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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Rebecca Brown,

10 Plaintiff,

11 v.

12 Life Insurance Company of North America,
13 a/k/a CIGNA Group Insurance

14 Defendant.

No. CV-16-00162-TUC-JAS

**FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

15 **STANDARD OF REVIEW**
16

17 As both parties stipulate, this dispute pertaining to the denial of disability benefits
18 is governed by the Employee Retirement Income Security Act (“ERISA”)¹, and the
19 standard of review for this Court is *de novo*.²

20 The Court has reviewed the record in this case and Brown I,³ Plaintiff’s motion for
21 summary judgment and statement of facts (Docs. 62, 71), Defendant’s motion for
22 decision of the administrative record (Doc. 60), the parties’ respective responses (Docs.
23 73, 74), and the pertinent authority. The Court agrees with Defendant inasmuch as this
24 Court will not review this case under summary judgment standards, but will conduct a

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26 ¹ See 29 U.S.C. § 1001 *et seq.*

27 ² Because the briefing is adequate and oral argument will not help in resolving this
28 matter, oral argument is denied. See *Mahon v. Credit Bureau of Placer County, Inc.*, 171
F.3d 1197, 1200-1201 (9th Cir. 1999)

³ Brown I is discussed in more detail below.

“paper trial” on the merits of this case. *See* Defendant’s Briefs at Doc. 60, p. 12 n. 7 (“ . . . [I]n ERISA cases, the Court decides the merits of the case based on the parties’ respective briefs on the administrative record. *Kearney v. Standard Ins. Co.*, 175 F.3d 1084 (9th Cir. 1999) [*en banc*] (court decides ERISA cases after ‘paper trial’ on the administrative record) . . .”); Doc. 74, p. 2 n. 1 (same); *see also* *Kearney*, 175 F.3d at 1095 (“[T]he district court may try the case on the record . . . The district judge will be asking a different question as he reads the evidence, not whether there is a genuine issue of material fact, but instead whether [the plaintiff] is disabled within the terms of the policy. In a trial on the record, but not on summary judgment, the judge can evaluate the persuasiveness of conflicting testimony and decide which is more likely true.”).

The primary question before the Court is whether Plaintiff was disabled and unable to work in any occupation under the terms of the disability plan with LINA as of May 18, 2015 (i.e., the effective date that LINA terminated disability benefits). Plaintiff has the burden to demonstrate that she continued to be disabled within the meaning of the disability plan each month. *See Muniz v. Amec Const. Mgmt., Inc.*, 623 F.3d 1290, 1294 (9th Cir. 2010) (“when the court reviews a plan administrator’s decision under the de novo standard of review, the burden of proof is placed on the claimant”).

FACTS AND DISCUSSION

Brown II

On March 18, 2016, Plaintiff Rebecca Brown (“Brown”) filed a Complaint against Defendant Life Insurance Company of North America (“LINA”) alleging that it again wrongfully denied her claim for long-term disability insurance benefits (for a second time) effective May 18, 2015.⁴ LINA claims that Brown has no limitations that would

⁴ Brown was previously employed as corporate counsel for a company in Texas from 2009 to 2010. While there, she obtained a disability policy through LINA. Brown began developing numerous health problems that interfered with her ability to work starting in 2009 and 2010. As such, Brown sought disability benefits from LINA, and LINA initially determined that she was entitled to benefits and began paying her benefits for a period of time. However, effective March 8, 2012, LINA determined that Brown no longer had any ailments preventing her from working in her occupation as an attorney, and denied benefits. Brown filed a Complaint against LINA in May of 2013 alleging that it wrongfully denied benefits, and this case was subsequently removed to federal court in

1 prevent her from performing any occupation and therefore she is not entitled to any
2 disability benefits.⁵ The disability dispute in this case is referred to as Brown II.

