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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

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LORENE LUNDQUIST,  
Plaintiff,

NO. CV 02-9602 FMO

v.

ORDER REVERSING ADMINISTRATIVE  
DETERMINATION RE: ERISA BENEFITS

CONTINENTAL CASUALTY COMPANY,  
et al.,  
Defendants.

INTRODUCTION

This is a claim for the recovery of benefits under the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1001, et seq. For the reasons set forth below, the administrative decision to terminate benefits is reversed.

PROCEEDINGS

On December 17, 2002, plaintiff Lorene Lundquist ("plaintiff" or "Lundquist") commenced this action by filing a "Complaint For Breach Of Employee Retirement Income Security Act Of 1974" ("Complaint"), asserting that her disability benefits were improperly terminated in violation of ERISA. In her Complaint, plaintiff named as defendants Continental Casualty Company ("CNA") and Blue Cross of California Disability Plan.<sup>1</sup> Plaintiff requests the following relief: (1)

<sup>1</sup> Although not addressed by any of the parties, it appears that plaintiff inadvertently named Blue Cross of California Disability Plan as a defendant in her Complaint rather than WellPoint

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1 a declaration that she is disabled under the terms of the relevant disability plan and entitled to  
2 continued disability benefits; (2) payment of disability benefits due, including all prejudgment and  
3 postjudgment interest, from the date her benefits were terminated; (3) attorney fees and costs  
4 pursuant to 29 U.S.C. § 1132(g)(1); and (4) any further relief the court deems just and proper.

5 CNA and WellPoint STD Plan (collectively "defendants") filed their Answer to plaintiff's  
6 Complaint ("Answer") on February 12, 2003. In their Answer, defendants denied plaintiff's  
7 allegations regarding disability and raised two affirmative defenses, specifically that plaintiff's  
8 Complaint fails to state a claim upon which relief may be granted and that plaintiff's alleged  
9 injuries, if any, were proximately caused, wholly or in part, by the acts, omissions, negligence,  
10 neglect or wrongful acts of parties, persons, entities or corporations other than defendants.

11 On May 13, 2003, the parties consented to proceed before the undersigned United States  
12 Magistrate Judge. Subsequently, on September 17, 2003, the parties stipulated that "the case  
13 will be decided by the court based upon the administrative record, which is less than 200 pages,  
14 and any supplementation of the record the court deems permissible." (Court's Stipulation and  
15 Order Allowing Waiver of Settlement Conference and Setting Briefing Schedule for Trial, filed  
16 September 17, 2003, at 2).

17  
18  
19 Health Networks Group Short Term Disability Plan ("WellPoint STD Plan"). Such inadvertence,  
20 however, does not appear to be substantial or material. Indeed, in her Complaint, plaintiff  
21 correctly referred to Policy No. SR-83094619, the policy number for the WellPoint STD Plan.  
22 (Complaint at 2). Also, plaintiff's Proof of Service of Summons and Complaint reflects that plaintiff  
23 served her summons and Complaint on WellPoint Health Networks, Inc. rather than Blue Cross  
24 of California. In addition, plaintiff, throughout her pleadings, interchangeably used both entities,  
25 Blue Cross of California Disability Plan and WellPoint STD Plan. Furthermore, CNA and  
26 Wellpoint STD Plan, not Blue Cross of California Disability Plan, filed an Answer to plaintiff's  
27 Complaint, and all pleadings filed by defendants have named CNA and WellPoint STD Plan as  
28 the sole defendants in this action. Finally, WellPoint STD Plan, not Blue Cross of California  
Disability Plan, is named in the relevant plan documents submitted as part of the Administrative  
Record. Accordingly, the court will refer to CNA and WellPoint STD Plan as the proper  
defendants in its decision. See Everhart v. Allmerica Financial Life Ins. Co., 275 F.3d 751, 754  
(9th Cir. 2001), cert. denied, 536 U.S. 958, 122 S.Ct. 2662 (2002) (in an ERISA action to recover  
benefits, the plan is a proper defendant); Gaines v. Sargent Fletcher, Inc. Group Life Ins. Plan,  
329 F.Supp.2d 1198, 1210-11 (C.D. Cal. 2004) (insurance company that carried out actual  
administration of claims was proper defendant in ERISA action for recovery of benefits); 29 U.S.C.  
§ 1132(d) (an employee benefit plan may be sued under ERISA as an entity).

