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SC Court of Appeals

November 8, 2021

The Honorable S. Phillip Lenski
Administrative Law Judge
1205 Pendleton Street, Suite 224
Columbia, South Carolina 29201

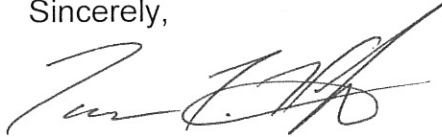
Re: *Leroy Madison v. South Carolina Public Employee Benefit Authority, Employee Insurance Program*
Docket No. 20-ALJ-30-0153-AP

Dear Judge Lenski:

Please find enclosed for filing in the above-referenced appeal the original and one (1) copy of the Respondent's Brief. Please file the original and return the stamped copy to me in the enclosed envelope. By copy of this letter, we are serving Appellant's counsel with a copy of the Respondent's Brief.

Please contact me if you have any questions or if I can be of assistance.

Sincerely,



James T. Hedgepath

JTH/klm

Enclosures

cc: M. Leila Louzri, Esquire – w/encl.

- Charleston
- Charlotte
- Columbia
- Greensboro
- Greenville**
- Hilton Head
- Myrtle Beach
- Raleigh

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Leroy Madison,

Appellant,

vs.

South Carolina Public Employee Benefit
Authority, Employee Insurance Program,

Respondent.

Docket No.: 21-ALJ-30-0153-AP

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 LEROY MADISON'S LONG TERM DISABILITY CLAIM?

STATEMENT OF THE CASE

This case involves an appeal by Appellant Leroy Madison ("Madison") of Respondent South Carolina Public Employee Benefit Authority, Employee Insurance Program's ("PEBA") decision to close his 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) (2020) and the claims procedures and discretion provided by the Plan,¹ PEBA closed Madison's claim after he received LTD benefits for two months, and after PEBA determined that Madison's medical conditions did not qualify him for additional LTD benefits under the terms and conditions of the Plan. R 2-17.²

Madison was formerly employed by Spartanburg School District 7 as a Secondary School Teacher, a light strength level occupation. *Id.* at 167, 321. As an employee of Spartanburg School District 7, Madison participated in the Plan. Madison's last day of work was May 31, 2017, which was apparently the end of the 2017 school year. *Id.* at 172. According to Madison's application for LTD benefits, he became unable to continue working on June 16, 2017, following a car accident. *Id.* On his application for LTD benefits, Madison listed his illness as "concussion." *Id.*

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.13, *infra*.

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

As discussed below, Standard Insurance Company (“Standard”), the third-party claims administrator for the Plan,³ determined that Madison qualified for LTD benefits under the Plan from September 14, 2017 through November 13, 2017. *Id.* at 150. Standard closed Madison’s claim with payment through November 13, 2017 because Madison did not meet the Plan’s Own Occupation Definition of Disability after that date. *Id.* at 150-54, 124-29. Pursuant to Section 1-11-710(C), which provides authority to PEBA to establish claims procedures for the Plan, Madison appealed Standard’s decision to PEBA for a *de novo* review of the decision to close his claim. PEBA conducted a thorough review of all the information contained in Madison’s file. *See id.* at 2-9. Based upon all of the information in Madison’s file and the terms of the Plan, PEBA determined that Madison did not qualify for additional LTD benefits under the Plan. *See id.* at 9-11. PEBA informed Madison of its decision by letter dated May 4, 2021. *Id.* at 2-11. After receiving PEBA’s final decision, Madison filed his Notice of Appeal with this Court.

STATEMENT OF FACTS

I. Applicable Plan Provisions

During the first 24 months of disability and following a 90-day Benefit Waiting Period, a claimant is entitled to LTD benefits if disabled from performing his own occupation. Specifically, the Plan’s Own Occupation Definition of Disability provides as follows:

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

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

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.

with reasonable continuity the Material Duties of your Own Occupation. *Id.* at 18.

A claimant seeking LTD benefits must provide adequate proof of loss demonstrating that he satisfies the applicable Definition of Disability. Specifically, the Plan 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 27.

Thus, to qualify for additional LTD benefits after November 13, 2017, Madison must provide objective medical evidence that his condition prevented him from performing the material duties of his Own Occupation.

