STATE OF MICHIGAN

COURT OF CLAIMS

JESSICA KEMETER,

Plaintiff,

v

Case No. 22-000094-MK

THE BOARD OF REGENTS OF THE UNIVERSITY OF MICHIGAN,

Hon. Sima G. Patel

Defendant.
_____ /

JUDGMENT FOLLOWING TRIAL

I. BACKGROUND FINDINGS OF FACT[1]

Plaintiff worked as an Oncology nurse at defendant's hospital. In January 2020, plaintiff became ill with a viral respiratory disease. Although antibody testing in the summer of 2020 was negative, plaintiff most likely contracted COVID-19. On January 22, 2020, plaintiff experienced breathing and movement difficulties on the job. Plaintiff has not returned to work since that day.

In the months that followed, plaintiff continued to suffer from asthma-like breathing difficulties, weakness in her legs, and chronic fatigue. She treated and consulted with pulmonologists, neurologists, and psychologists. She participated in physical therapy. When her

[1] The parties presented this case to the Court for review on stipulated exhibits without witness testimony. Plaintiff also presented a separate exhibit relating to her Social Security Disability determination. The Court admitted that exhibit over defendant's objection. The Court has considered these documents in reaching its decision.

treating physicians at Michigan Medicine were unable to resolve her medical issues, plaintiff travelled to the Cleveland Clinic for a second opinion. Plaintiff has been diagnosed with postural orthostatic tachycardia syndrome (POTS), functional neurological (or movement) disorder (FMD), and chronic fatigue syndrome. For the layman, plaintiff has long COVID.

In March 2021, plaintiff applied for benefits under the long-term disability (LTD) insurance plan provided through defendant, her employer. Knowing that such a claim would eventually be filed, defendant had previously requested plaintiff to submit to medical examinations with doctors hired by defendant (IMEs).[2] Those examining physicians found no objectively manifested disability.

On May 12, 2021, the LTD Claims Administrator denied plaintiff's claim. Plaintiff appealed and defendant required plaintiff to undergo a new IME with Dr. Stephen Wilson. The Claims Administrator again denied plaintiff's claim.

II. LEGAL PRINCIPLES

The Court previously resolved the parties' dispute over the standard of review to be applied in this case. The Court will review de novo the Claims Administrator's determination of disability as defined under the LTD policy.

[2] Although the parties refer to these as independent medical examinations, this is a "euphemistic term of art." "[A]n IME involves obtaining a second opinion from a doctor who is entirely selected and paid for by an insurance company, rendering the 'independence' of the examination somewhat questionable." A more accurate appellation is 'insurance medical examination.' " *Micheli v Mich Auto Ins Placement Facility*, 340 Mich App 360, 364 n 3; 986 NW2d 451 (2022).

To secure judgment in her favor, plaintiff must establish the elements of her claims by a preponderance of the evidence. *Mayor of Cadillac v Blackburn*, 306 Mich App 512, 522; 857 NW2d 529 (2014). This standard requires plaintiff to prove the elements were "more likely than not" met. *Skinner v Square D Co*, 445 Mich 153, 165; 516 NW2d 475 (1994).

III. THE LTD POLICY

The LTD policy initially defines eligibility for plan benefits or disability as follows: "You must be unable to do your job or any other reasonable job, based upon your education, training, or experience, for a continuous period of at least 12 months." The policy later expounds on that definition:

> Under the Expanded LTD Plan, disability must be **total *and* permanent**. **Total** disability is the complete inability, except during periods of rehabilitative employment, by reason of any medically determinable physical or mental impairment, to engage in any occupation or employment for wages or profit for which you are reasonably suited by education, training, or experience. **Permanent** disability occurs when the impairment is expected to result in death, or when the impairment has lasted (or is expected to last) for a continuous period of at least twelve (12) months from the date of disability.

The policy continues:

> The determination as to whether you meet this definition is based on medical information, which must include objective clinical findings. The objective clinical findings must support the conclusion not only that you have a condition(s), but that the condition(s) renders you totally and permanently disabled . . . as defined under the Expanded LTD Plan.

IV. SPECIFIC FINDINGS OF FACT

The long course of plaintiff's illness began in January 2020. It began with a viral illness that most likely was COVID-19. For several months, plaintiff experienced shortness of breath with exertion, cough, severe fatigue, and muscle aches. Unable to find relief, plaintiff found a new

primary care physician from within Michigan Health, Amal Othman. Dr. Othman observed that plaintiff suffered from weakness in the legs, chronic fatigue, and shortness of breath with chest tightening. Dr. Othman believed plaintiff suffered from a post-viral syndrome. She also referred plaintiff for physical therapy for her leg weakness.

