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United States District Court, W.D. Michigan, Southern Division,
SOUTHERN DIVISION.

MARY ROSE TOBIN, Plaintiff,

v.

UNUM LIFE INSURANCE COMPANY OF AMERICA, Defendant.

Case No. 1:24-cv-1012
|
Filed 02/13/2026

Attorneys and Law Firms

Troy W. Haney, Haney Law Office PC, Grand Rapids, MI, for Plaintiff.

Andrea M. Dalimonte, D. Andrew Portinga, Neil Joseph Marchand, Miller Johnson PLC, Grand Rapids, MI, for Defendant.

OPINION AND ORDER

JANE M. BECKERING United States District Judge

***1** Plaintiff Mary Rose Tobin challenges Defendant Unum Life Insurance Company of America's ("Unum") denial of certain benefits under Tobin's long-term disability and life insurance plans. Both plans are governed by the Employee Retirement Income Security Act ("**ERISA**"), 29 U.S.C. 1001 *et seq.* Now pending before the Court is Tobin's motion for judgment on the administrative record. The parties have stipulated that the Court should review Unum's denial of benefits de novo. For the reasons stated in greater detail below, the Court will (1) grant the motion for judgment on the administrative record in part given that Tobin has satisfied her burden of showing that her sickness—an intractable headache causing pain and fatigue—precludes her from performing her regular occupation; and (2) deny the motion in part given that Tobin has failed to satisfy her burden of showing that her sickness precludes her from performing any gainful occupation for which she is reasonably fitted by training, education, or experience.

I. MOTION STANDARD

ERISA was enacted to "promote the interests of employees and their beneficiaries in employee benefit plans" and "protect contractually defined benefits[.]" *Firestone Tire & Rubber Co. v. Bruch*, 489 U.S. 101, 113 (1989). **ERISA** authorizes an employee participant to bring a civil action challenging a plan administrator's denial of benefits. *See* 29 U.S.C. § 1132(a)(1)(B). "[A] denial of benefits challenged under § 1132(a)(1)(B) is to be 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*, 489 U.S at 115. Here, the parties have stipulated that the applicable standard of review is de novo (*see* Standard of Review Stipulation, ECF No. 16; Order on Standard of Review Stipulation, ECF No. 17).

To succeed on a claim for disability benefits under an **ERISA** plan, a plaintiff must prove by a preponderance of the evidence that she is "disabled" as defined by the plan in question. *Messing v. Provident Life & Accident Ins. Co.*, 48 F.4th 670, 678 (6th Cir. 2022); *Bruton v. Am. United Life Ins. Corp.*, 798 F. App'x 894, 901 (6th Cir. 2020) (quoting *Javery v. Lucent Techs.,*

Inc. Long Term Disability Plan, 741 F.3d 686, 700 (6th Cir. 2014)). In the context of the facts noted above, courts "review a plan administrator's factual findings de novo, according no deference or presumption of correctness to the administrator's decision, but instead independently 'determine whether the administrator properly interpreted the plan and whether the insured was entitled to benefits under the plan.' " *Wallace v. Oakwood Healthcare, Inc.*, 954 F.3d 879, 890 (6th Cir. 2020) (quoting *Hoover v. Provident Life and Acc. Ins. Co.*, 290 F.3d 801, 809 (6th Cir. 2002)). "In conducting this review, courts may look only to the record before the administrator." *Id.* (citing *Hoover,* 290 F.3d at 809); *see also Bruton*, 798 F. App'x at 902 (stating that the de novo standard of review requires a district court to "take a 'fresh look' at the administrative record ... giving proper weight to each expert's opinion in accordance with supporting medical tests and underlying objective findings, and 'according no deference or presumption of correctness' to the decisions of the ... plan administrator") (quoting *Javery*, 741 F.3d at 700) (cleaned up)).

II. FACTUAL BACKGROUND[1]

A. Tobin's Employment as an Account Executive

***2** Tobin, who is in her early 30s, worked as an account executive at Williams Group, a marketing agency based in Grand Rapids, Michigan, prior to the onset of the medical condition discussed below (*see* Employer Information, ECF No. 18-3 at PageID.381–388). Tobin's work as a Williams Group account executive required her to make complex judgments and decisions; lead various communication projects; maintain client relationships and generate hundreds of thousands of dollars in client billings each year; manage the scope, budget, and timeline of multiple projects; develop an understanding of client industries, organizational practices and objectives; perform supervisory and quality control functions ensuring a standard of excellence; and work extended hours as needed (*id.* at PageID.492; Vocational Analysis, ECF No. 18-4 at PageID.772; Williams Group Account Executive Job Description, ECF No. 18-7 at PageID.2094–2095).

B. Initial Onset of Tobin's Medical Condition

On January 11, 2022, Tobin woke up with "the worst headache of [her] life" (Medical Notes, ECF No. 18-3 at PageID.312). She tried over-the-counter remedies—Excedrin, ibuprofen, caffeine, acetaminophen, hot and cold packs—to no avail (*id.*). On January 13, 2022, after her attempts to relieve the headache failed, she called her primary care physician's office—they prescribed ondansetron, Benadryl, and ibuprofen (*id.*). These medications did not stop the pain. Tobin's primary care physician then prescribed Toradol and Imitrex (*id.*). No relief. On January 15, 2022, Tobin's unrelenting pain drove her to seek help from a hospital emergency department (*id.*). The ER team treated her with intravenous Benedryl and Toradol, intranasal lidocaine, and Haldol before discharging her (*id.*). Her pain persisted. She came back to the ER on January 17, 2022, underwent diagnostic imaging, and received Depakote, Benadryl, Reglan, Indocin, and magnesium sulfate (*id.*). Tobin's providers consulted with the neurology department and neurology recommended CT and MRI scans, but—given the limitations associated with these diagnostic methods[2]—the neurology team failed to identify the etiology for Tobin's illness (*id.*). "Unfortunately, nothing relieved the headache," and Tobin "admit[ted] to crying a lot due to the pain and frustration of still having this headache" for so many days on end (*id.* at PageID.345). Tobin was diagnosed with an "acute intractable headache" and discharged with a prescription for Amitriptyline, Indomethacin, and other medications (*id.* at PageID.311–345, 358).

Tobin provided a detailed description of her pain and its characteristics to Nurse Practitioner Michelle VanDenToorn, explaining that the pain had been constant since Tobin woke up on January 11, 2022, and rating it as an 8 out of 10 in severity (*see id.* at PageID.349–350). Tobin reported poor concentration, difficulty focusing, and increased fatigue, among other symptoms (*id.*) She noted her sister's history of migraines (*id.*). NP VanDenToorn charted Tobin's diagnosis, "acute intractable headache," and described Tobin as "reliable" with respect to her medical history and symptomology (*id.*). Medical notes indicate that Tobin's preexisting depression began worsening due to her headache (*id.*). Nurse Practitioner VanDenToorn wrote that "[w]e did discuss

that unfortunately headaches will typically take time [up to several months] to respond to medications and that we may need to try several different medications" (*id.* at PageID.349). Tobin's medical team recommended a three-month recheck, setting the parameters for Tobin's treatment intensity, with knowledge that Tobin was reporting little to no relief from her intractable headache and an 8 out of 10 pain score (*id.*).

***3** Given the symptoms associated with her acute intractable headache, and given the need to continue trialing different medications and treatments, Tobin had to stop "working [as an account executive at Williams Group] as of January 14, 2022" (Br. ISO Mot., ECF No. 22 at PageID.5644). Tobin submitted a claim for short-term disability benefits to Unum on January 25, 2022 (Short Term Disability Claim Form, ECF No. 18-3 at PageID.377–378). Melissa Kline, M.D., a doctor within the same health system as Nurse Practitioner VanDenToorn, submitted an attending physician's statement opining that Tobin was "unable to work due to severe, intractable headache" and she would "follow up with neurology on January 28, 2022" (*id.* at PageID.373). Unum approved Tobin's claim for short-term benefits and paid those benefits for the maximum period (*see* Unum Short Term Disability Letter of March 18, 2022, ECF No. 18-3 at PageID.300).

