (3) a report by Winifred S.

² Pursuant to 2006 S.C. Act No. 387, the ALC's review of EIP determinations is appellate under the standard of review set forth in § 1-23-380(A)(5). Unlike most cases that this court reviews in its appellate capacity, however, no evidentiary hearing takes place before the agency. The Committee conducts a paper review of EIP's initial coverage determination, which is also made without an evidentiary hearing.

Hayes, Inc., a company that provides synopses of clinical evidence regarding various medical treatments ("Hayes Brief"). (See id. at 87).

III. ISSUE

Did EIP err in finding that ADR is investigational and therefore excluded from coverage under the Plan?

IV. STANDARD OF REVIEW

As set forth above, this matter is before the ALC in its appellate jurisdiction pursuant to S.C. Code Ann. § 1-11-710(C), § 1-23-380, and § 1-23-600(D). Accordingly, the Administrative Procedures Act's standard of review governs this appeal. See S.C. Code Ann. § 1-23-380(A) (Supp. 2007); see also Byerly Hosp. v. S.C. State Health & Human Servs. Fin. Comm'n, 319 S.C. 225, 229, 460 S.E.2d 383, 385 (1995). The standard used by appellate bodies, including the ALC, to review agency decisions is provided by S.C. Code Ann. § 1-23-380(A)(5). See S.C. Code Ann. § 1-23-380(B) (Supp. 2007) (directing Administrative Law Judges to conduct appellate review in the same manner prescribed in Section 1-23-380(A)). This section provides:

The court may not substitute its judgment for the judgment 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 [of the agency] 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 abuse of discretion or clearly unwarranted exercise of discretion.

S.C. Code Ann. § 1-23-380(A)(5) (Supp. 2007).

A decision is supported by "substantial evidence" when the record as a whole allows reasonable minds to reach the same conclusion reached by the agency. Bilton v. Best Western Royal Motor Lodge, 282 S.C. 634, 321 S.E.2d 63 (Ct. App. 1984). Further, substantial evidence means that a decision will not be set aside simply because reasonable minds may differ on the judgment. Lark v. Bi-Lo, 276 S.C.130, 276 S.E.2d 304 (1981). Substantial evidence is not a

mere scintilla of evidence, nor the evidence viewed blindly from one side of the case, but is evidence that, considering the record as a whole, would allow reasonable minds to reach the conclusion the agency reached in order to justify its action. Hargrove v. Titan Textile Co., 360 S.C. 276, 289, 599 S.E.2d 604, 611 (Ct. App. 2004). The fact that the record, when considered as a whole, presents the possibility of drawing two inconsistent conclusions from the evidence does not prevent the agency's finding from being supported by substantial evidence. Id.; Waters v. S.C. Land Res. Conservation Comm'n, 321 S.C. 219, 467 S.E.2d 913 (1996); Grant v. S.C. Coastal Council, 319 S.C. 348, 461 S.E.2d 388 (1995). However, § 1-23-380(A)(5) requires the reviewing tribunal to consider not only the amount of evidence, but also the quality of that evidence; it must be both "reliable" and "probative," as well as "substantial." See S.C. Code Ann. § 1-23-380(A)(5).

It is helpful to note that the standard of review in this case is analogous to the standard used in cases arising under the federal Employee Retirement Income Security Act ("ERISA"). See, e.g., Bynum v. Cigna Healthcare of N.C., Inc., 287 F.3d 305 (4th Cir. 2002) (holding that an insurer's decision could be overturned if "a coverage decision is unreasonable" and the insurer "abused its discretion."); see also Booth v. Wal-Mart Stores, Inc. Assocs. Health & Welfare Plan, 201 F.3d 335, 342 (4th Cir. 2002); Feder v. Paul Revere Life Ins. Co., 228 F.3d 518, 522 (4th Cir. 2000). Accordingly, although not binding, ERISA case law provides guidance in analyzing the issue before the court.

V. DISCUSSION

A. Applicable Plan Language

The parties agree that the issue of coverage in this case is controlled by the Plan language contained in Article 9, which provides:

No benefits will be provided under any Article of this Plan for any service, supply or charges for the following

G. Any surgical or medical procedures determined by the medical staff of the Third Party Claims Processor with appropriate consultation, to be experimental or investigational or not accepted medical practice. Experimental or investigational procedures are those medical or surgical procedures, supplies, devices, or drugs, which at the time provided, or sought to be provided:

1. Are not recognized as conforming to accepted medical practice in the relevant medical specialty or field of medicine; or

2. The procedures, drugs or devices have not received final approval to market from appropriate government bodies; or
3. Are those about which the peer-reviewed medical literature does not permit conclusions concerning their effect on health outcomes; or
4. Are not demonstrated to be as beneficial as established alternatives; or
5. Have not been demonstrated, to a statistically significant level, to improve the net health outcomes; or
6. Are those in which the improvement claimed is not demonstrated to be obtainable outside the investigational or experimental setting.

(R. at 54-55).

B. Evidence Relied Upon by EIP

In denying coverage, EIP relied upon three specific pieces of evidence in the Record: (1) the opinion of Dr. Benson; (2) the TEC Assessment; and (3) the Hayes Brief.

1. Dr. Benson's Opinion

Antonelli argues that EIP erred in relying upon Dr. Benson's opinion because his finding that ADR is "investigational" was not based upon the applicable Plan criteria. The court agrees. The portion of Dr. Benson's opinion regarding the investigational status of ADR states in its entirety: "[T]he question is whether the CHARITE disc is investigational. Yes, it is. There are no larger peer reviewed studies that have proven efficacy and long term outcomes. The scientific evidence does not currently permit conclusions concerning the effect of the technology and health comes [sic]." (R. at 170) (Fax from National Medical Review dated Dec. 15, 2005).

Dr. Benson's letter does not indicate whether he was applying the proper Plan criteria or definition of "investigational." The word "investigational," left undefined, is ambiguous. See Pirozzi v. Blue Cross-Blue Shield of Va., 741 F. Supp. 586, 589-90 (E.D. Va. 1990) (noting in the ERISA context that the terms "experimental" and "clinical investigative" are ambiguous when they do not define the quantum or type of evidence required to demonstrate that the treatment is not experimental, the test that should be used to evaluate the treatment, or the threshold of statistical success in terms of cure). Accordingly, the fact that Dr. Benson did not use the applicable Plan definition of "investigational" when providing his opinion on that point

renders that evidence objectively unreliable for the purpose of determining coverage under the Plan.³

EIP argues that Dr. Benson did not need to use the applicable Plan definition of "investigational" to render an opinion because that issue is a question of law for the court. This argument misapprehends the nature of EIP's inquiry. Whether a particular procedure is "investigational" under the specific terms of a plan document can be a question of law or a question of fact. See, e.g., Hendricks v. Cent. Reserve Life Ins. Co., 39 F.3d 507, 512-13 (4th Cir. 1994) (ERISA). "Whether a form of treatment is experimental or investigative can be answered on at least two levels." Id. When the issue turns on contract interpretation, it is a question of law; however, when it is based upon whether a medical procedure meets a contract's definition on facts presented and the opinion of experts, it is a question of fact. Id. Here, where both components are at issue, it is a mixed question of law and fact. An expert's opinion as to the factual aspects of this determination is unhelpful, and therefore not probative, if it does not address the relevant criteria. See Rule 702, SCRE ("If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify thereto in the form of an opinion or otherwise.").

It is also unclear whether Dr. Benson reviewed the FDA/Dupuy Study. In fact, Dr. Benson does not mention FDA approval anywhere in his opinion. Dr. Benson vaguely refers to "peer-reviewed studies" and "scientific evidence," but he does not specify what resources he referenced in coming to his conclusion.⁴ There is no indication that Dr. Benson reviewed any of the relevant medical literature. Dr. Benson concludes that "[t]here are no larger peer reviewed studies [of the disc] that have proven efficacy and long term outcomes." (R. at 170). However, he does not articulate a measurable standard for what would constitute a "larger" study or what criteria might be used to establish a study as a "larger" one.⁵

³ By contrast, Dr. Johnson's medical opinion, which was part of the information considered by EIP, specifically addressed the question in terms of the Plan criteria.

⁴ Additionally, Dr. Benson admits he did not have Antonelli's updated MRI to review. (See R. at 170).

⁵ It follows that Dr. Jordan's opinion is likewise unreliable. Dr. Jordan's finding that ADR is experimental cannot constitute reliable, probative evidence upon which EIP can rely because it is clear from his report that he made no independent judgment about the investigational status of ADR, but rather merely relied upon the opinion of Dr. Benson. In addition, Dr. Jordan is a pediatrician and not a specialist in orthopedics.

Thus, because Dr. Benson did not render his opinion in the context of the applicable Plan criteria and because his report does not specify the sources or literature he considered, the court finds that EIP erred in relying on his opinion in finding that ADR was investigational and therefore excluded from coverage.

2. TEC Assessment

Antonelli argues that the BCBS TEC Assessment relied upon by EIP does not constitute reliable and probative evidence that ADR is investigational under the Plan criteria. Again, the court agrees.

TEC Assessments are documents prepared by members of the BCBS Association's Technology Evaluation Center and reviewed by the BCBS Association's Medical Advisory Panel, comprised of various physicians located across the country. See BCBS, Technology Evaluation Center, <http://www.bcbs.com/betterknowledge/tec/medical-advisory-panel.html> (last visited Jan. 29, 2008).⁶ Generally, courts have diverged on their consideration of TEC Assessments as evidence in insurance benefits cases. Compare Bucci v. Blue Cross Blue Shield of Conn., Inc., 764 F. Supp. 728 (D. Conn. 1991) ("Defendant's reliance on the TEC is not valid . . ."); and Pirozzi, 741 F. Supp. at 591 ("[T]he [TEC Assessment] criteria are not part of the Plan and the Plan nowhere states that the Blue Cross criteria are determinative of a treatment's experimental status . . .") with Martin v. Blue Cross & Blue Shield of Va., 115 F.3d 1201 (4th Cir. 1997) (upholding denial of benefits for high-dose chemotherapy and peripheral stem-cell rescue as being experimental based in part on TEC Assessment); Evans v. Blue Cross and Blue Shield of S.C., 834 F. Supp. 887 (D.S.C. 1993) (upholding denial of benefits for radial keratotomy based in part on TEC Assessment); and Glauser-Nagy v. Med. Mut. of Ohio, 987 F. Supp. 1002 (W.D. Ohio 1997) (denying preliminary injunction for pre-approval for high-dose chemotherapy and peripheral stem-cell rescue based in part on TEC Assessment that indicated that procedure was investigative or experimental).

⁶ A court may take judicial notice of information on a website. See Hall v. Virginia, 385 F.3d 421, 424 n.3 (4th Cir. 2004) (taking judicial notice of information published on the Virginia Division of Legislative Services website); Renaissance Greeting Cards, Inc. v. Dollar Tree Stores, Inc., 405 F. Supp. 2d 680, 684 n.9 (E.D. Va. 2005) (stating that information on a commercial website is appropriate for judicial notice under Fed. R. Evid. 201).

Thus, it is clear that in determining whether to provide coverage, EIP cannot blindly accept the statements or conclusions of a TEC assessment.⁷ Rather, it must carefully evaluate the probative value and reliability of a TEC assessment with regard to a particular treatment or procedure. For example, as with any other piece of evidence, EIP should consider such factors as whether the purpose of the TEC assessment is sufficiently analogous to the question at hand so it assists EIP in arriving at its conclusion, whether the criteria utilized by the TEC assessment are helpful in applying the criteria specified in the Plan, and whether the TEC assessment properly applies the stated criteria.

Here, the court finds that EIP erred in relying on the TEC Assessment. TEC assessments are used to determine whether a particular medical technology improves health outcomes such as "length of life, quality of life, and functional ability," BCBS, Technology Evaluation Center Criteria, <http://www.bcbs.com/betterknowledge/tec/tec-criteria.html> (last visited Jan. 29, 2008), and not whether that technology is investigational, nor whether any insurer should provide coverage for that procedure. Additionally, as Antonelli points out, although the criteria discussed in the TEC Assessment are similar to the Plan criteria, the language is not identical.

Moreover, the TEC Assessment in this case is internally inconsistent in its findings regarding ADR. For example, as to the efficacy of the procedure, the TEC Assessment states on the one hand that "[c]urrent evidence supporting the effectiveness of artificial vertebral disc is insufficient," but then asserts that "[t]he Charité artificial disc had a success rate of 63%, compared to a success rate of 53% for BAK fusion" It further recognizes that no other artificial discs "have better or more rigorous evidence of efficacy." (R. at 189). The TEC Assessment then concludes that "the reported success rate shows that the artificial disc is *not inferior* to the BAK [fusion]" *Id.* (emphasis added).

In addition, the TEC Assessment appears in several instances to apply a more rigorous standard than that mandated by either the Plan or the TEC Assessment itself. As stated above, the TEC Assessment specifically concludes that ADR is *not inferior* to fusion. This statement compels the conclusion that ADR is at least *as beneficial* as fusion – the criterion stated in the Plan. The TEC Assessment states that the 63% success rate of the disc (compared to 53% for fusion) shows that the disc "is not inferior" to fusion, but does "not [show] that it is *better*" than

⁷ In addition, the TEC Assessment contains disclaimer language that it is to be used "solely for informational purposes," and it should not be interpreted to suggest that BCBS or the TEC Program "discourages any particular treatment, procedure, or service" (R. at 189).

fusion. Id. (emphasis added). The TEC Assessment adds that the fact that the trial “did not show statistically significant *superiority*” to fusion is a “concern.” Id. (emphasis added). These conclusions implicitly mandate a demonstration of the superiority of ADR to spinal fusion, rather than utilizing the applicable Plan criterion – or even the stated TEC criterion – that requires merely that ADR be “as beneficial as” the established alternative.

Similarly, the TEC Assessment appears to misapply the Plan requirement that ADR “improve the net health outcomes.” In construing similar language in another plan, at least one court has noted that this criterion simply requires that the patient be better off with the treatment or procedure than without it. See Johnson v. Blue Cross & Blue Shield of Ala., Inc., 457 F. Supp. 2d 1288, 1314 & n.166 (N.D. Ala. 2006), vacated following settlement on appeal by Johnson v. Blue Cross & Blue Shield of Ala., Inc., 489 F. Supp. 2d 1290 (N.D. Ala. 2007); see also Chapman v. Anthem Health Plans of N.H., Inc., 2005 WL 1123949, *1 (D.N.H. 2005) (unpublished decision stating that “improvement in health outcomes” means “the beneficial effects outweigh any harmful net effects”).

These courts’ construction of “improve the net health outcomes” is startlingly similar to TEC’s own website’s stated interpretation of that language. The TEC website explains that, to improve the net health outcomes, “[t]he technology’s beneficial effects on health outcomes should outweigh any harmful effects on health outcomes.” BCBS, Technology Evaluation Center Criteria, <http://www.bcbs.com/betterknowledge/tec/tec-criteria.html> (last visited Jan. 29, 2008). However, the TEC Assessment at issue conjoins this criterion of “improv[ing] the net health outcome” with that of being “as beneficial as any established alternatives,” indicating that the TEC Assessment applies the same analysis to both. (See R. at 190, 202) (discussing the two criteria together); (R. at 197) (listing as the assessment question: “Does artificial disc replacement . . . improve health outcomes . . . compared with fusion or other treatments?”). Such a construction is contrary to the plain language of TEC’s own stated definition.

In relying on the TEC Assessment for its finding that ADR did not improve health outcomes, ELP similarly misapplied the Plan criterion. It adopted the TEC Assessment’s misapplication, which (as stated above) is inconsistent with the plain language of the Plan criterion requiring only that ADR be “as beneficial as” – not superior to – fusion. Such a construction of the words “improve the net health outcomes” renders this criterion meaningless, as it is redundant to the Plan’s separately stated “as beneficial as” criterion that does call for a

comparison to established alternatives – in this case, fusion. See Goodman v. Resolution Trust Corp., 7 F.3d 1123, 1127 (4th Cir. 1993) (“Contract terms must be construed to give meaning and effect to every part of the contract, rather than leave a portion of the contract meaningless or reduced to mere surplusage.”); Medlin Constr. Group, Ltd. v. Harveya, 449 F.3d 1195, 1200 (Fed. Cir. 2006) (a reasonable contract interpretation must “assure that no contract provision is made inconsistent, superfluous, or redundant”); cf. Gregory v. S.C. Democratic Executive Comm., 271 S.C. 364, 247 S.E.2d 439 (1978) (stating that a statute is not to be interpreted so that a particular phrase becomes “redundant and meaningless”). In other words, unlike the TEC Assessment’s analysis with regard to this criterion (“improve the net health outcomes”), the Plan language does not invite a comparison to the accepted alternatives – an exercise already mandated by a different Plan criterion (that the treatment “be as beneficial as established alternatives”). Thus, in relying on the TEC Assessment, EIP erred in construing the Plan criterion that ADR “improve the net health outcomes” to (1) require, yet again, a comparison to fusion, and (2) require superiority to fusion.

Applying the “improve the net health outcomes” Plan criterion properly, the evidence in the record viewed as a whole overwhelmingly shows to a statistically significant level that patients are better off with ADR than without it. See Johnson, 457 F. Supp. 2d at 1314 & n.166; Chapman, 2005 WL 1123949, at *1. Medical literature shows that with ADR, “full flexibility and motion is restored and the natural integrity and design of the spine is maintained.” (R. at 116-17). Disc replacement allows a patient’s spine to “maintain its normal range of motion” and “reduc[es] or eliminat[e] the risk of degeneration in adjacent segments of the spine.” (R. at 124). In addition, the Spine Arthroplasty Society found that “both the patients’ pain and functional scores improved significantly after surgery.” (R. at 123). The disc “is intended to maintain the normal movement between the vertebral bodies and prevent them from collapsing (and thereby irritating or damaging the nerve root) by maintaining the disc space height between the bones.” (R. at 125). The FDA/DePuy study found that “those patients implanted with the Charité disc improved or maintained their range of motion” (R. at 117). In addition, artificial discs “preserve the mobility of the patient’s adjacent discs” Id. Patients with the disc enjoy “[i]mprovements in range of motion, disc space height and less subsidence.” (R. at 127). Thus, EIP erred in finding that ADR had not been demonstrated to improve net health outcomes to a statistically significant level.

3. Hayes Brief

Antonelli argues that the Hayes Brief relied upon by EIP does not constitute reliable and probative evidence that ADR is investigational under the Plan criteria. The court agrees.

The criterion used by the Hayes Brief is whether ADR is "more efficacious" than fusion. (R. at 182). However, as previously discussed, the Plan only requires *equal* effectiveness. Therefore, the Hayes Brief does not employ the same criterion as the Plan. Notably, the Hayes Brief, like the TEC Assessment, contains a disclaimer stating that it "is not to be used as the sole basis for determining coverage policy." *Id.* In Whitley v. Carolina Care Plan, Inc., No. 3:06-257-CMC, 2006 WL 3827503, slip op. (D.S.C. Dec. 28, 2006), the District Court for the District of South Carolina held that an insurer's reliance upon a Hayes Brief alone to conclude that a particular procedure was "experimental" was an abuse of discretion for a number of reasons.⁸ The Hayes Brief in this case does not indicate whether it properly applied the Plan definition of "investigational" or even used that definition in rendering its opinion. Further, it is not clear what evidence was considered or referenced in forming the opinions found in the Hayes Brief. See Whitley, 2006 WL 3827503, at *32 ("While there is evidence that HAYES considers some of the same criteria as the Plan, it is far from clear that the HAYES Rating considers all of the same criteria and in the same way. Thus, it cannot fairly be said that the HAYES Rating is the equivalent of any one of the Plan's criteria or all of them."). For these reasons, the Hayes Brief does not constitute substantial evidence supporting EIP's decision.

C. Antonelli's Evidence

Dr. Johnson, Antonelli's treating physician and a board-certified orthopedic surgeon, submitted an affidavit in which he stated the following with regard to the Plan's definition of "investigational," as it relates to the Charité disc:

1. The disc is "widely accepted in the medical community and is increasingly being used"
2. The disc "has been implanted in thousands of patients worldwide . . . with proven safety and efficacy"
3. Typically a patient must sign an "informed consent" form when a procedure "is truly investigational." No informed consent was required here.
4. The disc has FDA approval.
5. "There are copious amounts of peer reviewed medical literature that conclude that the Charite artificial disc is a beneficial and effective treatment" In addition, the

⁸ EIP conceded at oral argument that the Hayes Brief alone would not constitute substantial evidence supporting its decision.

disc has been discussed numerous times in the peer-reviewed publication, The Spine Journal.

6. "There is ample evidence to show that the medical community has drawn conclusions regarding the beneficial effect of [ADR]" and the disc "has a most extensive clinical history with over seventeen (17) years of clinical experience with the current design in over 8000 patients in 30 countries worldwide."
7. The evidence shows that the disc would "be more beneficial than any alternative available...."

(R. at 98-103).

Dr. Johnson's affidavit⁹ is supported by other evidence provided by Antonelli. First, the record contains extensive medical literature about the disc, including: (1) an online article appearing on the University of Pittsburgh Department of Neurosurgery's website entitled Neurosurgical Spine Services Division Charité Artificial Spine Disc Replacement, (R. at 116-17); (2) an online article appearing on the National Public Radio ("NPR") website entitled Artificial Disc Offers New Hope for Treating Back Pain, (R. at 118-21); (3) a discussion on the NPR program "All Things Considered," on May 10, 2005, wherein Dr. Scott Blumenthal, the "principal investigator" of the FDA study, stated, "[T]he Charite is a viable alternative to spinal fusion. And if you look at the comparison, even if they are equal, both operations have a good potential to reduce pain. One eliminates motion, and one preserves motion." (R. at 120); (4) two online articles found on Spine-Health.com's website entitled All About the Charité Artificial Disc: Now Approved for Use in the U.S., (R. at 122-23), and Spinal Disc Replacement with the CHARITÉ Artificial Disc, (R. at 124-25); and (5) a listing of news stories about the disc on Charité's website, (R. at 126). Additionally, Dr. Johnson discusses in his affidavit other peer-reviewed literature including: (1) numerous articles that have appeared in The Spine Journal, which is the official journal of the American Spine Society – an international and multi-disciplinary journal that publishes original, peer-reviewed articles on research and treatment related to the spine; (2) an article authored by Dr. Regis W. Haid and Dr. Vincent Traynelis entitled Artificial Discs – the Future is Bright, (see R. at 102); and (3) an article in the Journal of

⁹ The Respondent's contention that the record merely shows that there are conflicting medical opinions about whether or not the disc is investigational misapplies the Plan criteria and fails to consider all the reliable, probative data in the record as a whole. In addition to all of the other reasons discussed herein, the fact that other physicians may *disagree* with the peer-reviewed literature's conclusions or question its methodology does not mean that the procedure is investigational under the exclusionary language of the Plan. See, e.g., Bolden v. Humana Ins. Co., 466 F. Supp. 2d 1199, 1211 (D. Ariz. 2006) ("[E]ven if some scientists hypothetically dispute the safety and efficacy of the treatment, Humana's policy exclusion does not apply so long as a treatment is identified in the literature as [meeting the Humana plan's requirement that the procedure be] 'generally accepted as effective.'").

Neurosurgery: Spine, which describes the technique for placement of the Charité disc, (see R. at 102). Moreover, EIP offered no peer-reviewed literature to counter Antonelli's position.¹⁰ Thus, the only peer-reviewed literature before this court is that offered by Antonelli, and that evidence clearly supports Antonelli's position.

Furthermore, the Charité disc was granted full FDA approval as of October 26, 2004, which was based upon the FDA/Dupuy clinical trial. This trial's objective was determining "whether the Charité artificial disc was any less safe or effective than the currently available spinal fusion surgery" Stephen Hochschuler, MD, and Paul McAfee, MD, All About the Charité Artificial Disc: Now Approved for Use in the U.S., (R. at 122). The results from that study showed the patients who received the disc were "*no worse* than patients treated with anterior lumbar interbody fusion." Id. (emphasis added).

As Dr. Johnson pointed out in his affidavit, (R. at 98-103), an indication of a procedure being considered "investigational" is whether it is being administered as part of a clinical trial, which requires informed consent. See Hendricks, 39 F.3d 507 (noting that the fact that the disputed procedure was part of clinical trial and informed consent was required supported the finding that the procedure was investigational or experimental); Martin, 115 F.3d 1201 (observing that the facts that informed consent was required and that the procedure was part of a Phase II clinical trial "strongly supports Blue Cross's conclusion that the procedure . . . was experimental or investigative"). The treatment in this case has already received government approval and will be administered in a normal hospital setting, not as part of a clinical trial.

VI. CONCLUSION

EIP denied coverage because it found that (1) the peer-reviewed medical literature does not permit conclusions concerning the effect of ADR on health outcomes; (2) ADR was not demonstrated to be as beneficial as the established alternative, spinal fusion; and (3) ADR has not been demonstrated, to a statistically significant level, to improve net health outcomes. (R. at 87). For all of the reasons discussed above, the court finds that EIP's decision to deny coverage

¹⁰ The term "peer reviewed" is not defined in the Plan; however, "peer review" generally means "a process by which something proposed (as for research or publication) is evaluated by a group of experts in the appropriate field." Miriam-Webster Online Dictionary (2008); Taber's Cyclopedic Medical Dictionary 1613 (20 ed. 2001) (defining "peer review" as "[t]he evaluation of the quality of the work effort of an individual by his or her peers. It could involve evaluation of articles submitted for publication or the quality of medical care administered by an individual, group, or hospital."). Notably, the Plan criterion on this point uses different language than that of the sources relied upon by EIP, which merely speak in terms of "scientific evidence" rather than "peer-reviewed literature." Thus, the sources that can be consulted for a determination as to this criterion are different from those used by EIP.

for ADR based upon these three criteria is clearly erroneous in view of the reliable, probative, and substantial evidence in the record as a whole. Furthermore, EIP misapplied the Plan criteria, causing its decision to be affected by error of law.

The Plan requires EIP to make six specific inquiries in determining whether a procedure is excluded because it is investigational.¹¹ EIP must consider whether the treatment has governmental approval.¹² The Charité disc does. EIP must also consider whether the peer-reviewed medical literature permits conclusions concerning ADR's effect on health outcomes. Here, the record is replete with conclusions regarding ADR's effect on health outcomes based upon peer-reviewed literature. The Plan also requires EIP to determine whether the procedure is demonstrated to be as beneficial as established alternatives. As noted above, the sources relied upon by EIP applied a more stringent standard, requiring superiority, and even the TEC Assessment itself found that ADR was "not inferior" to fusion. Finally, under the terms of the Plan, EIP must consider whether ADR has been demonstrated to a statistically significant level to improve health outcomes. Viewing the record as a whole, the evidence unquestionably shows that patients are better off with ADR than without it.

¹¹ EIP did not rest its decision on the ground that (1) the treatment is "not recognized as conforming to accepted medical practice in the relevant medical specialty or field of medicine"; or (2) the claimed improvement "is not demonstrated to be obtainable outside the investigational or experimental setting." (R. at 87).

¹² Although EIP did not expressly base its decision denying coverage on this criterion, its criticisms of the methodology of the FDA/DuPuy Study appear to implicitly rely on this criterion in that they seem to question whether the FDA *should have* approved the Charité disc. The Plan language, however, does not permit EIP to second-guess the FDA; it merely requires EIP to inquire whether the treatment *in fact has* government approval. Moreover, the court observes that the United States Court of Appeals for the Fourth Circuit has found that a Phase III clinical study is not a prerequisite to a treatment's non-investigational status. Wilson v. CHAMPUS, 65 F.3d 361, 365-66 (4th Cir. 1995) (ERISA). Thus, as the existence of a Phase III clinical trial has not been considered to be determinative as to whether a treatment should be deemed investigational, the court finds that EIP's criticisms of the FDA/DuPuy study miss the mark.

VII. ORDER

For all of these reasons, EIP's conclusions as to the investigational status of ADR were clearly erroneous when viewed in light of the reliable, probative, and substantial evidence in the record as a whole, and were affected by error of law. It is therefore

ORDERED that EIP's denial of coverage is reversed.

IT IS SO ORDERED.

PAIGE J. GOSSETT
Administrative Law Judge

January 29, 2008
Columbia, South Carolina

EXHIBIT C

***TIMMERMAN v. HARTFORD LIFE &
ACCIDENT INS. CO.***

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Reporter

2010 U.S. Dist. LEXIS 7044 * | 2010 WL 412553

James Timmerman, Plaintiff, v. Hartford Life and Accident Insurance Company, Defendant.

Core Terms

disability, benefits, occupation, records, administrator's, workforce, disability benefits, requirements

Counsel: [*1] For James Timmerman, Plaintiff: Robert Edward Hoskins ▾, LEAD ATTORNEY, Foster and Foster ▾, Greenville, SC.For Hartford Life and Accident Insurance Company, Defendant: Ingrid Blackwelder Erwin ▾, LEAD ATTORNEY, Jackson Lewis Law Firm ▾, Greenville, SC.Judges: G. ROSS ANDERSON, JR. ▾, UNITED STATES DISTRICT JUDGE.Opinion by: G. ROSS ANDERSON, JR. ▾.

Opinion

ORDER

(Written Opinion)

Plaintiff James Timmerman ("Plaintiff") brings this action pursuant to the Employment Retirement Income Security Act ("ERISA"), 29 U.S.C. § 1132(a)(1)(B), to recover long-term disability ("LTD") benefits allegedly payable to him as a participant of a group long-term disability policy ("the Plan") administered by Hartford Life and Accident Insurance Company ("Defendant"). Plaintiff also seeks attorney's fees and costs pursuant to 29 U.S.C. § 1132(e).

Pursuant to this Court's Specialized Management Order for ERISA cases, the Parties filed a Joint Stipulation and the administrative record on August 20, 2009. This matter is now before the Court on cross-memoranda for judgment. Plaintiff filed his memorandum on August 14, 2009, to which Defendant filed a reply on September 3, 2009. Defendant filed its memorandum on August 21, 2009, to which Plaintiff filed [*2] a reply on September 3, 2009. On October 2, 2009, Plaintiff filed a notice of supplemental authority, to which Defendant filed a reply on October 8, 2009.

Under the Joint Stipulation, the Parties agreed a hearing was unnecessary, and that this Court could dispose of this matter consistent with the Joint Stipulation, memoranda, and administrative record. The Court has thoroughly considered the submissions by the Parties, the administrative record, the Plan, and the arguments of counsel. For the reasons set forth below, the Court remands this case to Defendant, the Plan administrator, for reconsideration consistent with this Order.

Factual and Procedural Background

1

Plaintiff, a fifty-eight-year-old man who resides in Easley, South Carolina, worked as a sales manager for Republic National Distributing Company, a liquor distributorship in Columbia, South Carolina, for approximately fourteen years. (R. at 195, 205.) Plaintiff last worked as a sales manager for Defendant on November 13, 2007. (Id. at 3.) Through his employment, Plaintiff participated in an ERISA-governed LTD plan which is fully insured [*3] and administered by Defendant. (Id.) To be eligible for benefits, the Plan required that Plaintiff be continuously disabled for ninety days (an "elimination period"), and for the next twenty-four months. (Id. at 235, 248.)

Plaintiff submitted his Initial LTD claim form on January 25, 2008, after Plaintiff had been out of work due to symptoms including shortness of breath. (R. at 195-217.) In his Initial claim submission, Plaintiff listed his occupation as "sales manager," and claimed his duties were "selling, displays, shelf, reports, and manage reps." (R. at 195.)

Plaintiff's employer provided Defendant with an even more detailed description of Plaintiff's job. (*Id.* at 215-17.) It outlined the physical demands that were representative of those required to do the job. (*R.* at 217.) It said Plaintiff

is regularly required to use hands to finger, handle, or feel and talk or hear. The employee is frequently required to sit and reach with hands and arms. The employee is frequently required to stand; walk; climb or balance; stoop, kneel, crouch, or crawl; taste or smell. The employee must frequently lift and/or move up to 60 pounds of products 50% of the workday. Specific vision abilities [*4] required by this job include close vision, distance vision, color vision, peripheral vision, depth perception and ability to adjust focus.

(*Id.*)

After a vocational rehabilitation clinical case manager conducted an occupational analysis, Defendant determined that Plaintiff's job was the equivalent of "Manager, Sales" in the Dictionary of Occupational Titles ("DOT") which is DOT Code 163.167-010. (*R.* at 26.) The summary of Defendant's occupational analysis revealed that, in comparing the job Plaintiff was performing for his employer at the time of his claim with the position of "Manager, Sales" in the general workplace, "the essential duties, environmental conditions and non-exertional requirements are equal." (*R.* at 27.) Defendant acknowledged that Plaintiff and his employer both described Plaintiff's actual job as more physically demanding than the DOT position of "Manager, Sales," but Defendant ultimately determined the DOT position it selected most accurately reflected Plaintiff's job as performed in the general workplace. (*Id.* at 26-27, 159.)

In a detailed letter to Plaintiff on February 29, 2008, Defendant denied Plaintiff's claim for LTD benefits under the Plan. (*R.* at 157-61.) Defendant [*5] explained that based on the Plaintiff's claim form, as well as the medical and other information collected by Defendant and submitted by Plaintiff, Plaintiff was capable of performing his occupation in the general workplace because the physical requirement of the DOT position "Manager, Sales" were within Plaintiff's functional capabilities, which Plaintiff's physician claimed were sedentary. (*Id.* at 159-60.)

On March 12, 2008, Plaintiff's newly-retained attorney notified Defendant that Plaintiff was appealing its decision. (*R.* at 138-144.) On September 2, 2008, in addition to numerous other medical and employment-related records, Plaintiff submitted an affidavit that claimed he had been approved for Social Security disability benefits, although he did not include any documentation of these benefits. (*Id.* at 76.) On November 6, 2008, Defendant denied Plaintiff's appeal via a detailed letter sent to Plaintiff's attorney without referencing the Social Security disability benefits. (*Id.* at 61-63.)

On November 16, 2008, Plaintiff filed the instant action appealing Defendant's final determination.

Standard of Review

In this case, the Parties agree that the Plan affords Defendant "full discretion" [*6] and authority to determine eligibility for benefits and to construe and interpret all terms and provisions of the Group Insurance Policy." (See Joint Stipulation at 1; *R.* at 257.) This language clearly invokes an abuse of discretion standard. *Carden v. Actna Life Ins. Co.*, 559 F.3d 256, 260 (4th Cir. 2009) ("When the plan language grants the administrator discretionary authority, review is conducted under the familiar abuse-of-discretion standard.")

When evaluating a plan administrator's decision for abuse of discretion, the administrator's decision must stand unless unreasonable, even if the court would have reached a different conclusion. *Booth v. Wal-Mart Stores Inc. Assocs. Health and Welfare Plan*, 201 F.3d 335, 341 (4th Cir. 2000). "Under the abuse of discretion standard, the plan administrator's decision is reasonable if it is the result of a deliberate, principled reasoning process and if it is supported by substantial evidence." *Bernstein v. Capitalcare, Inc.*, 70 F.3d 783, 788 (4th Cir. 1995) (internal quotation marks and citation omitted). "Substantial evidence . . . is evidence which a reasoning mind would accept as sufficient to support a particular conclusion . . . [and] [*7] consists of more than a mere scintilla of evidence but may be somewhat less than a preponderance." *Laws v. Celebrezze*, 368 F.2d 640, 642 (4th Cir. 1966).

In *Booth*, the Fourth Circuit identified eight nonexclusive factors that guide ERISA abuse-of-discretion review:

- (1) the language of the plan; (2) the purposes and goals of the plan; (3) the adequacy of the materials considered to make the decision and the degree to which they support it; (4) whether the fiduciary's interpretation was consistent with other provisions in the plan and with earlier interpretations of the plan; (5) whether the decisionmaking process was reasoned and principled; (6) whether the decision was consistent with the procedural and substantive requirements of ERISA; (7) any external standard relevant to the exercise of discretion; and (8) the fiduciary's motives and any conflict of interest it may have.

Id. at 342-43 (footnote omitted).

Discussion

Defendant's decision to deny Plaintiff's LTD benefits for the twenty-four month period following Plaintiff's injury is not fully supported by the evidence given Defendant's failure to adequately consider that Plaintiff was awarded Social Security disability benefits.

In this [*8] case, the ultimate issue is whether Plaintiff was disabled from performing his occupation under the terms of the Plan. (Pl.'s Mem. at 17-22; Def.'s Mem. at 23-24.) To be disabled, Plaintiff must be unable to perform one or more of his occupation's essential duties. (*R.* at 248.) Additionally, the Parties agree, and the Plan clearly states, that Plaintiff's occupation means the job Plaintiff performed in the general workforce, and not the job Plaintiff performed for his specific employer. (Pl.'s Reply at 4; Def.'s Mem. at 23-24.)