During five months of physical therapy, the providers observed poor aerobic capacity and that plaintiff needed support when standing from a seated position. During an October 20, 2020 physical therapy appointment, plaintiff was unable to push pedals on a bicycle due to weakness. Approximately a week later, the therapist observed that plaintiff required rest breaks every two minutes while walking on a treadmill. Plaintiff's symptoms were serious and long-lasting enough that in November 2020, her attending physicians ordered MRIs and a spinal tap to rule out multiple sclerosis (MS). Even as plaintiff's muscle strength improved, the fatigue remained. Her husband video recorded plaintiff shaking and quivering in her sleep.

Eventually, plaintiff was referred to the Cleveland Clinic for a second opinion. On April 9, 2021, a neurologist, Dr. Barabara Merriman, observed that when her eyes were closed, plaintiff could not touch her left hand to her nose and her hand tremored. Dr. Merriman also observed that when plaintiff's eyes were closed and she tried to hold out her left arm, it drifted downward. Dr. Merriman analyzed plaintiff's gait, noting that she could not walk on her tip toes, she was very unstable and nearly fell to the side during the Romberg test, and had a slight wobble while in a tandem stance. Dr. Merriman opined that if plaintiff's symptoms were not caused by MS (which was later ruled out) then "it is likely sequelae of a post viral syndrome," long COVID, and referred her to the COVID recovery clinic. The doctor also ordered tests for POTS.

On May 20, 2021, plaintiff underwent neuro cardio autonomic reflect with and without tilt testing. Dr. Yuebing Li, of the Cleveland Clinic Neuromuscular Center, reported "[s]ignificant heart race increase with testing," and diagnosed plaintiff with POTS. Plaintiff then underwent a POTS consultation with Dr. Leslie Cho at the Cleveland Clinic. Dr. Cho noted plaintiff's leg weakness and shaking in her left leg and arm, and observed that plaintiff was unable to complete an exercise stress test. Plaintiff was also referred to cardiac rehabilitative therapy with Nurse Practitioner Kyle Shannon at the Cleveland Clinic.

On July 2, 2021, plaintiff followed up with Dr. Merriman. Before her consult, plaintiff participated in a cardiac stress test. "This required her [to] pedal a bicycle (to get her heart rate up) and her legs get so weak and stiff." Dr. Merriman observed plaintiff walking and noted her muscles were very shaky. Plaintiff also demonstrated a tremor when she tried to touch her finger to her nose and to bring her left heel to her shin.

On August 9 2021, Dr. Benjamin Claytor at the Cleveland Clinic Neuromuscular Center diagnosed plaintiff with functional neurological disorder, also known as functional movement disorder or FMD. During his examination, Dr. Claytor observed several signs of FMD, including "slow cautious gait," "positive abductor sign," "slow halting leg movements" when sitting upright to pedal versus smooth pedaling when reclined, and "halting movements with finger nose and heel knee shin that does not appear to be ataxic." These symptoms, Dr. Claytor believed, were caused by "disruptions in neural networks" and were not manifestations of anxiety. Dr. Claytor referred plaintiff to Cleveland Clinic's functional disorder clinic.

In a September 29, 2021 letter, NP Shannon advised that plaintiff had been diagnosed with POTS, which comes with "[d]isabling symptoms," like "dizziness, lightheadedness, tachycardia,

shortness of breath, near syncope, and fatigue." Until these symptoms were under better control, plaintiff would be unable to work, Shannon opined. That control would take at least six to eight months of medical intervention, such as specialized exercises. Shannon further described that POTS is a chronic, lifelong condition.

On October 6, 2021, Dr. Xin Yu at the Cleveland Clinic Movement Disorders Center found plaintiff's FMD diagnosis to be "definitive." He observed that plaintiff was able to push the pedals of a bicycle while in recumbent position, but when sitting upright, her movements were slow and halting. Plaintiff also had a slow and cautious gait.

Overall, objective testing demonstrated that plaintiff suffers from POTS. Several medical professionals observed plaintiff's tremors, muscle weakness, and balance issues. Two doctors at the Cleveland Clinic also diagnosed plaintiff with FMD based on their physical observations of plaintiff's movements. And NP Shannon reported that plaintiff would be unable to work until her symptoms were under better control, which he predicted could take an additional six to eight months beyond September 2021.