3 **SSDI Benefits**

4 At the time of the denial of disability benefits by LINA on May 18, 2015, Brown
5 was receiving Social Security Disability Insurance (“SSDI”) benefits from the United
6 States Social Security Administration (“SSA”). Brown had been receiving SSDI benefits
7 since 2009. Shortly before LINA’s second denial of benefits on May 18, 2015, the SSA
8 again considered Brown’s medical circumstances, and reaffirmed in December of 2014
9 that Brown was still eligible for SSDI benefits.

10 **Brown I**

11 This is the second case in the District of Arizona (Tucson Division) between
12 Brown and LINA regarding the denial of disability benefits. Shortly before LINA denied
13 disability benefits again on May 18, 2015, United States District Judge David C. Bury
14 issued a written order on December 12, 2014 finding that LINA wrongfully denied
15 benefits (the first time) as Brown’s disabilities prevented her from engaging in any form
16 of employment. *See* CV 13-439-TUC-DCB (“Brown I”) (Doc. 55 at p. 16: “. . . [T]he
17 question before the Court is whether Brown was disabled and unable to work in her
18 regular occupation as corporate counsel or in any form of employment under the terms of
19 the Plan as of March 8, 2012 . . . Unfortunately Plaintiff has diseases and treatments for
20 these diseases that are incompatible with working in her own occupation as an attorney or
21 any gainful occupation over a consistent period of time.”).⁶

22
23 June of 2013. U.S. District Judge Bury found in December of 2014 that LINA
wrongfully denied benefits.

24 ⁵ Brown was born in 1983. Under LINA's disability policy, the potential benefit
25 period for disability payments to Brown could extend to age 67. Brown's gross disability
26 benefit is \$4,250 a month, but is offset by SSDI, which lowers the amount LINA was
27 obligated to pay to \$2,914 monthly. The disability policy has a COLA provision and the
benefit amount has been rising. The SSDI offset is frozen at the initial monthly award.
Benefits may continue until Brown turns 67 years old in October of 2050.

28 ⁶ Participants under the LINA disability plan are eligible to receive benefits if they
satisfy the terms of the Plan, which defines disability as: “The Employee is considered
Disabled if, solely because of Injury or Sickness, he or she is: 1. Unable to perform the

The Court has reviewed the record in this case (“Brown II”) and the record in Brown I, and agrees with the factual and legal analysis by Judge Bury in Brown I. *See id.* at Doc. 55. The Court notes that Plaintiff’s health history as it relates to this disability dispute overlaps with Brown I. The Court finds it unnecessary to repeat the discussion of Plaintiff’s extended health history and previous disability issues in Brown I as it was already properly addressed and discussed by Judge Bury. *See id.* Rather, this Court primarily focuses on Plaintiff’s health issues and disability status post-March 8, 2012 (the effective date of the first denial of benefits) to May 18, 2015 (the effective date of the second denial of benefits).

Credibility of Witnesses⁷

Shortly after Judge Bury found that LINA wrongfully denied benefits in December of 2014, and shortly after the SSA reaffirmed that Brown was still entitled to benefits in December of 2014, LINA arranged for two doctors (Dr. Brian F. McCrary, D.O., and Dr. John Tsanadis, Ph.D.) to conduct independent medical evaluations (“IME”) of Brown. Dr. Tsanadis conducted his IME on April 30, 2015, and Dr. McCrary conducted his IME on May 2, 2015. Both doctors concluded that Brown had no limitations that would prevent her from engaging in any sedentary occupation. Based on these IME’s, LINA denied Brown’s disability benefits effective May 18, 2015. Thereafter, Brown pursued an administrative appeal with LINA. While on appeal with LINA, LINA arranged for three more doctors (Dr. Michelle Park, M.D., Dr. Girtry Heydebrand, Ph.D., and Dr. N. Nicole Barry, M.D.) to conduct medical reviews of

