UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
CIVIL MINUTES—GENERAL

Case No.	**EDCV 23-01510 JGB (DTBx)**	Date	May 29, 2025
Title	***Hettihewage Dharmasena v. Metropolitan Life Insurance Company***		

Present: The Honorable	JESUS G. BERNAL, UNITED STATES DISTRICT JUDGE

MAYNOR GALVEZ	Not Reported
Deputy Clerk	Court Reporter
Attorney(s) Present for Plaintiff(s):	Attorney(s) Present for Defendant(s):
None Present	None Present

Proceedings: **FINDINGS OF FACT AND CONCLUSIONS OF LAW REVERSING DECISION TO DENY BENEFITS (IN CHAMBERS)**

Before the Court is an appeal of the denial of disability benefits under the Employee Retirement Income Security Act ("ERISA"). Plaintiff Hettihewage Dharmasena filed a motion for judgment under Rule 52 of the Federal Rules of Civil Procedure. ("Motion," Dkt. No. 25.) The Court finds this matter appropriate for resolution without a hearing. See Fed. R. Civ. P. 78; L.R. 7-15. The Court **GRANTS** Plaintiff's Motion and **VACATES** the June 2, 2025 hearing on this motion.

On October 15, 2024, Plaintiff filed his motion for judgment. (Motion.) On December 9, 2024, Defendant Metropolitan Life Insurance Company filed its opposition. ("Opp'n," Dkt. No. 28.) On January 24, 2025, Plaintiff filed his response. ("Reply," Dkt. No. 32.) On February 14, 2025, Defendant filed a sur-reply. ("Sur-Reply," Dkt. No. 35.) The parties filed an administrative record. ("AR," Dkt. No. 27.) The following constitutes the Court's Findings of Fact and Conclusions of Law pursuant to Rule 52(a) of the Federal Rules of Civil Procedure.

I. FINDINGS OF FACT

"In bench trials, Fed. R. Civ. P. 52(a) requires a court to 'find the facts specially and state separately its conclusions of law thereon.'" Vance v. American Hawaii Cruises, Inc., 789 F.2d 790, 792 (9th Cir. 1986) (quoting Fed. R. Civ. P. 52(a)). "One purpose behind Rule 52(a) is to aid the appellate court's understanding of the basis of the trial court's decision. This purpose is achieved if the district court's findings are sufficient to indicate the factual basis for its ultimate

conclusions." Id. (citations omitted). The following constitutes the Court's findings of fact based on the Administrative Record.

A. Plaintiff's Employment History at Schneider Electric Inc.

Plaintiff worked for many years at Schneider Electric Inc. ("Schneider") as an electrical engineer. (AR 97.) Plaintiff's vocational expert found Plaintiff's role at Schneider as a blend of two codes from the Dictionary of Occupational Titles: Electrical-Design Engineer and Electronics-Designer Engineer. (AR 49.) Plaintiff's job required him to "handl[e] electronical equipment to facilitate repairs, design[] products and software, troubleshoot[] the system, restart[], and repair[] the electronics." (Id.) The job required "light physical exertion" including "occasional walking [and] standing and frequent movements such as reaching, manual dexterity, motor coordination, handling, sitting[,] and standing." (Id.)

B. Relevant Plan Terms

Plaintiff was a participant in a long-term disability employee benefit plan ("Plan") issued by Defendant to Schneider, and which Defendant administers. (AR 2844–2915.) Plaintiff was also a participant in a short-term disability plan administered by Defendant and self-funded by Schneider.[1] (AR 2298, 2812–2843.)

Under the Plan, "Disabled or Disability means that, due to Sickness or as a direct result of accidental injury" the participant is both:

- "[R]eceiving Appropriate Care and Treatment and complying with the requirements of such treatment;
- And "unable to earn":
    - "during the Elimination Period and the next 24 months of Sickness or accidental injury, more than 80% of Your Predisability Earnings at Your Own Occupation from any employer in Your Local Economy;"
    - "after such period, more than 60% of your Predisability Earnings any employer in Your Local Economy at any gainful occupation for which You are reasonably qualified taking into account Your training, education and experience." (AR 2865.)

In this case, because Plaintiff does not request short-term disability benefits, the Elimination Period is 180 days. (AR 2863.) Under the Plan, the participant's "[o]wn [o]ccupation means the essential functions [he] regularly perform[s] that provide [his] primary source of earned income." (AR 2867.) Likewise, "[p]redisability [e]arnings means gross salary or wages [he was] earning from the [p]olicyholder as of [his] last day of [a]ctive [w]ork before [his] Disability began." (AR 2868.)

[1] Plaintiff "is no longer seeking [short-term disability] benefits." (Motion at 1.)

The plan provides for, and Plaintiff seeks, benefits from his separation through his normal retirement age, which is 67. (Motion at 2–3; AR 2864, 2867.) For some neuromuscular or musculoskeletal disorders, there is a two year limitation on benefits, but Plaintiff argues he falls under a myopathy exception, which Defendant does not dispute. (AR 2889.)

A participant's insurance ends "the date You cease to be in an eligible class. You will cease to be in an eligible class on the date You cease Active Work in an eligible class, if You are not disabled on that date; or the date Your employment ends." (AR 2872.)