It seems apparent from the record that Plaintiff's employer requires Plaintiff to perform a number of physical tasks that require more than minor effort. (See, e.g., *r.* at 217.) This case revolves around whether this less-than-minimal exertion is representative of Plaintiff's job in the general workforce, as advocated by Plaintiff and his employer, or whether the physical requirements are unique to Plaintiff's specific job, while his occupation in the general workforce involves sedentary activities, as argued by Defendant.

In determining the nature of Plaintiff's job in the general workforce, Defendant relied almost exclusively on the Department of Labor's DOT [*9] in selecting Plaintiff's occupation. However, although Plaintiff filed an affidavit swearing he had been approved for Social Security disability benefits, Defendant never reviewed, nor did it ask Plaintiff to provide, any information regarding Plaintiff's approval for Social Security disability benefits.

In *Elliot v. Sara Lee Corp.*, the Fourth Circuit explained that, in reviewing an ERISA plan's denial of disability benefits, consideration of a disability award by the Social Security Administration "should depend, in part, on the presentation of some evidence that the 'disability' definitions of the agency and Plan are similar." 190 F.3d 601, 607 (4th Cir. 1999). Here, the Social Security Administration's definition of disability tracks closely with the definition of disability in the Plan. The Social Security Administration defines disability as an impairment so severe "he is not only unable to do his previous work but cannot . . . engage in any other kind of substantial gainful work which exists in the national economy . . ." See 42 U.S.C. § 423(d)(3)(A). Additionally, the Fourth Circuit has made clear that phrase "unable to do his previous work" in this definition requires a claimant [*10] to show an inability to return to his occupation in the general workplace. *Delapche v. Hackler* 715 F.2d 148, 151 (4th Cir. 1983). The Fourth Circuit has also held that using the DOT in Social Security disability cases is an acceptable way to determine a claimant's occupation in the general workforce.

Here, Defendant, as administrator of the Plan, used a resource often used by the Social Security Administration in assessing disability. Moreover, the Plan and the Social Security Administration use a very similar definition of disability. In fact, it would appear that a greater showing is required to show disability under the Social Security definition than the Plan's definition. See, e.g., *Leagon v. Eaton Corp.*, No. CA 7:02-898-20, 2003 WL 23532381, at *3 (D.S.C. July 18, 2003) ("[A]n award of [Social] [S]ecurity disability benefits seems to indicate that a person is disabled from performing any occupation . . ."). Yet, Defendant found Plaintiff was not disabled while the Social Security Administration concluded the opposite.

The contrasting Social Security opinion does not inherently render Defendant's decision denying benefits an abuse of discretion. *Elliott*, 190 F.3d at 602. However, [*11] without reviewing the Social Security records, which would shed more light on the chiefly contested issue of the nature of Plaintiff's job in the general workforce, Defendant made its decision without adequate evidence. See *Id.* at 609.

Defendant claims it was not required to consider an award of Social Security benefits because, aside from Plaintiff's statement in the affidavit, there was nothing in the record reflecting an award of Social Security disability benefits. Accordingly, Defendant cites *Elliott* for the proposition it was not required to inquire further because it was under no obligation to secure evidence. (See Def.'s Resp. to Supp. Auth. at 3.) Although this is true as a general rule, this rule must be read in context. As the court in *Elliott* explained:

When a district court reviews a plan administrator's decision under the abuse of discretion standard, "an assessment of the reasonableness of the administrator's decision must be based on the facts known to it at the time." If the court believes the administrator lacked adequate evidence on which to base a decision, "the proper course[is] to 'remand to the trustees for a new determination . . .'"

Elliott, 190 F.3d at 608-09. [*12] (Internal citations omitted). Accordingly, although it would be inappropriate to reverse Defendant's decision for its failure to consider or procure the Social Security information, it is within this Court's discretion to direct a remand requiring Defendant to consider this information.

The Fourth Circuit has indicated, however, that "remand should be used sparingly." *Berry v. Ciba-Geigy Corp.*, 761 F.2d 1003, 1008 (1985). Remand is most appropriate "where the plan itself commits the trustees to consider relevant information which they failed to consider or where [the] decision involves records that were readily available and records that trustees had agreed that they would verify." *Id.* Here, the records were readily available from Plaintiff or the Social Security Administration. Additionally, the Plan contained multiple provisions to indicate Defendant would likely obtain possession of the Social Security records, or at the very least consider their existence in its assessment. For example, the Plan required participants to apply for Social Security benefits, and it discussed how Social Security benefits would impact the participants' ERISA benefits. (R. at 238-39, 245.)

Accordingly, [*13] in light of the *Berry* factors, Defendant lacked adequate evidence to support a decision to deny disability benefits. However, the record is not so clear as to warrant this Court directing Defendant to award Plaintiff the benefits he seeks. Moreover, the Court finds no improper motivation or bad faith on the part of Defendant such as might preclude remand.

IT IS THEREFORE ORDERED that this Court remands the matter to Defendant Hartford Life and Accident Insurance Company, as plan administrator, to reconsider its determination that Plaintiff is not entitled to long-term disability benefits by taking into account the records from the Social Security Administration granting Plaintiff disability benefits.

IT IS FURTHER ORDERED that Defendant shall issue a new decision on this matter within sixty days of entry of this Order.

IT IS SO ORDERED.

/s/ G. Ross Anderson, Jr. ✓

G. ROSS ANDERSON, JR. ✓

UNITED STATES DISTRICT JUDGE

January 28, 2010

Anderson, South Carolina

Footnotes

[1]

This factual summary briefly reflects those facts most relevant to the issue on remand.



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STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Tonya Scott

Appellant

Docket No. 16/ALJ-30-0298/AP

vs.

South Carolina Public Employee
Benefit Authority Employee Insurance
Program

Respondent

RESPONDENT'S BRIEF

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STATEMENT OF ISSUES ON APPEAL

- I. DOES THE SUBSTANTIAL EVIDENCE IN THE RECORD ON APPEAL SUPPORT RESPONDENT SOUTH CAROLINA PUBLIC EMPLOYEE BENEFIT AUTHORITY, EMPLOYEE INSURANCE PROGRAM'S DECISION TO CLOSE APPELLANT L'TONYA SCOTT'S LONG TERM DISABILITY CLAIM?

STATEMENT OF THE CASE

This case involves an appeal by Appellant L'Tonya Scott ("Scott") of Respondent South Carolina Public Employee Benefit Authority, Employee Insurance Program's ("PEBA") decision to close her long-term disability ("LTD") claim under the State of South Carolina Long Term Disability Income Benefit Plan (the "Plan"). Specifically, pursuant to the statutory mandate of S.C. Code Ann. 1-11-710(C) and the claims procedures and discretion provided by the Plan,¹ PEBA closed Scott's claim after she received LTD benefits for approximately five months, and after PEBA determined that Scott's conditions did not qualify her for additional LTD benefits under the terms and conditions of the Plan. R 4-21.²

Scott was formerly employed by the South Carolina State Ports Authority in the occupation of Shipping Order Clerk, a light strength level occupation. *Id.* at 277, 628. 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

¹ 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 in appeals involving the Plan, see Section entitled Allocation of Authority to PEBA and the Appropriate Standard of Review, p. 18, *infra*.

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

benefits in which she asserted that she was unable to continue working due to "sickle cell anemia, (and) left foot heel ulcer." *Id.* at 277, 272.

Standard Insurance Company ("Standard"), the third-party claims administrator for the Plan,³ 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 medical records from Scott's treating physicians, Standard determined that Scott no longer satisfied the Plan's Own Occupation Definition of Disability. Accordingly, Standard closed Scott's LTD claim with payment through April 14, 2013. *Id.* at 194-95.

Scott appealed Standard's decision. In response to Scott's appeal, Standard referred her claim to its Administrative Review Unit ("ARU") for an independent review. As part of its review of Scott's claim, the ARU requested an independent medical opinion from Dr. Fancher, a board-certified internist, regarding whether Scott's medical conditions prevented her from returning to her work in her light level occupation after April 14, 2013. Dr. Fancher reviewed all of the available information from Scott and her treating physicians and opined that Scott "would be capable of performing sedentary or light work after 4/14/2013." *Id.* at 308.

Scott submitted additional medical records before the ARU made its final decision. Dr. Fancher reviewed all of the additional information and opined a

³ 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.

second time that Scott's medical conditions did not prevent her from returning to work in her light level occupation. *Id.* at 281-82.

After considering all of the information in Scott's claim file and the opinions of Dr. Fancher, on May 1, 2014, the ARU upheld the decision to close Scott's claim. *Id.* at 176-89. The ARU also informed Scott of her right to appeal to PEBA for a final decision. *Id.* at 189.

Pursuant to Section 1-11-710(C), which provides authority to PEBA to establish claims procedures for the Plan, Scott, through her attorney, appealed Standard's decision to the PEBA Long Term Disability Appeals Committee (the "Committee") for a *de novo* review of the decision to close her 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. Along with her appeal to PEBA, Scott submitted additional medical records; however, the medical records significantly postdated the closing of her LTD claim. Notwithstanding the fact that the medical records provided no new information regarding the April 2013 timeframe when Scott's claim was closed and therefore were of questionable relevance, Standard provided the additional information to Dr. Fancher and asked him to reconsider his opinion regarding Scott's limitations and restrictions.

In a December 4, 2015 memo,⁴ Dr. Fancher provided a summary of the additional information Scott submitted and opined that Scott "would have been capable of performing sedentary or light work." *Id.* at 670-72.

After Dr. Fancher completed his third review of Scott's medical file, the Committee conducted a very thorough review of all the information contained in Scott's claim file. *See id.* at 4-17. Based upon all of the information in Scott's claim file and the terms of the Plan, the Committee unanimously determined that Scott did not qualify for additional LTD benefits under the Plan. *See id.* at 18-21. PEBA informed Scott of the Committee's decision by letter dated June 12, 2015. *Id.* at 2-3. After receiving PEBA's final decision, 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 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.

⁴ Dr. Fancher's December 4, 2015 memo was inadvertently left out of the original Record on Appeal. As of the date of filing this Respondent's Brief, PEBA's Motion to Supplement the Record on Appeal, which requests that the Court allow PEBA to supplement the Record on Appeal with Dr. Fancher's December 4, 2015 memo, is pending before the Court. References to Dr. Fancher's memo in this Brief are to pages R 670-72 of the Supplemental Record on Appeal, which will be filed with the Court if the Court grants PEBA's Motion to Supplement the Record on Appeal.

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. *Id.* at 28.

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 37.

Thus, to qualify for LTD benefits beyond April 14, 2013, Scott must provide objective medical evidence that her condition prevented her from performing the material duties of her occupation after that date. Stated differently, Scott must provide objective medical evidence to PEBA that her condition prevented her from returning to work in her occupation (not her specific job with the South Carolina State Ports Authority) after April 14, 2013. Scott failed to do so.

Finally, in order to receive LTD benefits under the Plan, a participant must be receiving ongoing appropriate medical treatment. Specifically, the Plan states as follows:

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. *Id.*

II. Scott's Medical Records

As noted above, 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. At the time Scott ceased working, she experienced a sickle cell event that resulted in her being hospitalized from May 10, 2012 through May 29, 2012. Notably, Scott's medical records indicate that she has not experienced an event of similar significance since May 2012.⁵ 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.

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 to further treat the ulcers. *Id.* at 606. 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." *Id.*

⁵ In a follow-up visit with Physician's Assistant Blessing-Feussner on June 8, 2012, PA Blessing-Feussner noted that Scott's May 2012 sickle cell emergency was "her worst in 10 yrs." *Id.* at 348.

Scott began treating with 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. *Id.* Dr. Saffer recommended that Scott purchase and wear wider shoes to avoid future ulcers. *Id.* at 381.

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. *Id.* at 417.

Scott saw 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." *Id.* at 414. Scott reported "[n]o pain really other than in heel area which was debrided yesterday." *Id.*

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. *Id.* at 403. Scott also reported that she had begun taking Hydrea and that the mild crisis had occurred prior to her starting Hydrea. *Id.* Dr. Smith noted that Scott complained of being tired. *Id.* Scott complained of pain and numbness in her left foot. *Id.* Dr. Smith referred Scott to a neurologist for assessment of her left foot numbness. *Id.* at 404.

At his 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." *Id.* at 408.

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. *Id.* at 342. Dr. Taylor noted that Scott had "no anxiety, depression, mood swings or psychotic features." *Id.*

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. *Id.* at 344. Scott reported that her left foot ulcer had healed. *Id.* Scott also reported that she had stopped taking Hydrea. According to Dr. Nawabi's chart note, Scott's "only real complaint today is that she is chronically tired as a result of her hospitalization. She states that she is not able to explain that. She states that as a result of chronic fatigue she is no longer able to work fulltime." *Id.*

Scott returned to Dr. Saffer on December 4, 2012. Scott complained of decreased range of motion in her left big toe and plantar fasciitis symptoms. *Id.* at 385.

Based on 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.⁶ See *id.* at 386. 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." *Id.*

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. *Id.* at 379. Dr. Saffer also stated that Scott could return to work, with no restrictions listed, on April 15, 2013. *Id.*

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 Scott "is able to bathe herself (and) clean the house." *Id.* at 333. Scott saw Dr. Taylor again the next day. Despite reporting no problems the previous day, Scott

⁶ 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 7, n. 7.

"complains of dizziness. It was noted 3 weeks ago and was sudden in onset." *Id.* at 329. Scott reported no other problems.

Scott saw Dr. Saffer on July 1, 2013. Dr. Saffer noted that Scott still had not made an appointment to see a neurologist. *Id.* at 370. Dr. Scott's office made an appointment with a neurologist for July 10, 2013; however, Scott apparently did not attend the appointment. *Id.* at 371.

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." *Id.* at 318. Dr. Townsend noted that Scott "[r]eports rare pain crisis."⁷ *Id.* at 320.

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." *Id.* at 289. Dr. Martin noted that Scott "denies fever, chills, headache, chest pain, [shortness of breath], cough . . . or swelling of her joints . . . she has not had any interval hospitalization or [emergency room] visits." *Id.* Scott complained of fatigue and became tearful during a depression screening. *Id.* Dr. Martin reported that Scott's hypertension was stable. *Id.* at 290.

⁷ 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. This clearly contradicts Scott's argument, as set forth in Appellant's Brief, that during the relevant time period, she experienced frequent episodes related to her sickle cell condition that would have prevented her from working due to both the severity and frequency of the episodes.

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, the Statement stated 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." *Id.* at 322. 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 Dr. Martin's 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 work day, Scott was capable of walking 2-4 hours; standing 1-2 hours; and sitting 4-6 hours. Dr. Martin also stated 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." *Id.* at 326. 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." *Id.* at 289. While Dr. Martin was clearly advocating for her patient's various disability claims, the significant disparity between Scott's contemporaneous medical records, Dr. Martin's 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, which were provided months after Scott's LTD claim was closed, provide little, if any, relevant evidence regarding Scott's ability to perform her occupation at the time her LTD claim closed in April 2013.

Scott saw Dr. Martin again on November 26, 2013. She complained of fatigue and difficulty with sleep and anxiety. *Id.* at 287.⁸

III. Standard's Consideration 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. *Id.* at 628-29. Thus, in

⁸ 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 her occupation as of April 15, 2013, not some subsequent date.

order to return to work in her occupation, Scott had to be able to perform light strength level job duties. The evidence in the Record on Appeal demonstrates that Scott was more than capable of performing light strength level job duties as of April 15, 2013.

As noted above, Scott received LTD benefits from November 9, 2012 through April 14, 2013. As part of its ongoing management of Scott's LTD claim, Standard requested that Scott have her treating physician(s) complete an Attending Physician's Statement 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 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. *Id.* at 194-95.

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,⁹ regarding whether Scott "has any limitations or restrictions from any conditions or combination of conditions which would preclude her from working in any way after 04/14/2013." After reviewing all of the available medical information and providing a summary of Scott's medical file through November 26, 2013, including Dr. Martin's Statement, Dr. Fancher provided the following opinion:

⁹ Dr. Fancher's *curriculum vitae* is included in the Record on Appeal at R 283-84.

I believe the claimant would be precluded from performing strenuous physical activity such as might be encountered in medium-level work due to her subjective complaint of fatigue and due to her left foot drop. I cannot identify any condition that would preclude the claimant from performing sedentary or light work after 04/14/2013. *Id.* at 307.

Subsequently, the ARU received additional medical records from Scott 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:

It is apparent that the claimant was seen in the emergency room on February 1, 2014¹⁰ 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 . . .

Again, given her constitutional complaint of fatigue, it may be reasonable to preclude her from performing strenuous physical exertion such as might be encountered in medium level work. However, I could not identify either a physical process or a mental

¹⁰

Almost ten months after her LTD claim was closed.

health condition which would preclude the claimant from working in a sedentary or light occupation on a full time basis.¹¹ *Id.* at 281-82.

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 of its decision by letter dated May 1, 2014. *Id.* at 176-89. The ARU also informed Scott of her right to appeal to PEBA for a final review of her claim. *Id.* at 189. Scott appealed to PEBA.

IV. PEBA's Consideration of Scott's Claim

In conjunction with her appeal to PEBA, Scott, through 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." *Id.* at 671.

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. *Id.* at 670-71. Dr. Fancher also noted that Scott was admitted to the hospital on May 8, 2015, but Scott did not provide detailed

¹¹ Notably, in her Brief, Scott attempts to discredit Dr. Fancher's conclusion that her mental health condition did not prevent her from returning to work in her occupation. However, Scott fails to point out that she never sought any specialized treatment from a mental health provider, nor does she point out that Scott's alleged mental health condition was never identified as a significant issue by any of her health care providers prior to the closure of her LTD claim. To the contrary, the medical records from the relevant timeframe indicate that Scott was not experiencing any mental health issues. For example, Dr. Taylor noted on October 12, 2012 and June 26, 2013 (both before and after Scott's LTD claim was closed) that Scott had no anxiety, depression, mood swings or psychotic features. *Id.* at 331, 342.

information about the admission or her subsequent discharge. *Id.* at 672. 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, but not medium level work as I have previously described. *Id.* at 671-72.

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 *id.* at 4-17. 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 *Id.* at 18-19.
- 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. *Id.* at 19.

- 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. *Id.*
- 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. *Id.* at 19-20.
- Regarding Claimant's hypertension and headaches, the Committee noted Claimant's file documented no evidence of recurring complications or symptoms from hypertension and headaches. These conditions were well controlled when she took her medication, and there was no evidence these conditions worsened around the time Claimant's BLTD benefits ceased. There was no evidence these conditions prevented Claimant from working full time in her light Own Occupation. *Id.* at 20.
- 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.¹² *Id.*

- 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. *Id.* at 21.

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." *Id.*

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

¹² The Committee also determined that Scott's plantar fasciitis did not prevent Scott 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." *Id.*

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 39. 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 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) (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, 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. 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).

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 *Wilson v. State Budget and Control Board Employee Insurance Program*, 374 S.C. 300, 305-06, 648 S.E.2d 310, 313 (Ct. App. 2007) (holding that although Wilson presented a favorable opinion from a treating physician and a favorable Social Security Disability determination, i.e., "some evidence" to support her claim, "we must affirm an agency's decision when substantial evidence supports the decision").

ARGUMENT

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

The overwhelming evidence in the Record on Appeal supports PEBA's decision to close Scott's LTD claim. As an initial matter, 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.¹³ 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.

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 335. Dr. Taylor noted that Scott "exercises in the form of walking (daily)" and that Scott was able to perform activities of daily living. Finally, Dr. Taylor reported that Scott had "no anxiety, depression, mood swings or psychotic features. Patient's insight is good. Memory and judgment are intact." Thus, contrary to the arguments set forth in Appellant's Brief, the undisputed evidence from the relevant 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. Scott argues that PEBA and Dr. Fancher erred in finding that Scott's

¹³ The evidence in the Record on Appeal does not support a conclusion that Scott did in fact satisfy the Own Occupation Definition of Disability at some later date.

plantar fasciitis, left foot drop, and left foot bursitis did not result in Scott being disabled. See Appellant's Brief, p. 14. In fact, Scott attacks Dr. Fancher's opinion and argues that "Dr. Saffer's opinion should be given greater weight (than Dr. Fancher's) because he is a board certified podiatrist who specializes in such conditions." Appellant's Brief, p. 14. Scott's argument ignores the undisputed fact that Dr. Saffer opined on March 13, 2013 that Scott could return to work with no restrictions on April 15, 2013.¹⁴

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, this condition 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 overwhelmingly support PEBA's decision to close her LTD claim and refute Scott's claim that she continued to be disabled due to sickle cell disease, fatigue, depression, plantar fasciitis, 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

¹⁴ Although not expressly addressed in PEBA's final decision, it is noteworthy that Scott has utterly failed to comply with the Plan's requirements that she provide proof of loss and that she be receiving appropriate care and treatment from a physician in the appropriate specialty with respect to her left foot drop condition. Scott did not follow Dr. Saffer's advice to obtain a neurological evaluation of the cause of her left foot drop, even after Dr. Saffer made an appointment for her with a neurologist.

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 work day, Scott could walk for 2-4 hours per day, stand for 1-2 hours per day, and sit for 4-6 hours per day. *Id.* at 326. 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 medical records, the opinions of Dr. Fancher provide support for PEBA's decision. Dr. Fancher consistently opined that Scott's medical conditions would not allow her to perform medium strength level work, but that her 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.

As a final matter, Scott argues that PEBA's decision making process was flawed because PEBA's decision did not expressly address the Social Security Administration's determination that Scott is disabled under the Social Security regulatory scheme. Scott's argument is misplaced for at least three reasons. First, the medical records of Scott's treating physicians contained in the Record on Appeal do not support a finding of disability under any disability standard. Second, the only information regarding the Social Security Administration's favorable decision is a two page "Notice of Decision" (see *id.* at 156-57) that merely informs Scott that her Social Security disability claim was approved. Scott

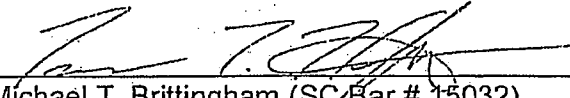
did not submit an actual determination letter that provided the rationale for the favorable decision nor did she identify what documentation the Social Security Administration considered in making its decision. Third, the responses provided by Dr. Martin on the Social Security Disability Questionnaire demonstrated that Scott was not disabled under the terms and conditions of the Plan. Thus, the only substantive information related to Scott's Social Security disability claim supports PEBA's decision to close Scott's LTD claim.

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 the Court affirm its decision.

Respectfully submitted,

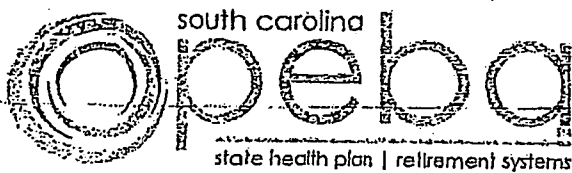


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January 6, 2017
Greenville, South Carolina

Attorneys for Respondent
South Carolina Public Employee Benefit
Authority, Employee Insurance Program



Serving those who serve South Carolina

August 8, 2016

Nathaniel Bax, Esquire
Foster Law Firm, LLC
601 E. McBee Ave, Ste. 104
Greenville, South Carolina 29601

Re: State of South Carolina Basic Long Term Disability Income Benefit Plan
Subscriber: L'Tonya L. Scott
Benefits Identification Number: 09176052

Dear Mr. Bax:

Thank you for your letter to the South Carolina Public Employee Benefit Authority, Insurance Benefits (PEBA Insurance Benefits), in which you appealed the decision of The Standard Insurance Company (The Standard) to close your client's basic long term disability benefits claim. Your appeal was considered by the Long Term Disability Appeals Committee, which consists of three members who have not been involved in any prior decisions to deny your client's claim. The Committee fully considered your client's appeal by reviewing the claim file along with the relevant provisions of the State of South Carolina's Basic Long Term Disability Income Benefit Plan (BLTD Plan). After the review, the Appeals Committee determined the facts and circumstances of your client's claim do not qualify her for additional disability income benefits under the Plan. The Appeals Committee's full decision is enclosed for your information.

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

Your client's right to appeal through PEBA Insurance Benefits has been exhausted. In accordance with instruction from the Administrative Law Court (ALC), the next level of appeal is to the ALC in its appellate jurisdiction pursuant to S.C. Code Ann. § 1-23-600(D). The contact information for the ALC is:

Administrative Law Court
1205 Pendleton Street, Suite 224
Columbia, South Carolina 29201

An appeal is commenced by filing a notice of appeal with the ALC within 30 days of receipt of this letter. If you need any further information regarding your appeal, please contact the ALC at 803.734.0550.

If your client chooses to appeal to the ALC, please note the following address for serving PEBA Insurance Benefits:

Executive Director Peggy G. Boykin, CPA
803.737.6800 | 888.260.9430 | www.peba.sc.gov
202 Arbor Lake Dr., Columbia, SC 29223

Healthcare | Public Employees | Workers' Compensation | Disability | Insurance | Long Term Disability | Life Insurance | Retirement

Legal Counsel
PEBA Insurance Benefits
202 Arbor Lake Drive
Columbia, SC 29223

Thank you for allowing PEBA Insurance Benefits the opportunity to review your client's claim. Best wishes to your client for good health now and in the future.

Sincerely,



Stephen R. Van Camp
General Counsel,
South Carolina Public Employee Benefit Authority

SRV/kmc/cek/jcs

Enclosure

cc: Rachel Robinson, Standard Insurance Company

BEFORE THE SOUTH CAROLINA PUBLIC EMPLOYEE BENEFIT AUTHORITY,
INSURANCE BENEFITS

Subscriber: L'Tonya Scott

Plan: South Carolina Basic Long Term
Disability Income Benefit Plan

FINAL DECISION OF
THE APPEALS COMMITTEE

Introduction

This matter is before the Long Term Disability Appeals Committee of the South Carolina Public Employee Benefit Authority, Insurance Benefits (PEBA Insurance Benefits), pursuant to the appeal of L'Tonya Scott (Claimant), filed by Nathaniel Bax, Esquire (Attorney). As an employee of South Carolina State Ports Authority, Claimant participated in the Basic Long Term Disability Income Benefit Plan (BLTD Plan or Plan). Claimant is appealing the decision of Standard Insurance Company (The Standard), the benefits manager and Third-Party Claims Administrator for the Plan, to close Claimant's Basic Long Term Disability claim. Claimant's claim was closed on April 14, 2013, because she no longer met the Plan's Own Occupation Definition of Disability based on the submitted documentation regarding her medical conditions.¹ The Appeals Committee conducted this *de novo* review.

Findings of Fact

The Appeals Committee carefully considered all of the evidence contained in Claimant's file, including, but not limited to, PEBA Insurance Benefits' records, Claimant's and Attorney's correspondence, documentation provided by Claimant's medical providers, and information provided by The Standard. After taking into account the credibility of the evidence, the Appeals Committee made the following findings.

Procedural History

On May 10, 2012, Claimant ceased working due to complications from sickle cell anemia.²

Claimant applied and was approved for BLTD benefits. Claimant met the Own Occupation Definition of Disability as outlined in the Plan documents. The Standard determined Claimant's date of disability was May 10, 2012. Claimant began receiving BLTD benefits on November 9, 2012, at the end of her 90-day Benefit Waiting Period. The Standard closed Claimant's BLTD claim on April 14, 2013, because it found she no longer met the Plan's Own Occupation Definition of Disability.

On August 16, 2012, Claimant's employer, South Carolina State Ports Authority (Ports Authority), completed an Employer's Statement. Claimant worked as a Terminal Clerk for Ports Authority. Claimant's BLTD coverage began on January 1, 2011. Claimant's last day of work

¹ The pertinent Plan terms are reprinted and discussed in the subsequent sections of this decision.

² Sickle cell anemia is a condition where there are not enough healthy red blood cells to carry adequate oxygen throughout your body. In sickle cell anemia, the red blood cells are rigid and sticky and are shaped like sickles or crescent moons. See Mayo Clinic, *Sickle Cell Anemia* (2014), <http://www.mayoclinic.org/diseases-conditions/sickle-cell-anemia/basics/definition/con-20019348>.

before disability commenced was May 9, 2012. Claimant had not returned to work. Claimant's employer had not considered allowing Claimant to work in another occupation or with modified job duties because Claimant was unable to work per her physician's orders. Claimant was on family medical leave (FMLA) from May 10, 2012 through August 1, 2012. Claimant's sick leave benefits were paid through May 17, 2012. Claimant was on leave without pay effective May 18, 2012. Claimant had applied for disability retirement benefits, but Claimant's employer did not know whether she received any form of deductible income.

On August 29, 2012, Claimant completed her Employee's Statement. Claimant was 33 years old. Claimant was employed by Ports Authority and worked as a Terminal Clerk. Claimant indicated she assisted truck drivers at a problem resolution booth and also assisted in the operation of a company vehicle to inventory equipment. Claimant indicated her disability was not work-related. Claimant's last full day at work was May 9, 2012. Claimant indicated the date she became unable to work at her occupation as a result of disability was May 10, 2012; she was no longer working. Claimant indicated her sickle cell anemia, first noticed as a child, and her left heel ulcer,³ first noticed during her hospitalization in May 2012, contributed to her being unable to work at her occupation. Claimant explained she experienced extreme pain in her arms and legs.

Claimant listed her treating physician as board-certified physician assistant Carol Blessing-Feussner, P.A. Claimant indicated she was hospitalized at Roper St. Francis Mt. Pleasant Hospital (Roper) on May 10, 2012 and transferred to Medical University of South Carolina (MUSC) from May 10, 2012 through May 29, 2012 for sickle cell crisis⁴ and acute chest syndrome.⁵ Claimant listed sickle cell anemia in her history of illness; she indicated she had been treated several times at Roper and MUSC.

Claimant had applied for two forms of deductible income, Social Security Disability and disability retirement benefits, in June 2012. She was not receiving either. Claimant had been employed by Ports Authority since May 19, 2001.

On September 6, 2012, a vocational consultant found Claimant's Own Occupation of Terminal Clerk most closely matched that of a Shipping Order Clerk, a light strength level occupation.⁶

³ Also known as decubitus ulcers, pressure ulcers, or bedsores; areas of broken skin which can develop in people who have been confined to bed for extended periods of time, are unable to move for short periods of time, or use a wheelchair or bedside chair. Decubitus ulcers are common in people in hospitals or nursing homes; they are from where the weight of the person's body presses the skin against the firm surface of the bed. See Harvard Medical Sch., Harvard Health Publications, *Bedsores (Decubitus Ulcers)* (2014), <http://www.health.harvard.edu/diseases-and-conditions/bedsores-decubitus-ulcers>.

⁴ A sickle cell crisis is a pain episode that occurs in people with sickle cell anemia. See U.S. Dept. of Health & Human Services, Nat'l Heart, Lung, and Blood Inst. [hereinafter Heart, Lung, and Blood Inst.], *What Are the Signs and Symptoms of Sickle Cell Disease?*, <http://www.nhlbi.nih.gov/health/health-topics/topics/sca/signs>.

⁵ Symptoms of acute chest syndrome are similar to pneumonia. Signs and symptoms include chest pain, coughing, difficulty breathing, and fever. See Centers for Disease Control and Prevention (CDC) [hereinafter CDC], *Sickle Cell Disease (SCD)*, <http://www.cdc.gov/ncbddd/sicklecell/treatments.html>.

⁶ The *Dictionary of Occupational Titles* provides the following description of the occupation of Shipping Order Clerk: 219.367-030 SHIPPING-ORDER CLERK

Requisitions transportation from freight carriers to ship plant products: Reads shipping orders to determine quantity and type of transportation needed. Contacts carrier representative to make

On September 18, 2012, Claimant called The Standard for an update on the status of her BLTD claim. Claimant's disability benefits analyst explained The Standard was waiting for records; the analyst also needed to know who Claimant was being treated by since she had been out of work. Claimant's history showed she normally went to the emergency room for her sickle cell anemia and did not have a physician. Claimant listed physicians she had seen since being hospitalized. The week earlier, Claimant had a minor sickle cell crisis and managed it with pain medication and fluids. Claimant stated Ms. Blessing-Feussner would not fill out the disability paperwork for Claimant because Ms. Blessing-Feussner felt it would not be right for Claimant to live off government assistance for the rest of her life at 33 years old. The analyst explained The Standard based its determination on Claimant's actual medical record; it reviewed whether medical records supported limitations that preclude Claimant from her Own Occupation for 90 days and beyond. Claimant noted she could not be in extreme heat or cold; she had many sickle cell crises in the past and she felt she may not go back to work. The analyst explained if Claimant did not have limitations beyond 90 days, The Standard could not approve a claim. Claimant informed the analyst she applied for Social Security Disability and disability retirement benefits but had not heard from either. The analyst advised she would call Claimant once a decision was made.

On September 25, 2012, board-certified internist Martin Smith, M.D., wrote a letter documenting Claimant's visit to his clinic that day. He stated Claimant could return to work on desk duty for the next three months and possibly longer. Dr. Smith further stated Claimant was precluded from prolonged standing or extended amounts of walking.

On November 2, 2012, a nurse case manager at The Standard completed a Nurse Consultant Memo regarding Claimant's BLTD claim. The nurse case manager outlined Claimant's medical records and found Claimant was precluded from more than occasional walking and standing due to recovery from hospitalization and treatment for her left heel ulcer. The nurse case manager recommended following up with Claimant's physicians to clarify whether there were any ongoing limitations and restrictions to full-time light-level work activity.

On November 5, 2012, Claimant called The Standard for a status update on her BLTD benefits claim. Her disability benefits analyst explained to Claimant she received the medical review and there was enough medical evidence to approve her claim based on her foot condition alone; it would take three to five business days to process. Claimant stated she was denied Social

arrangements and to issue instructions for loading products. Annotates shipping orders to inform shipping department of loading location and time of arrival of transportation. May perform other clerical tasks, such as typing and mailing bills, typing correspondence, and keeping files.
U.S. Dep't of Labor, *Dictionary of Occupational Titles* (4th ed. 1991)

Light strength work is defined as:

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 a 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.

U.S. Dep't of Labor, *Dictionary of Occupational Titles* (4th ed. 1991).

Security Disability and disability retirement benefits; Claimant appealed only her Social Security denial. Claimant would move forward with a disability retirement benefits appeal. The analyst agreed to mail Claimant copies of the medical records in her file to assist her in the appeal process. The analyst assured Claimant she would call her once Claimant's BLTD claim was complete.

On November 9, 2012, The Standard, in an internal memo, noted Claimant's BLTD claim should be approved. It was reasonable that Claimant was unable to perform work activity initially due to her sickle cell anemia crisis and continuing due to her left heel ulcer.

Also on November 9, 2012, The Standard sent Claimant a letter indicating her BLTD claim was approved effective August 8, 2012. Her first BLTD check would total \$1,766.38.

On December 18, 2012, The Standard sent Claimant a letter regarding her BLTD benefits and how her benefits are calculated.

On February 5, 2013, The Standard left Claimant a voicemail and requested a return call; The Standard wanted to know if Claimant had been seen by a physician since December 4, 2012. On Claimant's December 4, 2012 chart note, her left foot ulcer was still being treated. The Standard sent Claimant an Attending Physician's Statement (APS) for a physician to complete on her behalf.

On February 7, 2013, Claimant called The Standard; Claimant had not followed up with a physician. Claimant had a podiatrist appointment the following week. Her disability benefits analyst requested that Claimant have an APS completed, and noted if Claimant's disability retirement benefits were approved, she would have an overpayment. Claimant understood.

On March 13, 2013, board-certified podiatrist Andrew Saffer, D.P.M., completed an APS. Dr. Saffer indicated Claimant's diagnoses were plantar fasciitis⁷ in her left foot and a left foot drop.⁸ Dr. Saffer noted Claimant's initial visit was July 9, 2012 and her most recent visit was March 12, 2013; Claimant had monthly visits. Claimant's condition was unchanged. Dr. Saffer described Claimant's physical, mental, and cognitive limitations as left foot pain from prolonged standing. Dr. Saffer recommended a neurology consult. Dr. Saffer anticipated Claimant could return to work on April 15, 2013.

On March 25, 2013, The Standard, in an internal memo, noted Dr. Saffer's APS listed Claimant could return to work on April 15, 2013; therefore, Claimant's claim would close effective April 14, 2013.