material duties of his or her Regular Occupation; and 2. Unable to earn 80% or more of his or her Indexed Earnings from working in his or her Regular Occupation . . . After Disability Benefits have been payable for 24 months, the Employee is considered Disabled if, solely due to Injury or Sickness, he or she is: 1. Unable to perform the material duties of any occupation for which he or she is, or may reasonably become, qualified based on education, training or experience; and 2. Unable to earn 60% or more of his or her Indexed Earnings.” (emphasis added). As to the denial of benefits in Brown I, LINA denied benefits inasmuch as it found that Brown could perform her “regular occupation” as an attorney as of March 8, 2012. In Brown II, LINA denied benefits inasmuch as it found that Brown could perform “any occupation” as of May 18, 2015.

⁷ For ease of reference, the Court refers to the numerous individuals offering written statements or opinions in this case as “witnesses.”

1 Brown's records.⁸ Drs. Park, Heydebrand, and Barry all concluded that Brown had no
2 limitations that would prevent her from engaging in any sedentary occupation.

3 The Court rejects the testimony⁹ of Drs. McCrary, Tsanadis, Park, Heydebrand,
4 and Barry, and credits the testimony of Brown's treating physicians (Dr. Jennifer
5 Suriano, M.D., and Dr. Kenneth B. Gossler, M.D.).¹⁰ The Court also credits the
6 testimony of Plaintiff Rebecca Brown, and her mother (Susan Brown), regarding
7 Plaintiff's pain, level of pain, and frequency of her pain.¹¹ Dr. McCrary, Tsanadis, Park,
8 Heydebrand, and Barry were all compensated by LINA for their opinions. Dr. McCrary
9 met with Brown on a single occasion for one hour. Likewise, Dr. Tsanadis only met with
10 Brown on a single occasion. Drs. Park, Heydebrand, and Barry never met Brown, and
11 never had any contact whatsoever with Brown. In stark contrast to Drs. McCrary,
12 Tsanadis, Park, Heydebrand, and Barry (who either met Brown on one occasion or never
13 had any contact with Brown at all), Plaintiff's treating physicians (Drs. Suriano and
14 Gossler) actually had regular contact with Plaintiff over the course of five years (i.e.,
15 prior to the denial of benefits on 5/18/15), diagnosed and treated her numerous health
16 conditions over the course of five years, and had the opportunity to observe and examine
17 Plaintiff over the course of five years to form their opinions.

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23 ⁸ Dr. Park's medical review is dated 12/16/15. Dr. Heydebrand's medical review
is dated 2/25/16. Dr. Barry's medical review is dated 1/20/16.

24 ⁹ For ease of reference, the Court uses the term "testimony" or "testified"
25 throughout this Order when referring to any written opinions, medical notations, letters,
diagnoses, statements, or other health records.

26 ¹⁰ The testimony of Drs. Soriano and Gossler support the conclusion that Brown
27 suffers from numerous health conditions that prevent her from engaging in any
occupation. Their opinions will be discussed in more detail later in this Order.

28 ¹¹ Plaintiff's and Susan Brown's testimony, which is consistent with Drs. Soriano
and Gossler, will be discussed in more detail later in this Order.

Brown's Health Issues and Disability Benefits¹²

The records and testimony from Brown's treating physicians support the conclusion that Brown's disabilities prevent her from engaging in any occupation; the testimony from Rebecca Brown and Susan Brown further support this conclusion.

Brown's diagnosed health conditions include: Chronic Regional Pain Syndrome ("CRPS") (CRPS is also known as and referred to as Reflex Sympathetic Dystrophy – ("RSD")), Raynaud's Disease, Nutcracker Syndrome, degenerative disc disease, celiac disease, plantar fasciitis, and autoimmune disorders which have been characterized as either connective tissue disorder, scleroderma, or lupus.

Records and testimony from Dr. Suriano¹³, who has treated Plaintiff for the last seven years, reflect how these conditions were disabling for Brown as of the effective date of the denial of benefits (i.e., 5/18/15), and how they continue to be disabling to this day.