1 Plaintiff filed her "Trial Brief" ("Plaintiff's Trial Brief") on October 23, 2003, and defendants  
2 filed their "Opening Trial Brief" ("Defendants' Trial Brief") on October 24, 2003. Thereafter, on  
3 November 6, 2003, plaintiff filed a "Response to Defendants' Trial Brief" ("Plaintiff's Response  
4 Brief"), and on November 7, 2003, defendants filed a "Responsive Trial Brief" ("Defendants'  
5 Response Brief").

6 On November 18, 2003, the court heard oral arguments from plaintiff and defendants, after  
7 which the matter was deemed submitted. (See Court's Minute Order of November 18, 2003).

8 On March 3, 2004, plaintiff filed a document entitled "Supplemental Authority Re Standard  
9 of Review Following Trial" ("Plaintiff's Supplemental Authority"), in which plaintiff requested that  
10 the court take judicial notice of an opinion letter and notice issued by the California Department  
11 of Insurance ("California DOI"), on February 26 and 27, 2004, respectively, withdrawing approval  
12 of disability insurance policies containing discretionary clauses. In response to Plaintiff's  
13 Supplemental Authority, the court ordered additional briefing from the parties. (See Court's Order  
14 of March 5, 2004, at 1-2).

15 On March 25, 2004, plaintiff filed her "Supplemental Brief Following Trial" ("Plaintiff's  
16 Supplemental Brief"), and on June 16, 2004, defendants filed their "Post-Trial Supplemental Brief"  
17 ("Defendants' Supplemental Brief"). Shortly thereafter, on July 16, 2004, plaintiff filed a "Reply  
18 Brief In Support of Supplemental Brief Following Trial" ("Plaintiff's Supplemental Reply Brief").

19 The parties filed various requests for judicial notice from July 16, 2004, through March 31,  
20 2005, relating to the California DOI's revocation of its approval of discretionary clauses in disability  
21 insurance policies.

## 22 SUMMARY OF FACTS

### 23 I. PLAINTIFF'S EMPLOYMENT.

24 Plaintiff is a 66-year-old woman who began employment with Blue Cross of California  
25 ("Blue Cross") on April 14, 1997. (Administrative Record for ERISA Trial ("AR") at 2, 16 & 20).  
26 Plaintiff's last day of employment with Blue Cross was on December 7, 2001. (Id. at 19-20, 31,  
27 40, 52, 61, 64, 70, 73 & 125).

1 During her employment with Blue Cross, plaintiff worked as a Clinical Research Manager  
2 in the Grievance and Appeals Department, a department that handles approximately 700 appeals  
3 and complaints per month. (AR at 2, 16, 19-20, 22, 28, 31, 40, 59, 61, 64, 67 & 70). In this  
4 management position, plaintiff earned an annual salary of approximately \$72,185.00 to  
5 \$75,073.00. (Id. at 16 & 20). Her duties included: data entry; reviewing medical records;  
6 handling a case load of approximately 135 cases, each of which had to be closed within 30 days;  
7 handling expedited appeals, each of which had to be closed within three days; training new  
8 employees; and attending three to five employee management meetings a week, which lasted  
9 anywhere from one to four hours. (Id. at 16, 20, 22 & 70).

10 Plaintiff described her job as stressful due, in part, to a decrease in department size and  
11 a hiring freeze that was in place in 2001 and 2002. (AR at 24, 28 & 70). In a letter to defendant  
12 CNA, dated April 12, 2002, plaintiff stated:

13 Since I am one of the managers in [the Grievance and Appeals] department,  
14 I have a twofold job. Over the last 18 months the department has decreased  
15 in size and all the employees, especially the managers, have assumed an  
16 increase in the work load. I added to my work load of trainer of all new hires  
17 with a small case load, to a large case load of 135 cases, plus continued as  
18 a resource manager to all the employees. These cases have to be reviewed,  
19 records requested, re-reviewed and presented to a Medical Director, and  
20 closed with a decision within 30 days. There are also expedited appeals that  
21 have to be handled and closed within 3 days. This was added on to the 135  
22 cases already being reviewed.

23 Since I am in management I also attend 3-5 meetings per week, that  
24 last anywhere from 1-4 hours. As you can see this is much more than data  
25 entry and record review. With changes in the management of the  
26 department and a hiring freeze in the last year, the department became very  
27 stressful. The case load was 3 times what it was when I hired on with the  
28 company.

1 (Id. at 70).