C. Plaintiff's Medical History

Plaintiff suffers from a genetic musculoskeletal disorder disease known as Facioscapulohumeral Muscular Dystrophy (FHSD). FHSD is a type of muscular dystrophy—meaning "progressive muscle degeneration, with increasing weakness and atrophy (loss of bulk) of muscles." (AR 864.) FHSD "first and most seriously affects the face, shoulders, and upper arms, but the disease usually also causes weakness in other muscles." (Id.) It most commonly appears in patients under the age of 20, but can appear in adulthood. (Id.) The severity of FHSD is "highly variable." (Id.)

Additionally, Plaintiff has had chronic kidney disease and received a kidney transplant. (AR 111, 519, 651.) After the transplant, his kidney function began to decline in 2004. (AR 651.)

Plaintiff's FHSD symptoms began with right foot drop, a condition caused by weakness in the muscles that lift the front part of the foot, as early as 2012. (AR 1055.) At that time he saw Dr. Ries, and was referred to therapy. (Id.)

After showing no improvement in therapy, Plaintiff's primary care doctor, Dr. Sandar Win, referred him to a physiatrist, Dr. Allen Huang, in 2017. (AR 107.) Dr. Huang, noted Plaintiff's muscular weakness and suggested "[c]oncern for some progressive neuromuscular disorder," and referred Plaintiff to a neurologist, Dr. Richard Shubin. (AR 108.)

Plaintiff visited Dr. Shubin shortly thereafter in 2017. At that time, Dr. Shubin did not yet diagnose Plaintiff with FHSD, but suggested myopathy or the steroids related to his kidney transplant as possible reasons for his weakness. (AR 1055.) At the time Dr. Shubin observed "wasting of the forearms and legs," "weakness with both upper motor neuron features," "marked scapular winging" of the back (a symptom where the shoulder blade protrudes abnormally due to the weakening of muscles surrounding the scapula), and other issues. (AR 1053–55.)

The next year, in 2018, Plaintiff saw Dr. Shubin several times, who fitted him with a foot brace making it "easier to get up from a chair." (AR 100.) Dr. Shubin suggested Plaintiff "taper down on prednisone," which he was taking for his kidney transplant. (AR 101.) Dr. Shubin also

noted that Plaintiff's foot muscles were in a "probable atrophied state." (Id.) Plaintiff went to physical and occupational therapy at that time. (Id.)

In 2018, Dr. Win suspected neuropathy (nerve damage). He noted that Plaintiff "cannot lift his right index finger upward," described Plaintiff's calf muscles as "soft and weak," and repeated his observations about right foot drop. (AR 125.) Dr. Win suggested a diagnosis of "[m]ultifocal motor neuropathy." (Id.)

In 2019, genetic testing confirmed that Plaintiff had FSHD. (AR 674–77.)

That same year, Plaintiff was hospitalized for worsening symptoms of chronic kidney disease, including respiratory symptoms and hyperkalemia. (AR 652, 934.) Plaintiff ultimately recovered.

According to statements made as part of a general functional capacity evaluation by a physical therapist, Carissa Beyer, in June 2022, Plaintiff's FHSD continued to worsen in 2020.[2] Noting that Plaintiff "tend[ed] to minimize his limitations," Beyer recorded that Plaintiff stated he was able to drive until the beginning of the COVID-19 pandemic in 2019. (AR 28.) At that point, Plaintiff reported using a walker and orthotics devices on his feet to walk. (Id.) By May 2020, Plaintiff stated he was unable to safely drive. (AR 29.) By December 2020, he could no longer access the second floor of his home. (Id.) Plaintiff stated when working at a computer "his cervical pain progressively increased." (Id.)

In March and July 2021, Plaintiff went through two evaluations for a second kidney transplant. During the first evaluation by nephrologist Dr. Regmi, he received a Karnofsky score of 40 and was described as having "[m]oderate limitation[s]" on his physical activity. (AR 533.) A Karnofsky Score, a general functional measurement, of 40 accords to a level of functional capacity of "[d]isabled, requir[ing] special care and assistance" and that the patient is "[u]nable to care for self; requires equivalent of institutional or hospital care; disease may be progressing rapidly." (AR 922.)[3] Around the same time in March, Plaintiff underwent a psychosocial assessment for the transplant with the Licensed Social Worker Merci Lynne Garziosi, where he

[2] The Court recounts Plaintiff's medical history in order. Beyer's contemporaneous observation of Plaintiff in 2022 are detailed below.

[3] Defendant devotes several pages of their sur-reply to explaining why Plaintiff's Karnofsky score is inaccurate. (Sur-reply at 6–7.) While the analysis of whether the Karnofsky score is sufficient to show Plaintiff was disabled is a legal question addressed below, there is no serious dispute that Dr. Regmi did, in fact, assign a score of 40. (AR 922.) Considering that Plaintiff relies on the Karnofsky score in his opening brief, the Court is not impressed by Defendant's attempts to discredit the accuracy of the doctor's diagnosis for the first time in its sur-reply. (Compare Motion at 28, with Opp'n (no mention of Karnofsky score) and Sur-reply at 6–7.)

stated he could "ambulate independently without the assistance of walking aids," though was currently in physical therapy and working on exercises for "1/2 hour a day." (AR 529.)[4]

In his second evaluation in July of 2021 by Dr. Minh-Tri Nguyen, Plaintiff was observed to have FSHD starting in his mid 50s. (AR 520.) Dr. Nguyen described Plaintiff as able to "walk[] around the house by leaning/holding on wall/furniture" and requiring a walker or wheelchair for longer distances. (AR 520.) She made an in-person observation that "[i]n clinic, walked slowly by using wheelchair as walker." (Id.) At the time of the visit, Plaintiff could "still use [a] stationary bike and still works as engineer." (AR 524.) Due to Plaintiff's degenerative FSHD, he was diagnosed as a "fair" candidate for a transplant because a "deterioration in functional status could contraindicate kidney transplant in the future." (AR 524.)