Brown's diseases seriously limit the use of her hands. Dr. Suriano testified that:

Rebecca is medically disabled for many reasons. Rebecca's hands are a daily source of difficult problems. After years of analysis and diagnostic work, Dr. Gossler has concluded that Rebecca has Complex Regional Pain Syndrome (CRPS) in both her hands and in both her feet, which flare regularly. Her hands flare even more than her feet at this time. She also suffers Raynaud's Disease which is also a cause of the flares. The diagnosis of both CRPS and Raynaud's is correct and beyond doubt.

The frequency of flares to Rebecca's hands has become pretty much daily, sometimes more than once a day. She has suffered flares in my presence and during examinations in my office. She frequently experiences

¹² The discussion of Brown's health issues in relation to disability benefits is primarily drawn from the witnesses that the Court has found credible (i.e., Drs. Soriano and Gossler, and Rebecca and Susan Brown) and the underlying medical records at issue in this case. As referenced earlier, the discussion pertains to Brown's health issues and limitations post-March 8, 2012 (the effective date of the first denial of benefits) to May 18, 2015 (the effective date of the second denial of benefits).

¹³ Dr. Suriano, M.D., is Board Certified in Internal Medicine, and has a Masters Degree in Public Health which included training in occupational health. Dr. Suriano has been Brown's primary care provider since November of 2010. In addition to Dr. Suriano, Dr. Gossler has also been one of Brown's primary treating physicians since November of 2011.

1 temperature sensitivity, change in palpable temperature of a limb, and
2 changes of color during examinations. These temperature and color changes
3 are objective evidence and have great functional significance. My
4 instruction to Rebecca, consistent with that of Dr. Gossler and the medical
5 community that treats patients with CRPS, is to cease activity in order to
6 minimize the escalation and progression of the flare. The stressors which
7 have caused the inflammation and discoloration are likely to gain in
8 destructive power if there is continued activity once the flare starts.
9 Rebecca is following the limitations of her treating physicians when she
10 stops activities with her hands and feet when the flares occur.

11 Rebecca is unable to keyboard, write, or do anything with continuity
12 with her hands . . . [R]eductions in opioid medications . . . plus the
13 increased use of her hands [trigger painful flares to Rebecca's hands].
14 When Rebecca uses her hands extensively it brings on flares. For Rebecca,
15 "excessive" use of the hands is what would be typically considered minimal
16 use for persons not suffering from her medical problems.

17 *See* AR 535-36.

18 Brown's diseases also restrain the use of her feet. Dr. Suriano testified that:

19 Brown's feet are a major source of difficulty contributing to her
20 medical disability. Prior to the implantation of the spinal cord stimulator the
21 pain to Rebecca's feet prevented her from being able to perform routine
22 activities of daily living such as showering without assistance. This is a
23 dramatic change from the physically fit 26 year-old runner and attorney that
24 she was in 2009. The progress made by the placement of a spinal cord
25 stimulator allows her to live a more normal life, but confirms that
26 extraordinary measures are needed to mitigate the tremendous pain which is
27 replaced by more bearable pain. Her feet still flare with some frequency. It
28 is impossible for her to function in a workplace at the time of a flare. Her
instruction from her treating physician is to place her feet at a higher
altitude than her waist, and "preferably higher than her heart." . . . On a
good day, Rebecca would be able to walk from 5-30 minutes at most . . .
[Walking] as much as 30 minutes is likely to bring on a flare, even on one
of Rebecca's best days . . . Rebecca may be able to stand as much as 5-20
minutes . . . without irresponsibly inviting a flare to her feet . . . Even with
these limitations, flares occur daily.

29 *See* AR 536.