C. Tobin's Long-Term Disability and Life Insurance Policies

Tobin then sought disability benefits under two separate policies that are the subject of the motion at bar: Unum Group Insurance Policy No. 693421 002, which was issued to Tobin's employer, Williams Group (the "LTD Policy") (*see generally* LTD Policy, ECF No. 18-2), and Unum Group Life Insurance Policy No. 693421 001 (the "Life Policy") (*see generally* Life Policy, ECF No. 18-1) (collectively, "the policies"). The Court will briefly outline the relevant sections of each policy in turn.

1. The LTD Policy

The LTD Policy provides long-term disability ("LTD") benefits to employees who satisfy the Policy's definition of "Disability," which states "[y]ou are disabled when Unum determines:"

- you are limited from performing the material and substantial duties of your regular occupation due to your sickness or injury; and

- you have a 20% or more loss in your indexed monthly earnings due to the same sickness or injury.

(LTD Policy, ECF No. 18-2 at PageID.200). The LTD Policy defines "limited" as "what you cannot or are unable to do," and the policy defines "material and substantial duties" as duties that "are normally required for the performance of *your regular occupation;* and cannot be reasonably omitted or modified" (*id.* at PageID.216, emphasis added). "Regular occupation" means "the occupation you are routinely performing when your disability begins" (*id.* at PageID.218). Unum considers "your occupation as it is normally performed in the national economy" (*id.*).

The LTD Policy includes a twenty-four-month limitation on disabilities resulting from self-reported symptoms (*id.* at PageID.206, 219). Self-reported symptoms are defined as "manifestations of your condition which you tell your physician, that are not verifiable by tests, procedures or clinical examinations standardly accepted in the practice of medicine" (*id.* at PageID.219). Examples include "*headaches, pain, fatigue*, stiffness, soreness, ringing in ears, dizziness, numbness and loss of energy" (*id.*, emphasis added). Under the LTD Policy, the "lifetime cumulative maximum benefit period for all disabilities due to mental illness and disabilities based primarily on self-reported symptoms is 24 months" (*id.* at PageID.206).

Additionally, the LTD Policy updates the definition of disability "[a]fter 24 months of payments," at which time "you are disabled when Unum determines that due to the same sickness or injury, you are unable to perform the duties of *any gainful occupation* for which you are reasonably fitted by education, training, or experience (*id.* at PageID.200, emphasis added).

2. The Life Policy

The Life Policy contains a life insurance premium waiver for to those who satisfy the policy's definition of "disability" (Life Policy, ECF No. 18-1 at PageID.139). After a nine-month elimination period, the Life Policy states that a person has a "disability" if that person is "unable to perform the duties of *any gainful occupation* for which [that person is] reasonably fitted by training, education or experience" due to "sickness or injury" (*id.* at PageID.115, 139, emphasis added). The policy defines "gainful occupation" as "an occupation that within 12 months of your return to work is or can be expected to provide you with an income that is at least equal to 60% of your annual earnings in effect just prior to the date your disability began" (*id.* at PageID.156). Unum "has calculated Tobin's gainful occupation wage to be $28.39/hour; or $59,058.72/year" (Br. ISO Mot., ECF No. 22 at PageID.5648, citing Unum Calc., ECF No. 18-4 at PageID.768).[3]

D. Tobin's Claims Under the LTD and Life Policies

***4** As noted above—after Tobin's short-term disability benefits expired—she applied for LTD benefits, and Unum approved her LTD claim in a letter dated March 31, 2022 (Unum Approval Letter, ECF No. 18-3 at PageID.499–500, 506 (noting that Tobin's disability date commenced on January 15, 2022 and that benefits began under the LTD Policy on April 23, 2022)). Tobin also applied for the life insurance **waiver** of **premium** benefit under the Life Policy, which Unum also approved (*see* Opp., ECF No. 23 at PageID.5680, citing Unum Letter, ECF No. 18-12, PageID.3385, 3390). Unum then reversed these decisions a few months later, discontinuing benefits under the LTD Policy on March 2, 2023 (*see* Unum Letter, ECF No. 18-4 at PageID.812), and discontinuing benefits under the Life Policy on March 6, 2023 (*see* Unum Letter, ECF No. 18-12 at PageID.3447). Unum indicated that it had discontinued benefits in light of updated information that it had received concerning Tobin's medical status (*see id.*).

E. Tobin's Medical Evaluations and Vocational Reviews

The parties each submit excerpts from Tobin's medical records, vocational reviews, and other portions of the administrative record to support their respective positions on whether Tobin was entitled to continued receipt of benefits after Unum reversed course and denied them. The Court will provide a concise summary of relevant evidence from the administrative record in this section, generally organized by the name of the expert who produced the evidence in question.[4]

Nurse Practitioners VanDenToorn and Stoutjesdyk. NP VanDenToorn, a specialist in neurology, authored medical notes reflecting the following: (1) Tobin's headaches continued unabated at office visits on May 10, 2022, July 13, 2022, and September 2, 2022; (2) Tobin trialed a high number of medications in an attempt to find relief; (3) Tobin suffered from fatigue and decreased concentration; and (4) "due to severity of symptoms [Tobin] is unable to work at this time, working on headache management" (*see* Br. ISO Mot., ECF No. 22 at PageID.5648, citing Medical Notes, ECF No. 18-3 at PageID.564; ECF No. 18-4 at PageID.622; ECF No. 18-6 at PageID.1413). NP VanDenToorn, who evaluated Tobin face-to-face, described her as a "reliable" medical historian; she did not indicate Tobin exaggerated symptoms or showed signs of malingering (*see* Medical Notes, ECF No. 18-3 at PageID.564).

***5** Nurse Practitioner Stoutjesdyk, another member of the neuroscience department managing Tobin's care from January 2022 onward, confirmed NP VanDenToorn's medical opinions. *See, e.g.,* Letter, ECF No. 18-11 at PageID.3199 (reflecting Nurse Practitioner Stoutjesdyk's medical opinion, based on firsthand observations, that Tobin's "headaches are currently occurring on a continuous, daily basis and are severe with associated symptoms such as concentration difficulty .... [Tobin's] symptomatology is genuine and expected").

Jared Pomeroy, M.D. "On November 23, 2022, Ms. Tobin was evaluated by Jared Pomeroy, M.D., a board-certified neurologist, who replaced NP VanDenToorn as Ms. Tobin's attending neurology specialist, but within the same medical practice group" (*see* Br. ISO Mot., ECF No. 22 at PageID.5648). Tobin's case was escalated to Dr. Pomeroy given his specialty in treating headaches (*id.*). Dr. Pomeroy noted after a November 23, 2022 examination that Tobin's memory was intact, her attention and concentration showed "no distractibility" for the limited purpose of that office visit, and her December 2022 CT scan results were normal (Medical Notes, ECF No. 18-4 at PageID.704, 690–693), but he clarified that Tobin's "headache could impact [her] concentration if she attempted to return to work too soon," that a "mental status examination would not pick up abnormalities," and that Tobin "may need more in-depth cognitive evaluation if she is not able to return to work" (Call Notes, ECF No. 18-4 at PageID.791–792). Dr. Pomeroy's notes also indicate that Tobin was exercising five days per week for thirty minutes, drinking one to two glasses of alcohol per night, and attending social gatherings twice a week (Medical Notes, ECF No. 18-4 at PageID.703). Subsequently, on January 24, 2023, Dr. Pomeroy completed a "Restrictions and Limitations" form noting Tobin's "[o]ngoing [daily persistent headache] chronic migraine phenotype" and concluding that "associated symptoms limit [Tobin's] ability to perform any sort of meaningful work" (Medical Notes, ECF No. 18-4 at PageID.764).