As discussed below, Plaintiff was terminated from his job on February 4, 2022. (AR 2375.)

On February 8, 2022, Plaintiff returned to his primary care doctor, Dr. Win. (AR 111.) Dr. Win and Plaintiff discussed applying for disability. (Id.) Dr. Win observed Plaintiff was "very weak and cannot walk at all" because his "muscles got atrophy." (Id.) He required an electric wheel-chair because he "cannot push a wheel-chair." (Id.) It was "very hard" for Plaintiff to "sit on the chair because his back muscles are getting weak." (Id.) Dr. Win later reflected on this visit in an October 2022 letter, where he stated "it was decided that it was best that he go out on disability since due to the fact that [Plaintiff] can no longer utilize his upper extremities, he is unable to type or use a mouse which clearly precludes him from being able to perform his job." (AR 477.)

In March 2022, Dr. Win submitted an Attending Physician Statement for Defendant. (AR 2340.) In his statement, he stated Plaintiff could only sit for 3 hours continuously, and could not stand or walk. (AR 2338.) Dr. Win again stated Plaintiff suffered from FHSD and had "bilateral foot drop, then bilateral bicep atrophy & generalized muscle loss." (Id.)

At the time of Plaintiff's aforementioned functional capacity evaluation by Carissa Beyer in June 2022, Plaintiff was limited to "sit[ting] in an upright chair up to 1-hour without his head/neck supported before reporting increased cervical pain," was "unable to stand unsupported due to his poor balance and muscle weakness," "cannot safely walk in a work setting," "is a fall risk and is only safe at wheelchair when outside of his own familiar home environment," and "[d]ue to his profound weakness, progressive neuromuscular disease and cervical pain, the [Plaintiff] . . . *cannot work at any physical demand level including any sedentary occupation*." (AR 29 (emphasis added).) His left bicep was atrophied so he used his "right hand for activities such as eating and brushing teeth." (AR 29.) He spent "the majority of

[4] Graziosi recorded that Plaintiff "enjoys playing tennis and stays busy working." (Id.) Defendant seizes on this as an admission to suggest that Plaintiff was healthy and still playing tennis in 2022. (Sur-reply at 7.) The Court discusses this inconsistency below.

his day reclined in a recliner chair." (AR 29.) She also noted Plaintiff's tendency to "minimize his limitations." (AR 28.) In his October 2022 letter, Dr. Win concurred in Beyer's findings, stating he "agree[d] that he is at a very high risk for falling . . . [S]ince he must recline his head to avoid cervical pain, this also impedes his ability to function on a computer keyboard and mouse—coupled with the fact he cannot lift his upper extremities to do so anyway." (AR 477.) Dr. Win also agreed Plaintiff was "completely preclude[d] from performing any work on a full-time or part-time basis." (Id.)

Plaintiff applied for Social Security benefits in May of 2022, and in July 2022, the Social Security Administration ("SSA") reviewed Plaintiff's request for benefits. (AR 729–30.) He stated his disability began on February 4, 2022. (AR 730.) The SSA found that Plaintiff's muscular dystrophy was "severe" and met the requirements for a disability claim as of February 4. (AR 736–37.) The SSA also reviewed his kidney issues and found they were "severe," but did not then meet the criteria for a disability listing. (AR 736.)

Plaintiff met with a vocational expert, Christy Singh, in August 2022. Singh notes Plaintiff "made every effort to continue working, but experienced significant difficulties." (AR 43.) Though Plaintiff was terminated, Singh states Plaintiff "took medical leave" and "after an extended period of absence, his employer was forced to terminate him in February 2022." (AR 43.)[5] Singh observed Plaintiff was "a proud individual and appeared hesitant to discuss his dependence on his wife to complete basic activities of daily living to include grooming, ambulation and transferring." (AR 44.) Plaintiff was unable to lift objects greater than five pounds and unable to push his wheel chair. (Id.) He could not sit for more than fifteen minutes and was unable to walk or stand independently. (Id.) He was unable to hold a coffee cup for more than thirty seconds and reported he required help from his wife bathing. (Id.)

Singh found that Plaintiff "is unable to perform his Own Occupation as such work is performed at the light exertional level and he is limited to less than the full range of the sedentary exertional demand range." (AR 49.) She also concluded Plaintiff is "unable to engage in any meaningful work activity on any consistent, reliable basis." (AR 50.) Singh's opinion relied on "the records supplied to date" (including records from Dr. Win, Plaintiff's physical therapist, and the functional capacity evaluation by Carissa Beyer) and her "direct vocational interview" with Plaintiff. (AR 50.)

[5] As Defendant observes, this is inaccurate. Plaintiff was terminated due to a reduction in force and had not requested time off before his termination. (AR 43.) That said, the Court is unsure how much this statement undermines Plaintiff's credibility as opposed to Singh's narration—it seems at least somewhat likely that Singh could have misunderstood Plaintiff's statements. That said, as the Court will detail below, it finds the in-person physical and medical evidence more credible than Plaintiff's narration of his own condition, and still sufficient to support Plaintiff's claim.

By December 2022, Plaintiff's upper body muscles, including his respiratory muscles, had grown so weak he required a ventilator. (AR 284.) Despite participating in physical therapy, Plaintiffs condition continued to deteriorate through 2023. (AR 476.)