30 The prescribed treatment for Brown's frequent daily flares in her body further

1 limit her abilities. Dr. Suriano testified that:

2 My instruction to Rebecca . . . is to respond to flares in hands, feet
3 and her gastrointestinal system by stopping activity to allow for flare
4 symptoms to subside. She also often needs to use temperature modulation
5 to slow down the flare – either electric blankets/hot compresses or ice baths
6 or freezer depending on the presentation of the symptoms. Rebecca is also
7 advised to avoid the stress which brings on flaring. This includes avoiding
8 moderate to high activity with hands and feet . . . It also involves avoiding
9 stressful emotional situations . . . to reduce stress levels . . . Rebecca cannot
10 tolerate stress . . . without risking flaring of symptoms. This can affect both
11 the CRPS and the auto immune disease entities. My restriction to her is to
12 attempt to limit stress and to turn off (if possible) whatever is causing stress
once a flare of any type is experienced. This advice is consistent with the
treatment of CRPS and auto-immune diseases. Stress is linked to flares
and the inflammation of cells in the nervous system . . . Significant
restrictions in [Rebecca's] activity level are necessary to keep the pain and
flares down to a somewhat tolerable level.

13 *See* AR 536-38.

14 Brown's degenerative disc disease, in conjunction with her CRPS and Raynaud's
15 Disease, impacts her ability to sit for extended periods of time on a daily basis. Likewise,
16 in connection with her autoimmune diseases and CRPS, Brown also suffers from frequent
17 fevers (at least several times weekly, and sometimes daily) that may be paired with bouts
18 of chills or sweating.
19

20 In light of Brown's numerous health issues, Dr. Suriano further testified that:

21 [I]n my years of experience with her, the many dozens of hours spent
22 reviewing her medical records and the numerous serial physical exams I
23 have performed, make it clear that she continues to lack the ability to
24 perform with any consistency and continuity. She is not medically able to
25 be a reliable employee. The ability to perform an occupation includes the
26 ability to show up and perform with regularity, with mental and physical
27 energy, and with an ability to focus. Rebecca has her limitations and
28 restrictions which require her to stop activity when there are flares, and to
moderate her level of activity to deter the occurrence of flares . . . Rebecca
Brown is not medically able to work full time.

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2 *See* AR 538.

3 The records and testimony from Dr. Gossler (Brown's other treating physician
4 since 2011) are consistent with Dr. Suriano's regarding Brown's limitations. For
5 example, Dr. Gossler testified that: "[Brown] has episodes of severe incapacitating pain
6 with significant color change . . . With [Brown's] reflex sympathetic dystrophy she would
7 be an unreliable employee incapable of coming in to work every day. Some days she
8 cannot use her hands or stand on her feet due to severe pain. Good or bad stress can
9 cause pain flares and she is very sensitive to changes in temperature . . . With regards to
10 her hands, she does have Raynaud's disease as wells as CRPS." *See* AR 422.¹⁴

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13 Likewise, the testimony from Rebecca Brown, and her mother (Susan Brown), are
14 consistent with the records and testimony from Drs. Suriano and Gossler.

15
16 After Rebecca lost her independence due to her various health problems, she
17 moved in with her mother. Rebecca has lived with her mother since 2010, and her
18 mother has spent more time with Rebecca than anyone else since 2010. Susan Brown has
19 testified that: "Rebecca suffers daily from pains and flares from her condition . . . suffers
20
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23 ¹⁴ The Court notes that LINA makes much of the fact that Brown took and passed
24 the Arizona Bar exam in February 2013 with the highest score; LINA argues this
25 undermines claims as to many of Brown's limitations. However, the Court gives very
26 little weight to this issue as Brown received numerous and significant accommodations in
27 taking the exam. For example, instead of taking the Arizona Bar Exam over course of
28 only two full days (with strict time limits to complete each section of the exam) which is
the standard procedure for applicants to the Arizona Bar, Brown was able to take the
Arizona Bar Exam over the course of four days, was given large amounts of additional
time exceeding standard limits to actually complete the tests, and was also given
numerous other accommodations for her various health issues. Brown's ability to focus
for a few days to complete a test whereby she was given numerous and significant
accommodations does not undermine the limitations stemming from the diseases at issue
reflecting that she is unable to perform any occupation.