Andrea Coraccio, M.Ed. On January 27, 2023, Unum requested a "Vocational Review and Analysis [that was] completed by its in-house Senior Vocational Rehabilitation Consultant, Andrea Coraccio, M.Ed, CRC" (*see* Br. ISO Mot., ECF No. 22 at PageID.5649, citing Vocational Analysis, ECF No. 18-4 at PageID.771–772). Coraccio stated "that Ms. Tobin's regular occupation matched the job description of Account Executive in the national economy" (*id.*).[5]

6** ***Wendy Weinstein, M.D. Unum Medical Consultant Wendy Weinsten, one of Unum's in-house file reviewers, called Dr. Pomeroy on February 22, 2023, "to discuss Ms. Tobin's diagnosis, treatment, and ability to work" (*see* Br. ISO Mot., ECF No. 22 at PageID.5650). According to Dr. Weinstein's call notes, she "referenced the fact that [Tobin] continued to complain of significant headaches but she has not been observed to be in any distress and examinations have not documented abnormalities. We discussed the fact that any impairment is based on her self-report, but [Dr. Pomeroy] thought that the headache could impact her concentration if she attempted to return to work too soon" (*id.*, citing Call Notes, ECF No. 18-4 at PageID.791–792). Dr. Pomeroy explained that "a mental status examination would not pick up abnormalities and noted that [Tobin] may need more in-depth cognitive evaluation" (*id.*). Dr. Weinstein stated that the four-month gap between Tobin's evaluation by NP VanDenToorn and her evaluation by Dr. Pomeroy "does not appear consistent with severe incapacitating headache," after which Dr. Pomeroy explained that "it takes time to find the right medication. He thought they were going in the right direction but also indicated that it may just take a little longer" (*id.*).

Dr. Weinstein then "completed a paper-file review of Ms. Tobin's medical records and concluded that in her opinion, Ms. Tobin's chronic migraine did not prevent Ms. Tobin from performing the material and substantial duties of her regular occupation as an Account Executive" (Br. ISO Mot., ECF No. 22 at PageID.5651–5652). Unlike Dr. Pomeroy, Dr. Weinstein is not a neurologist. But she declined to credit Dr. Pomeroy's conclusions on a number of points as noted in the below excerpt from her "Analysis/Rationale":

- The physical and mental status examinations do not demonstrate loss of functionality that would preclude the functional capacity being considered. [Tobin's] headaches are a self-reported symptom with no underlying etiology. She has been out of work for over a year and has continued to complain of significant headaches, but she has not been observed to be in any distress and examinations have not documented abnormalities.

- Diagnostic test findings do not correlate with loss of functionality ... initial imaging including Head CT, Brain MRI, CT Venogram and Ocular Ultrasound was normal ... Brain CT Angiogram (CTA) was normal.

- The treatment intensity is not consistent with the claimed loss of functionality. The claimant has received routine outpatient treatment and has not required any urgent care or emergency room visits since the initial hospitalization when she went out of work ... follow-up visits with the neurologist have been scheduled at 4-month intervals which would not be anticipated if [Tobin] had severe incapacitating headaches.

- The claimant's reported activities are not consistent with the claimed level of impairment ... she gets out every day to walk the dog ... she can do home chores in short increments ... [if she rests] throughout the day ... she can drive short distances ... [she] exercis[es] 5 days/week for 30 minutes ... [and she sees] friends and family ... twice a week.

(Weinstein File Review, ECF No. 18-4 at PageID.797–799). Dr. Weinstein declined to request that Tobin "undergo an independent medical review and examination," relying instead on the paper file generated by other medical personnel, and she did not provide any substantive explanation for this decision despite her right to request such an examination (*id.* at PageID.799).

Zeyad Morcos, M.D. Unum sent Dr. Weinstein's report to Dr. Morcos, another member of Unum's file review team. Dr. Morcos, unlike Dr. Weinstein, is a neurologist, but his brief report largely copies and pastes Dr. Weinstein's conclusion that "the reported symptoms, physical examination findings, diagnostic testing, intensity of treatment and noted activities reflected in the file do not support an impairment precluding the claimant from performing the outlined occupational demands on a full-time basis" (*compare* Weinstein File Review, ECF No. 18-4 at PageID.799 *with* Morcos File Review, ECF No. 18-4 at PageID.805 (reflecting word-for-word duplication of the above conclusions—the Court also notes that Dr. Morcos did not take the time to remove the word "Template" from the header of his report)).

***7** Dr. Morcos highlights that Tobin's MRI, Ocular Ultrasound, CT Venogram, and CT Angiogram testing did not reveal abnormal findings and that Dr. Pomeroy had noted that Tobin had an intact memory, spoke clearly, maintained eye-contact, and had a "normal mental status" (Morcos File Review, ECF No. at PageID.805–806). Dr. Morcos does not substantively address Dr. Pomeroy's statement that "a mental status examination would not pick up" the "abnormalities" at issue, that Tobin would benefit from "more in-depth cognitive evaluation," and that Tobin needed "a little longer" before a "return to work" (*compare id. with* Call Notes, ECF No. 18-4 at PageID.791–792). Dr. Morcos then declined to credit Tobin's self-reported symptoms and the opinions of Dr. Pomeroy—her treating neurologist and headache specialist—instead adopting Dr. Weinstein's conclusion that "the information provided does not support an impairment precluding [Tobin] from performing" the work of an account executive (*id.* at PageID.806). Following Dr. Weinstein's lead, Dr. Morcos did not request that Unum exercise its right to an independent medical evaluation to confirm or deny Dr. Pomeroy's statement that concentration problems precluded Tobin's return to work as an account executive (*see* Independent Medical Examination Provisions, ECF No. 18-1 at PageID.140 and ECF No. 18-2 at PageID.182).

After receiving Dr. Morcos's report, Unum discontinued Tobin's relevant benefits in March 2023 (*see* Unum Letters, ECF No. 18-4 at PageID.812 and ECF No. 18-12 at PageID.3447).

F. Tobin's Appeal and Additional Medical Evaluations

Tobin appealed Unum's termination of her benefits under the LTD and Life Policies, submitting additional medical records, vocational assessments, and letters of support—Unum agreed to review these new records. *See* Appeal Documents, ECF No. 18-10 at PageID.2946–2988; Opp., ECF No. 23 at PageID.5685 (noting Unum's review); *accord Killian v. Healthsource Provident Adm'rs,* 152 F.3d 514, 521 (6th Cir. 1998) ("[I]t is not open to a plan administrator to curtail consideration of the information propounded by the plan beneficiary, while continuing to accumulate information that bolsters a denial decision."). The Court outlines this evidence in relevant part below, again largely organized by the name of the expert who produced the evidence.

Carnegee Truesdale, Psy.D. On March 9, 2023, Tobin spoke with Dr. Truesdale, a board-certified clinical psychologist with a specialty in pain medicine (*see* Medical Notes, ECF No. 18-6 at PageID.1670–1673). Tobin reported to Dr. Truesdale that she experienced:

> [N]o alleviation of pain with any specific kind of treatment ... She reports that pain impacts her ability to focus and concentrate for more than a few minutes at a time. She reports that things that used to be simple are very taxing. She reports that her brain is slower than it used to be. She reports that everything that she does is much slower than what or how she used to do.

> She reports that she walks her dog and does chores but she takes many more breaks and at times does nothing for hours to give her brain a break ... Patient reports that she can read about 10 minutes before she has to go back and reread and feels like her brain is getting exhausted. She reports that her brain is firing slower and it takes longer for her to find the words she wants to use ... Patient reports feeling anxious and worrying about future and employment and stability. She reports that her head pain can exacerbate her depression and anxiety.

(*Id.* at PageID.1670–1671). Dr. Truesdale did not conclude that Tobin was malingering or misrepresenting her symptoms; she instead recommended a referral to neuropsychology "to help determine functioning and realistic expectations in returning to workforce and quality of life" in light of Tobin's headache pain and fatigue (*see* Truesdale Medical Notes, ECF No. 18-6 at PageID.1670). Dr. Truesdale further recommended that Tobin meet with Pain Psychology "to learn how to think about and approach her pain and learn coping skills" (*id.*).