Also on March 25, 2013, The Standard sent Claimant a letter. The information in Claimant's BLTD claim indicated she would be able to return to work on April 15, 2013; therefore, her claim would close with payment through April 14, 2013. The letter noted if Claimant had medical reasons why she could not work after April 14, 2013, she could have the enclosed APS

⁷ Pain 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. See Mayo Clinic, *Plantar Fasciitis*, <http://www.mayoclinic.org/diseases-conditions/plantar-fasciitis/basics/definition/con-20025664>.

⁸ General term for difficulty lifting the front part of the foot. See Mayo Clinic, *Foot Drop* (2014), <http://www.mayoclinic.org/diseases-conditions/foot-drop/basics/definition/con-20032918>.

completed by a physician and returned to The Standard with supporting medical records. The Standard would review the medical records and APS once received.

On April 12, 2013, Claimant called The Standard and left a voicemail about her BLTD claim closure. A disability benefits analyst returned Claimant's call and explained if she was unable to return to work, Claimant needed to take an APS to her physician to complete and have the physician fax it to The Standard.

On April 14, 2013, Claimant's BLTD claim closed.

On July 16, 2013, Attorney sent a letter to The Standard requesting a review of the decision to close Claimant's BLTD claim. Attorney was in the process of obtaining additional medical records to be considered in The Standard's review of Claimant's BLTD claim; Attorney asked The Standard not conclude its review until he was able to submit complete copies of Claimant's relevant medical records.⁹ Attorney also requested a complete copy of the documents upon which The Standard based its denial of Claimant's claim.

Between August 2013 and May 2014, The Standard and Attorney exchanged multiple correspondences. The Standard deferred its review, per Attorney's request, until he submitted all of the medical documentation he wanted The Standard to review.

On September 7, 2013, Claimant completed an affidavit. Claimant explained The Standard provided her with BLTD coverage for approximately eight months, but closed her claim because her podiatrist said she should have been able to return to work on April 15, 2013. Claimant listed Dr. Saffer, board-certified internist, Temeia Martin, M.D., board-certified general practitioner Joan Taylor, M.D., and board-certified internist Tabitha Townsend, M.D., as physicians who had treated her. She noted she suffered from sickle cell disease, lower back pain, plantar fasciitis and bursitis¹⁰ in her left foot, acute chest syndrome, and hypertension. Claimant expressed she underwent each and every treatment prescribed to her by her physicians. Claimant was having financial difficulty; Claimant noted going back to work was not an option despite her financial problems. Claimant stated she was completely and totally disabled from performing her prior occupation or any occupation on a full-time and consistent basis.

On November 4, 2013, Dr. Martin completed a Social Security Questionnaire. Dr. Martin documented on the form Claimant was able to walk for two to four hours in total in an eight hour day; Claimant could lift and carry up to 10 pounds occasionally. Dr. Martin did not think Claimant could work eight hours per day, five days per week due to chronic pain worsened by various environmental stimuli (like stress or weather changes). Dr. Martin also felt Claimant needed approximately six to eight rest periods during the day, lasting 20 minutes to an hour. Dr. Martin did not expect Claimant's condition to improve. Dr. Martin noted Claimant had been disabled for 12 months in a row. Claimant could perform sedentary work less than four hours per day.

Also on November 4, 2013, Dr. Martin provided a statement in support of Claimant's claim for BLTD benefits. Dr. Martin noted Claimant suffered from sickle cell anemia, lower back pain, plantar fasciitis and bursitis in her left foot, acute chest syndrome, and hypertension. Dr. Martin

⁹ Medical records considered by The Standard in its review are summarized in the medical background section below.

¹⁰ Bursitis is a condition which affects the small, fluid-filled sacs, called bursae, which cushion bones, tendons, and muscles near one's joints. Bursitis occurs when bursae become inflamed. See Mayo Clinic, *Bursitis* (2014), <http://www.mayoclinic.org/diseases-conditions/bursitis/basics/definition/con-20015102>.

also noted Claimant's daily activities were limited; Claimant had difficulties performing activities of daily living, activities for prolonged periods of time like sitting, standing, or walking. Dr. Martin noted Claimant could not bend, twist, pull, grasp, push, squat, or reach without experiencing pain; Claimant suffered from daily headaches, she often tripped when walking, she felt tired during the day, and she had difficulty falling and staying asleep. Dr. Martin expressed Claimant's subjective complaints and limitations were consistent with her diagnosed medical conditions. Dr. Martin felt Claimant suffered from significant medical conditions which prevented her from working.

On January 1, 2014, board-certified internist Bradley Fancher, M.D., independently reviewed Claimant's file. Claimant had sickle cell anemia, with infrequent hospitalizations and infrequent emergency room visits. Dr. Fancher noted there was no indication in the claim file that Claimant would have been impaired from her sickle cell anemia following April 2013; Claimant's sickle cell anemia was fairly well controlled. Claimant's left heel ulcer was healed by November 2012; Claimant would not be impaired from working on a full-time basis in a light-level occupation due to her heel ulcer once it was fully healed. Dr. Fancher noted Claimant's left foot drop had an uncertain cause and Claimant had not seen a neurologist; however, with or without her prescribed AFO brace,¹¹ Claimant would not be impaired from performing sedentary or light-level work. Claimant was diagnosed with plantar fasciitis on her left foot; Claimant only had light tenderness upon examination. Dr. Fancher noted this was a commonly encountered condition and could not be expected to interfere with the performance of sedentary or light work. Dr. Fancher further noted Claimant had reported headaches at times; however, the medical information did not support Claimant had debilitating headaches or would be precluded from work due to her headaches. Claimant had been noted to have depression; however, Dr. Fancher noted there were no mental health notes to review nor was Claimant taking anti-depressants. Dr. Fancher felt the medical records did not demonstrate Claimant had a mental health condition of such severity it would interfere with her ability to be gainfully employed. Dr. Fancher felt Claimant would be precluded from performing strenuous physical activity that might be encountered in medium-level work due to subjective complaints of fatigue and her left foot drop; however, Dr. Fancher felt no condition would preclude Claimant from performing sedentary or light-level work after April 14, 2013.

On April 15, 2014, Dr. Fancher independently reviewed additional medical records submitted by Attorney. Dr. Fancher believed Claimant's sickle cell disease was under fairly good control; Claimant infrequently visited the emergency room. Claimant exhibited signs of depressive disorder. Claimant was not seeing a mental health counselor, but Claimant was described in medical records as having normal judgment, thought content, affect, and behavior. Dr. Fancher felt the medical records did not suggest Claimant had a mental health condition of such severity that it would preclude her from performing her usual occupational duties. Dr. Fancher believed Claimant's chronic fatigue may be due to psychosocial circumstances, though the cause of her fatigue had not been identified. Due to a continual complaint of fatigue, Dr. Fancher determined it would be reasonable to preclude her from performing strenuous physical activity that may be encountered in medium-level work. However, Dr. Fancher's opinion remained unchanged; he

¹¹ Ankle and Foot Orthoses (AFOs), or splints, are external devices used to improve or prevent a physical deformity, stabilize a joint or joints, reduce pain, improve mobility or performance, or reduce the risk of injury. See HemiHelp, *Ankle & Foot Splints or Orthoses (AFOs)* (2014), <http://www.hemihelp.org.uk/hemiplegia/treatments/splinting/foot-and-ankle-splints/>.

believed no condition precluded Claimant from working in a sedentary or light occupation on a full-time basis.

On May 1, 2014, The Standard upheld its denial and found the medical information contained in Claimant's file did not support her conditions and/or symptoms of sickle cell anemia with infrequent crises, left foot drop, mild plantar fasciitis, fatigue, headaches or recent depression, alone or in combination, would have impaired Claimant's ability to work in a sedentary or light level occupation after April 14, 2013. The Standard also noted based on the vocational information in Claimant's file, it found Claimant's Own Occupation of Terminal Clerk most closely matched a Shipping Order Clerk, a light level occupation; therefore Claimant was capable of performing the Material Duties of her Own Occupation since April 14, 2013. The Standard found Claimant did not meet the Own Occupation Definition of Disability after April 14, 2013; and its decision to close Claimant's BLTD claim was correct and upheld. Attorney or Claimant could appeal to PEBA Insurance Benefits within 90 days.

On May 29, 2014, PEBA Insurance Benefits received a letter from Attorney notifying PEBA Insurance Benefits he was retained to represent Claimant; Attorney wished to appeal on Claimant's behalf.

On November 17, 2014, PEBA Insurance Benefits sent Attorney a letter acknowledging its receipt of his appeal on behalf of Claimant. The letter included an outline of the appeal process.

On July 6, 2015, PEBA Insurance Benefits received a letter from Attorney; additional medical records from East Cooper Medical Center (East Cooper) were enclosed. These records are summarized in the medical background section below.

On December 4, 2015, Dr. Fancher reviewed the additional medical records submitted to PEBA with Claimant's appeal. Dr. Fancher noted Claimant's newer medical records revealed Claimant had been having a sickle cell crisis roughly once per month; most episodes had been handled by Claimant remaining at home and taking medication, and several other episodes being handled by an emergency room visit. Dr. Fancher believed the frequency of Claimant's sickle cell crises, particularly those requiring emergency room visits, would not have precluded Claimant from working on a reasonably continuous basis in a sedentary or light-level occupation, following April 13, 2013 up to May 9, 2015. Dr. Fancher noted Claimant was admitted to the emergency room on May 9, 2015 for a sickle cell crisis; Claimant's subsequent course was unknown. Dr. Fancher could not assess whether Claimant may have been able to return to gainful employment following her May 9, 2015 hospitalization.

On December 31, 2015, The Standard notified PEBA Insurance Benefits it would be forwarding its updated determination to PEBA Insurance Benefits as soon as it could be compiled.

On January 21, 2016, PEBA Insurance Benefits received Attorney's letter requesting an update on his appeal involving Claimant's BLTD benefits.

On January 25, 2016, PEBA Insurance Benefits notified Attorney the Committee had not yet met to discuss Claimant's appeal.

The Committee reviewed Claimant's file.

Chronological Medical Background

On February 28, 2012, Claimant saw board-certified internist Cindy Feely, M.D., at MUSC in Charleston, SC. Dr. Feely documented Claimant had a history of sickle beta thalassemia¹² with rare sickle cell crises. Dr. Feely noted Claimant had one the previous weekend, likely triggered by a 24-hour diarrheal illness Claimant was treated at the hospital with pain medication and IV hydration. The crisis caused left leg pain and Claimant usually experienced crises with pain in her arms and legs. Claimant's prior crisis was in February 2011, due to a urinary tract infection.¹³ Dr. Feely documented a normal physical examination. Claimant's back pain was likely musculoskeletal in nature; all x-rays were normal and physical therapy did not help much.

On April 10, 2012, Claimant saw board-certified gynecologist David Smith, M.D., at Rhett's Women Center in Mt. Pleasant, SC. Claimant complained of headaches and back pain. Dr. Smith prescribed pain medication.

On May 10, 2012, Claimant went to the emergency room in Roper before being transferred to and admitted at MUSC. She had a sickle cell crisis with chest pain and lower back pain. Claimant reported her typical pain crisis occurred in her legs and arms; the crises were controlled with Oxycodone, an opiate pain medication, every two to three hours. Claimant's course of treatment was complicated by respiratory failure, which was likely related to over sedation with pain medication. Claimant noted her last hospitalization was three years earlier. Claimant's physical examination showed a normal lung and cardiovascular examination. Claimant's musculoskeletal examination documented Claimant as having decreased range of motion in her arms and legs due to pain, but no tenderness on palpation. Her neurologic examination was normal.

During the time she was in the hospital, Claimant increasingly complained of chest pain and difficulty breathing. Claimant was transferred to the intensive care unit and underwent elective intubation and antibiotic treatment. Over the course of her hospitalization, Claimant was anemic,¹⁴ had pneumonia with acute chest syndrome, and subsequent septic shock.¹⁵ In addition, Claimant had increased conjunctivitis¹⁶ in her right eye while she was intubated.

¹² An inherited condition that affects hemoglobin, the protein in red blood cells that carries oxygen to different parts of the body. It is a type of sickle cell disease; affected people have a mutation or a different change in their *HBB* (hemoglobin subunit beta) gene. The *HBB* gene provides instructions for making a protein called beta-globin (a component of hemoglobin). This mutation is one that causes red blood cells to form a "sickle" or crescent shape and reduces the production of hemoglobin. See U.S. Dept. of Health & Human Services, Genetic and Rare Diseases Info. Center (GARD) [hereinafter GARD], *Sickle Beta Thalassemia* (2014), <https://rarediseases.info.nih.gov/gard/10333/sickle-beta-thalassemia/resources/1>.

¹³ An infection in any part of the urinary system (kidneys, ureters, bladder, or urethra). Most infections involve the lower urinary tract (bladder and urethra). See Mayo Clinic, *Urinary Tract Infection (UTI)* (2015), <http://www.mayoclinic.org/diseases-conditions/urinary-tract-infection/basics/definition/con-20037892>.

¹⁴ Anemia is when your blood does not carry enough oxygen to the rest of the body. See A.D.A.M. Medical Encyclopedia, *Anemia*, <https://www.nlm.nih.gov/medlineplus/anemia.html>.

¹⁵ Sepsis happens when the body has an overwhelming immune response to a bacterial infection. Septic shock occurs when blood pressure drops and the heart weakens. See *id.*, *Sepsis*, <https://www.nlm.nih.gov/medlineplus/sepsis.html>.

¹⁶ Also known as pink eye. An inflammation or infection of the transparent membrane (conjunctiva) that lines the eyelid and covers the white part of the eyeball. When small blood vessels in the conjunctiva become inflamed, they are more visible. This is what causes the whites of the eyes to appear a reddish or pink. It is commonly caused by a bacterial infection or viral infection or an allergic reaction. It may affect one or both eyes. See Mayo Clinic, *Pink Eye (Conjunctivitis)* (2015), <http://www.mayoclinic.org/diseases-conditions/pink-eye/basics/definition/con-20022732>.

On May 15, 2012, Claimant's echocardiography (ECG)¹⁷ report confirmed she had normal sinus rhythm throughout the study; Claimant's results from the ECG were normal.

On May 18, 2012, Claimant had a chest x-ray; it showed stable airspace disease with mild improvement and she was weaning off the breathing vent. By discharge, Claimant was breathing well in room air without any issues and her chest x-ray improved. Claimant was to follow up with her primary care physician in one week; she needed to start hydroxyurea, a drug to treat sickle cell anemia, because of her acute chest syndrome.

On May 29, 2012, Claimant was discharged; she was to undergo physical therapy with home health and use a wheeled walker for assistance at home. She had no activity restrictions. Claimant had developed heel ulcers while in the hospital. Multiple notes suggested the ulcers did not have the appearance of a sickle cell lesion.¹⁸

On June 8, 2012, Claimant saw Ms. Blessing-Feussner. One of Claimant's heel ulcers was fluid-filled, but Claimant did not want it drained. Ms. Blessing-Feussner noted Claimant brought FMLA paperwork to begin permanently retiring from work due to her sickle cell diagnosis.

On June 13, 2012, Claimant saw Ms. Blessing-Feussner for her heel ulcers. Ms. Blessing-Feussner previously offered to drain the ulcers, but Claimant's fear of needles prevented it. Claimant's discomfort with weight bearing increased and Claimant wanted the blisters drained. Ms. Blessing-Feussner attempted to drain the ulcers, but was unsuccessful. Ms. Blessing-Feussner recommended Claimant see a podiatrist for ongoing treatment; Claimant declined. Ms. Blessing-Feussner recommended Claimant soak her ulcers for 20 minutes, two to three times a day, in vinegar water to aid in absorption and healing. Ms. Blessing-Feussner listed diagnoses of low back pain, sickle cell beta thalassemia, and elevated blood pressure.

On June 26, 2012, Claimant saw Dr. Taylor in Mt. Pleasant, SC. Claimant complained of a history of dizziness; she was walking on a daily basis. Dr. Taylor's examination of Claimant showed peripheral edema,¹⁹ but Claimant was in no distress. Claimant's musculoskeletal and neurologic exams were normal. Dr. Taylor noted Claimant had ear wax buildup and dysfunction of her Eustachian tube.²⁰ Claimant was prescribed Claritin for allergies.

On July 5, 2012, Claimant saw Dr. David Smith for a follow-up after her UTI. Dr. Smith noted Claimant was recently hospitalized with a sickle cell crisis.

¹⁷ Also called an echo test or heart ultrasound; a test that takes "moving pictures" of the heart with sound waves. See American Heart Ass'n, *What Is Echocardiography?*, https://www.heart.org/idc/groups/heart-public/@wcm/@hcm/documents/downloadable/ucm_300438.pdf.

¹⁸ A complication of sickle cell anemia are skin ulcers; sickle cell anemia can cause open sores. See Mayo Clinic, *Sickle Cell Anemia* (2014), <http://www.mayoclinic.org/diseases-conditions/sickle-cell-anemia/basics/complications/con-20019348>.

¹⁹ Abnormal buildup of fluid in the ankles, feet, and legs can cause swelling. The fluid buildup and swelling is called peripheral edema. See A.D.A.M. Medical Encyclopedia, *Foot, Leg, And Ankle Swelling* (2015), <https://www.nlm.nih.gov/medlineplus/ency/article/003104.htm>.

²⁰ The Eustachian tubes are small passageways which connect the upper part of the throat to the middle ears. Sometimes a Eustachian tube might get plugged. This is called Eustachian tube dysfunction. See Family Doctor.org, *Eustachian Tube Dysfunction* (2014), <http://familydoctor.org/familvdoctor/en/diseases-conditions/eustachian-tube-dysfunction.html>.

On July 9, 2012, Claimant saw Dr. Saffer at Carolina Foot Specialists in Mt. Pleasant, SC. Claimant complained of right and left foot pain for weeks, which progressively worsened. Dr. Saffer noted Claimant was recently hospitalized for pneumonia and sickle cell crisis. Claimant developed ulcers on both heels. Dr. Saffer noted Claimant's right heel decubitus ulcer healed. The left heel ulcer was very small; he treated it by debridement.²¹ Dr. Saffer recommended Claimant purchase new shoes with wider-cushioned soles.

On July 20, 2012, Claimant saw board-certified hematologist Charles Greenberg, M.D., at MUSC in Charleston, SC. Dr. Greenberg noted Claimant had sickle cell disease complicated by two episodes of acute chest syndrome, with the most recent one requiring exchange transfusion²² and ventilator support. Dr. Greenberg noted Claimant had healing ulcers and Claimant's body ached. He also noted Claimant seemed depressed throughout the exam and interview. Claimant was found to be a good candidate for hydroxyurea.

Also on July 20, 2012, Claimant saw board-certified hematologist Woodrow Coker, M.D., at MUSC in Charleston, SC. Dr. Coker noted Claimant had not had any sickle cell crisis events. Claimant was using Vicodin or Percocet when necessary. Claimant had decreased energy and motivation. She had a depressed mood. Dr. Coker felt Claimant would be an excellent candidate for hydroxyurea to prevent further sickle cell events.

On August 3, 2012, Claimant had a follow-up with Dr. Saffer for her left foot ulcer. Dr. Saffer debrided her left foot ulcer and again recommended Claimant buy new shoes.

On August 13, 2012, Claimant saw Dr. David Smith at Rhett Women's Center for a follow-up. Claimant was regaining her strength after her recent hospitalization.

On August 28, 2012, Claimant saw Dr. Saffer. Her left heel ulcer was smaller. Claimant reported she was unable to move her left big toe up or down. Claimant stated her physical therapist thought she may have signs of foot drop in her left foot. Dr. Saffer examined her left foot and noted Claimant had decreased movement of her foot. Claimant was referred to a neurologist for an electromyography (EMG)²³ and nerve conduction studies to determine the cause of her foot drop.

On August 29, 2012, Claimant saw Dr. Martin Smith at MUSC in Charleston, SC. Dr. Smith outlined her history of acute chest syndrome and decubitus ulcers. Claimant told Dr. Smith she had not started hydroxyurea because she was afraid of the side effects. She reported a few minor sickle cell crises since her hospital discharge in May 2012. Claimant was tearful while discussing her hospitalization, but denied that she was depressed. Claimant wanted her disability paperwork filled out. Claimant stated she had left toe numbness the previous day at the podiatrist; the numbness came and went. Claimant reported no other pain except her heel ulcer. Dr. Smith

²¹ Debridement is the surgical removal of lacerated, devitalized, or contaminated tissue. See Merriam-Webster's, <http://www.merriam-webster.com/dictionary/debridement#medicalDictionary>.

²² Exchange transfusion requires one's blood be removed and replaced. It is a potentially life-saving procedure that is done to counteract the effects of changes in the blood due to diseases such as sickle cell anemia. See A.D.A.M. Medical Encyclopedia, *Exchange transfusion* (2015), <https://www.nlm.nih.gov/medlineplus/ency/article/002923.htm>.

²³ EMG is a diagnostic procedure to assess the health of muscles and the nerve cells that control them. See *id.*, *Electromyography (EMG)* (2012), <http://www.mayoclinic.org/tests-procedures/electroconvulsive-therapy/basics/definition/prc-20014183>.

noted Claimant favored her leg when walking. Dr. Smith and Claimant discussed hydroxyurea; Claimant would start it. Dr. Smith prescribed Lisinopril, a blood pressure medication.

On September 25, 2012, Claimant saw Dr. Martin Smith. She was on hydroxyurea for the prior two and a half weeks with no crises, but was having pain in her joints. Claimant complained of having headaches almost daily; Tylenol did not help. Dr. Smith noted her blood pressure was high. Claimant had not returned to work; she had some numbness in her left foot, which was painful and she tripped over her foot sometimes. Dr. Smith noted Claimant had weakness when moving her left foot. He recommended Claimant increase her Lisinopril; her headaches could be related high blood pressure. He prescribed gabapentin, a medication for nerve pain, for her leg numbness and referred her to neurology.

Also on September 25, 2012, Claimant saw Dr. Saffer for a follow-up on her left heel ulcer. Claimant could not move her left great toe up or down. Claimant stated Dr. Martin was referring her to a neurologist for an evaluation of her left foot drop and shooting pains in her left lower leg and foot at night. Dr. Saffer prescribed an evaluation for an AFO brace.

On September 27, 2012, Claimant saw Dr. David Smith at Rhett Women's Center. She was still recovering after her hospitalization in May 2012 and her heel ulcer was not completely healed. Claimant felt she was still unable to work.

On October 11, 2012, Claimant saw Dr. Taylor for an evaluation of the ulcer on her left heel with numbness in her toes, as well as a follow-up for her sickle cell anemia, and issues with elevated blood pressure. Dr. Taylor recommended low impact aerobic exercise and recommended Claimant visit Lowcountry Hematology and Oncology for evaluation.

On November 1, 2012, Claimant visited board-certified hematologist Daud Nawabi, M.D., at Lowcountry Hematology and Oncology in Mt. Pleasant, SC. Claimant had not been hospitalized since May 2012; her prior hospitalization was ten years earlier. Dr. Nawabi noted Claimant had an uneventful summer; but had not been doing well. Claimant was not taking narcotics. Her sickle cell crises were well-controlled by over-the-counter pain medications. Dr. Nawabi noted Claimant went to the emergency room. She had not been able to tolerate the hydroxyurea and stopped taking it. Claimant complained of chronic fatigue; she was unable to explain why. Claimant was no longer able to work full-time because of her fatigue. Dr. Nawabi noted her last pain crisis was in September 2012. Claimant denied difficulty walking, chest pain, shortness of breath, back pain, and headache. Dr. Nawabi noted Claimant would need blood work and administered a flu shot. Dr. Nawabi encouraged Claimant to take folic acid and a multivitamin.

On December 4, 2012, Claimant saw Dr. Saffer; her left decubitus ulcer had healed. Claimant had thickening of her heel's skin and left foot drop with decreased dorsiflexion.²⁴ Dr. Saffer reviewed the types of shoes Claimant should be wearing. He again recommended Claimant see a neurologist and undergo an EMG and nerve conduction studies for her left foot drop.

On February 20, 2013, Claimant saw Dr. Taylor. Claimant complained of nasal congestion, body aches, sore throat, and fatigue. Claimant exercised daily by walking. Dr. Taylor noted

²⁴ Flexion of the foot in an upward direction. See Merriam-Webster's, <http://www.merriam-webster.com/medical/dorsiflexion>.

Claimant was independent in all her activities of daily living, minimally ill-appearing, and her walk was normal without ataxia.²⁵ Dr. Taylor prescribed antibiotics for her common cold.

On March 12, 2013, Claimant saw Dr. Saffer. Claimant reported continued left foot drop, but had not set up a neurology appointment. Claimant had no change since her last visit. Dr. Saffer administered an injection to reduce symptoms, swelling, and pain.

On June 26, 2013, Claimant saw Dr. Taylor for a follow-up. Claimant complained of dizziness over the past three weeks. Claimant reported having imbalance, lightheadedness, and weakness. Claimant walked daily for exercise; she was able to bathe herself, clean the house, converse meaningfully, cook, dress herself, drive, feed herself, find her way home, and live independently.

On July 1, 2013, Claimant saw Dr. Saffer. Claimant did not complain of heel pain but had slight tenderness on palpation of the left heel. Dr. Saffer noted Claimant still had evidence of left foot drop but had not set up an appointment with a neurologist. Dr. Saffer diagnosed plantar fasciitis and prescribed an AFO brace.

On July 8, 2013, Claimant saw Dr. Townsend at MUSC in Charleston, SC. Claimant reported she had been seeing a family practitioner and wanted to get reestablished at MUSC for care. Claimant noted she had a mild sickle cell crisis the prior weekend that she self-treated with pain medication and fluids. Claimant also reported she had a diagnosis of a left foot drop and was being evaluated for a foot brace. Dr. Townsend documented a normal physical examination, other than weakness of movement of Claimant's left ankle and knee. Claimant reported having rare pain crises and she stopped taking hydroxyurea due to nausea and vomiting. Claimant had an appointment with a neurologist later that month for her left foot issues.

On August 22, 2013, Dr. Martin completed a chart note addendum. Dr. Martin saw and examined Claimant. Claimant had sickle cell and a history of acute chest syndrome; her last hospitalization was in May 2012. Claimant had been doing relatively well since her last hospitalization, but had poor access to healthcare due to lack of insurance.

On September 8, 2013, Claimant saw Dr. Martin Smith. Claimant wanted to get reestablished with MUSC; she had a left foot drop. Dr. Smith noted Claimant had weakness of the left ankle and knee. Claimant informed Dr. Smith she had a pain crisis the preceding weekend. Claimant reported having rare pain crises. Claimant's hypertension was under good control. Dr. Smith noted Claimant had an appointment with a neurologist.

On September 23, 2013, Claimant saw Dr. Martin at MUSC in Charleston, SC. Claimant was using pain medications infrequently, about one to two times a week. Claimant had no recent hospitalizations or emergency room visits. Claimant's primary complaint was fatigue and poor sleep patterns. Upon depression screening, Claimant became tearful; Claimant endorsed low mood and low energy. Dr. Martin noted Claimant had symptoms of depression, anxiety, and insomnia secondary to her general medical conditions. Claimant was doing well with pain control for the sickle cell anemia. The cause of Claimant's fatigue was unknown. Dr. Martin hypothesized various

²⁵ A lack of muscle control during voluntary movements, such as walking. See Mayo Clinic, *Ataxia* (2014), <http://www.mayoclinic.org/diseases-conditions/ataxia/basics/definition/con-20030428>.

causes could be thyroid dysfunction, depression, or anemia. Dr. Martin indicated she wanted to do blood work. Dr. Martin prescribed Ambien for insomnia.

On November 26, 2013, Claimant saw Dr. Martin. Claimant reported pain involving her joints and associated it with fatigue. Claimant denied having headaches. Dr. Martin documented Claimant was compliant with her medications; the medications were helpful in the management of her overall pain. Claimant had continued difficulties with sleep, unhappiness, and anxiety. Claimant's blood work was pending.

On February 1, 2014, Claimant went to the emergency room (ER) at East Cooper in Mt. Pleasant, SC, for chest pain. A CT angiogram²⁶ did not reveal pulmonary emboli.²⁷ The CT scan noted mild webbing and a history of prior chronic pulmonary emboli. Claimant was having a sickle cell crisis, but she did not require admission. The ER provided pain medication.

On March 4, 2014, Claimant saw Dr. Martin for a follow-up. Claimant's sickle cell crisis responded fairly well with narcotics. She reported some pain in her arms and legs, continued low mood, insomnia, and fatigue. Dr. Martin started Claimant on Zoloft, as well as trazodone for sleep and depression.

On November 18, 2014, Claimant went to the ER at East Cooper with pain in her right leg. The ER administered the IV opioid pain medication Dilaudid; Claimant improved. She was discharged with oral pain medication the same day.

On November 19, 2014, Claimant returned to the ER at East Cooper for recurrent pain. Claimant had one painful crisis per month; she was normally able to handle her episodes at home using oral medication. The ER placed Claimant on a Dilaudid pump; she progressively improved. Claimant was discharged that day with no activity limitations and given Dilaudid to use as needed.

On January 19, 2015, Claimant went to the ER at East Cooper for leg pain. She was in a sickle cell crisis. The ER administered IV Dilaudid; Claimant responded well. Claimant had run out of Dilaudid at home. Claimant was discharged the same day.

On March 28, 2015, Claimant went to the ER at East Cooper, for low back pain and generalized pain. The ER diagnosed with sickle cell crisis and provided IV Dilaudid. Claimant was discharged on the same day.

On May 8, 2015, Claimant went to the ER at East Cooper for sickle cell crisis. The ER treated Claimant with pain medication; she was discharged on the same day.

On May 9, 2015, Claimant was admitted to East Cooper for low back pain and leg pain. During her hospitalization, Claimant seemed to be responding to Dilaudid. Claimant developed a

²⁶ A computerized tomography (CT) angiogram is an imaging test that looks at the arteries that supply the heart with blood. A CT angiogram relies on an x-ray machine to produce images of the heart and its blood vessels. See Mayo Clinic, *CT Coronary Angiogram* (2014), <http://www.mayoclinic.org/tests-procedures/ct-angiogram/basics/definition/prc-20014596>.

²⁷ Pulmonary embolism occurs when a blood clot gets lodged in an artery in the lung. Blood clots often originate in the legs and travel up through the right side of the heart and into the lungs. See Mayo Clinic, *Pulmonary Embolism*, <http://www.mayoclinic.org/diseases-conditions/pulmonary-embolism/multimedia/pulmonary-embolism/img-20006463>.

temperature of 102 degrees and had difficulty breathing. An x-ray revealed a dense right lung infiltrate.²⁸ It was unclear whether Claimant had developed a hospital-acquired pneumonia or whether it was acute chest syndrome related to her sickle cell anemia.

The Committee reviewed Claimant's file.

Relevant Statutory and Plan Provisions

The Basic Long Term Disability Plan, which was established by the State Budget and Control Board for state employees, provides in relevant part:

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.*

Definition Of Disability [...]

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. [...]

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.

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 50 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.*

²⁸ When air sacs or alveoli fill with fluids, these fluids are called infiltrates. See Livestrong, *What Are the Causes of Infiltration of Lungs?* (2011), <http://www.livestrong.com/article/265106-what-are-the-causes-of-infiltration-of-lungs>.

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. [. .]

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. [...]

Claims [...]

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. [...]

Decision of the Appeals Committee

The Appeals Committee considered all of the evidence in Claimant's file. The Committee then applied all of the reliable and probative evidence to the relevant provisions of the Plan.

The Committee first noted the time period in question was on and after April 14, 2013. As noted in the Plan provisions above, Claimant would have to be precluded from performing the Material Duties of her light-level Own Occupation of Shipping Order Clerk, due to her medical conditions at the time The Standard closed her BLTD claim and beyond. 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.

The Committee then reviewed the Own Occupation Definition of Disability, which provides Claimant must provide Proof of Loss that she was disabled from performing the Material Duties of her Own Occupation. The Material Duties are "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." The Committee noted Claimant's Own Occupation was a Shipping Order Clerk, which is light strength work as it is performed in the national economy; specific tasks with her specific job with her employer may not be considered in the Material Duties. Claimant must provide Proof of Loss that she was precluded from doing light-level strength work with reasonable continuity as of April 14, 2013, and afterward.

The Committee also emphasized the Plan's Proof of Loss provision, which requires "proof of physical impairment that results from anatomical or physiological abnormalities which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques." Claimant's

medical records must show objective medical proof supporting Claimant was impaired and precluded from doing light-level strength work with reasonable continuity by her symptoms as of April 14, 2013, and continuing beyond.

The Committee noted, in Claimant's application for Basic Long Term Disability Benefits, Claimant and her provider listed sickle cell anemia, left heel ulcer, lower back pain, and hypertension as Claimant's disabling conditions.

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 noted Claimant had infrequent hospitalizations; before May 10, 2012, Claimant's last hospitalization was three years earlier. 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. After the May 2012 hospitalization, Claimant's records showed her crises were manageable outside of a hospital setting. 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. The Committee found Claimant's BLTD benefits were correctly ended on April 14, 2013.

Well after Claimant's BLTD benefits ended on April 14, 2013, Claimant had three ER visits during 2014 for sickle cell anemia crises. However, Claimant was discharged the same day during each ER visit after being treated with IV pain medication. During 2015, Claimant had three ER visits and was discharged the same day during each visit after being treated with IV pain medication. On May 9, 2015, Claimant was admitted to the hospital with a sickle cell crisis and possible acute chest syndrome. However, Dr. Panther noted Claimant had roughly one sickle cell crisis per month, with most handled at home and several others handled as an emergency room visit with same-day discharge. 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. 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 through May 9, 2015.

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. Claimant's left heel ulcer was effectively treated with frequent visits to her podiatrist, Dr. Saffer. Claimant's records showed she was well-healed by November 2012. The Committee noted Claimant's provider, Dr. Saffer, indicated in his Attending Physician's Statement that he anticipated Claimant could return to work by April 15, 2013. The Committee also noted Dr. Saffer indicated in his visit with Claimant on December 4, 2012 that Claimant's heel ulcer was healed; in Dr. Saffer's July 1, 2013 visit with Claimant, he indicated she had no complaints of heel pain. Based on the objective medical information available, the Committee found Claimant's file contained no medical evidence that her left heel ulcer, alone or in combination with her other symptoms, precluded Claimant from performing the Material Duties of her light Own Occupation on a reasonably consistent basis as of April 14, 2013 and beyond.

Regarding Claimant's hypertension and headaches, the Committee noted Claimant's file documented no evidence of recurring complications or symptoms from hypertension and headaches. These conditions were well-controlled when she took her medication, and there was no evidence these conditions worsened around the time Claimant's BLTD benefits ceased. There was no evidence these conditions prevented Claimant from working full time in her light Own Occupation. The Committee noted in Claimant's visit with Dr. Martin Smith on September 8, 2013, Claimant reported her hypertension was under good control. On November 26, 2013, Claimant saw Dr. Martin, and denied having headaches. Based on the objective medical information available, the Committee found Claimant's file contained no medical evidence that Claimant's hypertension and headaches, alone or in combination with her other symptoms, precluded Claimant from performing the Material Duties of her light Own Occupation on a reasonably consistent basis as of April 14, 2013 and continuing beyond.

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 her prescribed AFO 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.

The Committee noted Claimant's file referred to a diagnosis of plantar fasciitis. Claimant was diagnosed with plantar fasciitis on July 1, 2013 by Dr. Saffer. Dr. Saffer prescribed Claimant with an AFO brace; however, no medical evidence was provided regarding Claimant's use of the AFO brace. On March 13, 2013, Dr. Saffer completed an APS which indicated Claimant could return to work on April 15, 2013. Dr. Fancher subsequently found Claimant would not be precluded from light work because Claimant was reported to only have light tenderness in relation to her plantar fasciitis. Based on the objective medical information available, the Committee found Claimant's file contained no medical evidence that her plantar fasciitis, 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 continuing beyond.

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. 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 continuing beyond.

The Committee noted Claimant's file referred to her other condition of bursitis; however, although the condition was listed, its effects were not discussed in her medical records. Based on the objective medical information available, the Committee found Claimant's file contained no objective medical evidence that this condition, alone or in combination with her other symptoms, was present or precluded Claimant from performing the Material Duties of her light Own Occupation with reasonable continuity as of April 14, 2013, and continuing beyond.

While the Committee sympathizes with Claimant's conditions, the medical documentation in Claimant's file did not support that she was unable to perform the Material Duties of her light-level Own Occupation with reasonable continuity within the national economy after April 14, 2013, which is what the Plan requires for her disability benefits to continue to be paid.

Conclusion

Based on all of the evidence in Claimant's file, the Committee determined Claimant's conditions, individually or in combination, did not continue to meet the Own Occupation Definition of Disability outlined in the South Carolina Basic Long Term Disability Income Benefit Plan after April 14, 2013. Therefore, Claimant's claim was properly closed on April 14, 2013, and no further benefits are payable to Claimant.

