UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 17-23448-Civ-COOKE/GOODMAN

SHENITA SAPP,

Plaintiff,

vs.

AT&T SERVICES, INC., *et al.*,

Defendants.
_____/

OMNIBUS ORDER ON SUMMARY JUDGMENT

This case is about a denial of benefits under the Employee Retirement Income Security Act ("ERISA"). Plaintiff Shenita Sapp brings this action to recover long-term disability after her plan administrator terminated her benefits. *See Complaint*, ECF No. 1. Pointing to her medical history of mental illness, Sapp contends Sedgwick's decision to deny her benefits was arbitrary and capricious. *See generally Plaintiff's Motion for Summary Judgment*, ECF No. 16. Defendants AT&T Umbrella Benefit Plan No. 1 and AT&T Services Inc. (collectively, "AT&T") disagree and argue that the record suggests Sapp exaggerated her symptoms during a medical examination. In AT&T's estimation, Sapp's malingering provided a reasonable basis to deny Sapp benefits. *See generally Defendants' Motion for Summary Judgment*, ECF No. 14. After reviewing the administrative record, the arguments raised by both sides, and the applicable law, the Court finds that Sedgwick did not commit reversible error. Consequently, the Court **GRANTS** Defendants' summary judgment motion, **DENIES** Plaintiff's summary judgment motion and **AFFIRMS** Sedgwick's denial of disability benefits.

BACKGROUND

A. The AT&T Southeast Disability Plan

The AT&T Southeast Disability Benefits Program (the "Program") is part of Defendant AT&T Umbrella Benefit Plan No. 1 (the "Plan"). *Summary Plan Description of AT&T Southeast Disability* at 1, ECF No. 14-2.[1] Defendant AT&T Services, Inc. (the "Company") acts as the Administrator of the Plan, but Sedgwick Claims Management Services ("Sedgwick") serves as the Claims Administrator. *ATT* 36. The Plan defines "disabled" as someone with "a continuous physical or mental illness or injury, whether work related or non-work related, that renders you unable to perform and type of work other than work for which the rate of pay is less than 50 percent of your pay." *ATT* 23. As Claims Administrator, Sedgwick determines all benefit claims and appeals submitted by plan participants and interprets the terms of the Program. *ATT* 39. But once Sedgwick determines a participant is entitled to benefits, those benefits come from a trust funded by AT&T. *ATT* 38.

B. Because of Sapp's qualifying disability, Sedgwick grants her claim for long-term disability benefits.

Before joining AT&T, Sapp served in the United States Army National Guard. *Administrative Record* at 495, ECF No. 14-3. While in the National Guard, Sapp's supervisor sexually harassed and assaulted her. *Id.* As a result, Sapp spent two months in the hospital before the National Guard medically discharged her. *AR* 496. When Sapp experienced symptoms of post-traumatic stress disorder in 2005, she began seeing a psychiatrist. *Id.* Around the same time, Sapp began working at AT&T. *Id.*

In 2011, after the death of her father, Sapp's mental health further deteriorated. On November 11, 2011, Sapp visited a licensed social worker named Karen Sack at Kaiser Permanente. *AR* 1020. Based on her interview, Sack found Sapp had moderate Bipolar 1 Disorder and post-traumatic stress disorder. *AR* 1021. On October 3, 2011, Sapp was hospitalized for two weeks at the Ridgeview Institute for mental health treatment. *AR* 1067-

[1] Citations to "*AR*" refer to the administrative record and citations to "*ATT*" refer to the Summary Plan Description of the AT&T Southeast Disability Benefits Program.

69. Sapp met with various medical professionals at Kaiser Permanente over the next year, including Dr. Corey Arranz and Dr. Rochon. *AR* 797. Ultimately, these medical professionals diagnosed Sapp with Bipolar 1 disorder, PTSD, and depression. *AR* 791.

Over the next few years, Sapp saw medical professionals at Kaiser Permanente, Ridgeview Institute, the VA Medical Center, Wellstar Psychiatry, WS Cobb Behavioral Health, and WMG Psychiatry. *See generally Pl. Statement of Undisputed Facts* at 2-8, ECF No. 17. At each step, doctors confirmed Sapp's diagnosis of Bipolar 1 Disorder, PTSD, and depression. *Id.* To help deal with conditions, her treating physicians prescribed Sapp Latuda, Topamax, Klonopin, and Prazosin. *AR* 498. Based on this record of mental illness, Sedgwick deemed Sapp disabled and approved her claim for benefits on August 1, 2012. *AR* 181.

C. Four years after approving long-term disability benefits, a medical examination suggests Sapp exaggerated her symptoms.