Dr. Pomeroy and NP VanDenToorn. On July 27 and July 28, 2023, "Dr. Pomeroy and NP VanDenToorn, issued Statements of Disability, confirming that they have examined Ms. Tobin and that in their respective medical opinions, she is totally disabled from working as an Account Executive and from any other full-time occupations due to the various effects of her ongoing medical conditions" (*see* Br. ISO Mot., ECF No. 22 at PageID.5656, citing Statements of Disability, ECF No. 18-8 at PageID.2433, 2435–2436).

8** ***Heshan Fernando, Ph.D. On March 8, 2024, "Tobin underwent a neuropsychological evaluation performed by a neuropsychologist, Heshan Fernando, Ph.D." (Fernando Report, ECF No. 18-11 at PageID.3226–3232). This evaluation included a battery of cognitive testing, and Dr. Fernando concluded based on the results that Tobin "did struggle relatively on a continuous performance task which required her to sustain her attention and concentration over a long period of time," that there were "findings on testing that are consistent with [Tobin's] report during interview," and "[m]ost notably, there was evidence of attentional difficulties and variability in her capacity to focus on a continuous performance task which requires her to sustain her attention/concentration for almost 20 minutes" (*id.*). That said, Dr. Fernando did not rule out the possibility that Tobin could potentially work in some capacity given her overall neurocognitive profile, including a number of test results in the normal and average ranges (*id.* at PageID.3229).

Dr. Weinstein Addendum. Unum reviewed the additional evidence submitted by Tobin in connection with her appeal (*see* Opp., ECF No. 23 at PageID.5683–5686). Dr. Weinstein authored an addendum that referenced Tobin's supplemental evidence (*see* Weinstein Addendum, ECF No. 18-10 at PageID.3042–3044). Largely mirroring her earlier analysis, Dr. Weinstein again declined to recommend an independent medical examination, and she concluded that Tobin's "additional information does not change my prior opinion" (*see id.*).

Dr. Morcos Addendum. Unum again forwarded Dr. Weinstein's file review to Dr. Morcos, and he again repeated Dr. Weinstein's conclusion, stating that Tobin's additional evidence did not change his opinion that "the reported symptoms, physical examination findings, diagnostic testing, intensity of treatment, and noted activities reflected in the file do not support" Tobin's inability to work as an account executive on a full-time basis (Morcos Addendum, ECF No. 18-10 at PageID.3046–3048). Dr. Morcos reiterated that Tobin's headache had an unidentified "etiology," that she had "normal diagnostic findings, normal mental status exams and the treatment frequency does not support" Tobin's inability to return to work (*id.* at PageID.3047–3048).

Zachary Gross, M.D. Unum then requested that Dr. Zachary Gross, an internist without a board certification in neurology, conduct another paper file review of Tobin's claim (*see* Opp., ECF No. 23 at PageID.5684). Dr. Gross did not request an independent medical examination (*id.*). He noted "the neurology visits on 03/02/23 and 05/05/23 did not show any significant pain behavior or significant neurologic deficit" (Gross File Review, ECF No. 18-10 at PageID.3103–3106), implicitly concluding—unlike Dr. Pomeroy, a neurologist who specializes in headaches, and unlike Dr. Truesdale, a pain management specialist—that Tobin's reports of intractable headache pain across multiple visits with multiple providers during the relevant time period lacked credibility (*id.*; *cf.* Letter from Nurse Practitioner Stoutjesdyk, ECF No. 18-11 at PageID.3199–3200 ("[Tobin] is currently under my professional care for the treatment of headaches that have been ongoing for the past 2 years, since January, 2022. This condition is debilitating and incapacitating .... This is not an uncommon situation")). Dr. Gross also

noted that Tobin's brain scans and other diagnostic imaging had been "normal," as opposed to revealing a conclusive etiology for Tobin's headaches (Gross File Review, ECF No. 18-10 at PageID.3103–3106).

Dr. Gross further noted that Tobin enjoyed hiking and could attend live concerts with earplugs, an "activity level" which—in Dr. Gross's view—established that Tobin could perform the role of an account executive (*see id.*). Dr. Gross does not explain which of the job responsibilities of an account executive, in his mind, are most closely analogous to hiking or attending a concert (*see generally* Gross File Review, ECF No. 18-10 at PageID.3103–3106). Dr. Gross then adopted Dr. Weinstein's opinion that Tobin's "treatment intensity"—including her three-to-six-month follow-up visits with her specialist teams and her purportedly low number of visits to emergency rooms or urgent care facilities (*see* Weinstein File Review, ECF No. 18-4 at PageID.797–799)—did not support her inability to work as an account executive (*see* Gross File Review, ECF No. 18-10 at PageID.3106).

***9** Dr. Gross also completed an addendum to address Dr. Fernando's neuropsychological testing, which, as noted above, revealed "deficits in [Tobin's] sustained attention and concentration" and concluded that "her frequent and sometimes severe migraines could certainly impact job performance from a physiological standpoint" (Gross Addendum, ECF No. 18-11 at PageID.3238–3239). Dr. Gross declined to offer a substantive response to these particular statements by Dr. Fernando, focusing instead on those test results that came back "within normal limits" before concluding that his "previous decision remains unchanged" and that Tobin had the ability to work as an account executive (*id.*).

On May 9, 2024, Unum affirmed its decision to terminate Tobin's benefits under the LTD and Life Polices (*see, e.g.,* Unum Letter, ECF No. 18-11 at PageID.3246–3251).

III. PROCEDURAL HISTORY

Tobin initiated this action by filing a Complaint on September 26, 2024 (*see* ECF No. 1). Unum filed a copy of the administrative record on January 31, 2025 (ECF No. 18). Tobin moved for judgment on the administrative record on July 10, 2025 (Mot., ECF No. 21; Br. ISO Mot., ECF No. 22). Unum filed a response in opposition on September 10, 2025 (Opp., ECF No. 23). Tobin filed a reply on September 30, 2025 (Reply, ECF No. 24). Having considered the parties' submissions, the Court concludes that oral argument is unnecessary to resolve the issues presented. *See* W.D. Mich. LCivR 7.2(d).

IV. ANALYSIS

For the reasons set forth in greater detail below, the Court concludes that: (1) Tobin has satisfied her burden of showing that her sickness precludes her from performing her regular occupation, as relevant to the LTD Policy; and (2) Tobin has failed to satisfy her burden of showing that her sickness precludes her from performing any gainful occupation for which she is reasonably fitted by training, education, or experience, as relevant to both the LTD and Life Policies.

A. Tobin Has Satisfied Her Burden Under the "Own Occupation" Standard

The Court must first determine whether Tobin has shown by a preponderance of the evidence that her sickness precludes her from performing the duties of her regular occupation. After carefully reviewing the parties' submissions, the administrative record, and applicable Sixth Circuit authorities, the Court concludes that Tobin has made this showing. The Court further concludes that Unum's evidence on this point suffers from the serious deficiencies noted below.

1. Tobin's Evidence Carries Significant Weight as to the "Own Occupation" Standard

Tobin has satisfied her burden for multiple reasons. First, as noted above, Tobin has submitted disability statements from Dr. Pomeroy, a board-certified neurologist, and Nurse Practitioner VanDenToorn, a neurology specialist—both of whom have examined Tobin face-to-face—explaining that "Tobin has ongoing complaints of daily headache, nausea, fatigue, lightheadedness, brain fog and decreased concentration" and that "Tobin has advised that she rests and naps for a large portion of her days" (*see* Statements of Disability, ECF No. 18-8 at Page.ID.2433, 2435–2536). These specialists opine, supported by firsthand observations, that Tobin "is totally disabled from working in her own occupation as an Account Executive" (*id.*).