State of South Carolina
202 Arbor Lake Drive
Columbia, South Carolina 29223

CERTIFICATE:

AMENDED AND RESTATED

BASIC LONG TERM DISABILITY INCOME BENEFIT PLAN

Plan Sponsor has established a long term disability income benefit plan. Plan Sponsor is solely responsible for payment of LTD Benefits payable under the terms of the Plan.

Plan Sponsor has retained Standard Insurance Company as claims administrator for the Plan. Standard shall receive, process, investigate and evaluate claims for benefits and shall recommend to Plan Sponsor approval or denial of each claim. Standard shall also investigate and process appeals of denied claims and recommend to Plan Sponsor approval or denial of each appeal. In each case Plan Sponsor retains the right of final review and decision on all claims and appeals.

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

You will be covered as provided by the terms of the Plan. Possession of this Certificate does not necessarily mean you are covered. You are covered only if you meet the requirements set out in this Certificate.

Plan Sponsor has the right at anytime to amend or terminate the Plan or to require or change the amount of Member contributions. If your coverage is changed by an amendment to the Plan, Plan Sponsor will provide you with a revised Certificate or other notice. No agent has authority to change the Plan or to waive any of its provisions.

"You" and "your" mean the Member. "We", "us" and "our" mean Plan Sponsor. Other defined terms appear with the initial letter capitalized. Section headings, and references to them, appear in boldface type.

PC190-LTD/ASO

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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
Employer(s):	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 enrolled in the State Health Insurance Plan or HMO Plan and you are one of the following:

1. An active permanent full-time employee of an Employer participating in the South Carolina Public Employee Benefit Authority who is regularly working at least 30 hours per week on an annual basis, or in full-time academic employment, who receives compensation from a participating 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;
2. An active permanent full-time employee who is employed by an Employer participating in the South Carolina Public Employee Benefit Authority and that has elected, upon notification and acceptance by the South Carolina Public Employee Benefit Authority, the definition of full-time to mean working at least 20 hours per week on an annual basis;
3. A member of the X22 Employer Group, regardless of whether the member's county participates in the South Carolina Public Employee Benefit Authority; or
4. A member of the General Assembly or judges in state courts.

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.

The minimum hourly work requirement does not apply while a Member is on a furlough, provided the furlough is for 80 days or less.

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.

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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.

*For purposes of determining your Predisability Earnings under the Group Policy, earnings are not impacted by a reduction in work hours due to furlough.

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.

AS/C01X

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

A. 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.

B. 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.

C. 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.RA.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.03

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.

For members of the X22 Employer Group, Predisability Earnings means (a) your total monthly rate of earnings from your Employer if your county participates in the South Carolina Public Employee Benefit Authority, or (b) the portion of your monthly rate of earnings associated with your Aid to Subdivisions appropriation, if your county does not participate in the South Carolina Public Employee Benefit Authority.

For all other Members, Predisability Earnings means your monthly rate of earnings from your Employer.

Predisability Earnings include:

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 compensation from an Employer that is not participating in the South Carolina Public Employee Benefit Authority.
6. 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.0102X

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.

C. 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.

D. 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 by:

1. Termination of the Plan after you become Disabled; or
2. Any amendment to the Plan that is effective after you become Disabled.
3. Termination of your Employer's participation under the Plan after you become Disabled. However, your Employer will be responsible to fund LTD Benefits payable after your Employer's participation under the Plan ends.

LT.BA.03X

EFFECT OF NEW DISABILITY

If a 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.

1. LTD Benefits will not continue beyond the end of the original Maximum Benefit Period.
2. All provisions of the Plan, including the Exclusions and Limitations sections, will apply to the new cause of Disability.

LT.ND.01X

EXCLUSIONS

A. 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.

B. 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.

C. 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.EX.05X

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.07.1X

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. Foreign Residency

While living outside of the United States or Canada, payment of LTD Benefits is limited to 12 months for each period of continuous Disability

E. 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.LM07.1

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

Completed claims statements, a signed authorization for us to obtain information, and any other items we may reasonably require in support of a claim must be submitted at your expense. If the required documentation is not provided within 45 days after we mail 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

We will evaluate your claim promptly after you file it. Within 45 days after we receive your claim we will send you: (a) a written decision on your claim; or (b) a notice that we are extending the period to decide your claim for 30 days. Before the end of this extension period we will send you: (a) a written decision on your claim; or (b) a notice that we are extending the period to decide your claim for an additional 30 days. If an extension is due to your failure to provide information necessary to decide the claim, the extended time period for deciding your claim will not begin until you provide the information or otherwise respond.

If we extend the period to decide your claim, we will notify you of the following: (a) the reasons for the extension; (b) when we expect to decide your claim; (c) an explanation of the standards on which entitlement to benefits is based; (d) the unresolved issues preventing a decision; and (e) any additional information we need to resolve those issues.

If we request additional information, you will have 45 days to provide the information. If you do not provide the requested information within 45 days, we may decide your claim based on the information we have received.

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

- a. The reasons for our decision.
- b. Reference to the parts of the Plan on which our decision is based.
- c. A description of any additional information needed to support your claim.
- d. 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 Public Employee Benefit Authority by submitting written comments or other items to support your claim within 90 days of receiving the Claims Administrator's final determination. The South Carolina Public Employee Benefit Authority will consider your appeal within 30 days of its receipt of all requested documentation from the Claims Administrator. The South Carolina Public Employee Benefit Authority will contact you 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.

LT2.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.

AS.AL.01X

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.

ASJ401

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.28X

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 Plan Sponsor, your Employer, or their respective employees or representatives will not:

1. Cause a person to become covered;
2. Invalidate coverage under the Plan otherwise validly in force; or
3. Continue coverage under the Plan otherwise validly terminated.

B. 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 coverage 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.

LT.CE.01X

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.

LT.TA.01X

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.05X

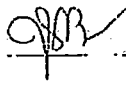
BLTD Appeals Fact Sheet

Date: 6/13/14

EIP Committee Member	Approved	Denied	Other
Jennifer Baker		☒	
Chris Pastelak		☒	
Bob McCarver			
Employee:	L'Tonya Scott		
Identification No.:	09176052		
Employer:	SC State Ports Authority		
Job Title/ Requirements of Position/Strength Factor:	Shipping Order Clerk / requisitions transportation; reads shipping orders; contacts carriers; annotates orders; and other tasks / light / 219.367-030		
Date of Disability:	5/10/2012		
Last Day Worked:	5/9/2012		
Plan Effective Date:	09/01/1995 BLTD and SLTD		
Description of Disability:	According to the claimant: sickle cell anemia, back pain, plantar fasciitis, bursitis, and hypertension		
Physicians of Record:	Temeia Martin, M.D. (Internal Medicine); Andrew Saffer, D.P.M. (Podiatry); Carol Blessing-Feussner, P.A. (Internal Medicine); Woodrow Coker, M.D. (Hematology); Martin Allen Smith, M.D. (Internal Medicine); Joan Wynn Taylor, M.D. (Primary Care); Tamara Wolfman, M.D. (Internal Medicine); David Smith, M.D. (Women's Health); Francis Clarkson, M.D. (Emergency Medicine); Martin Allen Smith, M.D. (Internal Medicine); Tabitha Townsend, M.D. (Internal Medicine) Physician Consultants for The Standard: Bradley Fancher, M.D. (Internal Medicine)		
How was residual capacity determined?	Review of medical information on file. Dr. Fancher found that the medical information in the file was insufficient to support limitations and restrictions that would prevent Ms. Scott from performing the Material Duties of her Own Occupation on a reasonably continuous basis beyond 4/14/2013.		
IMEs:	N/A		
Vocational Opinions:	Detailed Job Specialty Report, 9/6/2012, Sharon Cummins, M.S., C.R.C.		
Does the claimant meet the definition of disability?	(a) Own Occupation? No		(b) Any Occupation? No
Were benefits approved for any period?	Yes	(a) Benefit Start Date: 8/8/2012	(b) Date Benefits Ceased: 4/14/2013
Original Decision Date:	3/25/2013 - Closed (ARD)		
Date of Appeal(s):	7/16/2013		
Date and Decision of Standard's ARU:	5/1/2014 - upheld		
Grounds in Claimant's Petition:			
Grounds for Committee's Decision:			

LTD/Incap

Appeals Fact Sheet

Committee Member	Approved	Denied	Other
Bob McArver			
Jennifer Baker			
Chris Pastelak			

BIN: 09176052 Subscriber: L'Tonya Scott

Group Number: Y080600

Name/Dep: L'Tonya Scott

Relation to Subscriber: Self

Claims Proc Decision:

Attorney: Nathaniel Bax,

Appeal Requested: 5/29/2014 Atty Contact: (864) 242-6200

Requested Claim File: 11/17/2014



Requested Info Rec'd: 2/8/2016

Disability/Issue:

According to the claimant: sickle cell anemia, back pain, plantar fasciitis, bursitis, and hypertension



3rd Party Claims Proc: Standard

Plan Provision: BLTD Certificate

strPlanParticipation: Currently T5; Was HN1, DD1, DP1, VC

Notes

6/13/2016

Appeal Number:

1868

LTD/Incap

Appeals Fact Sheet

Committee Member	Approved	Denied	Other
Bob McArver			
Jennifer Baker			
Chris Pastelak		CP	

BIN: 09176052 Subscriber: L'Tonya Scott

Group Number: Y080600

Patient/Dep: L'Tonya Scott

Relation to Subscriber: Self

Claims Proc Decision:

Attorney: Nathaniel Bax,

Appeal Requested: 5/29/2014 Atty Contact: (864) 242-6200

Requested Claim File: 11/17/2014

Expedited? ☐

Requested Info Rec'd: 2/8/2016

Disability/Issue:

According to the claimant: sickle cell anemia, back pain, plantar fasciitis, bursitis, and hypertension

ACA? ☐

3rd Party Claims Proc: Standard

Plan Provision: BLTD Certificate

strPlanParticipation: Currently T5; Was HN1, DD1, DP1, VC

Notes

6/13/2016

Appeal Number: 1868

LTD/Incap

Appeals Fact Sheet

Committee Member	Approved	Denied	Other
Bob McArver		<i>RAM</i>	
Jennifer Baker			
Chris Pastelak			

BIN: 09176 052 Subscriber: L'Tonya Scott

Group Number: Y080600

Patient/Dep: L'Tonya Scott

Relation to Subscriber: Self

Claims Proc Decision:

Attorney: Nathaniel Bax,

Appeal Requested: 5/29/2014

Atty Contact: (864) 242-6200

Requested Claim File: 11/17/2014

Requested Info Rec'd: 2/8/2016



Disability/Issue:

According to the claimant: sickle cell anemia, back pain, plantar fasciitis, bursitis, and hypertension



3rd Party Claims Proc: Standard

Plan Provision: BLTD Certificate

strPlanParticipation: Currently T5; Was HN1, DD1, DP1, VC

Notes

6/13/2016

Appeal Number: 1868

FOSTER LAW FIRM, L.L.C.

PAUL J. FOSTER, JR., P.E.B. 1999

Attorneys and Counselors at Law

Nathaniel W. Bax
nbax@erisaexperience.com
GREENVILLE

June 29, 2015

Via United States First Class Mail

Appeals Coordinator
Public Employee Benefit Authority
PO Box 11661
Columbia, SC 29211-1661

RE: L'Tonya Scott
State of South Carolina
LTD Plan No. 627284, 621144
Claim No. 00VQ6781, 00VQ8255

To Whom It May Concern:

Please be advised that I represent the above referenced individual. I respectfully ask that you consider the following documents: 1) the medical records from East Cooper Medical Center.

It is my hope that the above will persuade you to award Ms. Scott the benefits which she seeks. In any event, I look forward to hearing from you soon. If you have any questions or comments, or need any further information from me, please do not hesitate to contact me.

With kind regards, I remain

Sincerely,
Dictated
Nathaniel W. Bax

NWB/bab
Encl

RECEIVED

JUL 06 2015

PEBA LEGAL

www.fosterlawfirm.com
GREENVILLE: 601 E. McBee Avenue, Suite 104 • Greenville, SC 29601 • 864-242-6200 • Fax: 864-233-0290
CHARLESTON: 895 Island Park Drive, Suite 202 • Charleston, SC 29492 • 843-972-0313 • Fax: 888-519-0934
Toll Free: 866-279-9772

R. 00154

FOSTER LAW FIRM, L.L.C.

PAUL E. FOSTER, JR. - OWNER

Attorneys at Law

Nathaniel W. Bax
nbax@erisaexperience.com
GREENVILLE

June 17, 2015

Via United States First Class Mail

Appeals Coordinator
Public Employee Benefit Authority
PO Box 11661
Columbia, SC 29211-1661

RECEIVED

JUN 22 2015

PEBA LEGAL

RE: L'Tonya Scott
State of South Carolina
LTD Plan No. 627284, 621144
Claim No. 00VQ6781, 00VQ8255

To Whom It May Concern:

Please be advised that I represent the above referenced individual. I respectfully ask that you consider the following documents: 1) the approval letter from SSDI. I am still awaiting additional information and I will forward the same to you immediately upon receipt. Please wait until I submit to you everything which I wish to have considered before you reach a decision.

It is my hope that the above will persuade you to award Ms. Scott the benefits which she seeks. In any event, I look forward to hearing from you soon. If you have any questions or comments, or need any further information from me, please do not hesitate to contact me.

With kind regards, I remain

Sincerely,
Dictated
Nathaniel W. Bax

NWB/bab
Encl

www.fosterlawfirm.com

GREENVILLE: 601 E. McBee Avenue, Suite 104 • Greenville, SC 29601 • 864-242-6200 • Fax: 864-233-0290
CHARLESTON: 895 Island Park Drive, Suite 202 • Charleston, SC 29492 • 843-972-0313 • Fax: 888-519-0934
Toll Free: 866-279-9772

R. 00155



SOCIAL SECURITY ADMINISTRATION

Refer To: 248-73-2659

Office of Disability Adjudication and Review
SSA ODAR Hearing Office
3875 Faber Place Drive
Suite 300
North Charleston, SC 29405

Date: December 29, 2014

Ltanya Letease Scott
2716 N. Highway 17
Mt Pleasant, SC 29466

Notice of Decision - Fully Favorable

I carefully reviewed the facts of your case and made the enclosed fully favorable decision. Please read this notice and my decision.

Although my decision is fully favorable, you have the right to an oral hearing and to examine the evidence on which I based my decision. Please contact the office listed above if you want to have an oral hearing or examine the evidence in your case record.

Another office will process my decision and decide if you meet the non-disability requirements for Supplemental Security Income payments. That office may ask you for more information. If you do not hear anything within 60 days of the date of this notice, please contact your local office. The contact information for your local office is at the end of this notice.

If You Disagree With My Decision

If you disagree with my decision, you may file an appeal with the Appeals Council.

How To File An Appeal

To file an appeal you or your representative must ask in writing that the Appeals Council review my decision. You may use our Request for Review form (HA-520) or write a letter. The form is available at www.socialsecurity.gov. Please put the Social Security number shown above on any appeal you file. If you need help, you may file in person at any Social Security or hearing office.

Please send your request to:

Appeals Council
Office of Disability Adjudication and Review
5107 Leesburg Pike
Falls Church, VA 22041-3255

Form HA-L76 (03-2010)

Suspect Social Security Fraud?

Please visit <http://oig.ssa.gov/r> or call the Inspector General's Fraud Hotline at 1-800-269-0271 (TTY 1-866-501-2101).

See Next Page

R 156

R. 00156

Lionya Letease Scott (248-73-2659)

Page 2 of 3

Time Limit To File An Appeal

You must file your written appeal within 60 days of the date you get this notice. The Appeals Council assumes you got this notice 5 days after the date of the notice unless you show you did not get it within the 5-day period.

The Appeals Council will dismiss a late request unless you show you had a good reason for not filing it on time.

What Else You May Send Us

You or your representative may send us a written statement about your case. You may also send us new evidence. You should send your written statement and any new evidence with your appeal. Sending your written statement and any new evidence with your appeal may help us review your case sooner.

How An Appeal Works

The Appeals Council will consider your entire case. It will consider all of my decision, even the parts with which you agree. Review can make any part of my decision more or less favorable or unfavorable to you. The rules the Appeals Council uses are in the Code of Federal Regulations, Title 20, Chapter III, Part 404 (Subpart J) and Part 416 (Subpart N).

The Appeals Council may:

- Deny your appeal,
- Return your case to me or another administrative law judge for a new decision,
- Issue its own decision, or
- Dismiss your case.

The Appeals Council will send you a notice telling you what it decides to do. If the Appeals Council denies your appeal, my decision will become the final decision.

The Appeals Council May Review My Decision On Its Own

The Appeals Council may review my decision even if you do not appeal. They may decide to review my decision within 60 days after the date of the decision. The Appeals Council will mail you a notice of review if they decide to review my decision.

When There Is No Appeals Council Review

If you do not appeal and the Appeals Council does not review my decision on its own, my decision will become final. A final decision can be changed only under special circumstances. You will not have the right to Federal court review.

See Next Page

Form HA-L76 (03-2010)

R 157

R. 00157

South Carolina
PUBLIC EMPLOYEE BENEFIT AUTHORITY

PEBA

Peggy G. Boykin, CPA
Executive Director
Insurance Benefits

November 17, 2014

Nathaniel Bax, Esq.
Foster Law Firm, LLC
601 E. McBee Ave, Ste. 104
Greenville, SC 29601

RE: Basic Long Term Disability Income Benefit Plan
Subscriber: L'Tonya L. Scott
BIN: 09176052

Dear Mr. Bax:

Our office is in receipt of your appeal of the decision of The Standard, our claims administrator, to deny your client's claim for basic long term disability (BLTD) benefits. The purpose of this letter and enclosure is to provide you with an outline of the appeals process, applicable deadlines, and your rights during this process. Please read this information carefully and completely.

Please understand that we will make every effort to process your appeal as efficiently as possible. If you need any additional information regarding this appeal process, please contact me at (803)734-3569.

Sincerely,

Caroline Keith
Appeals Coordinator

Enclosure

Street Address:
202 Arbor Lake Drive
Columbia, South Carolina 29223

803-734-0643 (Greater Columbia area)
888 260-9430 (toll-free outside Columbia area)

Mailing Address
Post Office Box 11661
Columbia, South Carolina 29211-1661

R. 00158

APPEALS PROCESS

LONG TERM DISABILITY APPEALS COMMITTEE

Who will review your claim?

Your claim will be reviewed by the Long Term Disability Appeals Committee, which is composed of three individuals appointed by the General Counsel of the South Carolina Public Employee Benefit Authority ("PEBA"). These Committee members are familiar with the Basic Long Term Disability Income Benefit Plan ("Plan") and have not been involved in the prior decisions to deny benefits for your claim.

Will there be an opportunity to meet with the Committee?

Typically, the Committee will not meet with the claimant. Any decision to conduct a conference or other non-adversarial proceeding is within the Committee's sole discretion. The Committee instead conducts an independent evaluation of all written documentation submitted prior to its meeting. At the meeting, the Committee discusses the information and the applicable Plan language and ultimately makes a decision regarding the claim.

What will the Committee review?

The Committee will review:

- The relevant Plan language;
- The file the claims administrator used in making its decision (we have requested a copy);
- Any relevant, reliable information maintained by or accessible to EIP; and
- Any additional information you submit.

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 to:

Appeals Coordinator
South Carolina Public Employee Benefit Authority, Insurance Benefits
Post Office Box 11661
Columbia, South Carolina 29211-1661

We may provide this additional information to the claims administrator for review prior to the Committee's review. If you need additional time to submit information, please contact the Appeals Coordinator at (803)734-3569. If you choose not to submit additional information within this timeframe, the Committee will proceed with your appeal based on the documentation received from the claims administrator. Once the Committee begins its review of your appeal, you will not be allowed to submit additional documentation and your claim will be decided based on the record before the Committee at that time.

What are your rights during this process?

As explained above, you have the right to submit within thirty (30) days of this letter any written information you want the Committee to consider when reviewing your claim.

You have the right to review your claim file. If you wish to review your claim file, you may send a written request for a copy of your file to the Appeals Coordinator at the address listed above. The Appeals Coordinator will coordinate the production of your file with the claims administrator. You may be required to sign an additional authorization form and pay a reasonable fee for the claims administrator to produce your claim file.

You have the right to be represented by an attorney during the appeals process.

How will you be notified of the Committee's decision?

After the Committee makes its decision, you will receive a written explanation of the Committee's decision. The written determination will explain the specific reasons for the Committee's decision and will include the applicable Plan provisions relied upon by the Committee. The Committee will make every effort to provide you a written determination within thirty (30) days of the Committee's decision.

What if your claim is denied by the Committee?

If the Committee denies your claim in whole or in part, you will have thirty (30) days to seek appellate review in the Administrative Law Court.



The Standard®

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

May 1, 2014

Nathaniel Bax
Foster Law Firm LLC
601 E McBee Ave, Ste 104

Re: L'Tonya Scott
State of South Carolina
Plan Nos. 627284, 621144
Claim Nos. 00VQ6781, 00VQ8255

Dear Mr. Bax:

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

Please recall, Ms. Scott was notified in a letter from Disability Benefits Analyst Amy Murdza, dated March 25, 2013, that the information in her LTD claim indicated she would be able to return to work on April 15, 2013, and therefore, her claim would close with payment through April 14, 2013. Please refer to that letter (copy enclosed), for a complete explanation of the initial investigation and determination made on Ms. Scott's LTD claim.

Subsequently, in a letter dated July 16, 2013, you requested a review of the decision made to close Ms. Scott's LTD claim. You later submitted additional documentation you wished for us to include as part of our review of this claim.

The focus of our review was to determine whether the medical and vocational information contained in Ms. Scott's LTD claim file supports that she met the Own Occupation Definition of Disability outlined in the State of South Carolina LTD Plan, after April 14, 2013.

In order to make our determination, all of the information in Ms. Scott's file was reviewed, including all correspondence regarding the closure of Ms. Scott's LTD claim, your letter requesting a review of that decision, as well as the additional information you submitted in support of your appeal. We also reviewed all provisions of the State of South Carolina LTD Plan applicable to Ms. Scott's claim.

Standard Insurance Company
900 SW Fifth Avenue
Portland OR 97204-1235
tel 888.937.4783

R 176

R. 00161

STANDARD INSURANCE COMPANY

L'Tonya Scott

2

May 1, 2014

First, it is important you understand the provisions of the State of South Carolina LTD Plan. The Definition of Disability provision of the LTD Plan states in part:

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...

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...

The LTD Plan provisions mean that in order for Ms. Scott to have been eligible for LTD Benefits after April 14, 2013, you would have needed to provide satisfactory medical evidence that Ms. Scott has a Physical Disease, Injury, Pregnancy and/or Mental Disorder, that was of a severity to preclude her from performing the Material Duties of her Own Occupation after that date.

With the above LTD Plan provisions in mind, we reviewed Ms. Scott's medical records and all other medical evidence currently available in her LTD claim file. Please understand that the following is merely a summary of that information and is not intended to be a completely detailed account of every chart note and medical record currently found in Ms. Scott's file.

STANFORD INSURANCE COMPANY

L'Tonya Scott

3

May 1, 2014

On February 28, 2012, Ms. Scott saw Dr. Cindy Feely. Dr. Feely documented Ms. Scott had a history of sickle beta thalassemia with "rare sickle crisis." She documented Ms. Scott had one the prior weekend, likely triggered by a 24 hour diarrheal illness. Dr. Feely noted Ms. Scott was treated at the hospital with pain medication and IV hydration. She noted that the crisis was manifested by left leg pain and Ms. Scott usually experiences a crisis with extremity pain. Dr. Feely noted Ms. Scott's prior crisis was February 2011, due to a urinary tract infection. Dr. Feely documented a normal physical examination. Under Assessment, she documented Ms. Scott's back pain was likely musculoskeletal in nature as noted that reportedly, all x-rays have been normal and physical therapy did not help much.

Ms. Scott presented to the hospital on May 10, 2012, due to sickle cell disease with acute chest syndrome. Ms. Scott reported substernal chest pain, without shortness of breath, and low back pain. She reported her typical pain crisis occurred in her legs and arms and were controlled with Oxycodone every two to three hours. She reported it was her first hospitalization for acute chest syndrome and her last hospitalization was three years prior. Upon physical examination, it was documented that Ms. Scott had a normal lung and cardiovascular examination. Musculoskeletal examination documented Ms. Scott had decreased range of motion in her upper and lower extremities due to pain, but no tenderness on palpation. Neurologic examination was documented as normal with normal strength and sensation.

Under Hospital Course it documented Ms. Scott had increased complaints of chest pain and difficulty breathing. She was transferred to the intensive care unit. Elective intubation was decided as well as a broadened antibiotic regimen. Over the course of her stay she was found to be anemic, have pneumonia with acute chest syndrome and subsequent septic shock. It documented that Ms. Scott's blood and urine cultures continued to remain negative. It documented that on May 18, 2012, Ms. Scott's chest x-ray showed stable airspace disease with mild improvement and she was weaning off the breathing vent. They documented that by her day of discharge, she was sitting well on room air without any issues and her chest x-ray was much improved. It documented she was to follow up with her primary care physician in one week and she needed to start hydroxyurea as an outpatient because of her acute chest in light of her sickle cell disease.

During her admission, and echocardiography (ECG) Report dated May 15, 2012, documented an Interpretation that Ms. Scott had normal sinus rhythm throughout the study, 2D left ventricular volume indexes at end diastole and end systole were normal, no major wall motion abnormalities were identified, her ejection fraction was calculated to be 60% and her right ventricle was normal in size and systolic function was normal.

In addition, Ms. Scott was noted to have had increased conjunctivitis in her right eye while she was intubated. A separate assessment documented Ms. Scott had no corneal involvement or infection, mild retinopathy and an eye lubricant was recommended, along with outpatient retinal evaluation.

It was recommended that Ms. Scott undergo physical therapy home health and use a wheeled walker for assistance at home. Her discharge instructions indicated she had no activity restrictions and to advance her activity as tolerated. She was discharged on May 29, 2012.

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Ms. Scott was seen by Carol Blessing-Feussner, PA on June 13, 2012, to follow up on a blister. Ms. Blessing-Feussner listed diagnoses of low back pain, sickle cell beta thalassemia and elevated blood pressure. She indicated Ms. Scott was there for follow up of blisters on both of her heels. Ms. Blessing-Feussner documented that she previously offered to drain the blisters, but Ms. Scott's fear of needles prevented that. Ms. Scott reported that her discomfort with weight bearing had increased and she now wanted them drained that day. Drainage was attempted, but documented as unsuccessful. Ms. Blessing-Feussner recommended that Ms. Scott see a Podiatrist for ongoing treatment, but Ms. Scott declined. She recommended Ms. Scott soak her sores for 20 minutes, two to three times a day in vinegar water to aid in absorption and healing. Ms. Blessing-Feussner also documented Ms. Scott brought family medical leave (FMLA) paperwork "to begin permanently retiring from the work force" secondary to sickle cell diagnosis. Under Addendum, it stated, "Very challenging, but her issues, at this time, do not seem to be sickle cell related to the extent we can consider her disabled."

Ms. Scott presented to Podiatrist Andrew Saffer on July 9, 2012, with complaints of right and left foot pain for several weeks, which was progressively worse. Dr. Saffer documented that Ms. Scott had recently been hospitalized for pneumonia and sickle cell crisis and developed bilateral decubitus ulcers. Upon physical examination Dr. Saffer documented Ms. Scott's dorsalis pedis and posterior tibial pulses were graded at 2/4, her capillary refill time (CRT) with her legs elevated was less than three seconds at the distal hallux, bilaterally. He documented there was no evidence of ischemic skin changes, her bilateral lower extremity coordination was within normal limits, she had normal light touch and sharp sensation bilaterally, normal sharp/dull, proprioception and light touch sensation of her right and left foot. Dr. Saffer documented Ms. Scott's right ulcer was healed and the left showed hyperkeratotic tissue with dried decubitus skin. Upon further foot examination, Dr. Saffer documented Ms. Scott had good muscle strength to all prime movers of the foot and ankle with adequate muscle tone and symmetry bilaterally, as well as full, fluid range of motion for all joints from the ankle and no crepitation. Dr. Saffer recommended Ms. Scott purchase new shoes with wider cushioned soles. He also documented he debrided her left foot ulcer.

On July 23, 2012, Ms. Scott saw Dr. Charles Greenburg in consultation for initiation of hydroxyurea. He documented Ms. Scott had sickle cell disease complicated by two episodes of acute chest syndrome, with the most recent one requiring exchange transfusion and ventilator support. Of note, that statement contradicts prior documentation in the medical records that reported Ms. Scott had never before had acute chest syndrome. Dr. Greenburg documented a normal physical examination, but noted Ms. Scott had musculoskeletal tenderness and healing ulcers. He documented Ms. Scott had a relatively dysthymic disposition throughout the exam and interview. Ms. Scott was found to be a good candidate for Hydrea and explained it should improve her bouts of pain. Dr. Greenburg documented Ms. Scott was depressed with a flat affect, which he felt was not surprising based on the severity of her illness. He reiterated that Ms. Scott must take, and never stop taking, folic acid and he felt Hydrea would reduce her pain by 50-75%.

Ms. Scott again presented to Dr. Saffer on August 3, 2012, for follow up of her left foot ulcer. Dr. Saffer documented the same physical examination as documented previously. Dr. Saffer

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documented he again debrided Ms. Scott's left foot ulcer. He again recommended new shoes to Ms. Scott. She was to follow up for another visit in approximately three weeks.

Ms. Scott again saw Dr. Saffer on August 28, 2012, for follow up of her ulcer. She reported at that visit she was unable to move her left big toe up or down. Ms. Scott reported that her physical therapist felt she had signs of drop foot deformity of her left foot. Upon physical examination, Dr. Saffer documented Ms. Scott had paraesthesias to her left hallux and dorsal foot, drop foot was noted of her left foot with decreased dorsiflexion and plantarflexion, her muscle strength was 3/5 of her left foot and she was unable to move her left great toe. Dr. Saffer recommended that Ms. Scott be seen by neurology and have an electromyography (EMG) and nerve conduction studies performed to find out the etiology of her drop foot.

Ms. Scott saw Dr. Martin Smith on August 29, 2012. He outlined her recent history with hospitalization for acute chest syndrome and subsequent pressure ulcers. Ms. Scott indicated she had not started Hydrea yet as she was worried about side effects. She reported she had some minor sickle cell crises since her hospital discharge. Dr. Smith documented Ms. Scott was tearful when talking about her hospital stay, but she denied being depressed or hopeless. She noted she wanted her disability paperwork filled out. Ms. Scott reported that she had numbness in her left toe the previous day when she was at the podiatrist and the numbness comes and goes. She reported no other pain than in her heel where she had the ulcer. Dr. Smith documented an essentially normal physical examination with normal lower extremity examination, although he noted he could not elicit deep tendon reflexes, but pointed out that Ms. Scott could not relax and also noted Ms. Scott favored her left leg when walking. Dr. Smith documented they had a long discussion about Hydrea and Ms. Scott thought she would start it. She was to start Lisinopril and return for a follow up visit in one month.

Ms. Scott again saw Dr. Smith on September 25, 2012. She reported she was on hydroxyurea for two and a half weeks and was having pain in her joints, but no crises since starting Hydrea. She reported she was having headaches almost daily, with no sinus pressure, not related to medication administration, Tylenol did not help much and she hadn't checked her blood pressure, which was noted to be high at that visit. Ms. Scott reported she had not gone back to work yet, she had some numbness in her left foot, which was painful at times, and she tripped over her foot at times. Dr. Smith documented a normal physical examination, including lower extremity examination, but noted she had slight weakness in dorsiflexion on the left. Dr. Smith recommended she increase her Lisinopril and felt her headaches could have been related to her high blood pressure. He noted she did not have symptoms consistent with migraines or cluster headaches and she had no sinus pressure. Dr. Smith also prescribed Gabapentin for her leg paresthesia and said she was to see Neurology.

In a letter dated September 25, 2012, Dr. Smith documented Mr. Scott was seen in his clinic on that date. He stated his opinion that Ms. Scott could return to work on desk duty for the next three months and possibly longer. He stated she was precluded from prolonged standing or extended amounts of walking.

Ms. Scott was also seen at Rhett Women's Center. She presented on September 27, 2012, and reported she was still recuperating after her hospitalization in May 2012, due to her sickle cell

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crisis. She reported the ulcers on her foot were not completely healed. She felt she was still unable to work.

On October 12, 2012, Ms. Scott saw Internist Joan Taylor for an initial evaluation. Dr. Taylor documented Ms. Scott was there for evaluation of an ulcer on her left heel with associated numbness in her toes, for follow up of sickle cell, as well as issues with elevated blood pressure. On physical examination Dr. Taylor documented a normal physical examination with a musculoskeletal examination that documented no evidence of bony tenderness, joint effusion, enlargement or abnormal motion. No muscle fasciculation, atrophy, muscle weakness, asymmetry or reduced range of motion. Dr. Taylor documented a normal neurologic examination with cranial nerves intact, strength 5/5 in all muscle groups, intact sensation to light touch and pinprick, equal and symmetrical reflexes bilaterally in the upper and lower extremities and normal gait without ataxia. Dr. Taylor recommended low impact aerobic exercise and she return for follow up in six weeks.

On November 1, 2012, Ms. Scott underwent a consultation with Dr. Daud Nawabi. Ms. Scott reported she was followed for sickle cell since she was a child, at the Children's Hospital, then as an adult by Dr. Chris Brunson at MUSC, but the clinic had since shut down. Ms. Scott said ever since, she "had difficulty finding a hematologist willing to address her needs." Dr. Nawabi documented Ms. Scott followed with her primary care physician and at the hospital when needed. He stated, "Fortunately the patient required a hospitalization infrequently." Ms. Scott described to Dr. Nawabi her hospital stay in May 2012 with acute chest syndrome and an 18 day stay in ICU. She noted she developed a heel ulcer during that stay, which required care, but had since healed. Dr. Nawabi stated, "She was seen on one occasion by Dr. Greenburg from the hematology section of the Medical University. Unfortunately, followup visit was not made. Patient states that she did have a very good visit and she got the feeling that the doctors there were no longer interested in seeing her." Dr. Nawabi documented Ms. Scott had a "relatively uneventful summer. She has been doing well. She does not take narcotics chronically. Typically when she had minor crises, they seem to be well controlled with over-the-counter nonsteroidals. When they are a little more severe, she seems to get good relief after going to the emergency department." Ms. Scott reported that Dr. Greenburg did start her hydroxyurea, but she did not tolerate it well and discontinued it. Dr. Nawabi documented Ms. Scott's only complaint that day was she was chronically tired as a result of her hospitalization. She reported that due to her chronic fatigue, she was no longer able to work fulltime.

Upon physical examination, Dr. Nawabi documented Ms. Scott was well-appearing in no distress. He documented a normal physical examination. He documented lab results showed a white count of 10.9, hemoglobin of 10.4, hematocrit of 33.1 and a platelet count of 439,000. Dr. Nawabi documented on that date Ms. Scott was doing well, her physical findings were benign and she had microcytic anemia, which was likely representative of her beta thalassemia. He documented she did not appear to be symptomatic. Dr. Nawabi recommended blood work be completed, encouraged Ms. Scott to take folic acid and a multivitamin and she was to return in six weeks for a follow up visit.

Ms. Scott again followed up with Dr. Saffer on December 4, 2012, with complaints of left heel ulcer and inability to move her left hallux and left foot into dorsiflexion. Dr. Saffer documented

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on physical examination that Ms. Scott had drop foot on the left with decreased dorsiflexion and plantarflexion and she was unable to dorsiflex or plantarflex her great left toe. He also documented her muscle strength was 3/5. Dr. Saffer again recommended Ms. Scott see a Neurologist and undergo EMG and nerve conduction studies.

Ms. Scott again saw Dr. Saffer on March 12, 2013, for symptomatic left plantar fasciitis with heel spur syndrome, bursitis and gastrocnemius equines. Ms. Scott reported continued foot drop, but had not yet set up a Neurology appointment. Dr. Saffer documented Ms. Scott was intact from a neurovascular standpoint with no change since her last visit with regard to her bilateral lower extremities. He documented she had slight tenderness on palpation of the left plantar medial calcaneal tubercle, but no pain on medial-lateral compression of the calcaneus. He documented she had strong posterior tibial tendon to manual resistance and ankle joint dorsiflexion of +5 degrees with the knee extended bilaterally. He documented an injection was administered to reduce symptoms, swelling and pain. Ms. Scott again saw Dr. Saffer on July 1, 2013, and the chart note was essentially unchanged, although he prescribed an AFO.