In 2016, AT&T notified Sapp that they would review her claim to determine if Sapp had any work capacity. *AR* 491. As part of that review, AT&T retained Dr. Nick DeFilippis to conduct an independent medical evaluation (the "IME"). *AR* 494. As part of the IME, Dr. DeFilippis interviewed Sapp, reviewed her medical records and administered a battery of neuropsychological tests. *AR* 499-500.

In his review of Sapp's medical records, Dr. DeFilippis acknowledged that multiple medical professionals diagnosed Sapp with bipolar disorder and PTSD. *AR* 495. However, Dr. DeFilippis found signs of Sapp's improvement in two progress reports. *Id.* The first, dated January 4, 2016, came from Lynn Stamegna of WellStar. *Id.* Stamegna indicated Sapp "was doing better and her mood was stable" and Sapp was not impulsive, suicidal or psychotic. *Id.* WellStar's Dr. Riddell authored the second progress note after an October 1, 2015 evaluation. *Id.* Dr. Riddell stated that Sapp's prescribed mood stabilizer, while improving her mood and tempering her nightmares, "caused her to not be able to do things." *Id.*

Dr. DeFilippis then summarized his interview with Sapp before turning to the results of the psychological tests. *AR* 495-99. Dr. DeFilippis concluded that Sapp's "performance

on validity and effort measures were at levels that strongly suggest conscious exaggeration of symptoms." *AR* 508. Going further, Dr. DeFilippis stated that Sapp's scores on the battery of tests indicate "very poor effort," and that "her self-report is likely unreliable." *Id.* Dr. DeFilippis specifically noted that Sapp's IQ score of 43 did not match her functioning level. *AR* 517. All in all, Dr. DeFilippis declared that he "could not identify any limitations for the examinee based on this evaluation because of the invalidity of test findings. The examinee reports severe limitations in her functioning, but her self-report is not found to be valid." *AR* 523.

After conducting a labor market survey, AT&T found six alternate jobs that Sapp could do given her level of disability. *AR* 416. Based on the labor market survey and Dr. DeFilippis's report, AT&T denied Sapp's claim for long-term disability benefits on September 15, 2016. *AR* 415. Sapp appealed. *AR* 460-61.

D. Sapp appealed the termination of her benefits, but Sedgwick overruled her objections.

On September 29, 2016 Sapp wrote a letter to AT&T arguing that during the IME, she "couldn't stay alert or complete the assessments." *Id.* Sapp also indicated that she "fell asleep several times and got yelled at for not remembering questions," at which time, the test administrator helped her answer questions. *Id.* To further support her claim for benefits, Sapp provided additional medical records on November 21, 2016. *AR* 179.

Sedgwick retained Dr. Michael Rater (a psychiatrist) and Dr. Dennis Buchholz (a clinical neuropsychologist) to review Sapp's medical records. *See Defs.' Mot. Summ. J.* at 5, ECF No. 14. In his review, Dr. Rater asserted that Sapp's medical records do not "support[] a lack of work capacity" because Sapp "has not had intensity of services consistent with a lack of work capacity." *AR* 394-95. Relying on Dr. DeFilippis's "assessment of exaggeration and unreliability," Dr. Rater concluded Sapp could work, notwithstanding her dysphoric mood and history of mania. *Id.*

Dr. Buchholz reached a similar conclusion by focusing on Sapp's IQ test. *AR* 401. Because Sapp's score of 43 lies in the 0.1 percentile, Dr. Buchholz explained Sapp's results more closely aligned with people who are "institutionalized due to complete inability to

carry out simple activities of daily living such as eating." *Id*. Dr. Buchholz dismissed Sapp's other objections and said that "problems with fatigue or alertness did not result in below-chance performance on tests." *AR* 400. In the end, Sedgwick denied her administrative appeal on March 23, 2017. *AR* 262. Sapp, having exhausted her administrative remedies, then sued AT&T here. *See* Complaint, ECF No. 1.

SUMMARY JUDGMENT STANDARD

Courts will grant summary judgment "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." *Allen v. Tyson Foods, Inc.*, 121 F.3d 642 (11th Cir. 1997) (quoting Fed. R. Civ. P. 56(c)) (internal quotations omitted); *Damon v. Fleming Supermarkets of Florida, Inc.*, 196 F.3d 1354, 1358 (11th Cir. 1999). Thus, the entry of summary judgment is appropriate "against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986).

"The moving party bears the initial burden to show the district court, by reference to materials on file, that there are no genuine issues of material fact that should be decided at trial." *Clark v. Coats & Clark, Inc.*, 929 F.2d 604, 608 (11th Cir. 1991). "Only when that burden has been met does the burden shift to the non-moving party to demonstrate that there is indeed a material issue of fact that precludes summary judgment." *Id*.