In May 2023, Plaintiff and his wife submitted declarations describing the progression of the disease, and Plaintiff's increasing reliance on his wife. (AR 820–25.)

D. Plaintiff's Initial Claim and Appeal

Plaintiff's last day of work was February 4, 2022. (AR 821.) Plaintiff recalled "call[ing] Defendant sometime between February 4 and February 7 of 2022 to find out how to apply for disability." (Id.) Defendant stated it received Plaintiff's request for disability benefits on February 8, 2022. (AR 2345.) In its Short-Term Disability Claim files, Defendant recorded that Plaintiff's "Last Day Worked" was February 4, 2022, and that Plaintiff's "Disability Start Date" was February 7, 2022. (AR 2354.)

In a follow-up call with Plaintiff on February 17, 2022, Defendant "confirm[ed]" Plaintiff's "date last worked" was February 4, 2022, and that his "first day absent" was February 7, 2022. (AR 2764.) During the call, Plaintiff "states he has limitations but [Plaintiff's doctor] has not given any [restrictions or limitations]. EE states no walking, no lifting, pretty much can not do anything." (AR 2766.) Plaintiff described his job duties as not requiring "lifting or carrying," instead as "designing electronic thing, designing circuit boards, helping w/production." (AR 2767.)

On March 2, 2022, Defendant rendered its initial determination that Plaintiff's disability start date was February 7, 2022 "per intake," and because Plaintiff was terminated on February 4, 2022, he was no longer eligible for short-term disability benefits. (AR 2767.) Defendant informed Plaintiff of its decision that same day. (AR 2342.) Plaintiff was informed of his ability to appeal Defendant's short-term benefit decision. (Id.)

On March 7, 2022, Defendant received a letter from Dr. Win discussing Plaintiff's FHSD. (AR 2335–37.) In the letter, Dr. Win stated he had not previously advised Plaintiff to stop working. (AR 2337.) At the same time, Dr. Win stated Plaintiff "cannot do any activities," "cannot stand up, lift arms, [and] cannot sit down for a long time," due to his "bilateral foot drop, then bilateral bicep atrophy, and generalized muscle loss." (AR 2338–39.)

On March 11, 2022, after his claim for short-term disability benefits was denied, Plaintiff called Defendant to inquire about long-term disability benefits. (AR 2790.) That triggered a new claim at Defendant where the "setup did not go forward" because Plaintiff's long-term "coverage ended by 2/4/2022" and the disability date was 2/7/2022. (Opp'n at 5; AR 2791.) At that point, Plaintiff had not submitted a formal written request for long-term disability using the appropriate claim form.

On March 21, 2022, in a call logged under his short-term claim, Plaintiff and his wife called to discuss his claim. (AR 2772.) During the call Plaintiff "state[d] he was let go on 2/4/2022 but was disable[d] before that date but kept working." (AR 2772.) Defendant's representative stated to Plaintiff "that unfortunately that we cant not pay the policy if [Plaintiff] wasn't out on a disability claim before the date he got let go." (AR 2772.)

Plaintiff retained counsel as of April 4, 2022. (AR 2321.) His counsel sent a letter noticing their appeal of the denial of Plaintiff's request for short term disability benefits and requesting various documents. (AR 2321.)

On April 28, 2022, Defendant's claims handler inquired with Schneider about Plaintiff's long-term disability benefits claim. (AR 2653.) The handler asked: "Dharmasena has filed a Long Term Disability Claim. He is reporting date last worked as [sic] 2/4/2022, but we show his STD and LTD coverage stopped as 2/4/2022. Was he terminated? If so, what date. Did he work 2/4/2022? If not what was his date last worked." (AR 2653.)

As of June 29, 2022, Schneider's records from Defendant showed that Plaintiff's request for short-term and long-term disability had been denied.[6] (AR 2630.) On June 29, Schneider reached out to Defendant to ask whether Plaintiff had appealed either denial. (AR 2629–30.) Defendant responded that Plaintiff's long-term disability coverage ended on February 4, 2022. (AR 2629.)

On September 2, 2022, Plaintiff's attorney sent a letter to Defendant "constitut[ing] his administrative appeal of Defendant's denial of his LTD/LWOP claim." (AR 2184.) The letter attached the functional capacity evaluation by Carissa Beyer on June 27, 2022. (AR 2184–2255.) The letter stated it would attach more information, but due to a change in counsel, Plaintiff's firm did not submit more information. (AR 2181, 2184.) Defendant replied, confirming receipt of "the appeal of the denial of [Plaintiff's] Short Term Disability (STD) Claim." (AR 2174.)

Plaintiff's attorneys sent two more letters on October 6 and October 22, 2022 to appeal the short-term disability benefits decision, and to "initiate a claim for Long-Term Disability ("LTD")." (AR 2154, 2165.) The letters submitted medical records, declarations, research articles, and information from Plaintiff's successful application for Social Security Disability Insurance benefits. (AR 2154.) In his letters, Plaintiff argued that despite working until February 4, 2022, he was disabled before that date. (AR 2157–58.)

On November 2, 2022, Defendant informed Plaintiff it was denying his appeal of his short-term disability benefits. (AR 2139.)

[6] It appears that Plaintiff was never informed of this "denial," and the parties seem to equivocate about whether Plaintiff's long-term disability claim was denied at this point.

On November 18, 2022, Defendant informed Plaintiff, in admitted error (Opp'n at 8), that it was denying his claim for long-term disability benefits because it was no longer administering claims for Schneider. (AR 2651.) Defendant was still administering claims for Schneider as of February 2022, so retained responsibility for Plaintiff's claim. (Opp'n at 8; AR 2358–60.)