On July 13, 2013, Dr. Saffer completed an Attending Physician's Statement. On that form he listed Ms. Scott's diagnoses as plantar fasciitis and foot drop, both left sided. He documented she had pain with prolonged standing on her left foot. He documented an anticipated return to work date of April 15, 2013.

Ms. Scott saw Dr. Taylor on June 26, 2013, for regular follow up. Ms. Scott had complaints of dizziness for the prior three weeks, which was a sudden onset. She indicated she had imbalance, lightheadedness and weakness. Dr. Taylor documented Ms. Scott reported she walked daily for exercise, she is able to bathe herself, clean the house, converse meaningfully, cook, dress herself, drive, feed herself, find her way home and live independently. Upon physical examination Dr. Taylor documented that Ms. Scott appeared in no apparent distress. She documented both ear canals were occluded by cerumen, mucosa of the nose was boggy, edematous and pale and nasal turbinate were markedly swollen in both nostrils. Otherwise the examination was documented as normal. Dr. Taylor documented a diagnosis of dysfunction of Eustachian tube. She recommended Ms. Scott increase her water intake and samples of Claritin were given.

Ms. Scott saw Dr. Tabitha Townsend on July 8, 2013. Ms. Scott reported she had been seeing a family practice doctor and would like to get reestablished at MUSC for her care. She reported she had a mild sickle cell crisis the prior weekend that she treated with pain medication at home and fluids. She also reported she had a diagnosis of left foot drop and was being evaluated for a foot brace. Dr. Townsend documented a normal physical examination, other than weakness of flexion and extension of Ms. Scott's left ankle and knee. Dr. Townsend documented Ms. Scott reported "rare pain crisis" and stopped taking Hydrea due to nausea and vomiting. Ms. Scott also reported she had an appointment with a Neurologist later that month for her left foot issues.

A chart note addendum was completed by Dr. Temeia Martin on August 22, 2013. Dr. Martin documented she had seen and examined Ms. Scott and agreed with finding documented by Sherill Bradsher, NP. Dr. Martin documented that Ms. Scott had sickle cell and had presented for an initial evaluation. She had a history of acute chest syndrome with hospitalization in May 2012. Dr. Martin documented Ms. Scott had been doing relatively well since that time, but had poor

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access to healthcare due to lack of health insurance. Ms. Scott was to have baseline labs completed and follow up in one month.

On September 23, 2013, Ms. Scott presented to Dr. Martin. Ms. Scott reported she had "been doing well. She uses her pain medication infrequently and only has pain on average of 1-2 times out of the week." Ms. Scott reported her pain typically involved lower extremities and her back and she described it as dull and achy and 6/10 at its worst. She reported she had not had any interval hospitalizations or emergency department visits. Ms. Scott indicated her primary complaint was fatigue and reported very poor sleep patterns. Dr. Martin documented that upon depression screening, Ms. Scott became tearful. She endorsed low mood, low interests, poor energy, poor sleep and feelings of helplessness. Upon physical examination Dr. Martin documented a normal examination including normal range of motion on musculoskeletal examination and normal neurologic exam. She documented psychiatric examination as normal mood and affect, normal behavior and normal judgment and thought content. Under Assessment, Dr. Martin documented Ms. Scott had symptoms of depression, anxiety and insomnia secondary to her general medical condition. Dr. Martin documented Ms. Scott's sickle cell was doing fairly well in terms of pain control. In regard to her fatigue, Dr. Martin indicated she wished to do blood work to look at differentials of thyroid function, depression and symptomatic anemia. Dr. Martin prescribed Ambien for sleeping and Ms. Scott was to return for follow up in three months.

There is a Social Security Disability Questionnaire in the claim file, which appears to be completed by Dr. Martin on November 4, 2013. On that form Dr. Martin documented her belief that Ms. Scott was able to walk for two to four hour total in an eight hour day, stand for one to two hour total in an eight hour day, sit four to six hours in an eight hour day and could lift and carry up to ten pounds occasionally. She thought however, that Ms. Scott could not work eight hours per day, five days per week due to "chronic intermittent pain that is worsened by various environmental stimuli (stress, weather changes)." She also documented that she felt Ms. Scott needed approximately six to eight rest periods during the day, lasting 20 minutes to an hour. She marked that she felt Ms. Scott could perform sedentary level work less than four hours per day.

Ms. Scott again saw Dr. Martin on November 26, 2013, and reported she had been doing fairly well. She reported continued intermittent pain involving her joints associated with fatigue. Dr. Martin documented Ms. Scott indicated she was compliant with her medications and denied intolerance. Ms. Scott reported her medications were helpful in management of her pain overall. She reported continued difficulties with sleep and dysphoria and anxiety. Dr. Martin documented a normal physical examination and under psychiatric exam documented Mr. Scott had normal mood and affect, normal behavior and normal thought content.

On February 1, 2014, Ms. Scott presented to East Cooper Medical Center with a sickle cell pain crisis. A chest x-ray was performed at that visit and was documented as normal with no evidence of focal infiltrate, no pleural effusion, no pneumothorax and osseous structures were intact. A chest computed tomography (CT) scan was also performed, which documented no evidence of an acute pulmonary embolism. It noted mild webbing and shouldering could be seen with a history of prior chronic pulmonary emboli. Ms. Scott's hematocrit was documented at 34.9 at that visit, which is mildly reduced.

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Ms. Scott saw Dr. Martin on March 2, 2014, for follow up of her emergency room visit. Dr. Martin documented a CT scan at the hospital was negative for pulmonary embolism and Ms. Scott's labs were unremarkable. Ms. Scott reported her symptoms had resolved by that visit, although she reported some pain in her arms and legs. She reported her symptoms respond fairly well with her at home narcotics. Ms. Scott reported continued low mood, insomnia and fatigue. Dr. Martin documented a normal physical examination. Ms. Scott was started on Zoloft for her mood and Trazadone for sleep and depression.

As part of the Administrative Review Unit's independent review of the decision made to close Ms. Scott's LTD claim, we had a Physician Consultant, board certified in Internal Medicine, who was not previously consulted in regard to Ms. Scott's claim, review her entire claim file.

The Physician Consultant outlined the records in the claim file. He outlined that Ms. Scott has sickle cell anemia with infrequent crises. He documented she had infrequent visits to the emergency room with one in May 2012 and the next in February 2014. The Physician Consultant explained that Ms. Scott required infrequent use of hydrocodone or nonsteroidal anti-inflammatory agents for her joint aches. He also explained that her hematocrit generally runs between 27-33 and she had not had a transfusion since May 2012. The Physician Consultant stated his opinion that as documented in the medical records, Ms. Scott's sickle cell anemia has been fairly well controlled. He stated her recent blood count was actually somewhat higher than blood counts in the past. He explained that her anemia is very mild and her pain medications appear to still be working for her. The Physician Consultant stated his opinion that based on the medical records in the claim file, Ms. Scott would not have been impaired from working due to her sickle cell anemia after April 2013.

The Physician Consultant outlined that Ms. Scott developed heel ulcers while in the hospital in May 2012, which healed by November 2012. He stated his opinion that by the time her ulcers were healed, Ms. Scott would not be impaired from working full time in a light level occupation.

The Physician Consultant outlined that Ms. Scott was noted to have left foot drop, of an uncertain etiology. He pointed out that while it was recommended that she see a Neurologist, there was no indication in the file that she had and noted that was surprising. He noted that the records in the claim file did not support that Ms. Scott had been falling or tripping due to her foot drop or that she has had difficulty walking. Rather, the records in the claim file documented Ms. Scott was walking daily for exercise. Furthermore, he stated it was unclear from the records whether Ms. Scott was using an AFO brace. The Physician Consultant stated his opinion that with or without an AFO brace, Ms. Scott would be able to perform sedentary or light level work with her left foot drop. He then reiterated his opinion that even without an AFO brace, Ms. Scott would be able to perform light level occupation.

The Physician Consultant also outlined that Ms. Scott was noted to have plantar fasciitis. He pointed out that it was documented that she only had minimal tenderness on examination. The Physician Consultant stated his opinion that Ms. Scott's plantar fasciitis would not interfere with her ability to perform sedentary or light level work.

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The Physician Consultant also outlined that Ms. Scott had reported complaints of headaches at times. He explained however, that she was not receiving medication for her headaches, she was not seeing a neurologist for her headaches, she was not seen in the emergency room for headaches and the most recent records in the claim file documented Ms. Scott denied having headaches. Therefore, the Physician Consultant stated his opinion that the information in the claim file did not support that Ms. Scott had debilitating headaches that were of a severity to preclude her from working.

The Physician Consultant also explained that Ms. Scott has reported fatigue. He explained there has been no material change in her sickle cell anemia and there does not appear to be any condition which would have changed Ms. Scott's constitutional stamina following her hospitalization. The Physician Consultant pointed out that Ms. Scott was interested in filing for LTD shortly after her hospitalization. He explained that Dr. Martin expressed that she felt Ms. Scott's fatigue might include depression, thyroid dysfunction or her sickle cell anemia, but Dr. Martin did not document a final conclusion on the fatigue. The Physician Consultant noted that her fatigue may well be due to her psychosocial circumstances. The Physician Consultant reiterated that Mr. Scott's anemia was mild and chronic and the records did not indicate it has changed significantly over time. Therefore, the Physician Consultant stated his opinion that Ms. Scott may be precluded from medium level work due to her complaints of fatigue. However, he stated his opinion that the records do not support Ms. Scott has any condition that caused debilitating fatigue with respect to performing a sedentary or light level occupation.

The Physician Consultant also explained that the records indicated Ms. Scott had intermittent reports of depression. He explained however that it does not appear she has been seeing a mental health specialist. The Physician Consultant noted that Ms. Scott was recently started on Zoloft. He pointed out however, that recent records documented she had normal judgment, thought content, affect and behavior. The Physician Consultant stated his opinion that the medical records in the claim file do not support that Ms. Scott has a mental health condition that is of a severity to preclude her from working.

Lastly, the Physician Consultant explained that Ms. Scott has essential hypertension, which is well controlled. He stated his opinion that hypertension would not interfere with Ms. Scott's ability to perform sedentary or light level work.

Overall, the Physician Consultant stated his opinion that the information in the claim file supports Ms. Scott would be precluded from performing strenuous physical activity, such as medium level work, due to her complaints of fatigue and her left foot drop. However, he reiterated his opinion that the records in the claim file do not support that Ms. Scott has any conditions, or combination of conditions, that would preclude her from performing sedentary or light level work after April 14, 2013.

Based on the medical information currently contained in Ms. Scott's claim file, we do not find that the medical records support Ms. Scott's conditions and/or symptoms of sickle cell anemia with infrequent crises, left foot drop, mild plantar fasciitis, complaints of fatigue, intermittent headaches or intermittent/recent depression, alone or in combination, would have impaired Ms. Scott's ability to work in a sedentary or light level occupation from at least April 14, 2013.

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Ms. Scott's claim file was previously reviewed by a Vocational Consultant. The Vocational Consultant stated her opinion that Ms. Scott's job title of Terminal Clerk, most appropriately matched the Own Occupation of Shipping-Order Clerk, which is a light strength level occupation.

The *U.S. Department of Labor Dictionary of Occupational Titles*, Fourth Edition, revised 1991 describes the strength factors as follows:

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 a 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 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.

Based on the vocational information in Ms. Scott's claim file, we find Ms. Scott's Own Occupation of Shipping-Order Clerk is a light level occupation. As outlined above, we find the medical information in the claim file supports Ms. Scott is able to perform light level work. Therefore, we find Ms. Scott has been capable of performing the Material Duties of her Own Occupation since at least April 14, 2013.

We want to assure you that we have evaluated all of Ms. Scott's complaints and assessed all of her conditions. However, please understand that being diagnosed with medical conditions does not automatically qualify an individual for LTD Benefits. Rather, we must rely on whether the medical information in the claim file supports that Ms. Scott had limitations and restrictions that were of a severity to preclude her from performing the Material Duties of her Own Occupation. Furthermore, it is reasonable to anticipate that a person's physical impairments and/or limitations and restrictions would be reflected in their medical records. As outlined above, we do not find that Ms. Scott's medical records document any of Ms. Scott's conditions or symptoms, including sickle cell anemia with infrequent crises, left foot drop, plantar fasciitis, complaints of fatigue, intermittent headaches or recent depression were of a severity to preclude her from working after April 14, 2013.

We find it important to point out that Ms. Scott has had sickle cell anemia her whole life. We understand that she had a severe exacerbation of her symptoms in May 2012, with acute chest syndrome, which required an 18 day hospital stay. However, the records indicated that other than Ms. Scott's complaints of fatigue following that hospital stay, her sickle cell symptoms were back to her normal baseline with infrequent sickle crises that were well managed with infrequent pain medication. Ms. Scott was not seen in the hospital for her sickle cell anemia between May 2012 and February 2014, which verifies she has very infrequent significant crises.

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She also has not required a transfusion since May 2012. As outlined above, the Physician Consultant also explained that Ms. Scott's hematocrit levels of 27-34 supports her anemia is very mild. Furthermore, the records support her sickle cell anemia is very well controlled. Therefore, we find the records in the claim file do not support that Ms. Scott would be precluded from performing her own light level occupation due to her sickle cell anemia.

Furthermore, we understand that Ms. Scott has had left foot complaints, including left foot drop and plantar fasciitis. We find it would be reasonable that if Ms. Scott's symptoms were severe, she would have been more proactive in her treatment and follow up. After her complaints of left foot drop, it was recommended multiple times, by at least two different physicians, that Ms. Scott be seen by a Neurologist, as well as undergo EMG and nerve conduction studies. However, it does not appear that Ms. Scott was ever seen by a Neurologist. While we understand at some point Ms. Scott reported she had difficulties due to insurance, it appears that was after the recommendations to see the Neurologist. We also find however, that even with her reported insurance issue, Ms. Scott continued to be seen and treated by other physicians on a regular basis. As outlined in the medical records summary above, we also find there were other instances noted that Ms. Scott did not follow up with her treating and/or consulting physician's for ongoing follow up care. We also find that the medical records in the claim file consistently documented essentially normal physical exams, with some mild decreased foot flexion at times. Based on the records in the claim file, we do not find Ms. Scott's left foot drop or plantar fasciitis were of a severity to preclude her from performing light level work.

We understand Ms. Scott was intermittently documented as having a depressed mood. However, it was not until approximately September 2013, that Ms. Scott endorsed having symptoms of depression. Please recall, we must evaluate Ms. Scott's ability to work as of April 15, 2013. Based on the information in the claim file, Ms. Scott was prescribed Zoloft in March 2014, for her depressive symptoms. However, as outlined above, the records also documented Ms. Scott continued to have normal mood and affect, normal behavior and normal judgment and thought content. We also understand Ms. Scott has complaints of fatigue, which may be associated with her depressive mood. However, we also do not find those complaints are documented in the records as being severe. The records documented Ms. Scott walks daily for exercise and performs all her activities of daily living. Therefore, while we acknowledge that Ms. Scott had intermittent symptoms of depression and is now being treated for those symptoms, as well as symptoms of fatigue we do not find the records support her symptoms are of a severity to preclude her from working in her own light level occupation.

In addition, we understand Ms. Scott had a few reported times of headaches. The records in the claim file did not document she had ongoing complaints of headaches nor did she have associated sinus pressure. The records rather appeared to associate her headaches with a period of high blood pressure. It does not appear that Ms. Scott received any medication treatment or emergency room treatment for her headaches. Again, the records document they occurred infrequently. Therefore, we find the records in the claim file do not support she had headaches that were of a severity to preclude her from working.

We also acknowledge that Dr. Martin completed a form for Social Security in November 2013. Again, please recall that we must evaluate Ms. Scott's ability to work as of April 2013. It

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appears that Ms. Scott did not begin seeing Dr. Martin until approximately August 2013. Furthermore, we find that the limitations outlined on that form do not necessarily match the information documented in Dr. Martin's medical records. In the chart notes Dr. Martin consistently documented Ms. Scott was doing fairly well, with intermittent pain of her joints on average of 1-2 times per week, associated fatigue, no headaches and that her pain was managed well by her medications. The records from Dr. Martin documented normal physical examinations. The records focus on Ms. Scott's depressive symptoms, insomnia and fatigue. However, Dr. Martin documented normal psychiatric examinations. Again, she did start Ms. Scott on Zoloft in March 2014. Therefore, while we have evaluated the form Dr. Martin completed, we find her actual detailed medical chart notes are more informative as to Ms. Scott's condition and complaints.

Therefore, overall, we do not find the medical documentation in the claim file supports Ms. Scott's conditions and/or symptoms, including sickle cell anemia with infrequent crises, left foot drop, mild plantar fasciitis, complaints of fatigue, intermittent headaches or recent depression were of a severity to preclude her from working in her Own Occupation after April 14, 2013.

In conclusion, based on the medical and vocational evidence currently contained in Ms. Scott's LTD claim file, our review finds that she had the functional capacity to work in a light level occupation from at least April 14, 2013. We find Ms. Scott's Own Occupation of Shipping-Order Clerk is a light level occupation. We do not find the medical records support Ms. Scott's sickle cell anemia with infrequent crises, left foot drop, plantar fasciitis, complaints of fatigue, intermittent headaches or recent depression would alone, or in combination, have impaired Ms. Scott's ability to work from at least that date. Therefore, we do not find she met the Own Occupation Definition of Disability as outlined in the State of South Carolina LTD Plan after April 14, 2013. As such, we find that the decision made to close Ms. Scott's LTD claim was correct and therefore, has been upheld.

The decision to close Ms. Scott's claim has been upheld for the reasons outlined above. We understand you and Ms. Scott may still be disappointed with this decision. However, please be assured that our review was conducted fairly and objectively, taking into consideration all of the information available to us and the Plan provisions applicable to Ms. Scott's LTD claim.

If Ms. Scott so requests, we may provide you with a copy of her claim file. Please contact the Employee Benefits Department at 800.628.9696 for that information. Ms. Scott is entitled to this information upon request, but may be charged a reasonable fee for such copies.

We also want you to know that upon further investigation, other valid reasons for closing Ms. Scott's claim, which have not been previously considered, could come to our attention. Therefore, both the State of South Carolina and The Standard reserve the right to consider and/or assert other valid reasons for closure of Ms. Scott's claim should they occur 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 and an optional employee-paid Supplemental LTD Policy that is insured by The Standard. While The Standard administers claims for benefits under the self-funded Basic LTD Plan, the State of South Carolina is the insurer for Basic LTD benefits.

STANDARD INSURANCE COMPANY

L'Tonya Scott

14

May 1, 2014

and is ultimately responsible for payment or nonpayment of claims under the Basic LTD Plan. On the other hand, The Standard is the insurer for Supplemental LTD benefits and is ultimately responsible for payment or nonpayment of claims under the Supplemental LTD Policy.

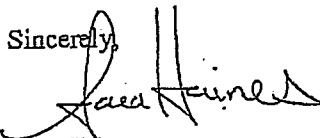
Both the Basic LTD Plan and the Supplemental LTD Policy provide for one independent review by The Standard. With Ms. Scott's receipt of this letter, that review is now complete. However, the Basic LTD Plan provides for an additional review of Basic LTD claims by the State of South Carolina. This additional review does not apply to claims for Supplemental LTD benefits.

If you wish to further pursue this decision on Ms. Scott's Basic LTD claim, please address your or Ms. Scott's written correspondence to the following within 90 days:

Appeals Coordinator
Public Employee Benefit Authority
PO Box 11661
Columbia, SC 29211-1661

We hope that this letter has addressed all your and Ms. Scott's concerns regarding the previous decision to close her LTD claim. Ms. Scott's claim has been returned to the Employee Benefits Department. Please contact them directly if you have any questions regarding this letter or Ms. Scott's claim.

Sincerely,



Sara Haines
Benefits Review Specialist
ISG Legal - Administrative Review

Enclosures: Definition of Disability LTD Plan provisions
Letter dated March 25, 2013

cc: Public Employee Benefit Authority



The Standard®
Positively different.

March 25, 2013

Administrative Consultants
for State of South Carolina

L'TONYA L SCOTT
2716 HWY 17 NORTH
MT PLEASANT, SC 29464

Re: State of South Carolina
LTD Plan No. 627284, 621144
Claim No. 00VQ6781, 00VQ8255

Dear Ms. Scott:

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 would like to explain how long benefits are payable.

Current medical information about your condition indicates that you will be able to return to work on April 15, 2013. As there are no medical reasons why you cannot return to work after April 14, 2013, your claim for LTD Benefits will be closed with payment to you through April 14, 2013.

Your claim for benefits will be closed based on the information in your file. If there are medical reasons why you cannot work after April 14, 2013, please have the enclosed Attending Physician's Statement completed and returned to us. Please make sure that your doctor includes copies of the supporting medical records with this form. Upon receiving additional information, we will review your file to determine whether further benefits are payable.

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 you may wish to submit would include medical information documenting your inability to return to work as anticipated. 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.

PO Box 2300 Portland OR 97208-2800 tel 800.363.1135
Standard Insurance Company - A subsidiary of SunCorp Financial Group

R 194

R. 00175

L'TONYA L SCOTT

2

March 25, 2013

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, The Standard reserves the right to consider and assert other reasons for limitation or denial of your claim 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.

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

Sincerely,



Amy Murdza
Disability Benefits Analyst
800-628-9696 ext. 7132

Enclosure: Attending Physician's Statement



PAUL J. FOSTER, JR., 1928-1999

Attorneys and Counselors at Law

Nathaniel W. Bax
nbax@erisaexperience.com
GREENVILLE

March 17, 2014

Amy Murdza
Disability Benefits Analyst
The Standard Insurance Company
P.O. Box 2800
Portland, Oregon 97208-2800

RE: L'Tonya Scott
State of South Carolina
LTD Plan No.: 627284, 621144
Claim No.: 00VQ6781, 00VQ8255

Dear Ms. Murdza:

Please find enclosed the updated medical records of MUSC which I wish to have considered in Ms. Scott's claim for disability benefits. This is the last thing that I wish to submit on Ms. Scott's appeal, therefore, please go ahead and make a decision on her claim. If you need anything further from me or if you have any questions or comments, please do not hesitate to contact me. Otherwise, I look forward to receiving a decision from you in the near future.

With kind regards, I remain

Sincerely,

Nathaniel W. Bax

NWB/bab
Encl

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MAR 20 2014

SIC BENEFITS DEPT

www.fosterfoster.com

GREENVILLE: 601 E. McBee Avenue, Suite 104 • Greenville, SC 29601 • 864-242-6200 • Fax: 864-233-0290
CHARLESTON: 895 Island Park Drive, Suite 202 • Charleston, SC 29492 • 843-972-0313 • Fax: 888-519-0934

Toll Free: 888-970-9772

R. 00177



The Standard®

CLAIMS ADMINISTRATOR
for the State of South Carolina
Long Term Disability Plan

January 30, 2014

Nathaniel Bax
Foster Law Firm LLC
601 E McBee Ave, Ste 104
Greenville SC 29601

Re: L'Tonya Scott
State of South Carolina
LTD Plan Nos: 627284, 621144
Claim No: 00VQ6781, 00VQ8255

Dear Mr. Bax:

Acting as Claims Administrator for the State of South Carolina's Long Term Disability (LTD) Plan, Standard Insurance Company's (The Standard's) goal is to treat all claimants fairly.

We are writing again today to update you on the status of the independent review of the decision made on the Long Term Disability (LTD) claim of your client L'Tonya Scott. As indicated previously, Ms. Scott's file was referred to the Administrative Review Unit for review. Ms. Scott is entitled to one independent review of the decision made to close her LTD claim.

Ms. Scott's claim file has recently been returned from the additional medical review. As such, we are still in the process of evaluating Ms. Scott's claim. Pending completion, we will continue to keep you informed about the progress of our investigation. You will also be notified in writing of our determination immediately upon completion of this review.

Thank you for your continued patience during the independent review process. If you have any questions, please feel free to write or call me at 971.321.2493.

Sincerely,

Sara Haines
Benefits Review Specialist
ISG Legal - Administrative Review

Standard Insurance Company
900 SW Fifth Avenue
Portland OR 97204-1235
tel 800.937.4703

R 203

R. 00178

FOSTER LAW FIRM, L.L.C.

Attorneys and Counselors at Law

PAUL J. FOSTER, JR., 1928-1999

Nathaniel W. Bax
nbax@erisnexperience.com
GREENVILLE

December 2, 2013

Amy Murdza
Disability Benefits Analyst
The Standard Insurance Company
P.O. Box 2800
Portland, Oregon 97208-2800

RE: L'Tonya Scott
State of South Carolina
LTD Plan No.: - 627284, 621144
Claim No.: 00VQ6781, 00VQ8255

Dear Ms. Murdza:

Please find attached updated records from MUSC that our office just received regarding Ms. Scott. Please consider these records in your review of Ms. Scott's claim. If you have any questions or concerns please give me a call.

With kind regards, I remain

Sincerely,

Nathaniel W. Bax

NWB/bab
Encl

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DEC 05 2013

ADMINISTRATIVE REVIEW UNIT

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DEC 05 2013

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Toll Free: 866-519-9772

R. 00179

FOSTER LAW FIRM, L.L.C.

Attorneys and Counselors at Law

PAUL J. FOSTER, JR., 1928-1999

Nathaniel W. Bax
nbax@erisaexperience.com
GREENVILLE

November 19, 2013

Ainy Murdza
Disability Benefits Analyst
The Standard Insurance Company
P.O. Box 2800
Portland, Oregon 97208-2800

RE: L'Tonya Scott
State of South Carolina
LTD Plan No.: 627284, 621144
Claim No.: 00VQ6781, 00VQ8255

Dear Ms. Murdza:

Please find enclosed the medical records of MUSC which I wish to have considered in Ms. Scott's claim for disability benefits. This is the last thing that I wish to submit on Ms. Scott's appeal, therefore, please go ahead and make a decision on her claim. If you need anything further from me or if you have any questions or comments, please do not hesitate to contact me. Otherwise, I look forward to receiving a decision from you in the near future.

With kind regards, I remain

Sincerely,

Nathaniel W. Bax

NWB/bab
Encl

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NOV 22 2013
ADMINISTRATIVE REVIEW UNIT

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Toll Free: 800-879-9772

R. 00180

FOSTER LAW FIRM, L.L.C.

Attorneys and Counselors at Law

PAUL J. FOSTER, JR., 1923-1999

Nathaniel W. Bax
nbax@erisaexperience.com
GREENVILLE

October 14, 2013

Amy Murdza
Disability Benefits Analyst
The Standard Insurance Company
P.O. Box 2800
Portland, Oregon 97208-2800

RE: L'Tonya Scott
State of South Carolina
LTD Plan No.: 627284, 621144
Claim No.: 00VQ6781, 00VQ8255

Dear Ms. Murdza:

Please be advised that I represent the above referenced individual. This is a follow up to my letter to you wherein I advised that I would be submitting additional materials to you to be considered on Ms. Scott's appeal. I respectfully ask that you consider the following documents: 1) the medical records of Dr. Joan Wynn-Taylor. I am still awaiting additional information and I will forward the same to you immediately upon receipt. Please wait until I submit to you everything which I wish to have considered before you reach a decision.

It is my hope that the above will persuade you to award Ms. Scott the benefits which she seeks. In any event, I look forward to hearing from you soon. If you have any questions or comments, or need any further information from me, please do not hesitate to contact me.

With kind regards, I remain

Sincerely,

Nathaniel W. Bax

NWB/bab
Encl

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OCT 21 2013

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Toll Free 800-219-9772

R. 00181

FOSTER LAW FIRM, L.L.C.

PAUL J. FOSTER, JR., 1928-1999

Attorneys and Counselors at Law

Nathaniel W. Bax
nbax@erisacexperience.com
GREENVILLE

September 11, 2013

Amy Murdza
Disability Benefits Analyst
The Standard Insurance Company
P.O. Box 2800
Portland, Oregon 97208-2800

RE: L'Tonya Scott
State of South Carolina
LTD Plan No.: 627284, 621144
Claim No.: 00VQ6781, 00VQ8255

Dear Ms. Murdza:

Please be advised that I represent the above referenced individual. This is a follow up to my letter to you wherein I advised that I would be submitting additional materials to you to be considered on Ms. Scott's appeal. I respectfully ask that you consider the following documents: 1) affidavit of Ms. Scott, 2) the medical records of Dr. Saffer, and 3) the medical records of Dr. Townsend. I am still awaiting additional information and I will forward the same to you immediately upon receipt. Please wait until I submit to you everything which I wish to have considered before you reach a decision.

It is my hope that the above will persuade you to award Ms. Scott the benefits which she seeks. In any event, I look forward to hearing from you soon. If you have any questions or comments, or need any further information from me, please do not hesitate to contact me.

With kind regards, I remain

Sincerely,

Nathaniel W. Bax

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SEP 18 2013

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Toll Free: 866-279-9772

R 215

R. 00182

Work Order Request

Date: 12/17/2012 Claim No. VQ6781 Name: L'tonya Scott
Requesting Analyst: Amy Murdza Claim Assistant: Kim West

2 Days - Approval

☒ Send Approval ltr to claimant	☒ Send Approval ltr to ER
Attachments: ☒ TAX Form ☒ EFT	Other:
☐ Send file to Waiver Team Choose one:	☒ Send file to Allsup: <i>tracking only</i>
☐ Calls: Call the	at (phone number)
Attempt: ☐ 1 ☐ 2 ☐ 3 times over	(time period - max 10 days) File will be returned after 10 days.
Reason for Call:	
If no contact, please send	
☒ Other Request:	
<i>Please send copies of all medical records (minus E-memos - just only actual records)</i>	

Lex Letters

☒ Letters (Check Appropriate Options):
Lex Letters: <i>2500</i> Lex Letter
*When selecting a LEX letter, please provide more detail as needed on the following line.
<i>Already applied SCRS and SSD</i>
☐ Other Specify

Task completed by claim assistant on:

12/18/12
km

+ order records from

1. Carolina Foot 8-29-12 → present
2. Dr. Greenberg 9-26-12 → present
3. Carol Blessing 7-12-12 → present

[Home](#) [Manage Requests](#) [Order Medical Records](#) [Provider Auths](#) [RPNet Logout](#)

Order Complete

Your Weborder Transaction ID is: 2053098

Please be sure to write this number on the authorization form when sending to ReleasePoint, or print this page and fax it along with the autho to:

626-768-7064

Name: SCOTT, LTONYA L

DOB: [REDACTED]

SSN: [REDACTED]

Policy Num: VO6781

Source Code: STS

Provider 1: DR. MARTIN ALLEN SMITH

Address: 96 JONATHAN LUCAS ST
CHARLESTON, SC 29425

Phone: 843-792-4074

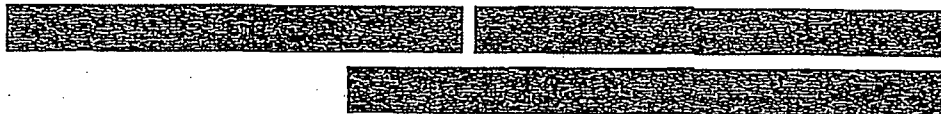
Record Range: Obtain records from 01/01/2012 to Present

Provider 2: DR. DAVID KEVIN SMITH

Address: 1300 HOSPITAL DR STE 250
MOUNT PLEASANT, SC 29464

Phone: 843-971-8180

Record Range: Obtain records from 01/01/2012 to Present



Standard Insurance Company

Employee Benefits Department 800.628.9696 Tel 800.437.0961 Fax
PO Box 2300 Portland OR 97208-2300

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>L. Tonya Scott</u>	Social Security No. <u>[REDACTED]</u>
Address: <u>2716 Hwy 17 north</u>	City: <u>Mt. Pleasant</u> State: <u>S.C.</u> Zip Code: <u>29466</u>
Phone No.: <u>[REDACTED]</u>	Birthdate: <u>[REDACTED]</u>
Sex: ☐ Male ☒ Female Height: <u>5'4"</u> Weight: <u>170</u>	Dominant Hand: ☒ Right ☐ Left
Name of Spouse: <u>N/A</u>	Birthdate: <u>N/A</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.	

2. EMPLOYMENT

Name of Agency/Institution: <u>South Carolina State Port Authority</u>	City: <u>Charleston</u> State: <u>SC</u> Zip Code: <u>29413</u>
Address: <u>P.O. Box 22297</u>	Phone No.: <u>(843) 577-8167</u>
State your job title and describe your duties at work: <u>Terminal Clerk, assist truck drivers at the problem resolution booth, also operation of company vehicle to do inventories of equipment in the yard.</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>5/9/12</u>	Date you became unable to work at your occupation as a result of disability: <u>5/10/12</u>
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	
Date you resumed part-time work: <u>N/A</u>	Monthly Earnings: _____
Date you resumed full-time work: <u>N/A</u>	Work Phone: (____) _____ Extension: _____

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

Illness: <u>Sickle Cell anemia, Left foot heel ulcer</u>	Date First Noticed: <u>N/A as above</u>
<u>Left heel ulcer developed while in the hospital</u>	Date First Noticed: _____
State what you believe caused your illness: <u>genetics</u>	
Describe your symptoms: <u>extreme pain in the arms and legs</u>	
Have you ever had the same condition or a related illness before? ☒ Yes ☐ No Date: <u>N/A</u>	

Standard Insurance Company

Claim Administrator 800.628.9698 Tel 800.437.0961 Fax
PO Box 2800 Portland OR 97208-2800

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

4. INJURY

Describe injury: N/A
Cause of injury: N/A
Time, Date and Location of injury: N/A

5. PREGNANCY

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

6. DISABILITY

Explain how your illness or injury prevents you from working at your occupation: _____
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>Carol Blessing</u>	Specialty: <u>Internal Medicine</u>	Phone No.: <u>803 876-2200</u>	Fax No.: ()
Address: <u>1200 Johnson Drive Blvd</u>	City: <u>Mt. Pleasant</u>	State: <u>SC</u>	Zip Code: <u>29464</u>
Date First Consulted for this injury or illness: <u>6/9/12</u>	Date Last Consulted: _____	Phone No.: ()	Fax No.: ()
Physician's Name: _____	Specialty: _____	City: _____	State: _____ Zip Code: _____
Address: _____	Date First Consulted for this injury or illness: _____	Date Last Consulted: _____	Phone No.: ()
Physician's Name: _____	Specialty: _____	City: _____	State: _____ Zip Code: _____
Address: _____	Date First Consulted for this injury or illness: _____	Date Last Consulted: _____	Phone No.: ()
Physician's Name: _____	Specialty: _____	City: _____	State: _____ Zip Code: _____
Address: _____	Date First Consulted for this injury or illness: _____	Date Last Consulted: _____	Phone No.: ()

8. HOSPITAL

Hospital Name: Proctor Mt Pleasant Medical University Address: 1171 Ashland Ave Charleston, S.C.
From: 5/10 through: 5/15 Reason for hospitalization: Sickle Cell crisis
From: 5/10 through: 5/29 Reason for hospitalization: Sickle Cell crisis / Acute Chest

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

Allment	Date	Medical Professional's Name	Complete Address & Phone No.
Sickle Cell	5/10/12	Proctor Mt Pleasant Medical University	3500 Highway 17 N Charleston SC 29414
Sickle Cell	5/10/12	Proctor Mt Pleasant Medical University	3500 Highway 17 N Charleston SC 29414
		Proctor Mt Pleasant Medical University	117 Ashland Ave, Charleston SC 29403
			876-2200

Standard Insurance Company

Employee Benefits Department 800.638.8693 Tel 800.437.0951 Fax
PO Box 2600 Portland OR 97208-2600

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	☒	☐	☐	☒	6/12			
b. Workers' Compensation	☐	☒	☐	☒				
c. Retirement or Pension (Employer, SCRS, ORP, etc.) Please specify type _____	☒	☐	☐	☒	10/12			
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	☐	☒	12th
GED	☐	☒	
College Graduate	☐	☒	Degree Major
Post Graduate	☐	☒	Degree Major

Have you attended any trade schools or received other special training? ☐ Yes ☒ No
If yes, please describe _____

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

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

Job Title & Employer	SCRS Qualified?	Dates of Employment	Duties	Last Salary
1. Terminal Clerk South Carolina state		From: 5/19/01 To: 5/9/12	assist drivers with problems, filling yard inventory	\$17.65
2. Port Authority		From: To:		
3.		From: To:		
4.		From: To:		
5.		From: To:		

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.