In addition, the Plan requires that a claimant be receiving appropriate care and treatment from a physician in order to receive ongoing LTD benefits under the Plan. Specifically, the Plan's Care of a Physician provision 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. *Id.*

II. Madison's Medical Records

Madison was involved in a car accident on June 16, 2017. Madison informed his family physician, Dr. Davis, that he was driving his automobile when it was hit from behind, "more on the driver side." *Id.* at 316. At that time, Madison complained of headache, neck

pain, stiff neck, left shoulder pain, lower back pain, and pain from the location of his seat belt straps. *Id.* Madison was diagnosed with a concussion following the accident. *Id.*

Madison saw Dr. Lucas, a sports medicine physician, on July 24, 2017. Dr. Lucas noted a history of concussion without loss of consciousness and headaches with “fogginess,” but noted that two CT scans were negative for intracranial abnormalities. *Id.* at 285. Madison complained of dizziness and light-headedness. *Id.* at 288. Dr. Lucas noted that Madison was agitated and reported decreased concentration and sleep disturbance. *Id.*

Dr. Lucas saw Madison again on August 9, 2017. Dr. Lucas stated that Madison continued to have concussion related dysfunction and recommended against Madison returning to teaching “at this point.” *Id.* at 274. Madison complained of fatigue, photophobia (light sensitivity) visual disturbance, headache, and dizziness. *Id.* at 276. Dr. Lucas recommended therapy to assist with dizziness. *Id.* at 277.

Madison returned to Dr. Davis on August 28, 2017. Madison’s complaints were the same as his prior visits with Dr. Lucas. *Id.* at 231. However, during his physical examination, Dr. Davis reported Madison’s psychiatric status as follows: “He has a normal mood and affect. His behavior is normal.” *Id.* at 232. Dr. Davis also noted that Madison was “alert and oriented to person, place, and time.” *Id.*

Madison returned to Dr. Lucas on September 6, 2017. Dr. Lucas noted a SCAT symptom number of 22 and a SCAT symptom score of 102.⁴ However, Dr. Lucas noted

⁴ SCAT is short for Sport Concussion Assessment Tool and is a standardized tool physicians can use to evaluate suspected concussion. The SCAT scoring summary includes scores for memory assessment, symptom evaluation, delayed recall, and cognitive screening, among its 22 symptom criteria. SCAT scores can range from 0-132, with zero representing the lowest symptom score and 132 representing the highest symptom score. <https://catonline.com/scat/>, <https://bjsm.bmj.com/content/bjsports/early/2017/04/26/bjsports-2017-097506SCAT5.full.pdf>

a normal psychological and neurological status. *Id.* at 264.

Dr. Davis saw Madison on November 1, 2017, more than four months after his accident. Madison reported that he “is also getting better,” but could not return to work due to inability to focus and headaches. *Id.* at 83. Other than Madison’s subjective complaints, Dr. Davis noted a normal physical examination. *Id.* at 84-85.

On November 13, 2017, Dr. Lucas stated that Madison was “[m]aking slow and steady progress. MRI shows punctate lesions throughout the cerebrum that is frequently seen in people who have frequent headaches.” *Id.* at 245. Madison reported symptoms of confusion, sleep disturbance, dizziness, speech difficulty, numbness, and headaches; however, during physical examination, Dr. Lucas noted Madison had euthymic (normal) mood and normal affect, normal strength, and that he did not have nystagmus or blurred vision. *Id.* at 248-49.

On December 1, 2017, Dr. Lucas signed an Attending Physician’s Statement (“APS”) in support of Madison’s LTD claim. Dr. Lucas listed only one diagnosis – concussion – with symptoms of headache, pressure in head, confusion, fogginess, amnesia, dizziness, nausea, vomiting, ringing in ears, and sensitivity to light and noise. *Id.* at 321. Dr. Lucas identified his “treatment plan” as “MRI brain, placed on meds: Elavil and Ativan, no work.” *Id.* at 321. Although Elavil and Ativan are normally used to treat depression and anxiety, respectively, Dr. Lucas did not mention any significant mental component to Madison’s condition and he had not referred Madison to a mental health professional.