Second, Tobin was evaluated by Dr. Truesdale, a pain management specialist who spoke with Tobin one-on-one and who did not identify evidence of malingering or otherwise call into question the credibility of Tobin's self-reported symptomology (*see* Medical Notes, ECF No. 18-6 at PageID.1670–1673). The parties do not dispute that Dr. Truesdale, as a psychologist and pain management specialist, is trained to assess whether patients are providing accurate information regarding their symptoms or whether they are malingering. *See, e.g., Holmstrom v. Metro. Life Ins. Co.*, 615 F.3d 758, 775 (7th Cir. 2010) ("[W]e must note the absence here of any evidence of malingering .... The problems of malingering, drug addiction, and drug-seeking behavior are well-known to professionals who treat painful conditions, and they look for them."). Neither Dr. Truesdale nor any of Tobin's other providers called into question the reliability of Tobin's reported headache pain and fatigue—on the contrary, they described Tobin as "reliable" and "genuine" as to her medical history and symptomology.[6] *See, e.g.,* Medical Notes, ECF No. 18-3 at PageID.564 (reflecting NP VanDenToorn's assessment of Tobin as "reliable"); Letter, ECF No. 18-11 at PageID.3199 (reflecting Nurse Practitioner Stoutjesdyk's medical opinion, as a treating provider, that Tobin's "headaches are currently occurring on a continuous, daily basis and are severe with associated symptoms such as concentration difficulty .... [Tobin's] symptomatology is *genuine* and expected") (emphasis added); *Javery*, 741 F.3d at 702 (highlighting the importance of a treating provider's "credibility determinations regarding ... medical history and symptomology").

***10** Third, Tobin submits objective evidence from "a neuropsychological evaluation" by Dr. Fernando noting that Tobin struggled "on a continuous performance task which required her to sustain her attention and concentration over a long period of time," in addition to "evidence of attentional difficulties and variability in her capacity to focus on a continuous performance task [for] 20 minutes" (*see* Fernando Report, ECF No. 18-11 at PageID.3226–3232). This evidence corroborates the medical opinion of Dr. Pomeroy—the only board-certified neurologist and headache specialist to personally treat Tobin in this case—who concluded that Tobin's "headache could impact her concentration if she attempted to return to work too soon" and that "she is totally disabled from working in her own occupation as an Account Executive" (*see* Call Notes, ECF No. 18-4 at PageID.791–792; Physician Statement of Disability, ECF No. 18-8 at Page.ID.2433; *accord Zuke v. Am. Airlines, Inc.*, 644 F. App'x 649, 654 (6th Cir. 2016) (indicating that a "treating physician's notes detailing the functional capabilities of a patient are objective evidence" and when a plan administrator in a denial-of-benefits case "categorically states that there is no objective evidence when in fact there is such evidence," that statement weighs against the administrator).

At bottom, the parties agree that Tobin's account executive role "is a highly skilled occupation requiring frequent concentration [and] attention" (*see* Vocational Addendum, ECF No. 18-10 at PageID.3058). Thus—regardless of whether Tobin can hold eye contact, retain her memories, perform within the normal range on brief mental status examinations, attend concerts, or go hiking—objective neuropsychological test results corroborate the medical opinion of Tobin's treating neurologist that her symptoms, particularly her difficulty with sustained concentration, preclude her from working as an account executive, a position that requires "frequent concentration [and] attention" (*see id.*; Statement of Disability, ECF No. 18-8 at Page.ID.2433).

2. The Evidence Presented by Unum Carries Little Weight

The Court concludes that the file reviews on which Unum relies are internally inconsistent, lack support, and are entitled to little weight for many reasons. First, the file reviews conducted by Drs. Weinstein, Morcos, and Gross rely heavily on the fact that diagnostic tests have not identified the etiology for Tobin's headaches and that those headaches—along with associated pain and fatigue—are "self-reported" symptoms.[7] But "**ERISA** does not require that a plaintiff show a particular etiology to prove they are disabled." *Jahnke v. Unum Life Ins. Co. of Am.*, 799 F. Supp. 3d 628, 647 (E.D. Mich. 2025) (collecting cases).

Although Unum "rightly point[s] out that [it] can reasonably require objective medical evidence of disability," that "is a separate issue from whether Plaintiff has a definitive and final diagnosis or can offer a clear etiology." *Id.* (citing *Cooper v. Life Ins. Co. of N. Am.*, 486 F.3d 157, 166 (6th Cir. 2007) and *Meinke v. Comput. Sci. Corp.*, No. 3:02-cv-286, 2004 WL 5345274, at *11 (S.D. Ohio Sep. 20, 2004).

Here, the LTD Policy expressly lists "headaches, pain, [and] fatigue"—Tobin's major medical complaints—as prototypical conditions that may not be "verifiable using tests, procedures or clinical examinations" (*see* LTD Policy, ECF No. 18-2 at PageID.206, 219).[8] The LTD Policy nevertheless includes a provision stating that self-reported symptoms, including those associated with headaches, may support up to twenty-four months of LTD benefits (*see id.*).[9] *Cf. Laake v. Benefits Comm., W. & S. Fin. Grp. Co. Flexible Benefits Plan*, 68 F.4th 984, 996–97 (6th Cir. 2023) ("Importantly, the Plan does not require the claimant to produce only objective evidence, nor does it foreclose the consideration of subjective evidence ... the fact that [the claimant's] complaints of pain are subjective do not render them irrelevant as to whether she was disabled"). Accordingly, Tobin must "offer evidence demonstrating her condition is a result of sickness or injury rather than something else. So long as she meets that requirement, she need not have conclusively determined the etiology of her symptoms. Doing so is not necessary for determining that she is disabled due to sickness or injury." *Jahnke,* 799 F. Supp. 3d at 648. Given the specific policy language at issue, to the extent Drs. Weinstein, Morcos, and Gross erroneously relied on the lack of a "definitive and final diagnosis" arising from diagnostic imaging to reject Tobin's claims, the Court concludes that the weight afforded their conclusions should be discounted. *Id.*

***11** Second, the file reviews authored by Drs. Weinstein, Morcos, and Gross repeatedly state that Tobin's "treatment intensity," including her follow-up visits with neurology in three-to-six-month intervals and the number of her urgent care and emergency room visits, does not accord with her inability to work full-time as an account executive.[10] Unum's file reviewers, however, do not meaningfully address evidence that Tobin's visits to emergency rooms and urgent care facilities early in the course of her illness did not result in pain relief (Medical Notes, ECF No. 18-3 at PageID.311–345, 358). Unum's file reviewers do not comment on the cost, anxiety, or intense discomfort normally associated with receiving care in an emergency room environment, and they do not comment on whether headache and pain management specialists—as opposed to emergency medicine specialists—normally staff emergency rooms. Critically, they also fail to acknowledge that Tobin's treatment intervals were expressly set by the headache and pain management specialty teams responsible for her ongoing care (*see id.*; Medical Notes, ECF No. 18-6 at PageID.1413 ("Return in about 4 months"); Unum Call Notes, ECF No. 18-4 at PageID.844 ("[Tobin] states [her neurologist's office] set the frequency of [office visits and she] was following [neurology's] advisement."). "Plan administrators are not obliged to accord special deference to the opinions of treating physicians," but they "may not arbitrarily refuse to credit" those "opinions," and Unum's file reviewers here have arbitrarily disregarded the decisions that Tobin's treating physicians made regarding her "treatment intensity." *See Shaw v. AT&T Umbrella Ben.*, 795 F.3d 538, 548 (6th Cir. 2015) (citing *Black & Decker Disability Plan v. Nord,* 538 U.S. 822, 825 (2003)).