2 II. THE PLANS.

3 Defendant CNA issued group insurance contracts providing short term and long-term  
4 disability benefits to WellPoint Health Networks, Inc. ("WellPoint"). (AR at 132-61 & 162-97).  
5 WellPoint, in turn, used the contracts to establish its Group Short Term Disability Plan ("WellPoint  
6 STD Plan"), Policy No. SR-83094619, and Group Long Term Disability Plan, ("WellPoint LTD  
7 Plan"), Policy No. SR-83094620, (collectively the "Plans"), which are employee welfare benefit  
8 plans funded by CNA and governed by ERISA. (Id.).

9 The Plans were offered to eligible employees of WellPoint and its subsidiaries, including  
10 Blue Cross. (AR at 139 & 165). Plaintiff, as an employee of Blue Cross, was eligible for, and was  
11 covered by both the WellPoint STD and LTD Plans. (Id. at 16, 20, 139 & 165).

12 Pursuant to the Plans, both WellPoint and CNA had "discretionary authority" to "interpret  
13 the terms of the Plan[s] and to determine eligibility for and entitlement to benefits in accordance  
14 with the Plan[s]." (AR at 158 & 193; see also id. at 147 & 179). As such, WellPoint and CNA  
15 acted as plan fiduciaries under the Plans. (Id. at 147, 158, 179 & 193); see also 29 U.S.C. §  
16 1002(21)(A).<sup>2</sup> Although only WellPoint was named plan administrator under the Plans, (AR at 158  
17 & 193), CNA, in fact, actively participated in the administration of the Plans. Indeed, as set forth  
18 in further detail below, it was exclusively CNA that denied plaintiff's claim for benefits, a decision  
19 that led to the filing of the Complaint in the instant action. See Gaines, 329 F.Supp.2d at 1211  
20 (insurer was not expressly named as plan administrator in the plan, but "participated in the  
21 administration of the plan, having undertaken the sole responsibility for administering claims" and  
22 "specifically rejected the claim in this case").

23 ///

24

25 <sup>2</sup> Pursuant to 29 U.S.C. § 1002(21)(A), "a person is a fiduciary with respect to a plan to the  
26 extent (i) he exercises any discretionary authority or discretionary control respecting management  
27 of such plan or exercises any authority or control respecting management or disposition of its  
28 so, or (iii) he has any discretionary authority or discretionary responsibility in the administration  
of such plan."

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1 A. The WellPoint STD Plan.

2 Under the WellPoint STD Plan, "disability" is defined as:

3 *Injury or Sickness* [that] causes physical or mental impairment to such a  
4 degree of severity that *You* are:

- 5 1. continuously unable to perform the *Material and Substantial Duties*<sup>3</sup>  
6 of *Your Regular Occupation*<sup>4</sup>; and  
7 2. not working for wages in any occupation for which *You* are or become  
8 qualified by education, training or experience.

9 (AR at 149) (italics in original).<sup>5</sup>

10 If an employee establishes "disability," the WellPoint STD Plan provides short term  
11 disability benefits for a maximum period of 26 weeks, subject to a waiting or "elimination" period<sup>6</sup>  
12 of seven days for disability based upon sickness, but no waiting or "elimination" period for  
13 disability based upon injury.<sup>7</sup> (AR at 143-44 & 149). The seven-day elimination period based  
14 upon sickness, rather than injury, is applicable in this case. (*Id.* at 16 & 20).

15 \_\_\_\_\_  
16 <sup>3</sup> "Material and Substantial Duties" are defined under the WellPoint STD Plan as "the  
17 necessary functions of *Your Regular Occupation* which cannot be reasonably omitted or altered."  
(AR at 156) (italics in original).

18 <sup>4</sup> "Regular Occupation" is defined under the WellPoint STD Plan as "the occupation that *You*  
19 are performing for income or wages on *Your Date of Disability*. It is not limited to the specific  
20 position *You* held with *Your* employer." (AR at 157) (italics in original).

21 <sup>5</sup> This definition of disability is based upon the "Occupation Qualifier." (AR at 149).  
22 "Disability" under the WellPoint STD Plan, in fact, can be met by satisfying either the "Occupation  
23 Qualifier" or the "Earnings Qualifier." (*Id.*). However, because both parties concede that plaintiff's  
24 claim arises under the "Occupation Qualifier," there is no need to discuss or set forth the  
25 "Earnings Qualifier" definition here. (See Plaintiff's Trial Brief at 11 & Defendants' Trial Brief at  
26 3, n. 1).

<sup>6</sup> The WellPoint STD Plan defines "elimination period" as "the number of calendar days at  
the beginning of a continuous period of *Disability* for which no benefits are payable." (AR at 156)  
(italics in original). It begins on the day an employee becomes disabled. (*Id.* at 149).