On December 13, 2017, Madison saw Davis with complaints of tightness and pain in his neck and shoulders. *Id.* at 80. Dr. Davis administered a trigger point injection in Madison's right upper back. *Id.* at 82.

Dr. Lucas saw Madison on May 14, 2018, six months after his last office visit. Dr. Lucas stated that Madison was "still extremely symptomatic with his [SCAT] score 89." *Id.* at 204. Dr. Lucas ordered a cervical spine MRI because Madison complained of neck and shoulder pain. *Id.*

Madison did not have the cervical spine MRI until August 13, 2018, three months after seeing Dr. Lucas. The MRI was relatively normal and showed only mild neuroforaminal narrowing at the C4-C5 and C5-C6 levels, and a small bone spur at C5-C6. *Id.* at 219.

Madison did not return to see Dr. Lucas until January 16, 2019. Thus, between December 13, 2017 and January 16, 2019, Madison saw Dr. Lucas one time and had the cervical spine MRI, and apparently no other medical care related to his alleged disabling condition. In fact, Dr. Lucas noted that "our clinic did make multiple attempts to contact him following the imaging however he never returned any of our calls." *Id.* at 208.

During the January 16, 2019 office visit, Dr. Lucas noted that Madison "has had minimal improvement over time" related to his concussion. *Id.* Dr. Lucas also noted that he conducted a Mini-Mental Status exam on which Madison scored 29 out of 30, which typically demonstrates no cognitive impairment.⁵ *Id.* at 208. Dr. Lucas also administered a PHQ9 questionnaire on which Madison scored 17.⁶ *Id.* Dr. Lucas stated the PHQ9 score

⁵ <http://www.fammed.usouthal.edu/Guides&JobAids/Geriatric/MMSE.pdf>

⁶ <https://www.mdcalc.com/phq-9-patient-health-questionnaire-9#next-steps>

“suggested” depression and he instructed Madison to follow up with Dr. Davis, his primary care physician. *Id.* at 208. Dr. Lucas did not refer Madison to a mental health professional. On exam, Dr. Lucas noted that Madison had tongue fasciculations (twitching), but he did not attribute any underlying diagnosis or any limitations or restrictions to the tongue fasciculations. *Id.* at 211.

Madison had brain and cervical spine MRIs on February 13, 2019. The brain MRI was normal. *See id.* at 87. The cervical spine MRI showed minimal facet joint swelling at the C5-C6 level that was slightly more advanced than shown in the August 2018 cervical spine MRI. *Id.* at 91. Otherwise, the cervical spine MRI was normal.

Dr. Lucas saw Madison again on February 14, 2019. Dr. Lucas stated that Madison’s “symptom burden seems to exceed that that I would typically see in concussion.” *Id.* at 212. Dr. Lucas further noted Madison “has no neurological deficits other than what is either some tongue fasciculations or perhaps just a tremor that is creating this appearance.” *Id.* When asked if he had any paranoid thoughts, Madison said he did not, but “did tell our staff that he occasionally feels a sensation of ‘bugs crawling on his arm.’” *Id.* Dr. Lucas also noted that Madison had an “incredibly flat affect.” *Id.* Dr. Lucas, for the first time, mentioned that he may recommend a referral to psychiatry; however, there is no record in the administrative record before PEBA that Madison ever saw a psychiatrist, psychologist, or any other mental health professional. *Id.* Dr. Lucas’ February 14, 2019 chart note is his most recent medical record in the Record on Appeal.

Madison also saw Dr. Davis on February 14, 2019, his first visit with Dr. Davis in almost 14 months. Madison continued to complain of concussion related symptoms. *Id.* at 76. Dr. Davis administered a trigger point injection in Madison’s upper trapezius muscle

in an effort to treat Madison's complaint of neck pain. *Id.* Dr. Davis also prescribed Adderall for Madison's complaint of "brain fog." *Id.* at 79.

Madison returned to Dr. Davis on April 1, 2019. Madison stated that the Adderall "did not clear up the brain fog." *Id.* at 72. Dr. Davis referred Madison to Dr. Mourtada, a pain management physician.