Third, although "there is nothing inherently improper with relying on a file review, even one that disagrees with the conclusions of a treating physician," *see Calvert v. Firstar Fin. Inc.*, 409 F.3d 286, 297 n.6 (6th Cir. 2005), the "failure to conduct a physical examination, where the Plan document gave the plan administrator the right to do so, raises questions about the thoroughness and accuracy of the benefits determination," *see Shaw,* 795 F.3d at 550 (cleaned up) (citing *Helfman v. GE Group Life Assur. Co.*, 573 F.3d 383 at 393 (6th Cir. 2009). The LTD Policy affords Unum the right to conduct an independent medical examination, and Unum repeatedly declined to exercise that right, despite its file reviewers making multiple judgments that depended on firsthand observations of Tobin's affect and demeanor during office visits (*see* Independent Medical Examination Provisions, ECF No. 18-1 at PageID.140 and ECF No. 18-2 at PageID.182). The Court thus questions the "thoroughness and accuracy" of the reports offered by Drs. Weinstein, Morcos, and Gross and concludes that their conclusions should be afforded less weight due to these facts. *See Helfman,* 573 F.3d at 393 (citing *Calvert,* 409 F.3d at 295).

Fourth, Sixth Circuit case law specifically disfavors a plan administrator's "file reviewers ... second-guessing" the "credibility determinations" made by a claimant's "treating physicians" in situations where the file reviewers have not "actually examined" the claimant. *See Judge v. Metro. Life Ins. Co.,* 710 F.3d 651, 663 (6th Cir. 2013); *accord Calvert*, 409 F.3d at 297 n.6. "That rule

makes good sense, given that physicians who do not physically examine a patient are in no position to assess their credibility." *Jahnke*, 799 F. Supp. 3d at 645–46. Here, Drs. Weinstein, Morcos, and Gross all implicitly question the credibility of Tobin's self-reported symptoms, reasoning that she did not show sufficient signs of pain during office visits,[11] she drinks alcohol, she hikes, she can take short trips in the car, and she has attended concerts while wearing earplugs, among other evidence of "activity levels" that purportedly undermine her credibility.[12] Dr. Pomeroy, Dr. Truesdale, and Nurse Practitioners VanDenToorn and Stoutjesdyk also reviewed Tobin's activity levels, but unlike Unum's file reviewers, they communicated directly with Tobin and observed her firsthand, after which they described her medical history and symptomology as "reliable" and "genuine." *See, e.g.,* Medical Notes, ECF No. 18-3 at PageID.564 and ECF No. 18-11 at PageID.3199; *Javery*, 741 F.3d at 702 (highlighting the importance of a treating provider's "credibility determinations regarding ... medical history and symptomology"). Given that Unum's file reviewers implicitly reach a contrary credibility determination—and given that they declined to request the independent medical examination authorized by the LTD Policy—the Court concludes that the weight afforded their file reviews should be heavily discounted. *See Judge,* 710 F.3d at 663; *Calvert*, 409 F.3d at 295, 297 n.6; *Godmar v. H.P.*, 631 F. App'x 397, 406 (6th Cir. 2015); *Johndrow v. Unum Life Ins. Co. of Am.*, No. 1:21-CV-296, 2023 WL 12219903, at *12 (E.D. Tenn. Aug. 31, 2023) (criticizing a file review because "Unum has not pointed to any medical notes that suggest that the physicians that actually treated and examined Johndrow suspected malingering or exaggeration").

***12** Fifth, Drs. Weinstein, Morcos, and Gross all cite normal "mental status examinations" during office visits as evidence that Tobin can work as an account executive.[13] But Dr. Pomeroy, the only board-certified neurologist and headache specialist to examine Tobin, expressly stated that "a mental status examination would not pick up abnormalities" and Tobin would benefit from a "more in-depth cognitive evaluation" (*see* Call Notes, ECF No. 18-4 at PageID.791–792). Unum's file reviewers offer no substantive response to Dr. Pomeroy on this point. Again, "[p]lan administrators are not obliged to accord special deference to the opinions of treating physicians," but they "may not arbitrarily refuse to credit" those opinions. *See Shaw*, 795 F.3d at 548 (citing *Black & Decker,* 538 U.S. at 825). The Court concludes that Drs. Weinstein, Morcos, and Gross—and by extension Unum—have arbitrarily refused to credit Dr. Pomeroy's opinion regarding Tobin's mental status examinations, further reducing the weight accorded their file reviews. *Id.*

Sixth, federal appellate authority establishes that a court reviewing the denial of benefits under an **ERISA** plan may "evaluate [a physician's] opinion in the context of any factors it consider[s] relevant, such as the length and nature of [the physician-patient] relationship, the level of the doctor's expertise, and the compatibility of the opinion with the other evidence." *See Connors v. Connecticut Gen. Life Ins. Co.*, 272 F.3d 127, 135 (2d Cir. 2001) (citing federal appellate and district court authority). Here, the most substantive analysis offered by Unum's file reviewers comes from Drs. Weinstein and Gross, both of whom are internists, not neurologists who specialize in treating headaches. Dr. Morcos is a board-certified neurologist, but his analysis copies and pastes from Dr. Weinstein's conclusions, he did not evaluate Tobin in person, and Unum's briefing does not identify whether he has any specialized expertise in the treatment of migraines or other headaches (*see* Morcos File Review, ECF No. 18-4 at PageID.805; Opp., ECF No. 23 at PageID.5682–5683). Dr. Pomeroy, on the other hand, is a neurologist who personally examined Tobin and who specializes in the treatment of headaches (*see* Br. ISO Mot., ECF No. 22 at PageID.5648 n.5). The Court concludes that Dr. Pomeroy's medical opinion is entitled to greater weight than those of Unum's file reviewers, not simply because he was Tobin's treating physician, but based on his expertise and the support provided for his opinion. *See Connors*, 272 F.3d at 135.

Seventh, Unum's file reviewers fail to explain how Tobin's "activity levels"—which Unum's lawyers argue motivated Unum's decision to discontinue LTD Benefits after Unum initially paid them for months—establish that she could perform the "highly skilled" role of an account executive (*see* Vocational Addendum, ECF No. 18-10 at PageID.3058–3060). For example, Dr. Gross declines to credit Tobin's self-reported symptoms as disabling because she has the ability to hike, go to concerts with earplugs, and enjoy the outdoors (Gross Reviews, ECF No. 18-10 at PageID.3103–3106 and ECF No. 18-11 at PageID.3238–3239). But the account executive role requires Tobin to manage multiple customer accounts simultaneously while negotiating and selling a high volume of services and coordinating the efforts of subordinates across multiple complex projects (*see* Vocational Assessment, ECF No. 18-4 at PageID.771–772). None of Unum's file reviewers explain which of the above job responsibilities

are most analogous to the modest "activity levels" reported by Tobin.[14] The "speculative leaps" upon which the Unum file reviewers' opinions depend further reduce the weight, if any, that those opinions should be afforded by the Court. *See Jahnke,* 799 F. Supp. 3d at 648 (noting that the court "would have to make speculative leaps and fill in gaps in the record to conclude that the activities" noted by Unum's file reviewers "is evidence of a lack of disability" and rejecting Unum's argument that the plaintiff "leads 'an active life' and therefore is not disabled under their policies").

***13** In sum, for the reasons stated above, the Court concludes that the evidence offered by Unum as to whether Tobin's sickness precludes her from performing her regular occupation has little value, and the Court further concludes that Tobin has carried her burden on this point by a preponderance of the evidence. *See Messing*, 48 F.4th at 678.

B. Tobin Has Not Satisfied Her Burden Under the "Any Gainful Occupation" Standard

As noted above, the Life Policy defines disability as the inability to "perform the duties of *any gainful occupation* for which you are reasonably fitted by training, education or experience" due to "sickness or injury" (Life Policy, ECF No. 18-1 at PageID.115, 139).[15] The Court concludes that Tobin has failed to establish by a preponderance of the evidence that she meets the definition for "disability" under the "any gainful occupation" standard for the following reasons.[16]

First, although Tobin's medical and vocational experts explained her inability to work as an account executive, they do not provide a similar level of support for the separate conclusion that Tobin is unable to work in any gainful occupation. For example, the Statements of Disability offered by Dr. Pomeroy and Nurse Practitioner VanDenToorn explain why Tobin's symptoms prevent her from working as an account executive, but they only reference Tobin's inability to work in "any other full-time occupation" in a cursory final sentence, without any particularized support or explanation for that additional opinion (*see* Physician Statement of Disability, ECF No. 18-8 at Page.ID.2433; Statement of Disability, ECF No. 18-8 at PageID.2435–2536).