[Signature]
SIGNATURE

8/29/12
DATE

Physician Consultant Memo

Claim Identification

Name: L'Tonya Scott

Claim Number: 00VQ6781

MTID #: 3670763

Analyst: Sarah Haines

Date Submitted: 04/15/2014

Physician: Bradley Fancher, M.D.
Consulting Physician, Internal Medicine

Date Transcribed: 04/15/2014

I discussed this claim file with you today, in consultation. I previously have reviewed this claim file. The claimant has submitted some additional medical records.

Some of these records I have already reviewed, specifically the progress notes from Dr. Martin dated September 23, 2013, and November 26, 2013. It is apparent that the claimant was seen in the emergency room on February 1, 2014, for pain attributed to her sickle cell disease. The records note that a CT angiogram did not reveal pulmonary emboli. The claimant's hematocrit was 34.9, which is only mildly reduced. It does not appear that the claimant required admission. She was provided with pain medication.

The claimant saw Dr. Temeia Martin again on March 4, 2014. At that time it was noted that her symptoms had resolved. She was reporting some pain in her legs and arms, related to her known sickle cell/beta thalassemia disease. It was noted that her symptoms would respond fairly well to narcotics. The claimant continued to have a low mood and fatigue. The claimant stated she did not have problems with concentration or agitation but noted increased irritability and short-term memory deficits. No cognitive testing was performed. On exam, she appeared to be in no distress. Her entire physical exam was unremarkable. She was noted to have a normal mood and affect. Her behavior was normal. Her judgment and thought content were normal. Dr. Martin concluded that the claimant's sickle cell disease was fairly well controlled. The claimant was using hydrocodone and folic acid. For her depressive symptoms, she was started on Zoloft and asked to return in 1 month.

It remains my opinion that the claimant's sickle cell disease is under fair to good control. The claimant is infrequently visiting the emergency room. Her anemia is very mild. The claimant's pain medication appears to be working well for her.

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.

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Scott, L'Tonya

Physician Consultant Memo

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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.

The claimant has a mild chronic anemia. Her recent blood count actually is somewhat higher than her blood counts have been in the past. She complains of chronic fatigue. The cause of her chronic fatigue has not been identified. It may well be due to psychosocial circumstances.

Again, given her constitutional complaint of fatigue, it may be reasonable to preclude her from performing strenuous physical exertion such as might be encountered in medium level work. However, I could not identify either a physical disease process or a mental health condition which would preclude the claimant from working in a sedentary or light occupation on a full time basis.

After reviewing the additional medical records that The Standard has received, my opinion remains unchanged.

I, Bradley Fancher, M.D., am a physician duly licensed to practice medicine in the State of Oregon. I am not an employee of Standard. I am an independent contractor and I am paid an hourly rate to review disability and life claim files and render medical opinions regarding the records contained therein. I am not responsible for deciding whether a claimant is entitled to insurance benefits. My role is to provide objective medical opinions to Standard's Benefits personnel.

I do not receive any additional compensation in the form of bonuses or incentive pay of any kind. My compensation does not depend upon the outcome of my reviews, the substance of my medical opinions, or any factor other than the number of hours it takes to review a file and to provide an analysis.

Standard has never expressed to me any requirements or expectations regarding the ultimate conclusions or opinions I provide other than that I provide a well reasoned, professional opinion based on thorough review of all relevant and available information. I do not believe that either my compensation or my continued professional relationship with Standard is contingent in any way on the ultimate conclusions or opinions that I provide.

***** Electronically Signed ***** 4/18/2014 10:26 AM
Bradley Fancher, M.D.
BF:saa

D: 04/15/2014 T: 04/15/2014

*** Electronically Signed ***

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Scott, L'Tonya

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04/15/2014

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Bradley J. Fancher, M.D.

EDUCATION

Undergraduate Education:
Stanford University • 1971-1975

Medical Education:
Oregon Health Sciences Center • 1975-1979
M.D.

Postgraduate Education:
Oregon Health Sciences Center • 1979-1982
Family Practice Residency

St. Vincent Hospital, Portland, Oregon • 1982-1984
Internal Medicine Residency

St. Vincent Hospital, Portland, Oregon • 1984
Chief Internal Medicine Resident

CERTIFICATIONS

- Board Certified in Internal Medicine 1984-present
- Active Medical License certified by the Oregon Board of Medical Examiners.

PROFESSIONAL EXPERIENCE

- Private Practice of Internal Medicine, Portland Oregon, 1985-present
- Active staff member, St. Vincent Hospital, Portland, Oregon
- Chairman, Internal Medicine Section, St. Vincent Hospital, Portland, Oregon 1991
- President, Oregon Society of Internal Medicine 1990-1991
- President, Cedar Creek Internal Medicine, Portland, Oregon 2007-present

PROFESSIONAL MEMBERSHIPS

- American College of Physicians ("ACP")

Revised February 2014



- Oregon Chapter ACP
- American Medical Association
- Oregon Medical Association

ADDITIONAL PRACTICE INFORMATION

Dr. Fancher is currently engaged in the private practice of medicine at Cedar Creek Internal Medicine, in Portland, Oregon. This is a group practice consisting of five internal medicine specialists. He is an active staff member at St. Vincent Hospital in Portland, Oregon and admits patients there on a regular basis. He has participated in a variety of different hospital committees. Dr. Fancher has previously served as chair of the internal medicine section. He participates in the teaching program at St. Vincent Hospital instructing internal medicine residents. His clinical practice encompasses the expected scope of internal medicine. Dr. Fancher's primary expertise is in diagnosing and treating diseases or disorders of internal organs. This includes cardiac, pulmonary, renal, endocrinologic and gastrointestinal disorders.

Dr. Fancher has also been an independent consultant for Standard Insurance Company and Northwestern Mutual for approximately 10 years. During his association with Standard and Northwestern Mutual he has become quite familiar with the medical and disability aspects of a number of clinical entities which may be less frequently encountered in an internal medicine practice. These entities include chronic fatigue syndrome, Lyme disease, porphyria, multiple chemical sensitivity syndrome, sick building syndrome, and reflex sympathetic dystrophy, among others. Although Dr. Fancher has encountered all of these diagnoses in his clinical practice, the frequency to which these diagnoses occur in claims presented to Standard and Northwestern Mutual has prompted him to gain additional expertise in these areas. This has been accomplished by conferring with and reviewing consultations from nationally recognized experts that Standard and Northwestern Mutual has regularly employed for these claims, attending conferences and lectures that pertain to these diagnoses, and by paying particular attention to peer reviewed medical literature.

Revised February 2014



Progress Notes

L'Tonya L Scott (MR# 000550551)

Progress Notes Info

Author	Note Status	Last Update User	Last Update Date/Time
Temela Denise Martin, MD	Signed	Temela Denise Martin, MD	9/23/2013 4:47 PM

Progress Notes

Subjective:

Patient ID: L'Tonya L Scott is a 34 y.o. female.

HPI L'Tonya has been doing well. She uses her pain medications infrequently and only has pain on average of 1-2 times out of the week. Her pain typically involves her lower extremities and back. Pain is 6/10 at worst and is described as dull and achy. She denies fever, chills, headache, chest pain, SOB, cough, diarrhea, constipation, dysuria, hematuria, or swelling of her joints. She has not had any interval hospitalizations or ED visits. Her primary complaint on today is fatigue. She reports that she has very poor sleep patterns including DFA and frequent awakenings. She averages 2 hours of sleep nightly and takes minimal naps. Does not drink excessive caffeine. On depression screening, she becomes tearful and this is explored further. She endorses daily low mood, low interests, poor energy, fair appetite, poor sleep, and feelings of helplessness. She denies suicidal thoughts and contracts for safety. She admits to significant worry thoughts over her health and finances but denies panic attacks, denies agoraphobia.

Review of Systems

Constitutional: Positive for fatigue. Negative for fever, chills, diaphoresis, activity change, appetite change and unexpected weight change.

HENT: Negative.

Eyes: Negative.

Respiratory: Negative.

Cardiovascular: Negative.

Gastrointestinal: Negative.

Endocrine: Negative.

Genitourinary: Negative.

Musculoskeletal: Positive for arthralgias. Negative for myalgias, back pain, joint swelling and gait problem.

Skin: Negative.

Allergic/Immunologic: Negative.

Neurological: Negative.

Hematological: Negative.

Psychiatric/Behavioral: Positive for sleep disturbance and dysphoric mood. Negative for suicidal ideas, hallucinations, behavioral problems, confusion, self-injury, decreased concentration and agitation. The patient is nervous/anxious. The patient is not hyperactive.

The following portions of the patient's history were reviewed and updated as appropriate: allergies, current medications, past family history, past medical history, past social history, past surgical history and problem list.

Objective:

Physical Exam

Vitals reviewed.

Constitutional: She is oriented to person, place, and time. She appears well-developed and well-nourished. No distress.

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Scott, L'Tonya L (000550551) DOB [REDACTED]

Printed by Betsy Reid ... Encounter Date: 08/23/2013 MAR 20 2014

SIC BENEFITS DEPT

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R. 00192

Medical University of South Carolina

Page 2 of 2

HENT:

Head: Normocephalic.

Mouth/Throat: Oropharynx is clear and moist. No oropharyngeal exudate.

Eyes: EOM are normal. Pupils are equal, round, and reactive to light. Right eye exhibits no discharge. Left eye exhibits no discharge. No scleral icterus.

Neck: Normal range of motion. Neck supple. No JVD present. No tracheal deviation present. No thyromegaly present.

Cardiovascular: Normal rate, regular rhythm and intact distal pulses. Exam reveals no gallop and no friction rub.

Murmur heard.

Pulmonary/Chest: Effort normal and breath sounds normal. No respiratory distress. She has no wheezes. She has no rales. She exhibits no tenderness.

Abdominal: Soft. Bowel sounds are normal. She exhibits no distension and no mass. There is no tenderness. There is no rebound and no guarding.

Musculoskeletal: Normal range of motion. She exhibits no edema and no tenderness.

Lymphadenopathy:

She has no cervical adenopathy.

Neurological: She is alert and oriented to person, place, and time. No cranial nerve deficit.

Skin: Skin is warm and dry. No rash noted. She is not diaphoretic.

Psychiatric: She has a normal mood and affect. Her behavior is normal. Judgment and thought content normal.

Assessment / Plan:

34 yo with sickle cell & beta thalassemia presenting for routine assessment. She has symptoms of depression, anxiety, and insomnia secondary to a general medical condition. Disease control is fair.

1) Sickle cell/beta thalassemia - doing fairly well in terms of pain control on today's assessment. Access to care is prohibited by patient's lack of insurance and she was not able to get appropriate labs drawn during the interim. Refill provided for Hydrocodone/APAP 5-500 mg #60 with 4 refills. Continue Folic acid.

2) Fatigue - differential includes thyroid dysfunction, depression, and symptomatic anemia. Would like to get blood work and patient will attempt to have this done prior to return to clinic.

3) Insomnia - trial of Ambien 5 mg orally nightly.

4) Hypertension - stable, continue Lisinopril 20 mg PO daily.

5) HMA - patient is due for a papsmear. Influenza vaccine on return.

RTC 3 months, sooner if needed.

RECEIVED

MAR 20 2014

Scott, L'Tonya L. (000550551) DOB: [REDACTED]

Printed by Betsy Reid ... Encounter Date: 03/23/2014

SIC BENEFITS DEPT

R 290

R. 00193

Physician Consultant Memo

Claim Identification

Name: L'Tonya Scott

Claim Number: 00VQ6781

Nurse:

MTID #: 3586338

Analyst: Sara Haines

Date Submitted: 01/20/2014

Physician: Bradley Fancher, M.D.
Consulting Physician, Internal Medicine

Date Transcribed: 01/21/2014

Opening Synopsis

This claimant is a 34-year-old shipping order clerk. It is my understanding she has a light-level occupation. She ceased work on 05/09/2012 due to complications of sickle cell anemia. I have been asked to assess the claim file and assess whether or not the claimant was precluded from working after 04/13/2013.

Review of Medical Records

I have carefully reviewed all of the available medical records. When the claimant was admitted on 05/10/2012 she presented with chest pain and low back pain that was demonstrated to be a sickle cell crisis. Her course was complicated by respiratory failure which was felt most likely to be related to oversedation with pain medication. The claimant was discharged on 05/29/2012.

The claimant developed heel ulcers while in the hospital. These apparently were pressure ulcers. Multiple notes suggest the ulcers do not have the appearance of a sickle cell lesion. She has been followed on a regular basis by podiatrists at the Carolina Foot Specialists.

When the claimant saw podiatrist Dr. Andrew Saffer on 08/28/2012 it was noted that the right heel decubitus ulcer had healed. The left heel ulcer was very small and only 0.5 cm by 0.5 cm. It was being treated with serial débridements.

When the claimant was seen by Dr. Saffer on 09/25/2012 the lesion had become smaller and was now measured to be 0.2 cm x 0.2 cm. He recommended appropriate footwear and limiting her weightbearing. The claimant additionally developed a left foot drop of uncertain etiology. She was referred to a neurologist for an electrophysiologic study. She was given a prescription for an AFO brace.

When the claimant saw Dr. Saffer again on 12/04/2012 it was noted that her decubitus ulcer had healed. She had some thickening of the skin over the heel. She again was noted to have a left foot drop with decreased dorsiflexion. Again, it was recommended to the claimant that she be referred to a neurologist for an electrophysiologic study. The claimant was given advice on how to buy shoes. At that time it would be reasonable to conclude that the claimant would not have been impaired by her heel ulcers with regard to light-level work. Ordinarily light-level work can be accomplished while wearing an AFO brace for a foot drop.

The claimant saw Dr. Saffer again on 07/01/2013. At that time, the claimant did complain of heel pain. It was noted that she still had not set up an appointment with a neurologist. She was found to have slight tenderness on palpation of the left plantar medial calcaneal tubercle. It was noted that the claimant still had evidence of a left foot drop. She was diagnosed with plantar fasciitis. She was to be seen in four weeks.

Plantar fasciitis is a commonly encountered condition and it would not be expected to interfere with the performance of sedentary or light work.

The claimant was seen on 06/13/2012 by physician assistant Carol Blessing-Feussner. At that time, it was noted the claimant had FMLA papers to begin permanently retiring from work due to her sickle cell disease.

When the claimant saw Dr. Coker, hematologist, on 07/23/2012 it was noted she had not had any sickle cell crisis events. The claimant was Vicodin or Percocet on a p.r.n. basis. She endorsed decreased energy and motivation. It was felt she had a depressed mood. It was felt she would be an excellent candidate for Hydrea to prevent further sickle cell events.

When the claimant saw Dr. Smith on 11/25/2012 the claimant had been started hydroxyurea. She had had one mild crisis at home prior to starting the Hydrea. She did complain of frontal headaches. On exam she was said to look well and be in no distress. Her hematocrit was 27 (this is similar to what the claimant's hematocrit has been in the past). She was started on gabapentin for joint and leg aches.

The claimant was seen by hematologist Nawabi on 11/01/2012. At that time, it was noted the claimant required hospitalizations infrequently. The claimant had not been hospitalized since the previous May. The claimant's prior hospitalization before May of 2012 was 10 years earlier. It was noted the claimant had an uneventful summer. She had been doing well. She was not taking narcotics. It was noted that crises were well controlled by over-the-counter nonsteroidal anti-inflammatory agents. The claimant went to the emergency room. It was noted that the claimant did not tolerate the Hydrea and had stopped the Hydrea. The claimant's only real complaint at that time was that she was chronically tired. She was not able to explain why. She states because of her fatigue she was no longer able to work full-time. The claimant's last pain crisis happened in September. She denied difficulty walking, chest pain, shortness of breath, or back pain. She denied having a headache. On exam she appeared to be in no distress. She was calm,

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Scott, L'Tonya

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comfortable and cooperative. Her physical examination was unremarkable. Her hematocrit at that time was actually 31.1 which is slightly higher than her usual baseline.

The claimant saw primary care physician Dr. Joan Taylor on 02/20/2013. At that time, she was complaining of nasal congestion, body aches, sore throat and fatigue. It was noted that the claimant exercised daily in the form of walking. It was noted the claimant was independent in all her activities of daily living. The claimant was said to be minimally ill-appearing. Gait was said to be normal without ataxia. No mood abnormalities were noted. The claimant was put on antibiotics for a URI syndrome.

The claimant saw Dr. Taylor on 06/26/2012. At that time she complained of a history of dizziness. It was again noted that the claimant was walking on a daily basis. On exam she appeared to be peripheral edema and in no distress. The claimant's musculoskeletal exam was said to be normal. Her neurologic examination was said to be normal. She was felt to have cerumen impaction and dysfunction of her eustachian tube. She was given Claritin.

I have reviewed the affidavit from Dr. Martin. The claimant saw Dr. Martin Smith on 09/08/2013. At that point she wanted to get reestablished with the Medical University of South Carolina. The claimant noted she had a left foot drop. Her physical examination revealed weakness of the left ankle and knee. The claimant's hematocrit was 27.5. Apparently the claimant had a pain crisis the preceding weekend. The claimant reported having rare pain crises. The claimant's hypertension was noted to be under good control. It was noted the claimant had an appointment with neurologist. She was to return in three months.

The claimant saw Dr. Temeia on 09/23/2013. At that time, it was noted she was using pain medications infrequently, only averaging 1-2 times a week. The claimant's pain episodes mainly involved her lower extremities and back. It was noted the claimant had not had any recent hospitalizations or ER visits. The patient did complain of fatigue. She endorsed daily low mood. The claimant's physical examination was unremarkable. She was felt to have a normal mood and affect on exam. It was felt that she was doing fairly well in terms of pain control for sickle cell anemia. The cause of the claimant's fatigue was unknown. Various causes were hypothesized including thyroid dysfunction, depression and symptomatic anemia. The claimant was to return in a 3 month basis.

The claimant was seen again by Dr. Martin on 11/26/2013. At that time, she reported intermittent pain involving her joints associated with fatigue. The claimant denied having headaches. Her physical examination again was entirely unremarkable. The claimant again was to return in three months.

Summary of Pertinent Information

This claimant has sickle cell anemia with infrequent crises. She has not been hospitalized since May of 2012. The claimant is requiring infrequent use of hydrocodone or nonsteroidal anti-inflammatory agents for her joint aches.

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During the claimant's hospitalization she developed pressure induced heel ulcers, which have healed.

The claimant has been diagnosed with plantar fasciitis but is noted to have only minimal tenderness on exam.

The claimant has a left foot drop of unknown etiology.

Response to Questions

1. *Please discuss any and all physical symptoms, conditions or diagnoses that are supported by the medical records in this claim file.*

The claimant has sickle cell anemia. She has had infrequent hospitalizations and infrequent emergency room visits because of this diagnosis. Her hematocrit generally runs between 27-33. She has not required a transfusion since May of 2012.

There is no indication in the claim file that the claimant would have been impaired from her sickle anemia following April of 2013. In fact, her sickle cell anemia has been fairly well controlled as noted by Dr. Martin and others.

The claimant's foot ulcers were healed by November of 2012. The claimant would not be impaired from working on a full-time basis in a light-level occupation due to her heel ulcers once they were fully healed. The claimant does have a left foot drop of uncertain etiology. It is surprising that the claimant has not seen a neurologist. However, either with or without an AFO brace the claimant would not be impaired from performing sedentary or light-level work due to her left foot drop. I note there is no indication the claimant has had problems falling or tripping in the medical records.

Dr. Saffer has diagnosed plantar fasciitis on the left. He describes the claimant as having only slight tenderness on exam. This is a commonly encountered condition and cannot be expected to interfere with the performance of sedentary or light work.

The claimant at times has reported headaches. However, the most recent notes reveal the claimant as not having problems with headaches. Although Dr. Martin filled out a statement saying that the claimant suffers from headaches (signed 11/04/2013), a physician visit from Dr. Martin dated 11/26/2013 reveals that the claimant denied headaches. There is no indication that the claimant is receiving narcotic analgesics for headaches. There is no indication that the claimant has seen a neurologist for her headaches. There is no indication that the claimant has been seen in the emergency room for her headaches. As such, the medical information does not support that the claimant has debilitating headaches or would be precluded from working due to her headaches.

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The claimant has been noted intermittently to be depressed. However, there are no mental health notes to review. The claimant is not taking an antidepressive medication. When the claimant was seen by Dr. Martin on 11/26/2013 it was noted she had a normal mood and affect. Dr. Martin felt it was not necessary to see the claimant for another 3 months. The medical records do not demonstrate that the claimant has a mental health condition of such severity that it would interfere with her ability to be gainfully employed.

The claimant has been treated for essential hypertension which is well controlled. Hypertension cannot reasonably be expected to interfere with the performance of sedentary or light work.

2. *Does the information in the claim file support that Ms. Scott has any limitations or restrictions from any condition or combination of conditions which would preclude her from working in any way after 04/14/2013? Please describe any limitations or restrictions that are supported and from which conditions.*

Please see my above response. I believe the claimant would be precluded from performing strenuous physical activity such as might be encountered in medium-level work due to her subjective complaint of fatigue and due to her left foot drop. I cannot identify any condition that would preclude the claimant from performing sedentary or light work after 04/14/2013.

3. *Do the records in the claim file support that Ms. Scott suffers from debilitating daily headaches? If so, are they of severity to preclude her from working in any way after 04/14/2013? Please explain your responses.*

Refer to my comments above. The medical records do not demonstrate that the claimant has a debilitating headache disorder. The claimant has not seen a neurologist. The claimant has not had any emergency room visits for headache disorder. It is not apparent that the claimant is consistently using any medications for a headache disorder. When she saw Dr. Martin on 11/26/2013 the claimant denied a headache. When she was seen on 09/23/2013 by Dr. Martin she denied headache as well. The notes from Dr. Taylor did not suggest the claimant is being treated for headache disorder. Dr. Taylor notes that the claimant is walking on a daily basis for exercise. Dr. Taylor notes the claimant is able to perform all activities of daily living. When the claimant saw hematologist Dr. Nawabi in November of 2012 there is no history of a headache disorder and the claimant denied having a headache. As such, there is no indication that the claimant has a debilitating headache disorder.

4. *Do the records in the claim file support that Ms. Scott has difficulty ambulating and/or have a history of tripping? If so do the records support that the claimant has any limitations or restrictions from working after 04/13/2013? Please explain your responses.*

See my above response. The cause of the claimant's left foot drop is unknown. However, there is no indication that the claimant has been falling or tripping. The claimant on several occasions has been advised to have an AFO brace. The medical records are not entirely clear as to whether or not the claimant is using an AFO brace. There have been no discussions in the medical record

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that suggests the claimant has been having trouble walking. Individuals with an AFO brace would be expected to be capable of performing sedentary or light work. The claimant in the medical record is described as walking for exercise. There is no indication that even without an AFO brace, the claimant would have difficulty performing light-level work.

5. *Do the records in the claim file support that Ms. Scott has significant daily fatigue? If so, is it of a severity to preclude her working in any way after 04/14/2013? Please explain your responses.*

The claimant has reported fatigue. There has been no material change in the sickle cell anemia. I cannot identify any condition which would have changed the claimant's constitutional stamina following her hospitalization. The claimant was interested in filing for long-term disability shortly after she was discharged from the hospital. Dr. Martin speculates that the claimant's fatigue might include depression, thyroid dysfunction, her sickle cell anemia, but Dr. Martin does not arrive at a final conclusion as to what is causing the claimant's daily fatigue. The claimant's anemia is mild and chronic. There is no indication that it has changed significantly over time. The records do not support that the claimant has any condition which caused debilitating fatigue with respect to performing a sedentary or light-level occupation.

6. *Overall, does the medical information currently in the claim file support that Ms. Scott has any limitations or restrictions from any physical condition or combination of conditions that would preclude her from working with reasonable continuity after 04/14/2013? Please explain your response.*

No. The claimant would be capable of performing sedentary or light work after 04/14/2013. Please refer to my above comments.

Please let me know if you have any further concerns or questions.

I, Bradley Fancher, M.D., am a physician duly licensed to practice medicine in the State of Oregon. I am not an employee of Standard. I am an independent contractor and I am paid an hourly rate to review disability and life claim files and render medical opinions regarding the records contained therein. I am not responsible for deciding whether a claimant is entitled to insurance benefits. My role is to provide objective medical opinions to Standard's Benefits personnel.

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Scott, L'Tonya

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***** Electronically Signed ***** 1/24/2014 10:14 AM
Bradley Fancher, M.D.
BF:kcs

D: 01/20/2014 T: 01/21/2014

*** Electronically Signed***

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Scott, L'Tonya

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01/20/2014

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Procedures

L'Tonya L Scott (MR# 000550551)

Procedures Info

Author	Note Status	Last Update User	Last Update Date/Time
Tabitha Nicole Townsend, MD	Signed	Tabitha Nicole Townsend, MD	7/8/2013 12:00 PM

Assoc. Orders
None

Procedures

UNIVERSITY INTERNAL MEDICINE

L'Tonya Scott, 34 y.o. female

PRIMARY CARE PROVIDER: Martin Allen Smith

ACTIVE PROBLEMS:

Patient Active Problem List

- LBP (low back pain)
- Sickle cell disease
- HTN (hypertension)
- Pressure ulcer of heel

RECEIVED

NOV 23 2013

ADMINISTRATIVE REVIEW UNIT

CHIEF COMPLAINT:

Chief Complaint

- Sickle Cell Anemia

Pt triaged by Mona Mitchell, LPN

HISTORY OF PRESENT ILLNESS: L'Tonya L Scott is a 34 y.o. female here for evaluation and management of her chronic medical conditions. She reports that she had been following with a family practice physician in the community and would like to get reestablished at MUSC for her care. She states that she has 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.

PAST MEDICAL HISTORY:

has a past medical history of LBP (low back pain) (6/7/2012); Hypertension; Ulcer; Depression (7/21/2012); and Sickle cell anemia.

PAST SURGICAL HISTORY:

has past surgical history that includes Breast surgery.

PAST FAMILY HISTORY:

family history includes Diabetes in her father and sister and Hypertension in her mother.

PAST SOCIAL HISTORY:

reports that she has never smoked. She has never used smokeless tobacco. She reports that she does not drink alcohol or use illicit drugs.

CURRENT MEDICATIONS:

Current Outpatient Rx

- amlodipine (NORVASC) 10 MG

Take one tablet by mouth 90 tablet daily

3

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NOV 21 2013

SIC-BENEFITS DEPT.

Scott, L'Tonya L DOB: [REDACTED]

Printed by Vernessa E Mitchell [VE...]

Encounter Date: 07/08/2013

MUSC 1 OF 3

tablet

- | | | | | |
|---|------|---|------------|---|
| • folic acid (FOLVITE) 1 MG tablet | Oral | Take 1 tablet (1,000 mcg total) by mouth daily. | 90 tablet | 3 |
| • gabapentin (NEURONTIN) 100 MG tablet | Oral | Take 1 tablet (100 mg total) by mouth 3 (three) times daily as needed (pain/numbness in leg). | 90 tablet | 0 |
| • HYDROcodone-acetaminophen 5-500 mg per tablet | Oral | Take 1 tablet by mouth every 6 hours as needed for Pain. NMT 4 g of acetaminophen in 24 hrs. | 30 tablet | 0 |
| • hydroxyurea (HYDREA) 500 mg capsule | | Take 1 tab daily | 30 capsule | 6 |

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NOV 22 2013

ADMINISTRATIVE REVIEW UNIT

ALLERGIES:

Allergies as of 07/08/2013 - Review Complete 07/08/2013

- Tequin (gatifloxacin)

06/07/2012

REVIEW OF SYSTEMS: As documented in the HPI, and the remainder of the ROS is otherwise negative

PHYSICAL EXAM:

Vitals: BP 138/88 | Pulse 75 | Temp(Src) 98.5 °F (36.9 °C) (Oral) | Resp 20 | Wt 166 lb 11.2 oz (75.615 kg) | BMI 28.6 kg/m2 | SpO2 100% | LMP 06/24/2013

General: alert

Heart: regular rate and rhythm, S1, S2 normal, no murmur, click, rub or gallop

Lungs: clear to auscultation bilaterally

Abdomen: soft, non-tender. Bowel sounds normal. No masses, no organomegaly

Extremities: extremities normal, atraumatic, no cyanosis or edema

Pulses: 2+ and symmetric

Neuro: weakness of flexion and extension of left ankle and knee

LABS RESULTED: Below is the patient's most recent value for WBC, Hemoglobin, Hematocrit, Platelet, Sodium, Potassium, Chloride, CO2, BUN, Creatinine Serum, GFR, Glucose, Calcium, Magnesium, Phosphorus, Intact PTH, Albumin, AST, ALT, Cholesterol, Triglycerides, HDL, LDL, HemoglobinA1C and TSH.

Lab Results

WBC	11.34*	5/29/2012
HCT	27.5*	5/29/2012
PLT	772*	5/29/2012
NA	138.0	5/29/2012

RECEIVED

NOV 21 2013

SIC BENEFITS DEPT.

Scott, L'Tonya L DOB

Printed by Vernessa E Mitchell [VE... Encounter Date: 07/08/2013

MUSC 2 OF 3

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R. 00202

K	3.90	5/29/2012
CL	107.0	5/29/2012
CO2CT	22	5/29/2012
BUN	20.0	5/29/2012
CREATININE	1.7*	5/29/2012
GLU	184*	5/13/2012
CALCIUM	9.4	5/29/2012
MG	1.8	5/29/2012
PHOS	5.6*	5/29/2012
AST	33.0	5/25/2012
ALT	24.0	5/25/2012
HGBA1C	4.5	5/12/2012

ASSESSMENT / PLAN :

34 yoF with history of sickle cell disease and hypertension who presents in clinic to reestablish care at UIM.

1. SCD: recent pain crisis this weekend. Reports rare pain crisis. Stopped taking hyrea due to nausea and vomiting.

-continue folate

-pm hydrocodone/tylenol for pain crisis at home.

-check cbc

2. HTN: well controlled in clinic today

-lisinopril 20 mg Qdaily

-Check bmp

3. Left lower extremity weakness on extension and flexion of left ankle and knee; present since ICU hospitalization 5/2012. Patient has an appointment with a neurologist later on this month. She also reports that she has been fitted for a foot brace.

4. RTC in 3 months or sooner if needed.

Patient had no questions regarding treatment plan, goals, risks or benefits and agrees to contact me or my clinic in the interim should any questions or problems arise.

Chart Cosign

Signed By
Tamara E. Wolfman, MD

Signed At
Wed Jul 10, 2013 9:10 AM EDT

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ADMINISTRATIVE

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SIC BENEFITS DEPT

Scott, L/Tonya L DOB [REDACTED] Printed by Vernessa E Mitchell [VE... Encounter Date: 07/08/2013

MUSC 3 OF 3

STATE OF SOUTH CAROLINA)
COUNTY OF *Charleston*)

STATEMENT OF
DR. TEMEIA MARTIN

1. I am a medical doctor licensed to practice in the state of South Carolina and that I do practice in Charleston, South Carolina. I have been asked by my patient, Ms. L'Tonya Scott, to provide this statement to be used in her quest for disability insurance benefits. This statement is based upon my medical education, experience, my specific knowledge of Ms. Scott's medical problems and treatment history.

2. Ms. Scott's medical records are attached hereto as exhibit A. I refer the reader to those records for the specifics of her medical problems and treatment history. Ms. Scott suffers from sickle cell disease, low back pain, plantar fasciitis left foot, bursitis left foot, acute chest syndrome and hypertension. Subjectively, as a result, she suffers:

- a) chronic pain;
- b) pain in joints;
- c) left foot drop;
- d) tenderness;
- e) headaches;
- f) fatigue;
- g) numbness in foot.

Her activities are limited as follows:

- i) she has difficulty performing activities of daily living;
- ii) she cannot perform any activity for prolonged periods of time;

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- iii) She is not able to sit, stand or walk for prolonged periods;
- iv) she is not able to bend, twist, stoop, pull, grasp, push, squat, or reach without experiencing pain;
- v) she suffers from daily headaches which can be quite debilitating;
- vi) she often trips and must be very careful when ambulating;
- vii) she experiences significant daytime fatigue;
- viii) she has difficulty falling and staying asleep at night which contributes to the fatigue she experiences during the day.

Ms. Scott's subjective complaints and limitations are consistent with her diagnosed medical conditions.

3. Ms. Scott is treatment compliant and she currently takes take Lisinopril, Hydrocodone and Temazepam. Her prescription medications cause her to suffer side effects including grogginess and lightheadedness.

4. It is my understanding from Ms. Scott that her job is with South Carolina State Ports Authority as a Terminal Clerk. A copy of her job description is attached hereto as Exhibit B.

5. It is further my understanding from Ms. Scott that her disability insurer has terminated benefits to her asserting that she should have been able to return to work on April 15, 2013 and that there are no medical reasons why she cannot return to work after April 14, 2013. With all due respect to the insurer, Ms. Scott does suffer from significant medical conditions, as described above, which prevent her from working.

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5. I have been advised that the disability policy in question contains a definition of disability as follows:

"You are Disabled if you meet one of the following definitions during the period 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

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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.

6. It is my opinion, based upon my medical education and experience and based upon my specific knowledge of Ms. Scott's problems and treatment history that she is and has been disabled from performing her own occupation or any occupation consistent with the definition of disability above. I render my opinion based upon Ms. Scott's above described medical conditions and the symptoms she suffers. It is my opinion that she has been so disabled since she ceased working in May, 2012 and that she will remain so indefinitely into the future.


Dr. Temeia Martin

Date: 11/4/13

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R. 00207



Joan Wynn Taylor, M.D.
General Medicine Practice

Visit Note

Provider: Joan Wynn Taylor, MD
Encounter Date: Jun 25, 2013

Patient: Scott, L'tonya (2444)
Gender: Female DOB: [REDACTED] Age: 34 year 2 month
Race: African American
Address: 2716 HWY 17 NORTH, Mount Pleasant SC 29466

Current Medication:

- 1 Lisinopril 20 Mg Tablet SIG: Take 1 daily
- 2 Amoxicillin 500 Mg Capsule SIG: Take 1 capsule(s) by mouth three times a day x 5
- 3 Medrol 4 Mg Dosepak SIG: Take as directed
- 4 Restoril 15 Mg Capsule SIG: Take 1-2 tablet(s) by mouth at bedtime as needed
- 5 Amlodipine Besylate 10 Mg Tab (Other MD) SIG: Take 1 daily
- 6 Folic Acid 1 Mg Tablet (Other MD) SIG: Take 1 daily

Medical History:

Hypertension.
Blood transfusion. Transfusion was done on 05-09-12.
Sickle cell anemia.

Social History:

Patient has never smoked or used tobacco products.
She denies alcohol use.
She denies recreational drug use.
Patient is single.
Patient lives with father, mother and her 2 sisters.
Patient denies being sexually active.
The patient is currently unemployed for one month.
The patient completed high school (12).
Patient exercises in the form of walking (daily).
Patient denies any interests in hobbies or other activities.
She follows a non restricted diet. The patient has 3 meals/day.
The patient is able to bathe herself, clean the house, be continent of bladder, be continent of

Patient: Scott, L'tonya DOB: [REDACTED] Visit: 06/25/2013 Page: 1

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bowel, converse meaningfully, cook, dress herself, drive, feed herself, find her way home, live independently, recognize familiar faces, remember the current date, remember her own name and remember where she lives but not ride public transportation.

She denies drinking caffeinated coffee. She denies drinking caffeinated soda. She denies drinking caffeinated tea.

The patient has not been exposed to any environmental factors which may affect her medical condition.

Patient has no recent travel.

Allergy:

Gatifloxacin

Diagnosis:

461.8 Other Acute Sinusitis 282.41 Sickle-Cell Thalassemia Without Crisis

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Patient: Scott, L'tonya

DOB:



Visit: 06/25/2013 Page: 2

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R. 00209



Joan Wynn Taylor, M.D.
General Medicine Practice

Visit Note - Office Visit

Provider: Joan Wynn Taylor, MD
Encounter Date: Feb 20, 2013

Patient: Scott, L'tonya (2444)
Gender: Female **DOB:** [REDACTED] **Age:** 33 year 10 month
Race: African American
Address: 2716 HWY 17 NORTH, Mount Pleasant SC 29466

Complaint:

Ms. Scott, 33 year 10 month old patient is here for regular follow-up visit. Patient came in complaining of nasal congestion. Patient's symptom is moderate. It is associated with cough, fatigue, post nasal drip, sore throat and body aches. There are no aggravating factors identified. No relieving factors noted. No prior consultation done. No other forms of treatments tried.

Current Medication:

- 1 Lisinopril 20 Mg Tablet SIG: Take 1 daily
- 2 Ativan 1 Mg Tablet SIG: Take 1 tablet(s) by mouth at bedtime as needed
- 3 Amlodipine Besylate 10 Mg Tab (Other MD) SIG: Take 1 daily
- 4 Folic Acid 1 Mg Tablet (Other MD) SIG: Take 1 daily

ROS:

Unremarkable with the exception of the chief complaint.