Madison saw Dr. Mourtada two and a half months later on June 14, 2019. Dr. Mourtada prescribed massage therapy for Madison's neck and shoulder pain. *Id.* at 57. Dr. Mourtada also referenced giving Madison an epidural steroid injection to treat his pain but his chart note does not provide any additional detail about whether the injection was administered. *Id.*

Madison saw Dr. Davis again on June 25, 2019 and August 19, 2019. *Id.* at 65-71. In the August 19, 2019 note, Dr. Davis noted that Madison had undergone surgery to remove a mass under his left arm. *Id.* at 65. Otherwise, Madison continued to make his subjective complaints of pain, dizziness, light-headedness, decreased concentration, and sleep disturbance allegedly related to the concussion he experienced more than two years earlier. *Id.* at 65, 69.

III. Statement by Dr. Davis

In support of his claim for additional LTD benefits, Madison submitted to PEBA an undated "Statement" signed by Dr. Davis. In the Statement, Dr. Davis listed Madison's numerous subjective complaints and summarily opined that Madison was totally disabled from performing any occupation. *Id.* at 39-41.

IV. Standard's Consideration of Madison's Claim

Madison did not submit his application for LTD benefits under the Plan until April 16, 2018, eight months after his accident. *Id.* at 172-74.⁷ After receiving Madison's application for benefits, compiling all of the available medical information from his treating physicians, and obtaining vocational information related to Madison's occupation of Secondary School Teacher, Standard requested that Dr. Topper, a board-certified neurologist,⁸ review all of the available information related to Madison's claim and provide his opinion regarding Madison's limitations and restrictions related to Madison's medical condition. As part of his review of Madison's file, Dr. Topper contacted and spoke with Dr. Lucas. Dr. Lucas and Dr. Topper discussed documentation issues with Dr. Lucas' chart notes, but Dr. Lucas did not otherwise provide additional information about Madison's alleged disabling limitations and restrictions except stating that Madison's "neurological examination has never been normalized." *Id.* at 193. Notably, Dr. Lucas saw Madison only two times after he spoke with Dr. Topper. In those visits, dated January 16, 2019 and February 14, 2019, he mentioned referring Madison to a neurologist and psychiatrist, but he apparently never did. *See id.* at 207-15.

After reviewing all of the available medical information and speaking with Dr. Lucas, Dr. Topper opined as follows:

From 6/6/17 through 11/13/17 the claimant was not able to work in any capacity. The claimant had believable constellation of symptoms of headaches, confusion, abnormal visual tracking and nystagmus, as well as dizziness and nausea. This (sic) symptoms are compatible with concussion

⁷ See fax date stamp at R 172.

⁸ Based upon the documents in the Record on Appeal, Dr. Topper was the first neurologist who evaluated Madison's alleged neurological conditions from a position of neurological expertise. Until Dr. Topper's involvement, the three physicians involved in Madison's case were a family physician, a family physician with a focus on sports medicine, and a pain management specialist. Dr. Topper's *curriculum vitae* is included in the Record on Appeal at R 196-97.

and postconcussive symptoms. The intensity of symptoms and abnormalities on neurological examination prevented the claimant from focusing on his work.

After 11/13/17 the claimant's neurological examination was documented as normalized, and there is no specific quantification of the claimant's symptoms of headaches. The claimant's balanced (sic) was characterized as improved. The claimant's neurocognitive symptoms were not quantified and there is no bedside or formal assessment of the claimant's cognition, such as neuropsychological testing. Therefore, after 11/13/17, considering normal neurological examination, and considering that the typical recovery time of concussion usually does not exceed three months, the claimant does not have any evidence of impairment and there is no need in restrictions and limitations. *Id.* at 194.

On June 12, 2018, Standard informed Madison that his LTD claim had been approved for payment for the September 14, 2017 through November 13, 2017 time period. *Id.* at 150. Standard also informed Madison that his claim had been closed with payment through November 13, 2017, because he did not meet the Plan's Own Occupation Definition of Disability after that date. *Id.* at 150-51.

Madison appealed Standard's decision and submitted additional information, including recent medical records, in support of his claim. In response to Madison's appeal, Standard referred his claim to its Administrative Review Unit ("ARU") for an independent review. The ARU requested a second independent medical opinion from Dr. Daniel, another board-certified neurologist,⁹ regarding Madison's limitations and restrictions.