The Court also notes that Tobin's reply brief devotes over a dozen pages to arguing that Tobin cannot work as an account executive, but includes little to no substantive argument on why she cannot work in any gainful occupation (*see, e.g.,* Reply, ECF No. 24 at PageID.5700–5709 (arguing throughout that Tobin is "unable to perform the material and substantial duties of an Account Executive").[17] Given the paucity of evidence or analysis offered on this point by Tobin's treating physicians, her vocational expert, and her counsel, and given that the Sixth Circuit cautions against "blindly accept[ing]" medical opinions in reviewing an **ERISA** plan administrator's benefits decision, the Court concludes that the evidence submitted by Tobin fails to establish, by a preponderance of the evidence, that she is unable to work in any gainful occupation. *See Cooper*, 486 F.3d at 167 (citing *Black & Decker,* 538 U.S. at 834).

***14** Second, although Dr. Fernando's neuropsychology test results indicate that Tobin cannot work as an account executive, his report also notes test results that weigh against Tobin's separate argument that she cannot work in any gainful occupation (*see* Fernando Report, ECF No. 18-11 at PageID.3226–3232).[18] Dr. Fernando notes that Tobin has "attentional difficulties" with respect to "her capacity to focus on a continuous performance task," but he otherwise notes "processing speed scores" that were only "slightly lower than expected based on her presumed baseline" (*id.* at PageID.3229). "[B]asic attention appears to be intact. Her scores in other domains including language, visual skills, and memory in particular, are all relatively strong" (*id.*). "Overall ... there are some deficits in sustained attention and concentration ... [but] [Tobin's] neurocognitive profile is within normal limits" (*id.*). Critically, Dr. Fernando does not opine that Tobin is unable to work in any gainful occupation, stating instead that her "deficits in sustained attention ... may not necessarily interfere with her ability to work, per se" (*id.*).

The Court affords significant weight to Dr. Fernando's opinion that Tobin may be able to work, even if she cannot perform the highly skilled and demanding work of an account executive. Taken together with the minimal evidence analysis offered on this point by Tobin's other experts[19]—and given that Tobin all but waived this point in her reply brief—the Court concludes that Tobin has not met her burden of showing that her sickness renders her unable to perform any gainful occupation. *See*

Messing, 48 F.4th at 678; *Guarino v. Brookfield Twp. Trs.*, 980 F.2d 399, 406 (6th Cir. 1992) (noting in an analogous context that it would be "inappropriate for the court to abandon its position of neutrality in favor of a role equivalent to champion" for a party by scouring the record to support an undeveloped argument); *McPhereson*, 125 F.3d at 995–96 ("Issues adverted to in a perfunctory manner, unaccompanied by some effort at developed argumentation, are deemed waived. It is not sufficient for a party to mention a possible argument in the most skeletal way, leaving the court to put flesh on its bones.") (cleaned up).

V. CONCLUSION

***15** For the reasons stated above:

IT IS HEREBY ORDERED that Tobin's motion for judgment on the administrative record (ECF No. 21) is GRANTED IN PART to the extent that Tobin has shown her sickness precludes her from performing her regular occupation and DENIED IN PART to the extent that Tobin has not shown her sickness precludes her from performing any gainful occupation.

IT IS FURTHER ORDERED that the parties shall submit a joint proposed judgment not later than fourteen (14) days after entry of this Opinion and Order. If the parties cannot agree on the form of a proposed judgment, they may each file a notice not longer then ten pages in length setting forth their respective positions on the form of the proposed judgment. To the extent the parties' proposed judgment includes a proposed attorneys' fee award, Plaintiff shall submit itemized billing entries supporting the amount proposed as an attachment to the joint proposed judgment.

All Citations

Slip Copy, 2026 WL 508810

Footnotes

1 All record citations refer to documents in the administrative record unless otherwise noted. *See* Admin Record., ECF No. 18; *Wallace*, 954 F.3d at 890 (noting that "courts may look only to the record before the administrator" in performing a de novo review of a denial of **ERISA** benefits).

2 Tobin has submitted evidence that "normal diagnostic MRI [and] CT testing such as scans and venograms" do not "mean the person wasn't suffering from painful headaches"—on the contrary, "the diagnosis of headaches is in part based on having normal imaging tests" (Mot., ECF No. 22 at PageID.5658–5659, citing Vocational Report Addendum, ECF No. 18-11 at PageID.3201–3203). Unum offers no substantive response to this evidence (*see* Opp., ECF No. 23).

3 In sum, the LTD Policy applies a "regular occupation" standard for disability during an initial twenty-four-month period, whereas the Life Policy—and the LTD Policy following the initial twenty-four-month period—apply an "any gainful occupation" standard (*compare* LTD Policy, ECF No. 18-2 at PageID.200, 216 *with* Life Policy, ECF No. 18-1 at PageID.115, 139).

4 The portions of the administrative record relied upon by the parties in their briefing are heavily excerpted (*see generally* Br. ISO Mot., ECF No. 22; Opp., ECF No. 23; Reply, ECF No. 24). The Court has reviewed this information in context with the broader administrative record, which spans over five thousand five hundred pages (*see generally* ECF No. 18). This Opinion and Order is informed by the Court's review of the broader record regardless of whether the Court expressly cites to any particular item of evidence herein (*see id.*). That said, to the extent the parties have failed to expressly cite to relevant portions of the record, that failure constitutes waiver. *See McPhereson v. Kelsey*, 125 F.3d 989, 995–96 (6th Cir. 1997) ("Issues adverted to in a perfunctory manner, unaccompanied by some effort at developed argumentation, are deemed waived. It is not sufficient for a party to mention a possible argument in the most skeletal way, leaving the court to put flesh on its bones.") (cleaned up); *Marko v. Comm'r of Soc. Sec.*, No. 2:16-CV-12204, 2017 WL 3116246, at *3 (E.D. Mich. July 21, 2017) ("[I]t is not the Court's function to search the administrative record for evidence to support [a party's] argument or find law supporting her claims ... [or] craft an argument on [a party's] behalf.") (cleaned up)); *Bencivenga v. Unum Life Ins. Co. of Am.*, No. 14-10118, 2015 WL 1439697, at *19 n.29 (E.D. Mich. Mar. 27, 2015)

(same); *Blanton v. Domino's Pizza*, 962 F.3d 842, 845 n.1 (6th Cir. 2020) (noting that courts "rely on the parties to frame the issues for decision" and decide only the "matters the parties present").

5 The job description for an "account executive" in the "national economy" includes the following "Material and Substantial Duties":

> Maintains existing customer accounts, acknowledges and handles taking care of their needs, and assures their satisfaction. Helps maintain or extend existing customer accounts, and attracts and develops new accounts. Communicates regularly with current and potential customers over the phone or email to discover their needs, answer questions, respond to emails, and find solutions to issues. Ensures products and services are to customers' satisfaction. Updates customers' profiles so the company can track what's happening with accounts. Gathers information and submit reports to management. Networks within the industry and studies the competition. Prepares and delivers targeted presentations of the company's products or services in person and/or web-based, explains product offerings, writes up bids, and closes sales.

The job also includes the "cognitive demands," among others, of "Directing, Controlling, or Planning Activities for Others," including "accepting responsibility for formulating plans, designs, practices, policies, methods, regulations, and procedures for operations or projects; negotiating with individuals or groups for agreements or contracts; and supervising subordinate workers to implement plans and control activities" in addition to "writing, demonstrating, or speaking to persuade and motivate people to ... purchase a specific commodity or service" and "solving problems, making evaluations, or reaching conclusions based on subjective or objective criteria" (*see* Vocational Analysis, ECF No. 18-4 at PageID.771–772).