In May 2023, Plaintiff responded with an appeal of his long-term disability denial. (AR 12–23.) Plaintiff again submitted his medical records that form much of the record for this Court's review.

In response, on May 26, 2023, Defendant granted Plaintiff's appeal inasmuch as its previous rationale—that it no longer administered claims for Schneider—was in error. (AR 2369.) Defendant stated it was "forward[ing] [Plaintiff's] claim to the Claims Specialist." (Id.)

On June 2, 2023, Defendant's claims specialist reached out to Schneider to confirm Plaintiff's "Date Last Worked," "First Date Absent," "Date Employee was Laid Off," and inquired "If Employee was Laid Off, would employee have LTD benefits?" (AR 2621.) Schneider replied that "[t]he employee would lose all benefits on the date of lay-off unless they converted their LTD or their date of disability was determined to be prior to the lay-off." (AR 2375.)

On June 29, 2023, Defendant sent Plaintiff his denial letter. In the letter, Defendant corrected its previous denial rationale—that Defendant no longer administered claims—and now stated that "the disability was being claimed as of February 7, 2022" in part because Plaintiff "submitted a request to your former employer for a medical leave to begin February 7, 2022." (AR 2358.) Because Plaintiff was laid off on February 4, 2022, Defendant decided the date of disability was on February 7, 2022 at the earliest, and Plaintiff "did not have active LTD insurance coverage as of February 7, 2022," Defendant denied Plaintiff's request for benefits. (AR 2358.)

Plaintiff then filed the present lawsuit. (Dkt. No. 1.)

II. CONCLUSIONS OF LAW

A. Standard of Review

Under ERISA, a beneficiary or plan participant may sue "to recover benefits due to him under the terms of his plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan." 29 U.S.C. § 1132(a)(1)(B) (2006). A denial of benefits under 29 U.S.C. § 1132(a)(1)(B) is reviewed under a de novo standard unless the benefit plan gives the administrator or fiduciary discretionary authority to determine eligibility for benefits or to construe the terms of the plan. Firestone Tire & Rubber Co. v. Bruch, 489 U.S. 101, 956-957 (1989). A court employing de novo review in an ERISA case "simply proceeds to evaluate whether the plan administrator correctly or incorrectly denied benefits." Abatie v. Alta Health & Life Ins. Co., 458 F.3d 955, 963 (9th Cir. 2006). "[T]he court does not give

deference to the claim administrator's decision, but rather determines in the first instance if the claimant has adequately established that he or she is disabled under the terms of the plan." Muniz v. Amec Const. Mgmt. Inc., 623 F.3d 1290, 1295-96 (9th Cir. 2010). In reviewing the Administrative Record, "the Court evaluates the persuasiveness of each party's case, which necessarily entails making reasonable inferences where appropriate." Schramm v. CNA Fin. Corp. Insured Grp. Ben. Program, 718 F. Supp. 2d 1151, 1162 (N.D. Cal. 2010). Plaintiff bears the burden of showing, by a preponderance of the evidence, that she was disabled under the terms of the plan during the claim period. Eisner v. The Prudential Ins. Co. of Am., 10 F. Supp. 3d 1104, 1114 (N.D. Cal. 2014).

B. Discussion

As the Court is applying de novo review, no deference is given to the claim administrator's decision, and the Court merely evaluates the persuasiveness of each side's case and determines if Plaintiff has adequately established that he is disabled under the Plan. Plaintiff no longer seeks short-term disability benefits, so that claim is dismissed, and this decision only addresses Plaintiff's entitlement to long-term disability benefits.

1. Scope of Review

The Court first, however, addresses the permissible scope of argument in its review of the denial of ERISA benefits. Plaintiff argues that in its initial determination, Defendant only argued that Plaintiff was not eligible for long-term disability benefits because he was terminated on February 4 and stated his date of disability. And the Ninth Circuit has previously held in Harlick v. Blue Shield of California, a "plan administrator may not fail to give a reason for a benefits denial during the administrative process and then raise that reason for the first time when the denial is challenged in federal court." 686 F.3d 699, 719 (9th Cir. 2012). As such, Plaintiff argues Defendant should be restricted to that procedural argument in this Court's review and not permitted to argue Plaintiff's disability claim on the merits.

In an unpublished decision, the Ninth Circuit has explained that in an ERISA case, the plan can not provide a new "reason" for denial upon review in the district court, but is permitted to make "factual arguments" in rebuttal. Beach v. Liberty Life Assurance Co. of Bos., 763 F. App'x 601, 602 (9th Cir. 2019). Admittedly, this distinction does not offer the Court much guidance. It seems the Ninth Circuit is suggesting the plan may not rely on a new or different term of the plan—that it did not rely on in its initial denial—to support the denial of benefits upon review in this court. On the other hand, where the "reason" for denial is insufficiency of evidence (of disability), and that argument was not raised in the initial claim denial, it seems the distinction between a new "reason" and a "factual argument" is blurry at best. In this Court's view, the Ninth Circuit's distinction seems motivated by the limitations on the record in an ERISA case and concerns of prejudice. That is, so long as a Plaintiff is "adequately permitted" to "pursue [his] appeals and litigation," and Defendant's arguments are

"founded solely on information in the record," Defendant is within the bounds of permissible argument.[7] Beach, 763 F.App'x at 602.