After reviewing all of the available medical records, including Madison's updated medical records, Dr. Daniel opined as follows:

No specific limitations or restrictions due to postconcussive syndrome or any other neurological condition are supported as of November 13, 2017 forward.

As of November 13, 2017, the claimant's postconcussive syndrome had improved despite several ongoing subjective complaints . . . Symptom

⁹ Dr. Daniel's *curriculum vitae* is included in the Record on Appeal at R 184-86.

severity score had improved in comparison to the previous visit and neurological examination was normal. It should be noted that several symptoms on the SCAT scale are not specific for concussion Additionally, the claimant was not to follow up for another six months, a longer interval than his previous followup visits which also suggests clinical improvement. There is no evidence that the claimant was in any acute distress or photophobic.

The severity of his pain from headaches and neck pain does not appear to have been high enough to result in any ongoing limitations or restrictions from November 13, 2017 forward. The claimant has not been seen in the emergency room or other urgent care settings for acute treatment of severe debilitating headaches, and a detailed headache description is lacking, which does not allow for diagnosis of migraine or any other headache disorder which often would be associated with some limitations in most patients. *Id.* at 181.

Significantly, Dr. Daniel noted that Madison “has not undergone a detailed cognitive assessment with a neuropsychologist. However, screening mental status examination from January 2019 was normal at 29/30.” *Id.* at 182. In addition, Dr. Daniel commented as follows:

The records suggest the claimant may have some depression or perhaps another psychiatric condition which potentially could be associated with some limitations, particularly with dealing with people beyond giving and receiving instructions and stress tolerance, though no definite psychiatric diagnosis has been made in the current records. *Id.* at 182.

Dr. Daniel also commented that it would be helpful to obtain results of updated evaluations and MRI imaging and labs that Dr. Lucas mentioned in his chart notes; however, those medical records were not provided to Standard or PEBA by Dr. Lucas’ office as part of the documents Dr. Lucas’ office provided to Standard in response to Standard’s request for all of Madison’s medical records. Although not expressly stated in the documents in the Record on Appeal, Madison apparently did not (1) undergo any neurological or neuropsychological evaluation; and (2) never saw a mental health professional, such as a psychiatrist or psychologist. What is certain is that Madison and

his treating physicians did not submit any evidence of such evaluations or mental health treatment to Standard or PEBA.

Based upon its review of all of the available information, including Madison's medical records, vocational information, and the opinions of Dr. Daniel and Dr. Topper, the ARU upheld the decision to close Madison's LTD claim. The ARU informed Madison of its decision by letter dated May 6, 2019. *Id.* at 124-29. The ARU also informed Madison of his right to appeal to PEBA for a final review of his claim. *Id.* at 129. Madison, through his current attorney, appealed Standard's decision to PEBA.

V. PEBA's Consideration of Madison's Claim

After receiving Madison's appeal, PEBA conducted a *de novo* review of his claim to determine whether he was entitled to additional LTD benefits. PEBA's decision was thorough and summarized in significant detail all of the information Madison submitted, Standard's consideration and closure of Madison's claim, and the relevant Plan provisions. *See id.* at 2-9. After considering all of the relevant information, PEBA made the following findings:

- PEBA finds, based on the persuasive opinions of Dr. Daniel and Dr. Topper, that Claimant had no specific limitations or restrictions due to traumatic brain injury, postconcussive syndrome or any other neurological condition that were supported on and after November 13, 2017. *Id.* 9.
- Records supported Claimant had a mild concussion without a loss of consciousness following his accident on June 16, 2017. Two CT scans of Claimant's head after the accident were unrevealing. But Claimant had a constellation of symptoms, including headaches, confusion, abnormal visual tracking and nystagmus, as well as dizziness and nausea. These symptoms were compatible with concussion and postconcussive syndrome. The intensity of symptoms and abnormalities on neurological examination prevented Claimant from focusing on his work. *Id.*
- At Claimant's appointment with Dr. Lucas on November 13, 2017, Claimant was relaxed, his eye exam was normal with no photophobia, his neck was normal with

no tenderness, Claimant's strength was intact in his extremities, and he was alert and oriented with a normal psychiatric exam. Moreover, Dr. Lucas set Claimant's appointment at six months, which suggests that Claimant's condition was not acute at that time. *Id.*