6 Unum tacitly admits this point, arguing instead that "no objective evidence substantiates Ms. Tobin's self-reported issues" (Opp., ECF No. 23 at PageID.5690). But Unum fails to grapple with relevant LTD Policy provisions that expressly contemplate self-reported symptoms for "headaches, pain, [and] fatigue" that "*are not verifiable using tests, procedures or clinical examinations*" (*see* LTD Policy, ECF No. 18-2 at PageID.206, 219, emphasis added) (indicating that benefits may be paid for up to twenty-four months based on "self-reported symptoms"). *Cf. Laake v. Benefits Comm., W. & S. Fin. Grp. Co. Flexible Benefits Plan*, 68 F.4th 984, 996–97 (6th Cir. 2023) ("Importantly, the Plan does not require the claimant to produce only objective evidence, nor does it foreclose the consideration of subjective evidence ... the fact that [the claimant's] complaints of pain are subjective do not render them irrelevant as to whether she was disabled"); *James v. Liberty Life Assurance Co. of Bos.*, 582 F. App'x 581, 589 (6th Cir 2014) (noting that some aspects of a claimant's "diagnosis [are] not capable of confirmation through objective indicators. Complaints of pain necessarily are subjective as they are specific to the patient and are reported by the patient," but the policy permitted claimants to rely on subjective evidence).

7 *See* Weinstein Review, ECF No. 18-4 at PageID.797–799 and ECF No. 18-10 at PageID.3043–3044; Morcos Review, ECF No. 18-4 at PageID.805 and ECF No. 18-10 at PageID.3046–3048; Gross Review, ECF No. 18-10 at PageID.3103–3106 and ECF No. 18-11 at PageID.3238–3239.

8 Tobin has submitted evidence that "normal diagnostic MRI [and] CT testing such as scans and venograms" do not "mean the person wasn't suffering from painful headaches" and "the diagnosis of headaches is in part based on having normal imaging tests" (Vocational Report Addendum, ECF No. 18-11 at PageID.3201–3203). This evidence accords with Unum's policy language and with Unum's initial decision to pay Tobin's claim despite evidence, within days of the onset of Tobin's condition, that imaging could not identify a specific etiology. Unum's file reviewers and counsel fail to provide a meaningful response to this evidence (*see generally* Opp., ECF No. 23).

9 As noted above, Unum paid Tobin LTD benefits for months after it received evidence that diagnostic imaging, completed as early as January 2022, could not identify an underlying etiology for Tobin's headaches, revealing a significant inconsistency between Unum's actions and the standard applied by its own file reviewers. *See* Medical Notes, ECF No. 18-3 at PageID.311–345.

10 *See* Weinstein Review, ECF No. 18-4 at PageID.797–799 and ECF No. 18-10 at PageID.3043–3044; Morcos Review, ECF No. 18-4 at PageID.805 and ECF No. 18-10 at PageID.3046–3048; Gross Review, ECF No. 18-10 at PageID.3103–3106 and ECF No. 18-11 at PageID.3238–3239.

11 Unum's file reviewers fail to substantively address or acknowledge that although "pain is an inherently subjective condition," it is "no less capable of being disabling," and "complaints of pain necessarily are subjective as they are specific to the patient and are reported by the patient." *See Counts v. United of Omaha Life Ins. Co.*, 429 F. Supp. 3d 389, 403 (E.D. Mich. 2019) (quoting *Koning v. United of Omaha Life Ins. Co.*, 627 Fed. Appx. 425, 437–38 (6th Cir. 2015)).

12 *See* Weinstein Review, ECF No. 18-4 at PageID.797–799 and ECF No. 18-10 at PageID.3043–3044; Morcos Review, ECF No. 18-4 at PageID.805 and ECF No. 18-10 at PageID.3046–3048; Gross Review, ECF No. 18-10 at PageID.3103–3106 and ECF No. 18-11 at PageID.3238–3239.

13 *See* Weinstein Review, ECF No. 18-4 at PageID.797–799 and ECF No. 18-10 at PageID.3043–3044; Morcos Review, ECF No. 18-4 at PageID.805 and ECF No. 18-10 at PageID.3046–3048; Gross Review, ECF No. 18-10 at PageID.3103–3106 and ECF No. 18-11 at PageID.3238–3239.

14 *See* Weinstein Review, ECF No. 18-4 at PageID.797–799 and ECF No. 18-10 at PageID.3043–3044; Morcos Review, ECF No. 18-4 at PageID.805 and ECF No. 18-10 at PageID.3046–3048; Gross Review, ECF No. 18-10 at PageID.3103–3106 and ECF No. 18-11 at PageID.3238–3239.

15 The Life Policy defines "gainful occupation" as "an occupation that within 12 months of your return to work is or can be expected to provide you with an income that is at least equal to 60% of your annual earnings in effect just prior to the date your disability began," (*id.* at PageID.156), and Unum "has calculated Tobin's gainful occupation wage to be $28.39/hour; or $59,058.72/year" (Br. ISO Mot., ECF No. 22 at PageID.5648, citing Unum Calc., ECF No. 18-4, PageID.768).

16 The LTD Policy applies the "any gainful occupation standard" after an initial twenty-four-month period (*see* LTD Policy, ECF No. 2 at PageID.200).

17 The Court does not mean to suggest that Tobin's counsel failed to offer well-researched and thorough briefing. Just the opposite. Counsel marshalled evidence from across the voluminous record and skillfully applied that evidence to relevant Sixth Circuit authority (*see generally* Br. ISO Mot., ECF No. 22; Reply, ECF No. 24). In fact, the persuasive force of Tobin's briefing on other points draws into sharp relief the comparatively scant evidence and argument offered to prove that Tobin lacks the ability to work in "any gainful occupation" (*see generally id.*).

18 Dr. Fernando notes that "all basic and instrumental ADL are intact," Tobin is able to perform the divided-attention task of driving "for an hour or less," her auditory attention span was in the high average range, her working memory index was high average, her processing speed showed "some relative weaknesses" but did not dip below the low average range, her learning and memory test results were in the exceptionally high range, and some executive function tests registered in the average range despite the "inattention difficulties" that prevent her from working as an account executive (*see* Fernando Report, ECF No. 18-11 at PageID.3226–3229).

19 For example, vocational analyst Susan Rowe provides a reasoned explanation for why "someone with [Tobin's] chronic headache pain and resulting symptoms" would not be able to "perform the material and substantial duties of her regular occupation as an Account Executive" because one "needs only to review the job description of an Account Executive position and interview Ms. Tobin to realize the high-level cognitive functioning involved in her job" (Vocational Analysis, ECF No. 18-7 at PageID.2111–2112). Given the objective evidence of attention difficulties highlighted by Dr. Fernando's battery of tests, Tobin would "certainly be unable to perform the cognitive demands of the Account Executive position" (*see id.* at 2111). Rowe concludes by stating "I hope this information is helpful to you in evaluating [Tobin's] vocational status and *inability to perform her job as an Account Executive*," but she offers no opinion on whether Tobin is also unable to work in any gainful occupation (*id.*, emphasis added). At counsel's request, Rowe later submitted an Addendum which added a sentence stating that Tobin's "chronic headaches would *also* prevent her from being able to perform even 'simple' jobs on a sustained basis at this time" (*see* Rowe Addendum, ECF No. 18-11 at PageID.3203, emphasis added). This sentence—which reads as an afterthought with no explanation of what Rowe considers to be a "simple" job—mirrors the similarly cursory statements offered by Dr. Pomeroy and NP VanDenToorn regarding Tobin's inability to work in any gainful occupation (*see* Statements of Disability, ECF No. 18-8 at Page.ID.2433 and ECF No. 18-8 at PageID.2435–2536). The burden of proof requires more.

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