Ultimately, the Court cannot read Harlick to disclaim Plaintiff of his burden of proof, as the claimant, to "show he was entitled to the benefits under the terms of his plan." Muniz v. Amec Const. Mgmt., Inc., 623 F.3d 1290, 1294 (9th Cir. 2010) (cleaned up) (quoting Farley v. Benefit Trust Life Ins. Co., 979 F.2d 653, 658 (8th Cir. 1992)). Defendant is at least entitled to rebut Plaintiff's attempt, on the evidence in the record, to meet his burden. That said, because the Court finds that Plaintiff meets that burden, it need not wade further into the scope of permissible argument by a plan as to those reasons not articulated at the time of the initial decision.

2. Retroactive ERISA claims

The Court's task is to decide "in the first instance if the claimant has adequately established that he or she is disabled under the terms of the plan." Muniz, 623 F.3d at 1295-96. Plaintiff must show that her medical conditions cause an impairment and that the impairment is disabling. See Jordan v. Northrop Grumman Corp. Welfare Benefit Plan, 370 F.3d 869, 872 (9th Cir. 2004).

The Court first turns to Defendant's only stated reason for denial—that Plaintiff claimed his disability started on February 7, 2022 and Plaintiff was laid off on February 4, 2022. (AR 2358.) The record does not support that Plaintiff claimed a date of disability of February 4, 2022. Defendant denied Plaintiff benefits because Plaintiff "last worked" on "February 4," that Plaintiff submitted a request for leave "to begin on February 7," and "the information contained in this [long-term disability] claim . . . indicate[d] the disability was being claimed as of February 7, 2022." (AR 2358.) Because the disability was being claimed as of February 7, and Plaintiff had been laid off, Defendant held Plaintiff was ineligible for benefits.

The evidence Defendant relies upon to suggest that Plaintiff claimed disability as of February 7 is intertwined with a critical legal question in this case—whether, under the Plan, Plaintiff can be considered "disabled" on or before February 4 if he was "continuously employed and working with no loss of earnings through February 4, 2022." (Opp'n at 23.) That is, the evidence that Defendant relies on for its denial—i.e. the last day Plaintiff worked—equates Plaintiff's last day worked with the date of his disability.

A plaintiff could be disabled under the Plan without experiencing a loss of earnings and while still working continuously. Under the Plan, a participant is "disabled" if they are "unable

[7] It seems a corollary principle, that if the Court were to deny Plaintiff's claim for failing to meet his overall burden of proof, and the plan had not raised the issue in the initial claim, the appropriate remedy would be remand to the plan for the opportunity to submit additional evidence, instead of affirming the denial of benefits.

to earn" "more than 80%" of their predisability earnings at their "own occupation" or "more than 60%" of their earnings at "any employer." (AR 2865.) The key term is "unable to earn." The Court interprets this in line with those Circuits that have held there is no "logical incompatibility between working full time and being disabled from working full time." Hawkins v. First Union Corp. Long-Term Disability Plan, 326 F.3d 914, 918 (7th Cir. 2003); Locher v. Unum Life Ins. Co. of Am., 389 F.3d 288, 297 (2d Cir. 2004). A plaintiff "might force himself to work despite an illness that everyone agreed was totally disabling." Hawkins, 326 F.3d at 918. There is no brightline rule that an employee must claim disability before being terminated to receive long-term benefits. Woo v. Deluxe Corp., 144 F.3d 1157, 1162 (8th Cir. 1998). That said, as other Circuits have recognized, while a plaintiff's continued employment certainly does not prohibit a retroactive disability claim, continued employment might weigh against a finding of disability. Locher, 389 F.3d at 297.

It is true, that if Plaintiff's date of disability were February 7, 2022, he would be ineligible for long-term disability benefits under the plan. But the evidence Defendant relies upon to establish Plaintiff's date of disability is related to when Plaintiff last worked, not when he became disabled. (AR 2358 (relying on Plaintiff's date "last worked," date he requested leave after being terminated, and other unstated information); AR 2764–64 (asking Plaintiff to "confirm first day absent").) Nieves v. Prudential Ins. Co. of Am., 233 F. Supp. 3d 755, 761 (D. Ariz. 2017) (questioning date of disability when "every citation" in the administrative record is "to a document [Defendant] created"). Because Plaintiff's last date of work and date of disability are distinct analyses, and Defendant's claim denial equates the two, the Court finds that Plaintiff's retroactive claim for benefits is permitted so long as the record evidence supports that Plaintiff was disabled on or before February 4, 2022.[8]

3. Plaintiff's Disability

The Court must still, however, determine whether Plaintiff was disabled as of February 4, 2022. The Court finds that there is adequate evidence in the record to support Plaintiff's claim he was disabled by a preponderance of the evidence, and overturns Defendant's denial of benefits.

Because the plan asks about Plaintiff's ability to earn 80% of his predisability earnings at his "own occupation," the Court first looks to record evidence defining the vocation requirements Plaintiff's occupation.[9] The parties dispute whether Plaintiff's job required lifting,

[8] The Court also agrees that the Plan seems to contemplate such a situation stating that Plaintiff's insurance would end if he was "not disabled on" "the date [he] cease[d] Active Work in an eligible class." (AR 2872.)