Rule 56 "requires the nonmoving party to go beyond the pleadings and by her own affidavits, or by the 'depositions, answers to interrogatories, and admissions on file,' designate 'specific facts showing that there is a genuine issue for trial." *Celotex*, 477 U.S. at 324. Non-moving parties "may not rest upon the mere allegations or denials of his pleadings, but must set forth specific facts showing that there is a genuine issue for trial." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) (internal quotation marks omitted).

"A factual dispute is genuine if the evidence is such that a reasonable jury could return a verdict for the non-moving party." *Damon*, 196 F.3d at 1358. "A mere 'scintilla' of evidence

supporting the opposing party's position will not suffice; there must be enough of a showing that the jury could reasonably find for that party." *Abbes v. Embraer Servs., Inc.*, 195 F. App'x 898, 899-900 (11th Cir. 2006) (quoting *Walker v. Darby*, 911 F.2d 1573, 1577 (11th Cir. 1990)).

When deciding summary judgment, "the evidence, and all inferences drawn from the facts, must be viewed in the light most favorable to the non-moving party." *Bush v. Houston County Commission*, 414 F. App'x 264, 266 (11th Cir. 2011).

DISCUSSION

In her summary judgment motion, Sapp makes four arguments.[2] *First*, Sapp contends Dr. DeFilippis' report is invalid and unreliable and relying on an invalid report is arbitrary and capricious. *Second*, Sapp argues that AT&T erred by relying on Dr. Rater's peer review of the report and discarding Sapp's objections. *Third*, Sapp maintains that the fact that she receives social security disability benefits strongly supports her claim for ERISA benefits here. *Fourth and finally*, Sapp claims Sedgwick's decision is wrong because Dr. DeFilippis disregarded contrary evidence from her treating physicians.

In response, AT&T asserts that the Court should provide significant deference to the administrator's decision. And since that decision is not arbitrary and capricious because it was based on a rational justification, AT&T asks the Court to affirm it. Before assessing the merits of the parties' arguments, the Court begins with the legal standard applicable to ERISA cases.

A. Courts apply the *Williams* test to evaluate an administrator's decision.

The United States Court of Appeals for the Eleventh Circuit developed a six-part test to review an ERISA plan administrators' benefits decision. *Williams v. BellSouth Telecomms., Inc.*, 373 F.3d 1132, 1137-38 (11th Cir. 2004) *overruled on other grounds by Doyle v. Liberty Life Assur. Co. of Boston*, 542 F.3d 1352 (11th Cir. 2008). Under *Williams*, courts:

[2] Though not raised by the parties, the Court first finds that it has subject matter jurisdiction here because the case presents a question of federal law. *See* 28 U.S.C. § 1331; *see also* 29 U.S.C. 1132.

> "1) Apply the *de novo* standard to determine whether the claim administrator's benefits-denial decision is wrong (i.e., the court disagrees with the administrator's decision); if it is not, then end the inquiry and affirm the decision.
>
> 2) If the administrator's decision in fact is *de novo* wrong, then determine whether he was vested with discretion in reviewing claims; if not, end judicial inquiry and reverse the decision.
>
> (3) If the administrator's decision is *de novo* wrong and he was vested with discretion in reviewing claims, then determine whether reasonable grounds supported it (hence, review his decision under the more deferential arbitrary and capricious standard).
>
> (4) If no reasonable grounds exist, then end the inquiry and reverse the administrator's decision; if reasonable grounds do exist, then determine if he operated under a conflict of interest.
>
> (5) If there is no conflict, then end the inquiry and affirm the decision.
>
> (6) If there is a conflict, the conflict should merely be a factor for the court to take into account when determining whether an administrator's decision was arbitrary and capricious."

Carr v. John Hancock Life Ins. Co. (USA), 703 F. App'x 733, 740 (11th Cir. 2017) (internal quotations omitted). The Court determines, as a matter of law, whether the plan administrator's decision was either *de novo* correct or reasonable. *Id*.

B. Under *Williams*, the Court must affirm Sedgwick's decision.

1. The Court disagrees with the Administrator's initial decision.

Considering only the evidence available to the administrator at the time of its decision, the Court concludes that Sedgwick likely reached the wrong conclusion. The record supports Sapp's claim that she experienced a traumatic event and that event

impacted her mental health. *AR* 495-96. Since then, medical professionals diagnosed her with bipolar disorder, PTSD, and depression. That diagnosis was confirmed by multiple doctors over several years. *Id*. And, while not dispositive, the Court finds the Social Security Administrations' decision to give Sapp disability benefits is persuasive evidence of her ongoing disability. *AR* 917; *see also Melech v. Life Ins. Co. of N. Am.*, 739 F.3d 663, 673 (11th Cir. 2014).