Medical History:

Hypertension.
Blood transfusion. Transfusion was done on 05-09-12.
Sickle cell anemia.

Social History:

Patient has never smoked or used tobacco products.
She denies alcohol use.
She denies recreational drug use.

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SIC BENEFITS DEPT

Patient: Scott, L'tonya **DOB:** [REDACTED] **Visit:** 02/20/2013 **Page:** 1

Patient is single.

Patient lives with father, mother and her 2 sisters.

Patient denies being sexually active.

The patient is currently unemployed for one month.

The patient completed high school (12).

Patient exercises in the form of walking (daily).

Patient denies any interests in hobbies or other activities.

She follows a non restricted diet. The patient has 3 meals/day.

The patient is able to bathe herself, clean the house, be continent of bladder, be continent of bowel, converse meaningfully, cook, dress herself, drive, feed herself, find her way home, live independently, recognize familiar faces, remember the current date, remember her own name and remember where she lives but not ride public transportation.

She denies drinking caffeinated coffee. She denies drinking caffeinated soda. She denies drinking caffeinated tea.

The patient has not been exposed to any environmental factors which may affect her medical condition.

Patient has no recent travel.

Vital Signs:

Weight: 169 lbs 9 oz

Height: 5' 4"

BMI: 29.09

Temperature: 98.0 F

BP: 118/70

Pulse: 68

Respiration: 12

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Allergy:

Gatifloxacin

Examination:

General Appearance: The patient appears to be well nourished and well developed, is well groomed, is minimally ill-appearing.

Skin: Inspection of skin outside of affected area reveals no abnormalities.

HEENT:

Ears: Inspection reveals normal ear structure with no pits, sinus tracts or skin tags. Left canal is occluded by cerumen. Tympanic membranes are normal.

Nose: Mucosa of the nose is boggy, edematous and pale. Nasal turbinates are markedly swollen in both nostrils.

Mouth & pharynx: no notable oral lesions. No pharyngeal erythema or exudate. Tonsils not enlarged.

Head: Patient's head is normocephalic, no gross bulging or retraction noted, no evidence of any mass or any osteomyelitis of skull bones evident.

Neck: Neck exam reveals no abnormalities. Thyroid examination reveals no abnormalities.

Jugular veins examined with no distention or abnormal waves noted. No neck, supraclavicular,

Patient: Scott, L'tonya DOB: [REDACTED] Visit: 02/20/2013 Page: 2

or axillary lymphadenopathy noted. No abnormalities of the hand, foot and nails.

Respiratory: Assessment of the respiratory effort reveals even respirations without the use of accessory muscles and no intercostal retractions noted. Auscultation of lungs reveals clear lung fields and no rales noted.

Cardiovascular: Heart auscultation reveals normal S1 and S2 and no murmurs, gallop, rubs or clicks. No edema present bilateral lower extremities. The apical impulse on heart palpation is located in the left fifth intercostal space in the midclavicular line, no thrill noted. Carotid pulses are palpated bilaterally and are symmetric, no bruits are auscultated over the carotid and vertebral arteries. Abdominal aorta is of normal size without presence of systolic bruit. All peripheral pulses present and normal. Varicosities are not observed.

Musculoskeletal: There is no evidence of bony tenderness, joint effusion, enlargement or abnormal motion. No muscle fasciculations, atrophy, muscle weakness, asymmetry or reduced range of motion is noted.

Lymphatic: No lymph node enlargement or tenderness noted. There is no evidence of acute or chronic lymphedema.

Neurologic: Alert and oriented X 3. Cranial nerves II-XII are grossly intact. Strength 5/5 in all muscle groups. Sensation is intact to light touch and pinprick. Reflexes are equal and symmetric bilaterally in the upper and lower extremities. Babinski is negative. Cerebellar function grossly intact. Finger-to-nose coordination is within normal limits. Gait normal without ataxia.

Psychiatric: There are no anxiety, depression, mood swings or psychotic features. Patient's insight is good. Memory and judgement are intact.

Prescription:

1 Amoxicillin 500 Mg Capsule SIG: Take 1 capsule(s) by mouth three times a day x 5 QTY: 15.00

2 Medrol 4 Mg Dosepak SIG: Take as directed QTY: 1.00

Plan:

STATUS: stable and needs improvement. **MEDICATIONS:** continue the current drug regimen.

DIET: Regular. **EXERCISE/ ACTIVITY/ LIFESTYLE:** avoid exercise and resume after illness resolves. **REFER TO:** Hematologist Dr. Nawabi.

Careplan:

(1) Sinusitis

Followup:

RTO pm

This visit note has been electronically signed off by following providers.

This visit note has been electronically signed off by Joan Wynn Taylor, MD.

Patient: Scott, L'tonya DOB:  Visit: 02/20/2013 Page: 3



Joan Wynn Taylor, M.D.
General Medicine Practice

10/12/2012

Dear Mrs. L'tonya Scott;

Thank you for visiting our office on Oct 11, 2012. For your convenience, we have included a clinical summary of your visit:

Chief Complaint:

Ms. Scott, a 33 year 6 month old patient, is here for an initial evaluation. Patient is here for evaluation of an ulcer. Ulcer #1: left heel It is associated with numbness in toes, and Patient was seen by Dr. Shaffer. Patient is here for follow up visit of sickle cell disease. Patient was recently hospitalized on May 10, 2012 and Hospitalized for 29 days in ICU. Ms Scott has been having problems with elevated BP.

Vitals recorded:

Weight:	175 lbs 2 oz
Height:	63.5"
BMi:	30.53
Temperature:	98.8 F (Oral)
BP:	110/90(Left Arm)(Sitting)
Pulse:	108(Left radial)(Sitting)(Regular)

Review of systems:

Psychiatric: (+) insomnia.

Examination:

General Appearance: Patient is a 33 year 6 month old female who appears pleasant, in no apparent distress, her given age, well developed, well nourished and with good attention to hygiene and body habitus. Oriented to person, place and time. Mood and affect normal and appropriate to the situation.

Skin: Inspection of skin outside of affected area reveals no abnormalities.

Neck: Neck exam reveals no abnormalities. Thyroid examination reveals no abnormalities. Jugular veins examined with no distention or abnormal waves noted. No neck, supraclavicular, or axillary lymphadenopathy noted. No abnormalities of the hand, foot and nails.

Respiratory: Assessment of the respiratory effort reveals even respirations without the use of accessory muscles and no intercostal retractions noted. Auscultation of lungs reveals clear lung fields and no rales noted.

Cardiovascular: Heart auscultation reveals normal S1 and S2 and no murmurs, gallop, rubs or clicks. No edema present bilateral lower extremities. The apical impulse on heart palpation is located in the left fifth intercostal space in the midclavicular line, no thrill noted. Carotid pulses are palpated bilaterally and are symmetric, no bruits are auscultated over the carotid and vertebral arteries. Abdominal aorta is of normal size without presence of systolic bruit. All peripheral pulses present and normal. Varicosities are not observed.

Musculoskeletal: There is no evidence of bony tenderness, joint effusion, enlargement or abnormal motion. No muscle fasciculations, atrophy, muscle weakness, asymmetry or reduced range of motion is

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noted.

Lymphatic: No lymph node enlargement or tenderness noted. There is no evidence of acute or chronic lymphedema.

Neurologic: Alert and oriented X 3. Cranial nerves II-XII are grossly intact. Strength 5/5 in all muscle groups. Sensation is intact to light touch and pinprick. Reflexes are equal and symmetric bilaterally in the upper and lower extremities. Babinski is negative. Cerebellar function grossly intact. Finger-to-nose coordination is within normal limits. Gait normal without ataxia.

Psychiatric: There are no anxiety, depression, mood swings or psychotic features. Patient's insight is good. Memory and judgement are intact.

Assessment:

401.9 Hypertension Not Otherwise Specified
282.41 Sickle-Cell Thalassemia Without Crisis
780.52 Unspecified Insomnia

Tests ordered (if applicable):

Plan:

STATUS: stable. **MEDICATIONS:** continue the current drug regimen. **DIET:** Regular. **EXERCISE/ACTIVITY/ LIFESTYLE:** low impact aerobic exercises.

Follow-up instructions:

6 Week(s)

Should you have any questions, please contact our office at 843-216-0080. Our office hours are Monday - Friday, 8:30 A.M. to 4:30 P.M.

Sincerely,

<Signature>

Joan Wynn Taylor, MD

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**Lowcountry Hematology & Oncology
Roper St. Francis Physicians**

**M. Daud Nawabi, MD
Gretchen A. Meyer, MD
Matthew A. Beldner, MD
Jeffrey S. Rose, MD**

CONSULTATION

**PATIENT: SCOTT, LTONYA
DATE OF BIRTH: [REDACTED]
DATE OF VISIT: 11/1/12**

Referring Physician: Joan Taylor, MD

REASON FOR CONSULTATION: Sickle cell anemia.

HISTORY OF PRESENT ILLNESS: Ms. Scott is a 33-year-old African-American female with a known diagnosis of sickle beta thalassemia. She has been referred by her primary care physician to establish care. She reports today that she is feeling well. Patient states that in childhood she was followed by the sickle cell clinic at the Children's Hospital. When she entered adulthood, she was followed by Dr. Chris Brunson's sickle cell clinic at MUSC. Since that clinic has closed down, she has had difficulty finding a hematologist willing to address her needs. She is followed by her primary care physician and when she requires hospitalization that is usually done through the hospital service. Fortunately the patient required a hospitalization infrequently. Most recently, she was admitted for a several week hospitalization to the Medical University in 5/12. Prior to that, she had a hospital admission 10 years ago. Patient states that during her admission in May she developed an acute chest syndrome requiring an ICU stay and mechanical ventilation. This was prolonged and lasted nearly a month with 18 days spent in the intensive care unit. After discharge, she developed a chronic left heel ulcer which required continued followup and wound care and that has subsequently healed. She was seen on one occasion by Dr. Greenberg from the hematology section of the Medical University. Unfortunately, followup visit was not made. Patient states that she did have a very good visit and she got the feeling that the doctors there were no longer interested in seeing her. Patient has had a relatively uneventful summer. She has been doing well. She does not take narcotics chronically. Typically when she has mild crises, they seem to be well controlled with over-the-counter nonsteroidals. When they are a little bit more severe, she seems to get good relief after going to the emergency department. Patient states that Dr. Greenberg did start her hydroxyurea which the patient did not tolerate and discontinued. Ms. Scott's only real complaint today is that she is chronically tired as a result of her hospitalization. She states that she is not able to explain that. She states that as a result of her chronic fatigue she is no longer able to work fulltime. In her lifetime, Ms. Scott states that she has had approximately 5 blood transfusions. Her last pain crises occurred in September. She denies any history of organ dysfunction or joint replacement.

PAST MEDICAL HISTORY:

1. Sickle cell anemia.
2. Beta thalassemia.
3. Insomnia.
4. Hypertension.
5. Left heel ulcer secondary to prolonged hospitalization.
6. Status post bilateral breast reduction.

PAST SURGICAL HISTORY:

MEDICATIONS:

1. Loraz p.r.n.
2. Amlodipine.
3. Folic acid.
4. Ativan.

ALLERGIES: Ginkgo (Tequin).

2043 Charlie Hall Boulevard
Charleston, S.C. 29414
Telephone 843-763-3104
Fax 843-763-5112

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11/16/2017 7 PM FROM: FAX LCHO TO: 9 2LG 0082 NAME: 003

**Lowcountry Hematology & Oncology
Roper St. Francis Physicians**

**M. David Nawabi, MD
Gretchen A. Meyer, MD
Matthew A. Beldner, MD
Jeffrey S. Rose, MD**

**SCOTT, LTONYA
11/1/12
CONSULTATION
PAGE 2**

FAMILY HISTORY: Notable for sickle cell trait, hypertension, and diabetes.

SOCIAL HISTORY: Negative for tobacco and alcohol. Patient is unmarried. She has no children. She is currently not working. Patient had previously been working for the Ports.

REVIEW OF SYSTEMS: Positive for fatigue. The patient denies nausea, vomiting, diarrhea, constipation, fevers, chills, shortness of breath, or chest pain. There is no cough, sputum production, or hemoptysis. Patient denies abdominal pain, dysuria, swollen glands, numbness, tingling, headache, blurry vision, difficulty walking, changes in balance, skin rashes, lesions, or back pain. The patient further denies gum bleeding, bright red blood per rectum, melena, hematuria, or hematemesis as well as anxiety or depression. Review of systems is otherwise per history of present illness.

PHYSICAL EXAMINATION: Ms. Scott is a well-appearing female in no distress. Alert and oriented x3. Calm, comfortable, and cooperative. Vital signs: Temperature 99.2, pulse 100, respirations 16, blood pressure 134/84, O2 saturation 96% on room air. Weight 173 pounds, height 62 inches. **HEENT:** Normal oral mucosa without any lesions, discharge, or erythema. Eyes are anicteric. Nose is without discharge. **Hearing is normal.** Neck: Full range of motion, supple and nontender without any JVD or thyromegaly. There is no evidence of lymphadenopathy of the cervical, supraclavicular, axillary, or inguinal areas. Chest: Clear to auscultation bilaterally. Heart: Regular rate and rhythm without any murmurs, gallops, or rubs. Abdomen: Soft, nontender, and nondistended. Positive bowel sounds. There is no hepatosplenomegaly or other palpable masses. Extremities: Without any clubbing, cyanosis, or edema. Neurologic: Intact without any evidence of anxiety or depression. Skin: Warm and dry without any lesions, petechiae, or rash. Back: Without any CVA or spinal tenderness.

LABORATORY DATA: CBC from today reveals white count of 10.9, hemoglobin 10.4, hematocrit 33.1, platelet count 499,000, MCV 73.2.

IMPRESSION: Ms. Scott is a 33-year-old female with sickle cell anemia and beta thalassemia. Patient had an episode of acute chest syndrome in the spring requiring a 30 day hospitalization which included an 18 day visit in the intensive care unit. She required mechanical ventilation. Patient also required pheresis while she was hospitalized because of her acute chest syndrome. She has recovered from that but she is now chronically fatigued. Her left heel ulcer is essentially healed. She is no longer able to work fulltime because of her fatigue. Today, she is doing well. Her physical exam findings are benign. She has a microcytic anemia which is likely reflective of her beta thalassemia. She does not appear to be symptomatic. Patient appears to be very appropriate in answering her questions. She does not appear to have any issues related to inappropriate use of pain medications.

PLAN:

1. Blood work to include CMP, reticulocyte count, hemoglobin electrophoresis, iron studies, B12 and folic acid levels.
2. Patient is encouraged to take folic acid and multivitamin.
3. Flu shot today.
4. Patient will return in 6 weeks in followup visit to review blood work.

**M. David Nawabi, MD
MDN:vmg
cc: Jean Taylor, MD**

D: 11/1/12

T: 11/8/12

**2048 Charlie Hall Boulevard
Charleston, S.C. 29414
Telephone 843-763-5104
Fax 843-763-5112**

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Medical University of South Carolina
Charleston, SC
843-792-2123

CLINICAL REPORT

Patient: SCOTT, L'TONYA
Attending: BLESSING-FEUSNER, CAROL

MRN: 000550551
Date: 08/12 1:40 PM
Status: Ambulatory

Encounter Type

Office Visit

Date Time Provider Department Center
8/8/2012 1:40 PM 100065-BLESSING-FEUSNER, CAROL None

Reason for Visit and Comments:

Follow-up (110033) - Sickle Cell Crisis

Blessing-Feussner, Carol L, PA 8/8/2012 6:53 AM Signed

HP: L'Tonya was admitted 6/10 to MUSC (transferred from Roger) w/dxchange 5/29; Dx - sickle cell crisis with chest CT showing changes consistent with acute chest syndrome/pneumonia. WBC humped to 31,800. She was initially on BI-Vent exhausted on GZ; CXR improved prior to d/c. She was started on anti-hypertensive meds including Norvasc and Clonidine (TID but only taking BID).

She's experiencing more small crisis lately requiring brief ER visit for fluid/pain meds. This recent one was her worst in 10yrs. She's requesting a letter stating she's unable to work.

EXAM:

GENERAL:

NECK: No adenopathy; thyroid not enlarged. No JVD or bruits.

CV:RRR w/o murmurs or gallops.

Lungs: Clear to A&P; moving air well.

EXT: Callus blisters on heels R>L; one is fluid filled and she does not wish to have drained - "too many needles".

PSYCH: Appropriate mood and affect.

ASSESSMENT/PLAN: Supposedly, there will be a Sickle Cell Clinic starting in July and she would like to be referred. If they can see her first, we'll schedule with Dr. Marly Smith for the following month. Clonidine will be tapered (although not necessary at 0.2mg qd) as it's precipitating dry mouth/thirsty on five her trial of monotherapy increasing Norvasc to 10mg tid with close flu. She will ck with her work to see if FMLA papers are necessary to be filled out by PCP. I spoke with Dr. Kim Davis who said the Sickle Cell Clinic is not available yet for scheduling but should be by the time she RTC to go w/Dr. Smith.

Blessing-Feussner, Carol L, PA 8/8/2012 9:50 AM Signed

L'Tonya knows to RTC sooner if BP >140/80 w/change in regimen. Discussed dietary changes especially watching Na intake.

Problem List

LBP (low back pain) [724.2] Noted Resolved

Sickle cell crisis (thalassaemia) [282.41] 08/07/2012

Elevated BP [796.2] 08/07/2012

This document should not be filed in the paper medical record and should be electronically destroyed when it is no longer needed.

Printed by: CANADAY, DEANNE
Date Printed: 08/08/2012

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R. 00217

Carolina Foot Specialists

.501 Bramson Court #301
Mt. Pleasant, SC 29464-7953

Phone: 843-654-8250 Fax: 843-654-8253 E-Mail: admin@carolinafootspecialists.net Website: carolinafootspecialists.net

Patient: L Tonya L Scott Account No: 5521728377 Date: 7/1/2013

Subjective: Patient returns for follow-up evaluation of symptomatic left plantar fasciitis with heel spur syndrome, bursitis, and gastrocnemius equinus. Patient relates no change since the last visit and has been very compliant with the at-home treatment instructions. Patient states current heel pain is 8/10 (10 being the worst). The patient denies any fever, chills, nausea or vomiting, calf pain or tenderness, and local or systemic signs of infection. The patient also complains of foot drop left but hasn't set up her appt. with the Neurologist Dr. Kelly.

Objective: The patient is intact from a neurovascular standpoint with no change since the last visit bilateral lower extremity.

- **Dermatological:** There is no edema, erythema, ecchymosis, open lesions, fat pad atrophy or cardinal signs of infection evident at this time bilateral lower extremity.
- **Musculoskeletal:** There is slight tenderness on palpation of the left plantar medial calcaneal tubercle in the region of the origin of the plantar fascia and intrinsic musculature, but no pain on medial-lateral compression of the calcaneus, with a strong posterior tibial tendon to manual resistance, and ankle joint dorsiflexion of +5 degrees with the knee extended bilateral. The shoe gear and insoles continue to be in good repair and show no significant wear pattern. Foot drop left foot.

Assessment:
Plantar Fasciitis left
Bursitis left foot
Pain in Limb
Foot drop left

Plan:
Office Visit - Established Patient

I have recommended continued use of previous at-home care instructions. I have recommended . to reduce symptoms. An injection of 1cc of 0.5% Marcaine/ Depomedrol 1:1 mix was administered into left heel this date to reduce symptoms, reduce swelling, reduce pain.
We will see them back in 4 weeks or sooner should problems arise. I have dispensed a prescription to Floyd brace and limb for an AFO and to Dr. Kelly Neurologist for her drop foot left evaluation.

Electronically Signed on 7/1/2013 1:06:54 PM
Andrew Saffer, DPM

L Tonya L Scott - 

Page 1

R 370

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SEP 18 2013

SIC BENEFITS DEPT

7/1/2013

R. 00218

JUL-01-2013 13:38 From: 553-0919

Page: 1/1

Lt. Lynn L. Scott - 5521728377
2718 Hwy 17N
Mt. Pleasant, SC 29466

34 year old female
Birthdate: [REDACTED]
SSN: [REDACTED]

Home: [REDACTED]
Work: 843-852-7603
Cell: [REDACTED]
Alt: [REDACTED]

Allergies: Equine
PMH: High Blood Pressure, sickle cell anemia
Family History: Diabetes, Hypertension
Immunizations: unknown

School. w/ Dr. Kelly
7/10 @ 1:30
Pt. aware.

Thx! ☺
Jany

Self pay patient

7/1/2013 1:22PM - Sally O.

Page 1

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SEP 18 2013

SIO BENEFITS DEPT

R 371

R. 00219

Standard Insurance Company

PO Box 2800 Portland OR 97208-2800 800.368.1135 Tel

Long Term Disability
Attending Physician's Statement I

Name: <u>L. TONYA L. SCOTT</u>	Analyst:
SSN: <u>[REDACTED]</u>	Group:

PART A - TO BE COMPLETED BY PATIENT

Please answer both 1. and 2.

1. I verify my medical condition prevents me from working on my foot standing walking long periods or distance
2. ☐ I returned to work on _____ (check one) ☐ my job ☐ another job ☐ self-employed at a time
- ☐ I expect to return to work on N/A at this time ☐ part-time - number of hours: _____

Some states require us to inform you that any person who knowingly and with intent to injure, defraud or deceive an insurance company, or other person, files a statement containing false, or misleading information concerning any fact material hereto commits a fraudulent insurance act which is subject to civil and/or criminal penalties, depending upon the state. Such actions may be deemed a felony and substantial fines may be imposed.

Signature: [Signature] Phone No. [REDACTED] Date: 3/12/13

The patient is responsible for the completion of this form without expense to Standard Insurance Company.

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 to document 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.

1. Primary diagnosis: (728.71) Plantar Fasciitis (C)
Secondary diagnosis: (726.79) Foot Drop (C)
2. Date of patient's initial visit: 7-9-12 Frequency of visits: ☐ Weekly ☒ Monthly
Date of most recent visit: 3/12/13 ☐ Other (specify) _____
3. Patient's condition since last report to The Standard (or date of first visit) whichever is later: Current HL _____ WL _____ BP _____
(Please check one) ☐ Recovered ☐ Improved ☒ Unchanged ☐ Regressed
4. Describe patient's current physical, mental and cognitive limitations and work activity restrictions:
Pain & C Prehens standing (C) Foot. Foot Drop Left
5. 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
6. Planned course of treatment (include expected duration, surgeries, etc.): Corticosteroid Neurology Consult.
7. Medications prescribed: dosage, frequency, dates of prescription(s): d
8. If patient was recently hospitalized, Name of hospital: _____
Address: _____ City: _____ State: _____ Zip Code: _____
Admitted: _____ Discharged: _____ (Please attach operative reports and discharge summary)
9. When do you anticipate the patient can return to work? If part-time, how many hours weekly? _____
Anticipated date: April 15, 2013 or, ☐ Unable to determine, follow up in _____ months
- Remarks: _____
- Other physicians being consulted: Dr. Kelly, Neurologist

Some states require us to inform you that any person who knowingly and with intent to injure, defraud or deceive an insurance company, or other person, files a statement containing false, or misleading information concerning any fact material hereto commits a fraudulent insurance act which is subject to civil and/or criminal penalties, depending upon the state. Such actions may be deemed a felony and substantial fines may be imposed.

Physician's Signature: <u>[Signature]</u>	Date: <u>3-12-13</u>
Physician's Name (please print): <u>ANDREW SARKER</u>	Specialty: <u>PODiatry</u>
Address: <u>501 BRADEN CT # 301</u>	City: <u>MT Pleasant</u>
Phone No: <u>843 654-8250</u>	State: <u>IL</u> Zip Code: <u>60468</u>
Fax No: <u>843 654-8253</u>	Physician's Tax ID No: <u>043613512</u>

When both parts A and B have been completed, return to the address indicated above.

SI 16859

Claim: 00VQ8255 LTONYA L SCOTT
Analyst: Amy Murdza, CTERECEIVED
SEP 18 2013

(805)

R 379

SIC BENEFITS DEPT

R. 00220

Carolina Foot Specialists

501 Bramson Court #301

Mt. Pleasant, SC 29464-7953

Phone: 843-654-8250 Fax: 843-654-8253 E-Mail: admin@carolinafootspecialists.net Website: carolinafootspecialists.net

Patient: LTonya L Scott Account No: 5521728377 Date: 7/9/2012

Chief Complaint: This 42 year old female presents today complaining of foot pain. The patient has been having right, left foot pain for several weeks and it has become progressively worse. The pain developed acutely and it is improving. The patient was recently hospitalized for Pneumonia and Sickle cell crisis and developed B/L decubitus ulcers. The patient states that the left heel is worse and causing more discomfort than the right heel.

Allergies: tequin

Medications: Patient denies taking any prescription medications or OTC remedies at this time.

Past Medical History:

GI Hx: negative history of GI problems

Renal / Urinary Hx: negative for history of GU problems

Immunologic Hx: negative for history of immunologic problems

Derm Hx: negative for history of skin cancers

HEENT Hx: negative for history of eye problems

Respiratory Hx: Asthma negative for history of asthma

Lung problems: negative for a history of lung problems

Musculoskeletal Hx: Arthritis conditions: negative for a history of arthritic conditions

Other musculoskeletal problems: negative for a history of gout or joint pain or low back pain

FOOT problems: negative for a history of foot problems

Hematologic / Lymphatic Hx: negative for a history of Hematologic/ lymphatic problems

Neurological Hx: negative for a history of epilepsy or dizziness or fainting or nervousness Neuropathy: negative for a history of neuropathy

Cardiovascular Hx: negative for a history of cardiovascular disease

Endocrine Hx: negative for a history of diabetes or thyroid disorder

Past Surgical History: Denies any significant surgical history.

Family History: Admits Diabetes, Hypertension.

Social History: Denies any use of alcohol, drugs, or smoking.

Examination:

Vascular: Dorsalis pedis and posterior tibial pulses are graded at 2/4 with digital hair growth present bilateral. CFT with the leg elevated was less than 3 seconds at the distal hallux bilateral. There is no evidence of ischemic skin changes. Temperature was warm at anterior tibia to warm at the distal digits bilateral.

Neurological: Patient alert and oriented, with appropriate affect, no anxiety or depression. Coordination WNL to right and left lower extremity. Exam reveals normal light touch, sharp sensation bilateral. Normal sharp/dull, proprioception, light touch sensation to right and left foot.

Dermatological: Hyperkeratotic tissue with dried decubitus skin left plantar heel. Healed decubitus ulcer right heel.

Musculoskeletal: Exam of feet reveals: Good muscle strength to all prime movers of the foot and ankle with adequate muscle tone and symmetry bilateral. Full, fluid range of motion for all joints from the ankle distal with no crepitation noted bilaterally.

Impression:

Pain in Limb

Decubitus Ulcer left heel

Callus left heel

Plan:

Office Visit - New Patient

LTonya L Scott



Page 1
R 380

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SEP 18 2013

SIC BENEFITS DEPT

7/9/2012

R. 00221

The diagnosis and proposed treatment plan was explained to the patient in detail. The patient and I reviewed the types of shoes they should be wearing, my recommendation includes having the patient look for new shoes, purchasing wider, cushioned soled shoes, having their feet measured before trying on new shoes, generally the best time of the day for a shoe fitting is the afternoon and having them wear wider, cushioned soled shoes. I debrided the decubitus ulcer/hyperkeratotic tissue with a 15 blade and tissue nipper. I was able to remove a substantial amount of loose hyperkeratotic tissue with nice pink healed tissue underneath. There was noted to be a 1cm x 1cm x 1cm partial thickness ulcer noted underneath this layer with negative probe to bone. I flushed the ulcer with wound cleanser applied silvadene cream and band aids. Home care instructions discussed with the patient. I dispensed a prescription of Mupirocin ointment 2% to apply to the ulcer daily. Pt. will limit weight on her left heel.

Patient is to return to office in 3 week(s) for follow-up. Earlier if problem.

Electronically Signed on 7/9/2012 5:31:34 PM
Andrew Saffer, DPM

LTonya L Scott



Page 2
R 381

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SEP 13 2013

SIC BENEFITS DEPT

7/9/2012

R. 00222

Carolina Foot Specialists

501 Bramson Court #301

Mt. Pleasant, SC 29464-7953

Phone: 843-654-8250 Fax: 843-654-8253 E-Mail: admin@carolinafootspecialists.net Website: carolinafootspecialists.net

Patient: LTonya L Scott Account No: 5521728377 Date: 12/4/2012

Chief Complaint: This 42 year old female presents today for follow up decubitus ulcer left heel. The patient has continued with all home care instructions. The patient does not have insurance but would like follow up for left plantar heel pain and inability to move her left hallux and left foot into dorsiflexion.

Examination:

Vascular: Dorsalis pedis and posterior tibial pulses are graded at 2/4 with digital hair growth present bilateral. CFT with the leg elevated was less than 3 seconds at the distal hallux bilateral. There is no evidence of ischemic skin changes. Temperature was warm at anterior tibia to warm at the distal digits bilateral.

Neurological: The patient has paraesthesias to the left hallux and dorsal foot left.

Dermatological: Hyperkeratotic tissue with healed decubitus ulcer.

Musculoskeletal: Exam of feet reveals: Drop foot noted left foot with decreased dorsiflexion and plantarflexion muscle strength 3/5 left foot. The patient is unable to dorsiflex or plantarflex the left great toe.

Impression:

Pain in Limb

Decubitus Ulcer left heel healed

Callus left heel

Drop foot left

Plan:

Office Visit - Established Patient

The diagnosis and proposed treatment plan was explained to the patient in detail. The patient and I reviewed the types of shoes they should be wearing, my recommendation includes having the patient look for new shoes, purchasing wider, cushioned soled shoes, having their feet measured before trying on new shoes, generally the best time of the day for a shoe fitting is the afternoon and having them wear wider, cushioned soled shoes. Pt was dispensed topical Hydrostat and a heel gel cushion.

I have recommended that the patient be evaluated by Neurology and have an EMG/NCV study performed to find out the etiology of her drop foot left.

Patient is to return to office in 4 week(s) for follow-up. Earlier if problem.

Electronically Signed on 12/4/2012 12:29:32 PM

Andrew Saffer, DPM

LTonya L Scott



R385

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SEP 18 2013

SIO BENEFITS DEPT

12/4/2012

R. 00223

Carolina Foot Specialists

501 Bramson Court #301

Mt. Pleasant, SC 29464-7953

Phone: 843-654-8250 Fax: 843-654-8253 E-Mail: admin@carolinafootspecialists.net Website: carolinafootspecialists.net

Patient: LTonya L Scott **Account No:** 5521728377 **Date:** 3/12/2013

Subjective: Patient returns for follow-up evaluation of symptomatic left plantar fasciitis with heel spur syndrome, bursitis, and gastrocnemius equinus. Patient relates no change since the last visit and has been very compliant with the at-home treatment instructions. Patient states current heel pain is 8/10 (10 being the worst). The patient denies any fever, chills, nausea or vomiting, calf pain or tenderness, and local or systemic signs of infection. The patient also complains of foot drop left but hasn't set up her appt. with the Neurologist Dr. Kelly.

Objective: The patient is intact from a neurovascular standpoint with no change since the last visit bilateral lower extremity.

- **Dermatological:** There is no edema, erythema, ecchymosis, open lesions, fat pad atrophy or cardinal signs of infection evident at this time bilateral lower extremity.
- **Musculoskeletal:** There is slight tenderness on palpation of the left plantar medial calcaneal tubercle in the region of the origin of the plantar fascia and intrinsic musculature, but no pain on medial-lateral compression of the calcaneus, with a strong posterior tibial tendon to manual resistance, and ankle joint dorsiflexion of +5 degrees with the knee extended bilateral. The shoe gear and insoles continue to be in good repair and show no significant wear pattern. Foot drop left foot.

Assessment:

Plantar Fasciitis left
Bursitis left foot
Pain in Limb
Foot drop left

Plan:

Office Visit - Established Patient

I have recommended continued use of previous at-home care instructions. I have recommended . to reduce symptoms. An injection of 1cc of 0.5% Marcaine/ Depomedrol 1:1 mix was administered into left heel this date to reduce symptoms, reduce swelling, reduce pain.

We will see them back in 4 weeks or sooner should problems arise. I have advised the patient to follow up with a Neurologist for her drop foot and the patient may need an AFO in the near future.

Electronically Signed on 3/12/2013 3:41:41 PM

Andrew Saffer, DPM

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SEP 18 2013

LTonya L Scott

Page 1
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SIC BENEFITS DEPT

3/12/2013

R. 00224

Medical Record Request Complete

Release POINT

Customer Information

Report Date: April 13, 2013

RPID: 1553589

Client Name: Standard Insurance Company Claims

Req. By: STS AMURD

Patient Information

Name: SCOTT, L'TONYA L

D.O.B.: [REDACTED]

Policy/Cert: VQ6781

Special Requirements:

****2ND REQUEST**PLEASE RUSH**** Please obtain all medical records from 7/12/12 to the present. Including records from: BLESSINGS-FEUSSNER, DR CAROL PATIENT WAS SEEN ON 08/29/12 & 09/25/12 THANK YOU!

Provider Information

Provider: MEDICAL UNIV OF SOUTH CAROLINA
169 ASHLEY AVENUE MSC 349
ATTN: ROI SUPERVISOR
CHARLESTON, SC 29425

Phone: (843) 792-3881

Fax: (843) 792-7292

Electronic Order Data (If Applicable)

Patient Name: SCOTT, L'TONYA L

Patient DOB: [REDACTED]

Patient SSN: [REDACTED]

Policy Number: VQ6781

Provider Data: BLESSINGS-FEUSSNER, DR CAROL
169 ASHLEY AVE

CHARLESTON, SC 29425
843-876-8282

RECEIVED
APR 15 2013
EMPLOYEE BENEFITS



L'Tonya Scott

9/25/2012 10:00 AM Office Visit

MRN: 000550551

Description: 33 year old female

Provider: Martin Allen Smith, MD

Department: E Cooper Internal Med

Encounter Status

Closed by Martin Allen Smith, MD on 9/25/12 at 1:18 PM

Diagnoses

Sickle cell anemia - Primary

282.60

HTN (hypertension)

401.9

Paresthesia of left leg

782.0

Headache

784.0

Reason for Visit

Follow-up

Vitals - Last Recorded

BP

143/90

Pulse

102

Temp

98.8 °F (37.1 °C)

Wt

175 lb (79.379 kg)

Progress Notes

Martin Allen Smith, MD 9/25/2012 1:18 PM Signed

L'Tonya L. Scott [REDACTED] 000550551 9/25/2012

CC: f/u

HPI: 33 yo F with sickle cell anemia here for routine f/u.

-hydroxyurea for 2 1/2 wks; pain in joints; no crises since starting hydroxyurea;

She was very hesitant to start hydroxyurea but finally did so after our last visit which we spent a significant amount of time discussing the benefits of hydroxyurea in a sickle cell patient. Had mild crisis at home which she drank plenty of fluids and used pain meds but this was prior to starting hydroxyurea.

Taking folic acid.

Abstinence for birth control.

-headaches, almost daily; no sinus pressure; not related to med administration; frontal, bilateral; tylenol hadn't helped much; drinking plenty of water; no sick contacts; hasn't checked BP although it was high today

-HTN: Not checking; amlodipine 10mg daily; lisinopril 10mg daily; used to be on clonidine

Always tired.

Haven't been exercising.

Hasn't gone back to work yet.

Previously at work. Job varies; sit in office; assist truck drivers; rotate in field, assist with inventory; out in vehicle

Numbness in left foot; painful at times, only on left foot;

Trip over foot at times

ROS as above otherwise negative

Past Medical HistoryDiagnosis

- LBP (low back pain)
- Hypertension
- Ulcer

Date

6/7/2012

Heel pressure ulcers from extended ICU stay

- Depression
- Sickle cell anemia

7/21/2012

Past Surgical HistoryProcedure

- Breast surgery

Date

reduction

Physical Exam:

Blood pressure 143/90, pulse 102, temperature 98.8 °F (37.1 °C), weight 175 lb (79.379 kg).