[9] Defendant does not make any argument as to whether Plaintiff satisfied the second prong—whether he could earn 60% of his predisability earnings after the Elimination Period and the next 24 months. Considering the substantial evidence of continued deterioration in Plaintiff's condition after 2022 and the SSA award, the Court finds this prong satisfied.

standing, and walking. On one hand, after an interview and reviewing Plaintiff's medical record, Plaintiff's vocational expert described Plaintiff's job as requiring "occasional walking and standing, frequent reaching, manual dexterity, motor coordination, handling, fingering, sitting and standing." (AR 49.) On the other hand, at the time Plaintiff was terminated, he was working remotely, an arrangement that Schneider had provided to all employees as a result of the COVID-19 pandemic. (AR 2193.)

Absent some evidence that the shift to remote work resulted in a permanent shift in Plaintiff's job responsibilities instead of merely a temporary shift, the Court generally would be disinclined to accept Defendant's argument that the COVID-19 pandemic accommodations changed Plaintiff's vocational definition. However, even assuming as Defendant claims, that Plaintiff's job was only sedentary, and did not require standing or walking, the medical evidence still supports a finding of disability. For now, the Court asks whether or not Plaintiff would be able to sit, and "use a mouse and input[] code." (AR 29.)

In reviewing the medical record in an ERISA case, the "credibility of physicians' opinions turns not only on whether they report subjective complaints or objective medical evidence of disability, but on (1) the extent of the patient's treatment history, (2) the doctor's specialization or lack thereof, and (3) how much detail the doctor provides supporting his or her conclusions." Shaw v. Life Ins. Co. of N. Am., 144 F. Supp. 3d 1114, 1129 (C.D. Cal. 2015)). Likewise, "[n]arratives provided by the claimant and any family and friends are properly accorded less weight than medical evidence in the record given their potential for bias and inability to 'diagnose medical conditions or assess functional capacity in the way individuals trained in the medical field can.'" Stratton v. Life Ins. Co. of N. Am., 589 F.Supp.3d 1145, 1175 (S.D. Cal. 2022) (citing Shaw, 144 F.Supp.3d at 1136).

The Court finds two items of evidence particularly probative. First, the Court relies on the contemporary visit notes on February 8, 2022, from his primary care doctor, Dr. Win. Dr. Win had been treating patient since at least 2017 (AR 107) and made in-person observations of Plaintiff during the visit. (AR 111.) During that visit, Dr. Win observed that it is "very hard" for Plaintiff to sit "because his back muscles are getting weak." (AR 111.) He also noted that Plaintiff "cannot use his upper extremity." (AR 112.) Fundamentally, even accepting Defendant's argument that Plaintiff only needed to sit, use a mouse, and input code for a job, if Plaintiff cannot sit or use his upper extremities, Plaintiff was disabled (he cannot earn more than 80% of his income at his occupation) within the meaning of the Plan. Even if Schneider had not yet acted on his performance or if Plaintiff was pushing himself beyond his limits, the best evidence of the reality of Plaintiff's condition comes from the physician who "actually examined" Plaintiff. Salomaa v. Honda Long Term Disability Plan, 642 F.3d 666, 676 (9th Cir. 2011) Defendant's only real objection is that this appointment was on February 8, and Plaintiff's date of disability was February 4. While there is some evidence in the record to suggest that the condition of some patients with FHSD rapidly deteriorates (AR 2097), there is no evidence to suggest that Plaintiff's condition could have deteriorated so rapidly that he was not disabled on the date of his termination.

Dr. Win expanded on this visit in his March 2022 Attending Physician Statement submitted to Defendant. Dr. Win stated Plaintiff "cannot do any activities," can only sit for three hours each day, and only perform fine finger movements for 3 hours each day. (AR 2338–39.) Again, considering Plaintiff was required to sit, use a mouse, and enter code, those conclusions are plainly inconsistent with Defendant's finding of no disability. While Defendant suggests this is an after-the-fact diagnosis entitled to less weight, because of the length of Dr. Win's treatment of Plaintiff and because Dr. Win observed Plaintiff roughly contemporaneously to the relevant date of disability, the Court finds the Statement persuasive.

Second, the Court also agrees that Plaintiff's SSA award with a date of disability supports a finding of disability in this case as well. As this Court has previously explained, "[w]hile the de novo standard of review applies in this case, the Court must take into account the 'weighty evidence' that the SSA found that Plaintiff was disabled." Rodas v. Standard Ins. Co., No. EDCV132203, 2015 WL 5156455, at *8 (C.D. Cal. Sept. 1, 2015) (citing Salomaa v. Honda Long Term Disability Plan, 642 F.3d 666, 679 (9th Cir. 2011)). Here, the requirements for disability under the SSA are stricter than the Plan. Whereas the Plan requires that Plaintiff be unable to make 80% of his income at his current occupation, the SSA requires Plaintiff to prove "inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months." 42 U.S.C. §§ 423(d)(1)(A), (5)(A).

Defendant's arguments why the Court should discount the SSA award collapse under scrutiny. First, Defendant argues that the SSA does not "require [Plaintiff] to show a loss of earnings on or before February 4, 2022." (Opp'n at 17.) As discussed above, Plaintiff does not need to show a loss of earnings to be disabled under the Plan. Second, Defendant argues there is "no indication that the SSA investigated the actual onset of [Plaintiff's] disability" on February 4, as opposed to relying solely on its observations in July 2022. (Opp'n at 16.) While the retrospective nature of the SSA's analysis accords it less weight than other contemporary medical observations, the SSA's analysis is consistent with those records. The Court also finds no support for the proposition that the SSA "simply adopt[s]" claimants' proposed date of disability. (Opp'n at 17.) Even if the SSA's decision occurred after Plaintiff's date of disability, it must have found the date of disability consistent with its review in July 2022. The SSA award weighs in favor of finding Plaintiff was disabled as of February 4, 2022.