The Court also finds it relevant, but not dispositive, that plaintiff was declared disabled by the Social Security Administration. On May 2, 2023, Administrative Law Judge (ALJ) Ramona Fernandez reviewed the evidence and determined plaintiff suffered from "the following severe impairments:" POTS, FMD, post-viral fatigue syndrome, and asthma. The ALJ found that plaintiff required a cane or other assistive device to walk for more than 10 minutes and for any length of time for standing. The ALJ noted that plaintiff had continued treatment for her conditions, along with home exercises and cardiac rehabilitation. "Given these impairments and symptoms, including deconditioning, fatigue, and weakness, [plaintiff] is most appropriately limited to a

reduced range of sedentary work." Plaintiff was unable to continue in her past work as a registered nurse or head nurse because those positions require exertion beyond plaintiff's capability. The ALJ ruled that plaintiff had been under a disability as defined by the Social Security Act since January 22, 2020.

Based on this evidence, the Court finds that the LTD Claims Administrator improperly determined that plaintiff did not suffer from a disability. Significant objective evidence of record supports that plaintiff suffered from a debilitating condition that prevented her from engaging in "any occupation or employment for wages or profit for which you are reasonably suited by education, training, or experience."

Moreover, the Court finds that plaintiff's disability was total and permanent. It lasted for a continuous period of at least 12 months. An insured is entitled to benefits "when the impairment has lasted (or is expected to last) for a continuous period of at leave twelve (12) months from the date of disability." The plan also states, however, that "Being out of the workplace for twelve (12) continuous months does not automatically qualify you for benefits under the Expanded LTD Plan."

Plaintiff's disability began on January 23, 2020, although it took an extended period of time to identify plaintiff's ailment. The record medical evidence establishes that she remained disabled until at least the end of 2021. The Court finds that the Social Security Administration's disability judgment establishes that plaintiff remained disabled until at least May 2, 2023.

V. RULINGS

1. Because plaintiff suffered a total and permanent disability, she is eligible for benefits under defendant's LTD policy. Defendant is DIRECTED to enroll plaintiff in the policy and provide all benefits available under the policy.

2. The parties have stipulated to the total backpay amounts of LTD benefits set off by the SSDI benefits received by plaintiff, as well as the monthly figure due to plaintiff. The parties agree that the total backpay of LTD benefits set off by SSDI payments received, as of April 20, 2026, is $95,291.42. While the Court has considered its judgment, payments came due on May 20 and June 20, 2026. The parties agree that plaintiff's net monthly benefits are $1,551.14. Accordingly, as of the entry of this judgment, defendant must pay plaintiff **$98,393.70 in back LTD payments**.

3. Going forward, defendant must pay plaintiff **$1,551.14 monthly**.

4. Plaintiff has requested reimbursement of her Social Security attorney fees in the amount of $7,200. The Court finds that pursuant to the limit on such fees on page 11 of the LTD policy, defendant is required to pay **$6,000 to plaintiff for her Social Security attorney fees.**

5. Plaintiff seeks reimbursement of $11,683.13 in medical and dental costs incurred during the period defendant denied her enrollment in the LTD Plan and its accompanying medical and dental insurance policies. The Court located no evidence supporting this figure in the voluminous binders of evidence, spanning thousands of pages, that were provided to this Court without assistive demarcation or tabs. Absent evidence to support this figure, the Court finds that plaintiff has not established her entitlement to this amount by a preponderance of the evidence.

6. The Court also finds that plaintiff is entitled to interest on the $98,393.70 in back LTD payments due under the policy and $6,000 in attorney fees. The interest will not be calculated in the method promoted by plaintiff. Rather, pursuant to MCL 600.6013, interest is calculated at 6-month intervals from the date of filing the complaint (June 29, 2022) "at a rate of interest which is equal to 1% plus the average interest rate paid at auctions of 5-year United States treasury notes during the 6 months immediately preceding July 1 and January 1, as certified by the state treasurer, and compounded annually." Defendant is liable **for $21,260.24 in interest payments through the date of this judgment.**

7. Defendant's total liability to plaintiff for back LTD benefits, Social Security attorney fees, and interest is **$125,653.94.**

8. Plaintiff's eligibility for LTD benefits will end at age 65. Between now and then, defendant will conduct an annual review as required under the policy. Defendant will be required to consider annually whether plaintiff's symptoms have been sufficiently controlled such that she is no longer totally and permanently disabled under the policy.

9. Having prevailed on the merits of this action, plaintiff may tax costs pursuant to MCL 600.6449.

10. Besides the issue of the taxation of costs, this judgment is a final order resolving all issues in this case.

Date: June 24, 2026

Sima G. Patel
Judge, Court of Claims