General: WDWN, well appearing, NAD

HEENT: NC/AT, oropharynx clear

Neck: supple, no thyromegaly or cervical LAD

Heart: RRR without M/R/G's

Lungs: CTAB, no crackles or wheezing

Abdomen: soft, NT/ND, no HSM; no rebound, guarding

Extremities: no C/C/E; gross sensation in lower extremities intact; ?slight weakness in dorsiflexion on left otherwise strength intact

(more thorough neuro exam done at last visit)

Psych: A&OX3; normal mood, affect

Recent Labs:

Lab Results

Component	Value	Date
WBC	11.34*	5/29/2012
HGB	8.9*	5/29/2012
HCT	27.5*	5/29/2012
PLT	772*	5/29/2012
ALT	24.0	5/25/2012
AST	33.0	5/25/2012
NA	138.0	5/29/2012
K	3.90	5/29/2012
CL	107.0	5/29/2012
CREATININE	1.7*	5/29/2012
BUN	20.0	5/29/2012
INR	1.18	5/20/2012
HGBA1C	4.5	5/12/2012

No components found with this basename: Idlcal

Assessment/Plan:

Active Problem List:

Problem List

Date Reviewed: 8/29/2012

Codes

Pressure ulcer of heel

707.07, 707.20

Overview

Followed by Dr. Saffer at Carolina Foot Specialists and has appt today

LBP (low back pain)

724.2

Sickle cell disease

282.60

--started hydroxyurea 500mg daily just over 2 wks ago.

--has labs ordered for next Tues and Heme clinic f/u

--no crises since hydraea initiation

--fatigued and slightly tachy: CBC to assess anemia ordered for Tues

Overview

--Acute chest syndrome requiring exchange transfusion and intubation; May 2012

HTN (hypertension)

401.9

--increase lisinopril to 20mg daily and continue amlol 10mg daily

--daily headaches may have been related to increased BP; she had previously been on clonidine and this was replaced with lisinopril. She doesn't have signs/symptoms c/w migraine or cluster headaches; no sinus pressure.

--TTE 5/2012 showed elevated pRVSP of 38mmHg, nml LVEF, nml RV size and fnc;

Paresthesia of left leg

Ambulatory referral to Neurology, gabapentin (NEURONTIN) 100 MG tablet
--instructed that she could take up to 300mg gabapentin TID if not too much

sedation; will start low and uptitrate to see if there is any relief of pain in leg

Symptoms have been present for a few months after her ICU stay and have persisted.

RTC: 6 wks

Patient had no questions regarding treatment plan, goals, risks or benefits and agrees to contact me or my clinic in the interim should any questions or problems arise.

Family History

Problem:

- Hypertension
- Diabetes
- Diabetes

History

Relation

Mother
Father
Sister

Age of Onset

Social History

- Marital Status:
- Spouse Name:
- Number of Children:
- Years of Education:

Single
N/A
N/A
N/A

Occupational History

- Not on file.

Social History Main Topics

- Smoking status:
- Smokeless tobacco:
- Alcohol Use:
- Drug Use:
- Sexually Active:

Never Smoker
Never Used
No
No
Not Currently

Other Topics

- Not on file

Concern

Social History Narrative

- No narrative on file

Current Outpatient Prescriptions

Medication	Sig	Dispense	Refill
• amlodipine (NORVASC) 10 MG tablet	Take one tablet by mouth daily	90 tablet	3
• folic acid (FOLVITE) 1 MG tablet	Take 1 tablet (1,000 mcg total) by mouth daily.	90 tablet	3
• hydroxyurea (HYDREA) 500 mg capsule	Take 1 tab daily	30 capsule	6
• lisinopril (PRINIVIL, ZESTRIL) 10 MG tablet	Take 1 tablet (10 mg total) by mouth daily.	30 tablet	1

All Flowsheet Templates (all recorded)Encounter Vitals Flowsheet

Not recorded

Orders Placed This EncounterAmbulatory referral to Neurology (REF46 Custom)Medications Ordered This Encounter

	Disp	Refills	Start	End
lisinopril (PRINIVIL,ZESTRIL) 20 MG tablet	30 tablet	1	9/25/2012	11/24/2012
Take 1 tablet (20 mg total) by mouth daily, for 60 days				

- Oral

	Disp	Refills	Start	End
gabapentin (NEURONTIN) 100 MG tablet	90 tablet	0	9/25/2012	9/25/2013
Take 1 tablet (100 mg total) by mouth 3 (three) times daily as needed (pain/numbness in leg).				

- Oral

MAR Audit Report

(all recorded)

Scott, L'Tonya 000550551
E COOPER INTERNAL MEDMedications the Patient Reported Taking

amlodipine (NORVASC) 10 MG tablet (Taking)
 folic acid (FOLVITE) 1 MG tablet (Taking)
 hydroxyurea (HYDREA) 500 mg capsule (Taking)
 lisinopril (PRINIVIL,ZESTRIL) 20 MG tablet (Taking)
 lisinopril (PRINIVIL, ZESTRIL) 10 MG tablet (Taking/Discontinued)

Learning Assessment

None

Follow-up and Disposition

Return in about 6 weeks (around 11/6/2012).

Level of ServicePR OFFICE/OUTPT VISIT,EST,LEVL III
[99213]Referring Provider

Martin Allen Smith, MD

All Charges for This Encounter

Code	Description	Service Date	Service Provider	Modifiers	Quantity
99213	PR OFFICE/OUTPT VISIT,EST,LEVL III	9/25/2012	Martin Allen Smith, MD		1
G8553	PR 1 RX VIA QUALIFIED ERX SYS	9/25/2012	Martin Allen Smith, MD		1

Best Practice Advisories

Influenza vaccine due. Order the immunization, document the immunization in the immunizations activity, give a reason for not giving the immunization, or add the exclusion modifier to permanently remove from Influenza plan.

Active

Date	User	Actions Taken
09/25/12	Valerie Mullen,	Acknowledge: Unavailable [54]
1004	CMA	
09/25/12	Valerie Mullen,	
1004	CMA	
09/25/12	Valerie Mullen,	
1004	CMA	

Other Encounter Related InformationAllergies & Medications

Problem List

History

Patient-Entered Questionnaires

Facility Administered Meds Report

RP Date ID: Sep 25 2012



East Cooper Internal Medicine
1280 Hospital Drive
Mt Pleasant SC 29464
Phone: 843-876-0988
<https://mychartmuschealth.com>

September 25, 2012

Patient: L'Tonya L. Scott
Date of Birth: [REDACTED]
Date of Visit: 9/25/2012

To Whom It May Concern:

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.

If you have any questions or concerns, please don't hesitate to call.

Sincerely,

Smith, Martin Allen, MD

R 408

R. 00231



Progress Notes

L'Tonya Scott (MR# 000550551)

Progress Notes Info

Author	Note Status	Last Update User	Last Update Date/Time
Martin Allen Smith, MD	Signed	Martin Allen Smith, MD	8/29/2012 4:46 PM

Progress Notes

L'Tonya L Scott 000550551
8/29/2012

CC: t/u

HPI: 33 yo F with sickle cell disease

--hospitalized in late may for acute chest syndrome and was in the ICU and on ventilator, had exchange transfusion and developed a pressure ulcer on left heel

--left foot; healing ulcer on left heel; seeing Dr. Saffer about every month; last seen yesterday

--hasn't started hydra yet; concerned about side effects and wanted to know more about it

--states she's had some minor sickle cell crises since hospital dc

--has t/u with hematology Friday

--tearful when talking about ICU stay but denies being depressed or hopeless, actually states she is thankful

--wants disability paperwork filled out

Had numbness in left foot and great toe yesterday when seen by podiatrist. Numbness comes and goes. No

pain really other than in heel area which was debrided yesterday.

No chest pain, abd pain, n/v or other complaints not named above.

ROS as above otherwise negative

Past Medical History

Diagnosis

- LBP (low back pain)
- Hypertension
- Ulcer

Date

6/7/2012

Heel pressure ulcers from extended ICU stay

- Depression
- Sickle cell anemia

7/21/2012

Past Surgical History

Procedure

- Breast surgery reduction

Date

Family History

Problem

- Hypertension
- Diabetes
- Diabetes

Relation

Mother

Father

Sister

Age of Onset

History

Social History

- Marital Status: Single
- Spouse Name: N/A
- Number of Children: N/A
- Years of Education: N/A

Occupational History

- Not on file.

Social History Main Topics

- Smoking status: Never Smoker
- Smokeless tobacco: Never Used

- Alcohol Use: No
- Drug Use: No
- Sexually Active: Not Currently

Other Topics

- Not on file

Concern

Social History Narrative

- No narrative on file

Current Outpatient Prescriptions

Medication	Sig	Dispense	Refill
• amlodipine (NORVASC) 10 MG tablet	Take one tablet by mouth daily	90 tablet	3
• clonidine (CATAPRES) 0.2 MG tablet	Take 0.2 mg by mouth 2 (two) times daily.		
• hydroxyurea (HYDREA) 500 mg capsule	Take 1 tab daily	30 capsule	6

Physical Exam:

Blood pressure 142/90, pulse 112, temperature 98.9 °F (37.2 °C), weight 176 lb (79.833 kg).

Rpt BP 136/90

General: WDOWN, well appearing, NAD

HEENT: NC/AT, oropharynx clear

Neck: supple, no thyromegaly or cervical LAD

Heart: RRR without M/R/G's

Lungs: CTAB, no crackles or wheezing

Abdomen: soft, NT/ND, no HSM;

Extremities: no C/C/E; healing ulcer on posterior aspect of left heel without surrounding erythema and exudate

Psych: A&OX3; crying when recounting ICU stay and realization of her sickness

Neuro:

Muscle strength in LE: 5/5 and symmetrical, including quadriceps, hamstrings, dorsiflexion, plantarflexion

Sensation intact in bilateral lower legs and feet (light touch, pain, vibration, proprioception)

Unable to elicit DTR in lower extremities but patient was not able to relax either leg

Favors left leg when walking

Recent Labs:

Lab Results

Component	Value	Date
WBC	11.34*	5/29/2012
HGB	8.9*	5/29/2012
HCT	27.5*	5/29/2012
PLT	772*	5/29/2012
ALT	24.0	5/25/2012
AST	33.0	5/25/2012
NA	138.0	5/29/2012
K	3.90	5/29/2012
CL	107.0	5/29/2012
CREATININE	1.7*	5/29/2012
BUN	20.0	5/29/2012
INR	1.18	5/20/2012
HGBA1C	4.5	5/12/2012

No components found with this basename: ldlcal

**Assessment/Plan:
Active Problem List:
Problem List**

Date Reviewed: 8/29/2012
Codes

Pressure ulcer of heel
Overview

707.07, 707.20

Followed by Dr. Saffer at Carolina Foot Specialists

Current Assessment & Plan Note
Improving with debridement by Dr. Saffer

LBP (low back pain)
Sickle cell disease
Overview

724.2
282.60

--Acute chest syndrome requiring exchange transfusion and intubation; May 2012

Current Assessment & Plan Note

--Very long discussion about the utility of hydrea today. Patient states that she thinks she will start hydrea 500mg daily. Given that she hasn't started hydrea, she can call hematology and reschedule appt for one month from now as they wanted to check labs after hydrea was started.
--I will see her in a month as well. If she decides to not f/u with hematology, then I will check CBC, iron studies, ferritin, d-dimer and cmp in a month.

HTN (hypertension)

401.9

Current Assessment & Plan Note

Continue norvasc 10mg daily.
Instead of restarting clonidine, will start lisinopril 10mg daily and bring back in a month to address other issues as well.

Has labs ordered.

Greater than 50% of total visit (40 minutes) was spent in counseling and coordination of care.

RTC: 1 month

Patient had no questions regarding treatment plan, goals, risks or benefits and agrees to contact me or my clinic in the Interim should any questions or problems arise.



Progress Notes

L'Tonya Scott (MR# 000550551)

Progress Notes Info

Author	Note Status	Last Update User	Last Update Date/Time
Woodrow Jenkins Coker, MD MSPH	Addendum	Charles Steven Greenberg, MD	7/23/2012 3:09 PM

Progress Notes

Subjective: Management of Sickle Cell Disease

Patient ID: L'Tonya L Scott is a 33 y.o. female.

HPI

Ms. Scott is a 33y AA lady with sickle cell disease complicated by two episodes of ACS with the most recent one life-threatening and requiring exchange transfusion and ventilator support. She is seen today in consultation for initiation of hydroxyurea. Since her discharge from the hospital, pt states that she has not had vaso-occlusive crises necessitating ED care but has in the past. She takes prn Vicodin or Percocet. She has to use a crutch due to heel pain from resolving pressure ulcers. Pt endorsed decrease energy and motivation.

Review of Systems

Constitutional: Positive for activity change and fatigue. Negative for fever, chills, diaphoresis, appetite change and unexpected weight change.

HENT: Negative. Negative for nosebleeds and mouth sores.

Eyes: Negative. Negative for visual disturbance.

Respiratory: Negative. Negative for cough, chest tightness, shortness of breath and wheezing.

Cardiovascular: Negative. Negative for chest pain, palpitations and leg swelling.

Gastrointestinal: Negative. Negative for abdominal pain and blood in stool.

Genitourinary: Negative.

Musculoskeletal: Negative.

Typical SC pain in long bones of the upper and lower extremities

Skin: Positive for wound. Negative for color change, pallor and rash.

Neurological: Negative.

Hematological: Negative. Negative for adenopathy. Does not bruise/bleed easily.

Psychiatric/Behavioral: Positive for dysphoric mood. Negative for behavioral problems and agitation.

The following portions of the patient's history were reviewed and updated as appropriate: allergies, current medications, past family history, past medical history, past social history, past surgical history and problem list.

Objective:

Physical Exam

Nursing note and vitals reviewed.

Constitutional: She is oriented to person, place, and time. She appears well-developed and well-nourished. No distress.

HENT:

Head: Normocephalic.

Mouth/Throat: No oropharyngeal exudate.

Eyes: Pupils are equal, round, and reactive to light. Right eye exhibits no discharge. Left eye exhibits no discharge. No scleral icterus.

Neck: Normal range of motion. No JVD present. No thyromegaly present.

Cardiovascular: Normal rate, regular rhythm and intact distal pulses. Exam reveals no gallop and no friction rub.

Murmur heard.

Pulmonary/Chest: Effort normal and breath sounds normal. No respiratory distress. She has no wheezes. She has no rales. She exhibits no tenderness.

Abdominal: Soft. Bowel sounds are normal. She exhibits no distension. There is no tenderness.

Musculoskeletal: Normal range of motion. She exhibits tenderness. She exhibits no edema.

Bilateral heel ulcers (healing)

Lymphadenopathy:

She has no cervical adenopathy.
 Neurological: She is alert and oriented to person, place, and time. No cranial nerve deficit. Coordination normal.
 Skin: Skin is warm and dry. No rash noted. She is not diaphoretic. No erythema. No pallor.
 Psychiatric: Her speech is normal. Thought content normal. She is not withdrawn. She exhibits a depressed mood.
 Pt has a relative dysthymic disposition throughout the exam and interview.

Assessment / Plan:
 33y AAF with SCDz complicated by ACS

SCDz - Pt has had a considerable disease burden manifest most notably as two episodes of ACS with the most recent in May 2012 requiring intubation where she had an 18-day ICU stay and was exchange transfused. At that time, her Hgb S was 70%, she was sitting 78% on FiO2 of 1.0 and ABG was 7.3/36/58. She has also had frequent ER visits preceding this event. She hydrates well and does not have tobacco exposure or frequent sick contacts. Pt is, however, dysthymic, and it is our opinion that stress is also a significant contributor to her crises.

- We will prescribe Hydrea 500mg daily and follow up as noted below. She is not currently sexually active and states that there is no way she could be pregnant. She was counseled to avoid Hydrea during any possible pregnancy.
- It is also advisable that the pt restart Folic acid 1mg daily.
- Please consider PCP treatment of depression.

Beta-thalassemia - We are suspicious of this designation. Although the pt has a low MCV (70-80), she has never really had significant elevations of Hgb F or A2. Since she is starting Hydrea, we will expect the MVC to increase. I think it is more likely she has alpha thalassemia. This would require checking alpha globin gene number. This may interfere with her MCV increasing with hydrea but she could still obtain a biologic effect on vascular obstruction.

Heel ulcers - These are healing well and do not appear consistent with sickle cell - associated leg ulcers.

Follow up - 6 weeks with CBCd, CMP, d-dimer, retic, and iron studies

ATTENDING ATTESTATION

I have seen, examined, and discussed this patient with Dr Woody Coker and agree with the findings, assessment, and plan. (GC)

Comments: I think she is an excellent candidate for Hydrea and this should improve her frequent bouts of pain. She is depressed and has a flat affect which is not surprising based on the severity of her illness. I think there will be a 50-75 % reduction in pain and complication of sickle cell disease with Hydrea. She must never stop taking her folic acid as this is required for normal red cell production and can be depleted with hemolytic anemia of sickle cell disease.

[Links](#)
[Previous Version](#)

Quality Assurance Report



Request Information

Report Date: April 13, 2013

RP ID: 1553589

Patient Name: SCOTT, L'TONYA L

Provider Name: MEDICAL UNIV OF SOUTH CAROLINA

Quality Assurance Information

Special Request: **2ND REQUEST**PLEASE RUSH** Please obtain
all medical records from 7/12/12 to the present.
Including records from: BLESSINGS-FEUSSNER, DR
Information From July 12, 2012 to Present
THANK YOU!

Special Request Included? NO

Secondary ID Confirmed? YES

QC Notes:

Chart Reviewed By: Patty Evans

Quality Assurance Report



Request Information

Report Date: December 20, 2012

RP ID: 1553582

Patient Name: SCOTT, L'TONYA L

Provider Name: CAROLINA FOOT SPECIALISTS

Quality Assurance Information

Special Request: Please obtain all medical records from 8/29/12 to the present. Thanks - Seen By: CAROLINA FOOT SPECIALISTS

Information From August 29, 2012 to Present

Special Request Included? NO

Secondary ID Confirmed? YES

QC Notes:

Chart Reviewed By: Patty Evans

Medical Record Request Complete

release POINT

Customer Information

Report Date: November 2, 2012

RPID: 1504343

Client Name: Standard Insurance Company Claims

Req. By: amurdza

Patient Information

Name: SCOTT, L'TONYA L

D.O.B.:

Policy/Cert: VQ6781

Special Requirements:

Please obtain all medical records from 5/01/12 to the present. Thanks -

Seen By: BLESSINGS-FEUSSNER, DR CAROL

Provider Information

Provider: BLESSINGS-FEUSSNER, DR CAROL
169 ASHLEY AVE
ATTN: MEDICAL RECORDS
CHARLESTON, SC 29425

Phone: (843) 876-8282

Fax: (843) 876-8252

Electronic Order Data (If Applicable)

Patient Name: SCOTT, L'TONYA L

Patient DOB:

Patient SSN:

Policy Number: VQ6781

Provider Data: BLESSINGS-FEUSSNER, DR CAROL
1280 JOHNNIE DODDS BLVD #301

MT PLEASANT, SC 29464
843-876-2200

RECEIVED
NOV 05 2012
EMPLOYEE BENEFITS

R 483

R. 00239

Medical Record Request Complete

release POINT

Customer Information

Report Date: October 23, 2012

RPID: 1505532

Client Name: Standard Insurance Company Claims

Req. By: amurdza

Patient Information

Name: SCOTT, LTONYA L

D.O.B.: [REDACTED]

Policy/Cert: VQ6781

Special Requirements:

Please obtain all medical records from 1/01/12 to the present. Thanks

Provider Information

Provider: MEDICAL UNIV OF SOUTH CAROLINA
169 ASHLEY AVENUE MSC 349
ATTN : ROI SUPERVISOR
CHARLESTON, SC 29425

Phone: (843) 792-3881

Fax: (843) 792-8258

Electronic Order Data (If Applicable)

Patient Name: SCOTT, LTONYA L
Patient DOB: [REDACTED]
Patient SSN: [REDACTED]
Policy Number: VQ6781

Provider Data: Dr. Charles S Greenberg
171 Ashley Ave

Charleston, SC 29425
843-792-1414

RECEIVED

OCT 24 2012

EMPLOYEE BENEFITS

R 488

R. 00240

Medical Record Request Complete

release POINT

Customer Information

Report Date: September 20, 2012 RPID: 1504344

Client Name: Standard Insurance Company Claims

Req. By: amurda

Patient Information

Name: SCOTT, LTONYA L

D.O.B:

Policy/Cert: VQ6781

Special Requirements:

Please obtain all admit & discharge summaries from 5/01/12 to the present.
Thanks

Provider Information

Provider: Mount Pleasant Hospital
3510 U.S. Highway 17.
ATTN: MEDICAL RECORDS
Mount Pleasant, SC 29466

Phone: (843) 606-7000

Fax: (843) 606-7914

Electronic Order Data (If Applicable)

Patient Name: SCOTT, LTONYA L
Patient DOB:
Patient SSN:
Policy Number: VQ6781

RECEIVED

SEP 21 2012

Employee Benefits - LTD

Provider Data: Roper St. Francis Mount Pleasant Hospital
3500 Highway 17 North

Mount Pleasant, SC 29466
843-606-7000

R 539

R. 00241

release POINTED

Please Return This Sheet with Records

RP ID: 1505531

☒

Please obtain all medical records from 1/01/12 to the present. Seen by Dr Andrew D. Saffer Thanks

☒

Patient was last seen: 8-28-12



14 Number of pages
total

- OR -



WFI Incorporated
P O Box 12460
Charlotte, NC 28220

Your ReleasePoint Processing Team



ReleasePoint/WFI

Date: Sep 18, 2012

Patient: SCOTT, Y'RONKA L

DOB: [REDACTED]

RP ID: 1505531

Carrier: Standard Empl Benefits CLAIMS

CAROLINA FOOT SPECIALISTS
615 Wesley Dr.
ATTN: MEDICAL RECORDS
CHARLESTON, SC 29407

Disability Insurance Benefit Analysis

Your patient has filed a claim with the carrier listed above for disability insurance benefits. In order to determine eligibility for benefits, ReleasePoint has been retained to retrieve medical records on their behalf. A copy of your patient's signed authorization is attached.

Please note that we are only requesting SPECIFIC RECORDS, as listed below:

Records Required: Information from January 1, 2012 to present

Please obtain all medical records from 1/01/12 to the present.
Seen by Dr Andrew D. Saffer Thanks

Hospitals Only: Only abstract records are required, including admission, history/physical, operation reports, discharge summaries, etc.

FEE LIMITS: Any fees above \$25.00 for records must be approved by the carrier, and will potentially delay awarding of insurance benefits.

We will follow up on this request by fax and phone until records are received. To avoid additional contacts, please advise us of status by fax:

Check one of the following and fax to number listed below:

☒ Faxing records to us:
Do not fold, staple or tape records
☐ Mailing Records to us at:

Pages 14 total

ReleasePoint/WFI
Benefit Analysis Department
P O Box 12460
Charlotte, NC 28220

☐ Prepayment of \$ 25 required. Do you accept Visa? (Circle) YES NO

☐ Records are not available because: but check in the mail

would be fine. Thank you!
Jto

Thank you for your cooperation.

Beverly Tasta
Phone: (661) 338-4430 ext.
Email: providers@releasepoint.com

Secure FAX: (213) 785-0413



MUSC Health

Medical University of South Carolina

Charleston, SC

843-792-2123

CLINICAL REPORT

Patient: **SCOTT, L'TONYA**
Attending: **BLESSING-FEUSSENER, CAROL**

MRN: **000550551**
Date: **6/13/12 3:40 PM**
Status: **Authenticated-Addended**

Encounter Type

Office Visit

Date Time Provider Department Center
6/13/2012 3:40 PM 100055-BLESSING-FEUSSENER, *ECI None

Reason for Visit and Comments:

Follow-up [110033] - blister

Blessing-Feussner, Carol L, PA 7/11/2012 11:58 AM Addendum

Patient Active Problem List

Diagnoses

LBP (low back pain)

Sickle cell beta thalassemia

Elevated BP

HPI: L'Tonya RTO to address "blisters" on both heels L>R. I had offered to drain them on f/u earlier but her fear of needles prevented that. Discomfort is worse w/ wt bearing and would like them drained today after discussion on the pros and cons with me and having Dr. Wong support that decision.

She has tapered her Clonidine down to just 0.1mg qd and has started taking 10mg Norvasc instead of 5mg qd. BP has responded in a positive way.

EXAM: Pressure sores plantar heel L>R w/ blood accumulated on L. Prepped area on L and tried to extract fluid w/ 25g needle which was unsuccessful.

ASSESSMENT/PLAN: ? Decubitus ulcer - recommended a Podiatrist to help tx but she declined for now. The plan is to soak for 20mins 2-3x/day in 1/2 vinegar/water to aid in absorption and healing. She will contact us to let us know if successful or she needs referral to Dr. Saffer. She also brought the FMLA papers to begin permanently retiring from the work force 2/2 sickle cell dz.

ADDENDUM: Dr. Greenberg has agreed to see L'Tonya on July 12th @ 10am to (1) assess use of Hydrea (2) Brain - does she have depression, silent infarcts, frontal lobe dysfunction, no ability to cope or plan? (3) Ambition/Attitude: What does she really want to do?? (4) Religion - Any support to help her cope? (5) Family - Is it strong and supportive; a determination needs to be made as to how to go forward. Very challenging but her issues, at this time, do not seem to be sickle cell related to the extent we can consider her disabled.

P.S. Seen by Dr. Saffer @ Carolina Foot Specialist 7/9/12: DX: Decubitus Ulcer L heel w/ callus; ulcer debrided, flushed and applied silvadene oint and band aqts. Recommend wider, cushioned soled shoes and given Mupirocin oint 2% to be applied to ulcer daily with f/u 3wks.

Problem List Noted Resolved
LBP (low back pain) [724.2] 06/07/2012

This document should not be filed in the paper medical record and should be confidentially destroyed when it is no longer needed.

Printed by: **OANADAY, DEBBIE**
Date Printed: **08/08/2012**

Page 1



R 606

R. 00244



Medical University of South Carolina
Charleston, SC
843-792-2123

CLINICAL REPORT

Patient: **SCOTT, L'TONYA**
Attending: **BLESSING-FEUSSNER, CAROL**

MRN: **000550551**
Date: **6/13/12 3:40 PM**
Status: **Authenticated-Added**

Sickle cell beta thalassemia 6/7/2012

Elevated BP 6/7/2012

BREAST SURGERY

Comments: reduction

Family History

Problem	Relation	Age of Onset
Hypertension	Mother	
Diabetes	Father	
Diabetes	Sister	

Family Status - Relation	Status	Age at Death
Mother	Alive	
Father	Alive	
Sister	Alive	

Social History

Marital Status: Single

Spouse:

Years of Education:

children:

Social History Narrative
(none)

Social History Topics

Tobacco Use: Never

Alcohol Use: No

Drug Use: No

Sexually Active: Not Current

Level of Service: 99213 PR OFFICE/OUTPT VISIT, EST, LEVL III

Primary Diagnosis: 817.2 Friction blisters of the soles

This document should not be filed in the paper medical record and should be confidentially destroyed when it is no longer needed.

Printed by: **CANADAY, DEBBIE**
Date Printed: **08/08/2012**

Page 3



R 607

R. 00245

DETAILED JOB SPECIALITY REPORTFrom Job Browser Pro - by SkillTRAN - <http://www.skilltran.com>

Page: 1

Claimant: L'Tonya Scott
Claim No: 00VQ6781
Job Title: Terminal Clerk
Date: 9/6/12

I have reviewed the Employee's Statement, the Employer's Statement, and job description. Based on this information it is my opinion this is the occupational title (as defined by the *Dictionary of Occupational Titles*) that best represents this claimant's occupation in the National Economy. Vocational resources utilized to arrive at this conclusion include SkillTran Job Browser Pro, which compiles occupational characteristics from the *Dictionary of Occupational Titles*, the *Occupational Outlook Handbook*, and O*NET Online. In addition, I relied on my own observation and vocational experience as to how the occupation is performed. This is a LIGHT strength demand occupation.

Sharon Cummins, MS, CRC
Vocational Case Manager

DESCRIPTION

219.367-030 SHIPPING-ORDER CLERK

ALTERNATE JOB TITLES (Might also be known as):

SHIPPING-ORDER CLERK

Requisitions transportation from freight carriers to ship plant products. Reads shipping orders to determine quantity and type of transportation needed. Contacts carrier representative to make arrangements and to issue instructions for loading products. Annotates shipping orders to inform shipping department of loading location and time of arrival of transportation. May perform other clerical tasks, such as typing and mailing bills, typing correspondence, and keeping files.

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-4	10 to 33%ile	Below Average
Form Perception	P-4	10 to 33%ile	Below Average
Clerical Perception	Q-3	34 to 65%ile	Average
Motor Coordination	K-4	10 to 33%ile	Below Average
Finger Dexterity	F-4	10 to 33%ile	Below Average
Manual Dexterity	M-4	10 to 33%ile	Below 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)

J - Making generalizations, evaluations, or decisions based on sensory or judgmental criteria.

PHYSICAL DEMANDS**STRENGTH: Light**

Exert force to 20 lbs. occasionally or 10 lbs. frequently, or negligible force constantly. May involve significant standing, walking, pushing, and/or pulling.

OTHER PHYSICAL DEMANDS:

DETAILED JOB SPECIALITY REPORT

From Job Browser Pro – by SkillTRAN – <http://www.skilltran.com>

Page: 2

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 - Occasional
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 – Quiet

QUICK VIEW CODES

R M L SVP: 4 Aptitudes: G V N S P Q K F M E C

GED: 3 2 3 Temperaments: J - 3 3 3 4 4 3 4 4 5 5

STRENGTH: L

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 O N F F N F N N N N

Environmental Conditions: WE CO HO WT NO VI AT MV EL HI RA EX TX OT
N N N N 2 N N N N N N N N

Physician Consultant Memo

Claim Identification

Name: L'Tonya Scott

Claim Number: 00VQ6781

Nurse: Carol Short, RN

MTID #: 120975172

Analyst: Rachel Robinson

Date Submitted: 12/04/2015

Physician: Bradley Fancher, M.D.

Date Transcribed: 12/04/2015

Opening Synopsis

This claimant has a history of sickle cell anemia. The Standard has received additional records since my last review.

Review of Medical Records

Please refer to my earlier reviews. The claimant was seen on March 4, 2014, by Dr. Martin. At that time, it was felt that her sickle cell anemia/beta thalassemia were fairly controlled, using hydrocodone and folic acid. The claimant was felt to have depression and was started on Zoloft at that time, as well as trazodone for sleep. On presentation, however, she was noted to have a normal mood and affect and no cognitive impairment.

The next note we have to review is from November 18, 2014, when the claimant presented to the emergency room with pain in her right leg, which was fairly typical of the claimant's episodes of sickle cell crisis. She was provided with intravenous Dilaudid and improved. The claimant was discharged on oral pain medication, but returned to the emergency room the following day because of recurrent pain. It is noted in the discharge notes that the claimant at that time was generally having one painful crisis a month. The claimant normally was able to handle her episodes at home using oral narcotics. The claimant was placed on a Dilaudid pump and progressively improved. Her hemoglobin was 9.5. It was noted her baseline hemoglobin was between 10 and 11. The claimant was discharged November 19, 2014, with no activity limitations. She was given Dilaudid to use on an as needed basis.

The claimant was seen in the emergency room again on January 19, 2015. She again presented with leg pain. The claimant again was felt to be in a sickle cell crisis and was provided with intravenous Dilaudid. She responded well to the infusion and was discharged on the same day. The claimant stated at the time of her admission that she had run out of her Dilaudid that she was using at home. It was additionally noted the claimant had not had any falls over the last 12 months.

The claimant was seen in the emergency room again on March 28, 2015, when she presented with low back pain and generalized pain. She was diagnosed with a sickle cell crisis and was provided with intravenous Dilaudid. The claimant was discharged from the emergency room on the same day.

The claimant was admitted on May 8, 2015, when she presented with low back pain and leg pain. She had been seen 1 day earlier in the emergency room, but returned and was admitted on May 8, 2015. During her hospitalization, the claimant seemed to be responding to Dilaudid. However, she subsequently developed a temperature of 102 degrees and became dyspneic. An x-ray revealed a dense right lung infiltrate. It was initially unclear whether the claimant had developed a hospital acquired pneumonia or whether this was an acute chest syndrome related to her sickle cell anemia. The claimant's hemoglobin was 8. Her white count was elevated at 20,000. The claimant was transferred to the ICU and then subsequently referred to the Medical University of South Carolina. The claimant's subsequent course cannot be determined from the records we have to review.

Summary of Pertinent Information

This claimant continues to have periodic episodes of sickle cell crisis. Most of her events are successfully managed with the claimant remaining at home, using narcotic analgesics. The claimant intermittently has required visits to the ER, as described above. She was admitted on May 8, 2015, for sickle cell crisis, which was complicated by an acute chest syndrome and respiratory failure.

Response to Questions

1. Do the newly available medical records support any degree of impairment during the period of April 15, 2013, through the present?

Answer: Please refer to my earlier memos regarding the claimant's course prior to March 4, 2014. The newer medical records reveal the claimant has been having an episode of sickle cell crisis roughly once per month. Most of these episodes have been handled by the claimant remaining at home, and taking narcotic analgesics. The claimant was seen in the emergency room on April 1, 2014, for a sickle cell crisis. She was next seen on April 18, 2014. She was seen again on April 19, 2015, and again on March 28, 2015. The claimant would have been impaired for 1 day, on the dates that she was seen in the emergency room. However, the claimant's episodes seemed to be relatively short-lived, and fairly easily managed. I think the 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. On May 8, 2015, the claimant was admitted for a sickle cell crisis. However, during her hospitalization, she developed a pulmonary infiltrate which was felt to be due to either an acquired pneumonia or a sickle cell event. The claimant's subsequent course is unknown. As such, I cannot assess when the claimant might have been able to return to gainful employment following her May 8, 2015, admission.

2. *If the claimant had impairments, please describe the claimant's limitations and restrictions and the dates such limitations or restrictions began.*

Answer: Please see my response above. 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, but not medium level work as I have previously described.

3. *If applicable, please indicate the claimant's prognosis, or the date the claimant's limitations and restrictions resolved.*

Answer: Please see my above response. I would be glad to review any additional medical records that are obtained to further assess the claimant's course following her May 2015 admission.

I, Bradley Fancher, M.D., am a physician duly licensed to practice medicine in the State of Oregon. I am not an employee of Standard. I am an independent contractor and I am paid an hourly rate to review disability and life claim files and render medical opinions regarding the records contained therein. I am not responsible for deciding whether a claimant is entitled to insurance benefits. My role is to provide objective medical opinions to Standard's Benefits personnel.

I do not receive any additional compensation in the form of bonuses or incentive pay of any kind. My compensation does not depend upon the outcome of my reviews, the substance of my medical opinions, or any factor other than the number of hours it takes to review a file and to provide an analysis.

Standard has never expressed to me any requirements or expectations regarding the ultimate conclusions or opinions I provide other than that I provide a well reasoned, professional opinion based on thorough review of all relevant and available information. I do not believe that either my compensation or my continued professional relationship with Standard is contingent in any way on the ultimate conclusions or opinions that I provide.

Electronically Approved by:

Date: 12/12/2015

Bradley Fancher, M.D.

BF:mc

D: 12/04/2015

T: 12/04/2015

A: 12/12/2015

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ADMINISTRATIVE LAW COURT

RECEIVED
OCT 04 2017
SC Court of Appeals

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

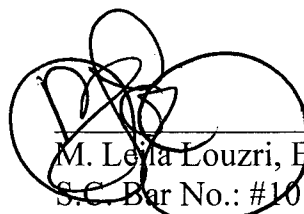
L'Tonya Scott, ... Appellant,

v.

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

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all material proposed
to be included by any of the parties and not any other material.



M. Leila Louzri, Esq.

S.C. Bar No.: #101793

FOSTER LAW FIRM, LLC

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R. 00251

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(864) 233-0290 (facsimile)
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Attorneys for Appellant

Date: September 1, 2017

R. 00252



PAUL J. FOSTER, JR., 1928-1999
ROBERT E. HOSKINS, 1965-2016

FOSTER LAW FIRM, L.L.C.

Attorneys and Counselors at Law

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October 2, 2017

Jenny Abbott Kitchings
Clerk of Court
Court of Appeals
PO Box 11629
Columbia, South Carolina 29211

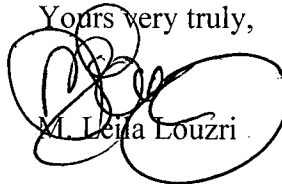
RE: *L'Tonya Scott v. South Carolina Public Employee Benefit Authority,*
Employee Insurance Program
Case No.: 16-ALJ-30-0293-AP

Dear Madam Kitchings:

Please find enclosed fifteen copies of the Record on Appeal. If you have any questions or comments, please do not hesitate to contact me.

With kind regards, I remain,

Yours very truly,



M. Leila Louzri

MLL/ahb
Encl.

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SC Court of Appeals