- PEBA notes that both Dr. Topper and Dr. Daniel indicated that symptoms regarding a mild concussion without loss of consciousness will typically resolve fully or nearly fully within three months. Claimant's persistent subjective symptoms, greater than 3-6 months after his injury, suggested that another process or other processes were causing his complaints, perhaps an undiagnosed mood disorder or other mental health issue. But PEBA observes that Dr. Davis noted Claimant had normal mood and affect and a normal psychiatric examination during visits. Thus, PEBA finds that the current record does not support that Claimant was Disabled from performing his Own Occupation due to any mental health condition as of November 13, 2017. *Id.* at 10.
- PEBA notes that records after November 13, 2017 confirmed Claimant was not Disabled due to postconcussion syndrome or other neurological conditions. On May 14, 2018, Dr. Lucas determined Claimant's head was atraumatic, his neck had full range of motion, he had normal coordination, and his vestibular exam was normal. Claimant had a depressed mood, but mental exam showed he was alert and oriented. Claimant's neurological examination was normal with full strength in upper and lower extremities. Claimant was not seen again by Dr. Lucas until January 16, 2019, which suggests Claimant was not having symptoms so severe he was functionally impaired from working, either physically or mentally. *Id.*
- Finally, PEBA reviewed the statement by Dr. Davis from January 2020 in which Dr. Davis found Claimant was totally disabled as a result of traumatic brain injury, concussion and depression. PEBA disagrees with Dr. Davis's opinion based on the medical records reviewed in this case and the opinions of Dr. Daniel and Dr. Topper. *Id.*
- PEBA finds the medical records do not support Claimant had limitations or restrictions that would have impaired his ability to perform his Own Occupation on a full-time basis after November 13, 2017 due to traumatic brain injury, postconcussion syndrome, any other neurological conditions, or due to cognitive impairment. Therefore, PEBA concludes that Claimant's BLTD claim was properly closed after November 13, 2017. *Id.*

PEBA informed Madison of its decision by letter to Madison's attorney dated May 4, 2021. *Id.* at 2-11. Madison appealed PEBA's decision to this Court.

ALLOCATION OF AUTHORITY TO PEBA AND THE APPROPRIATE STANDARD OF REVIEW

The Plan provides PEBA with "full and exclusive authority to control and manage the Plan, to administer claims, and to interpret the Plan and resolve all questions arising in the administration, interpretation, and application of the Plan. Our authority includes . . . [T]he right to determine . . . [E]ntitlement to benefits." *Id.* at 29. 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) (2021).

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

A. Substantial Evidence Supports PEBA’s Decision

The substantial evidence in the Record on Appeal supports PEBA’s decision to close Madison’s LTD claim after November 13, 2017. Although Madison’s treating

physicians, Dr. Lucas and Dr. Davis, generally opined that Madison was “disabled,” neither provided any detailed explanation for their opinions. Rather, they appear to have assumed that because Madison had long-term subjective complaints of headaches, neck and shoulder pain, dizziness, and lack of concentration, he was unable to return to work in his occupation. A deeper examination of Dr. Lucas’ records and Dr. Davis’ records since November 2017 reveals that Madison was provided very little medical treatment, beyond counseling during office visits. By way of examples, while Dr. Lucas and Dr. Davis discussed referring Madison to a neurologist or psychiatrist, the Record on Appeal does not contain actual evidence of such a referral – and even if such a referral was made, there is no evidence that Madison ever saw a neurologist or psychiatrist. In addition, despite claiming he was disabled from all occupations, from November 13, 2017 through January 16, 2019, Madison saw Dr. Lucas, his primary concussion treatment physician, one time. The Record on Appeal simply does not contain evidence to support Madison’s disability claim. Simply saying “Madison is disabled” months and years after a mild concussion is not sufficient to meet the Plan’s Proof of Loss requirements.