Defendant spends much of its opposition explaining why some evidence, particularly those reports based on Plaintiff's testimony and observations made in late 2022 through 2023. As the Court recounted in its findings of fact, Plaintiff's testimony, as recorded, is sometimes conflicting with other record evidence. The Court is unsure, and it is impossible to tell on the record, whether those inconsistencies are due to misunderstandings by treating physicians or Plaintiff not telling the truth. Nevertheless, the Court discounts his declarations in October 2022 for that reason. (Sur-reply at 8.) That the Court discounts Plaintiff's testimonial evidence is ultimately irrelevant because, as detailed above, there is sufficient objective evidence from

his to support a determination of disability. The mere fact that some evidence in excess of that is unreliable does not undermine the credible evidence.

The Court does, however, address the evidence that Defendant suggests supports a negative inference as to Plaintiff's disability because it conflicts or undermines other record evidence.

There is significant debate over Plaintiff's kidney transplant evaluations. Some of that evidence supports a finding of disability. In Plaintiff's March 2021 kidney transplant evaluation, the nephrologist, Dr. Regmi described Plaintiff as having "[m]oderate limitation[s]" on physical activity, and received a Karnofsky Score of 40. (AR 533.) That score corresponds to an overall function capacity of "[d]isabled, requi[ing] special care and assistance." (AR 922.)

Defendant argues that Plaintiff's March 2021 Karnofsky score conflicts with Dr. Nguyen's July 2021 transplant assessment. (Sur-reply at 7.) Despite Plaintiff raising the Karnofsky score in his opening brief, Defendant raises this rebuttal argument for the first time in its sur-reply, so the Court need not consider it. Bazuaye v. INS, 79 F.3d 118, 120 (9th Cir. 1996). In any event, there is nothing conflicting about Dr. Nguyen's report. Defendant argues that because Plaintiff told Dr. Nguyen he could still use a stationary bike, working, and only had "mild decline" over the last year, he was not disabled. But that Plaintiff was participating in physical therapy and pushing himself to work is not inconsistent with a finding of disability. While this evidence may not be sufficient or specific enough on its own to support a finding of disability, it nevertheless bolsters Dr. Win's findings the following February.

Defendant points out Plaintiff did make a statement to his social worker in March 2021 that he enjoyed playing tennis which seems inconsistent.[10] (AR 529.) However, other record evidence shows Plaintiff stated he stopped playing tennis in 2014. (AR 1052.) While the inconsistency is part of the reason the Court discounts Plaintiff's testimonial evidence, the Court will not take this inconsistency to mean that Plaintiff was actually playing tennis in 2021, considering the immense weight of evidence that suggests Plaintiff's foot muscles had atrophied by 2018. (AR 101.)

Defendant also argues that Plaintiff's statements to Dr. Vaidya in a telehealth visit in February 1, 2022 undermine a finding of disability on February 4, 2022. Defendant relies on a four-line report from the visit (to discuss lab reports related to his kidney issues) where Dr. Vaidya noted the patient "reports doing well." (AR 711.) Defendant states there was a "physical exam" that did not mention his sitting difficulties, (Opp'n at 18) but the last in-person

[10] Defendant attempts to have it both ways on Plaintiff's testimonial evidence. When Plaintiff makes statements that he was doing well to his date of disability, Defendant asks the Court to take him at face value. When he states he was struggling, Defendant asks the Court to discount his testimony. Ultimately, the Court discounts Plaintiff's testimony (both for and against a finding of disability) and instead relies on the findings of his treating physicians.

visit of Plaintiff was in February 25, 2020. The report from Dr. Vaidya's office refers to a range of visits and lab results from 2016 to 2022, so it is unclear when this "physical exam" occurred. Additionally, Plaintiff was seeing Dr. Vaidya—a nephrologist—for his kidney issues, not FHSD, so it is unclear why Dr. Vaidya would be assessing his motor function. Indeed, the visit notes describe the onset of Plaintiff's FHSD, but defers to other doctors. (See, e.g., AR 708 (from August 20, 2019 visit, Plaintiff "is currently being followed by neurologist for foot drop in RLE").)

Because the record is sufficient for the Court to determine that Plaintiff was disabled, and this case comes to the Court on de novo review, the Court thinks remand is inappropriate. Harlick, 686 F.3d at 719. Defendant has not made any argument as to what would be different about its review upon remand. As to any claim that Plaintiff failed to exhaust his remedies, Defendant both rendered an appeal decision and failed to raise the issue until the final point of this litigation. Defendant cannot use an indefinite piecemeal adjudication process whereby it denies claims on procedural issues, requires a claimant to exhaust an appeal on that issue, return for another adjudication, appeal that determination, and so on. Both sides have had a fair opportunity to argue their views on whether Plaintiff was disabled under the Plan, and the Court sees no reason to delay Plaintiff's review further.

III. CONCLUSION

Based on its findings of fact and conclusions of law, the Court concludes Plaintiff was disabled within the meaning of the Plan and was entitled to long-term disability benefits. Accordingly, the Court reverses Defendant's decision to deny Plaintiff's long-term disability benefits. Accordingly, Plaintiff is entitled to have judgment entered in his favor as to those benefits. Plaintiff has abandoned his claims for short-term disability benefits. The Court **ORDERS** Plaintiff to lodge a proposed judgment consistent with this order by **June 9, 2025.**

IT IS SO ORDERED.