Contrary to AT&T's contentions, the IME did not establish that Sapp lacked a disability. At best, the IME's results are inconclusive because A reasonable person could interpret Sapp's fatigue, an inability to focus, and a lack of effort as symptoms of her disability. Furthermore, Dr. Rater and Dr. Buchholz did not examine or interview Sapp, which could have allowed them to determine if her allegedly exaggerated symptoms were ongoing or an isolated incident.

Given the above and having conducted a *de novo* review of the record, the Court disagrees with the Sedgwick's ultimate decision. Accordingly, the Court moves to the second step of the *Williams* analysis.

2. The Administrator had discretion to review claims

The Summary Plan Description explicitly delegates to Sedgwick discretion to review the claims. ATT 25 (stating "only the claims administrator has the discretion to determine whether you have a disability that qualifies you for long-term disability benefits under the program"). Sedgwick properly exercised its discretion by reviewing Sapp's claim and Sapp does not dispute this element. Therefore, the Court moves to the third step.

3. Reasonable grounds exist to support Sedgwick's decision

Despite finding that Sedgwick may have reached the wrong conclusion, the Court must uphold Sedgwick's decision because it is supported by reasonable grounds. Even though Sapp's doctors found her self-reported symptoms credible, Sedgwick may "credit the opinions of the [its] doctors that reviewed Plaintiff's medical records over the opinions of Plaintiff s doctors." *Helms v. General Dynamics Corp.*, 222 F. App'x. 821, 833 (11th Cir. 2007)

(stating that if the administrator was dissatisfied with the evidence of disability that the participant provided, it could submit the participant's medical file for peer review and could discount the participant's doctor's opinion in favor of a contrary opinion produced by the peer review). Sedgwick acted within its discretion by relying on "evidence that conflicts with a treating physician's evaluation." *Black & Decker Disability Plan v. Nord*, 538 U.S. 822, 834 (2003). Where reliable evidence of work capacity exists, Sedgwick could discount the evidence of Sapp's treating physicians. *See id*. Such is the case here.

Courts have upheld administrator's decision to terminate disability benefits where a doctor determined a patient malingered or exaggerated symptoms. *See, e.g., Smith v. Pension Comm. of Johnson & Johnson*, 470 F. App'x 864, 867 (11th Cir. 2012) (opining that "we cannot say that the Pension Committee acted unreasonably or in an arbitrary and capricious manner when it determined that Plaintiff's eligibility for benefits under the Plan was nullified by her non-cooperation during testing procedures"). Dr. Rater and Dr. Buchholz's decision not to personally interview or exam Sapp does not undercut their conclusions. *See Ness v. Aetna Life Ins. Co.*, 257 F. Supp. 3d 1280, 1291 (M.D. Fla. 2017) (finding "the administrator is entitled to rely on the opinion of a qualified [medical] consultant who neither treats nor examines the claimant, but instead reviews the claimant's medical records"). Taken together, this shows that Sedgwick's decision to deny Sapp benefits was supported by reasonable grounds and this Court will not disturb that decision. Now, the Court proceeds to the fourth step.

4. There is no conflict of interest.

The Plan's structure does not present a conflict of interest. Here, Sedgwick determines eligibility while AT&T pays out awarded benefits. See *Blankenship v. Metro. Life Ins. Co.*, 644 F.3d 1350, 1355 (11th Cir. 2011) (finding a conflict of interest exists "where the ERISA plan administrator both makes eligibility decisions and pays awarded benefits out of its own funds"). Sapp provides no argument to the contrary. Because, reasonable grounds support Sedgwick's decision and no conflict of interest exists, the Court must "end the inquiry and affirm the decision." *Williams*, 373 F.3d at 1138.

CONCLUSION

Considering the above, the Court finds that Sedgwick's decision to deny Sapp long-term disability benefits was not arbitrary and capricious because it is supported by reasonable grounds. Therefore, the Court hereby **ORDERS and ADJUDGES** as follows:

- The Court **GRANTS** Defendants' Motion for Summary Judgment (ECF No. 14) and **AFFIRMS** the Plan Administrator's decision.
- The Court **DENIES** Plaintiff's Motion for Summary Judgment (ECF No. 16).
- The Court **DENIES** ***as moot*** all pending motions and orders the Clerk to **CLOSE** this case.

DONE and ORDERED in Chambers, in Miami, Florida, this 29th day of March 2018.

Marcia G. Cooke

MARCIA G. COOKE
United States District Judge

Copies furnished to:
Jonathan Goodman, U.S. Magistrate Judge
Counsel of Record