On the other hand, Dr. Daniel and Dr. Topper provided well-reasoned, unequivocal opinions that Madison was not disabled from performing his occupation after November 13, 2017. Both opinions, but especially that of Dr. Daniel, very clearly evaluate Madison’s medical records and conclude, based on the lack of evidence of impairment, limitations, and restrictions, that Madison could have returned to work after November 13, 2017. For these reasons, substantial evidence supports PEBA’s decision to close Madison’s LTD claim.

B. PEBA Did Not Abuse its Discretion in any Way

In Appellant's Brief, Madison argues that "it is clear from the record that PEBA never gave any weight to Appellant's diagnosis of depression or any other mental health conditions/symptoms he suffered therefrom." Appellant's Brief, p. 14. Appellant's Brief then asserts that PEBA "never had Appellant's claim reviewed by a psychiatrist or other duly qualified mental health physician, despite [Dr. Daniel] recommending the same." *Id.* at 15. Based on these misplaced statements, Madison argues that "[b]ecause of Respondent's utter lack of consideration of Appellant's mental health conditions and any symptoms he experienced as a result, it is clear that Respondent's decision to deny Appellant's basic claim is clearly erroneous." *Id.* Madison's argument fails for a number of reasons.

As an initial matter, Madison appears to assert that PEBA should have found him disabled due to a mental health condition. Madison ignores the fact that he never saw a mental health professional. Accepting Madison's argument would require PEBA, which is charged with a fiduciary duty to administer the Plan in a manner that is in the best interest of all Plan participants, to ignore and violate the clear terms of the Plan. Specifically, the Plan clearly states that "[n]o 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." R 27. Thus, no Plan benefits are payable to an individual with a disability based upon a mental disorder unless the claimant is receiving ongoing appropriate care and treatment from a mental health professional. The Record on Appeal is devoid of any evidence that Madison was ever treated by a mental health professional.

Thus, the Plan expressly prohibits payment of benefits to Madison for a mental health condition. Therefore, Madison's argument must be rejected.

Additionally, PEBA did not fail to give "any weight" to Madison's alleged symptoms of depression and anxiety. To the contrary, as discussed above, and more fully in the full text of PEBA's decision, PEBA pointed out repeatedly that while Madison's physicians noted depression, anxiety, and inability to concentrate, those same physicians also reported normal psychiatric examinations during office visits. Moreover, in its decision, PEBA specifically acknowledged complaints of cognitive impairment; however, PEBA stated that it found other medical records and the opinions of Dr. Daniel and Dr. Topper more credible than Madison's subjective complaints.

Finally, and as a practical matter, it is disingenuous for Madison to fault PEBA for not having a psychiatrist or other mental health physician review Madison's claim when Madison never saw such a physician. There were no mental health records for a psychiatrist or other mental health physician to review.

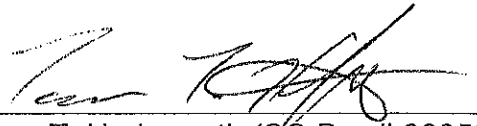
In summary, PEBA did not abuse its discretion in any way in this matter. Therefore, the Court should affirm PEBA's decision to close Madison's claim.

CONCLUSION

Substantial evidence in the Record on Appeal supports PEBA's decision to close Madison's claim for LTD benefits under the Plan and PEBA did not abuse its discretion when it closed Madison's LTD claim. Accordingly, PEBA respectfully requests that the Court affirm its decision.

[SIGNATURE PAGE FOLLOWS]

Respectfully submitted,



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November 8, 2021
Greenville, South Carolina

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Leroy Madison,

Appellant,

vs.

South Carolina Public Employee
Benefit Authority, Employee Insurance
Program,

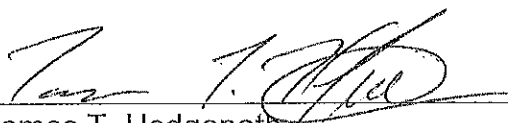
Respondent.

Docket No.: 21-ALJ-30-0153-AP

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing **RESPONDENT'S BRIEF** has been served upon the following counsel of record by placing the same in the United States mail, first class postage prepaid, addressed to the following as shown below this 8th day of November, 2021.

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