1 from stressful activities . . . suffers from trying to perform normal activities, over periods
2 of time, which are routine for others who are not afflicted with illness . . . [and] Rebecca
3 has routinely suffered during those times when she has tried to ignore the flares of pain,
4 and attempted to ‘tough out’ whatever she was doing when pain fla[res].” *See* AR 603.

5
6 Similarly, Rebecca Brown has testified that: “Everyday tasks such as writing or
7 typing for extended periods of time often trigger a CRPS flare . . . [T]he frequency and
8 intensity of flares is always variable . . . [I have] persistent low grade fevers . . . While
9 my body has fevers, many times my hands and feet chill and are literally cold . . . [I have
10 a severe] problem in my lower back . . . This degenerative disc disease makes sitting and
11 moving around more difficult at times . . . My pain level can vary greatly from week to
12 week, sometimes dependent on the weather, my activities, my stress level, and a myriad
13 of other conditions at the time . . . Stress from any source . . . tends to increase the
14 frequency and intensity of my flares.” *See* AR 593-94.

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18 Based on the record before the Court and the credible testimony from Dr. Soriano,
19 Dr. Gossler, Susan Brown, and Rebecca Brown, the Court finds that Plaintiff suffers from
20 a combination of debilitating health conditions that preclude her from engaging in any
21 occupation. The Court finds that LINA wrongfully terminated Brown’s disability
22 benefits effective May 18, 2015.

23
24 In light of the foregoing, IT IS HEREBY ORDERED as follows:

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26 (1) Brown is awarded retroactive benefits calculated from May 8, 2015 to the date of this
27 Order, and shall be set off by any SSDI income received on a monthly basis. Retroactive
28 benefits (with interest), as well as monthly disability payments, shall be made to Brown

1 within 14 days of the filing date of this Order.¹⁵

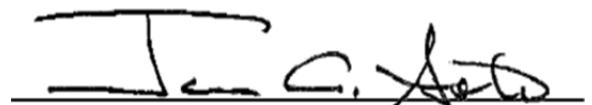
2 (2) LINA shall pay Brown's reasonable attorneys' fees and costs pursuant to 29 U.S.C. §
3 1132(g)(1),¹⁶ and shall cease terminating Brown's benefits without just cause.

4
5 (3) As to attorneys' fees, costs, and the proper pre-judgment interest rate,¹⁷ the parties
6 shall meet and confer within 21 days of the filing date of this Order to determine if they
7 can reach a stipulation as to the reasonableness of Brown's attorneys' fees and costs, and
8 the proper interest rate. If the parties are unable to reach a stipulation, Brown has leave
9 to file a motion for attorneys' fees and costs (which may include briefing on the proper
10 interest rate) within 60 days of the filing date of this Order. The parties may file a
11 stipulation and proposed order to alter these deadlines if they believe additional time is
12 warranted.
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15 The Clerk of the Court shall enter judgment in accordance with this Order.

16 Dated this 18th day of January, 2018.

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Honorable James A. Soto
United States District Judge

24 ¹⁵ See *Grosz-Salomon v. Paul Revere Life Ins. Co.*, 237 F.3d 1154, 1163-64 (9th
25 Cir. 2001) (holding that "retroactive reinstatement of benefits is appropriate in ERISA
cases" and that the district court appropriately awarded pre-judgment interest).

26 ¹⁶ See 29 U.S.C. § 1132(g)(1) ("In any action under [ERISA] by a participant,
27 beneficiary, or fiduciary, the court in its discretion may allow a reasonable attorney's fee
and costs of action to either party.").

28 ¹⁷ The briefs currently before the Court do not address the proper interest rate, or
the reasonable amounts of attorneys' fees and costs.