<sup>7</sup> "[I]njury" is defined as "bodily injury caused by an accident which results, directly and  
independently of all other causes, in *Disability* which begins while *Your* coverage is in force." (AR  
at 156) (italics in original). "Sickness" is defined as "sickness or disease causing *Disability* which  
begins while *Your* coverage is in force." (*Id.* at 157) (italics in original).

1 Under the WellPoint STD Plan, the weekly benefit is calculated based upon the type of plan  
2 in which the employee is enrolled, Plan A, B, or C. (AR at 143). Here, plaintiff was covered under  
3 Plan C of the WellPoint STD Plan, (*id.* at 4, 11, 13, 16, 20 & 52 & Plaintiff's Trial Brief at 11),  
4 which means that her weekly benefit is calculated as:

5 70% of *Weekly Earnings* to a maximum benefit of \$1,500.00 per Week  
6 subject to reduction by deductible sources of income or *Disability Earnings*\*.

7 \*In no event will the Weekly Benefit, after the reductions stated in [the]  
8 Deductible Sources of Income provision, be less than \$25.00 per week.

9 (AR at 143) (italics in original).

10 B. The WellPoint LTD Plan.

11 Under the WellPoint LTD Plan, the definition of "disability" is based upon the type of plan  
12 in which the employee is enrolled, Plan A, B, C, D or E. (AR at 181-82). In the instant case,  
13 plaintiff was covered under Plan C. (*id.* at 16 & 20 & Plaintiff's Trial Brief at 11). Under Plan C,  
14 "disability" is defined in the same manner as under the WellPoint STD Plan for the first 24 months  
15 during which benefits are payable. (AR at 181). Specifically:

16 "Disability" means that during the *Elimination Period*<sup>8</sup> and the following 24  
17 months, *Injury* or *Sickness* causes physical or mental impairment to such a  
18 degree of severity that *You* are:

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26 <sup>8</sup> The WellPoint LTD Plan, like the WellPoint STD Plan, defines "elimination period" as "the  
27 number of calendar days at the beginning of a continuous period of *Disability* for which no benefits  
28 is subject to an "elimination period" of 180 days or the expiration of the employee's short term  
disability benefits, whichever is longer. (*id.* at 175).

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1 1. continuously unable to perform the *Material and Substantial Duties*<sup>9</sup>  
2 of *Your Regular Occupation*<sup>10</sup>; and

3 2. not working for wages in any occupation for which *You* are or become  
4 qualified by education, training or experience.

5 (*Id.*) (italics in original).

6 Thereafter, the definition of "disability" is defined as follows:

7 After the *Monthly Benefit* has been payable for 24 months, "*Disability*" means  
8 that *Injury or Sickness* causes physical or mental impairment to such a  
9 degree of severity that *You* are:

10 1. continuously unable to engage in any occupation for which *You* are  
11 or become qualified by education, training or experience; and

12 2. not working for wages in any occupation for which *You* are or become  
13 qualified by education, training or experience.

14 (*AR* at 181) (italics in original).

15 Accordingly, if an employee can establish "disability" under the definitions set forth above,  
16 the WellPoint LTD Plan provides long term disability benefits for a period of 24 months and a  
17 determinate period thereafter,<sup>11</sup> as long as the employee is "continuously unable to engage in any  
18 occupation for which [the employee] [is] or become[s] qualified by education, training or  
19 experience" and "not working for wages in any occupation for which [the employee] [is] or  
20 become[s] qualified by education, training or experience." (*AR* at 181) (italics in original).

21 \_\_\_\_\_  
22 <sup>9</sup> "Material and Substantial Duties" are defined under the WellPoint LTD Plan as "the  
23 necessary functions of *Your Regular Occupation* which cannot be reasonably omitted or altered."  
24 (*AR* at 191) (italics in original). This definition is identical to that found in the WellPoint STD Plan.  
(*Id.* at 156).

25 <sup>10</sup> "Regular Occupation" is defined under the WellPoint LTD Plan as "the occupation that *You*  
26 are performing for income or wages on *Your Date of Disability*. It is not limited to the specific  
27 position *You* held with *Your* employer." (*AR* at 192) (italics in original). This definition is identical  
28 to that found in the WellPoint STD Plan. (*Id.* at 157).

<sup>11</sup> An individual, such as plaintiff, who was 63 years of age on the date her disability  
commenced, is entitled to a maximum benefit period of 36 months under the WellPoint LTD Plan.  
(*AR* at 176 & 185).