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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

RAYMOND M. TASH, DDS

Plaintiff,

v.

METROPOLITAN LIFE
INSURANCE COMPANY; PACIFIC
DENTAL SERVICES, INC.,
EMPLOYEE BENEFIT PLAN,

Defendants.

) SACV 14-01914 AG (RNBx)

) **FINDINGS OF FACT AND**
) **CONCLUSIONS OF LAW**

) Complaint Filed: December 3, 2014

FINDINGS OF FACT

After reviewing and evaluating all evidence in the administrative record (“AR”), the Court makes the following findings of fact, including any findings of fact found in the Conclusions of Law.

1. Dr. Raymond Tash participates in an employment group benefit plan provided by his employer, Pacific Dental Services, Inc., and issued by MetLife (“the Plan”). (POL 01.)

2. For the first 24 months of benefits, this Plan defines disability as Dr. Tash’s inability to perform his “own occupation.” After this 24-month period, Dr. Tash remains disabled if he is unable to earn 60% of his prior earnings in “any gainful occupation” that he is qualified to do. Specifically, the Plan provides:

Disabled or **Disability** means that, due to Sickness or as a direct result of accidental injury . . . You are unable to earn:

1 * * *

2 during the Elimination Period and the next 24 months of Sickness or accidental injury,
3 more than 80% of Your Predisability Earnings at Your Own Occupation from any
4 employer in Your Local Economy; and

5 after such period, more than 60% of your Predisability Earnings from any employer
6 in Your Local Economy at any gainful occupation for which You are reasonably
7 qualified taking into account Your training, education and experience.

8 (POL 24.)

9 3. The Plan also contains a 12-month limitation on benefits for certain medical
10 conditions. This 12-month limitation applied to:

11 Disability due to Mental or Nervous Disorders or Diseases, Neuromuscular,
12 Musculoskeletal or Soft Tissue Disorder, Chronic Fatigue Syndrome and related
13 conditions.

14 (POL 49.)

15 4. The most relevant of these conditions is the “Neuromuscular, Musculoskeletal or
16 Soft Tissue Disorder” (the “Soft Tissue Limitation”), which is further defined by the Plan as
17 follows:

18 Neuromuscular, musculoskeletal or soft tissue disorder including, but not limited to,
19 any disease or disorder of the spine or extremities and their surrounding soft tissue;
20 including sprains and strains of joints and adjacent muscles, unless the Disability has
21 objective evidence of:

- 22 • Seropositive Arthritis;
- 23 • Spinal Tumors, malignancy, or Vascular Malformations;
- 24 • Radiculopathies;
- 25 • Myelopathies;
- 26 • Traumatic Spinal Cord Necrosis; or
- 27 • Myopathies . . .

28 (POL 49.)

1 5. Due to a variety of injuries, Dr. Tash stopped working on October 14, 2010, and
2 made a claim under the Plan on February 24, 2011. (AR 436–37.) On May 31, 2011, MetLife
3 approved Dr. Tash’s claim for LTD benefits. It paid back benefits as of February 10, 2011, which
4 is when the Plan’s elimination period ended.

5 6. But in March 2012, MetLife stopped paying benefits to Dr. Tash without providing
6 either notice or an explanation. On April 17, 2012, Dr. Tash wrote the following to MetLife,
7 complaining about the lack of benefits, as well as MetLife’s failure to explain what was going on.

8 I have attempted to contact MetLife representatives, without success, even though I

1 have left voicemails. Each time I have called, I have been told there was a new case
2 manager on my case and have never been able to get an explanation for the failure to
provide me with my monthly benefits.

3 (AR 294).

4 7. MetLife’s claim notes show that in mid-February 2012 MetLife was re-evaluating
5 Dr. Tash’s claim. (AR 602–07.) For some reason, MetLife stopped paying benefits before
6 determining whether continued benefits were actually payable.

7 8. On May 7, 2012, MetLife wrote to Dr. Tash with “important information to share
8 with you regarding your Long Term Disability (LTD) claim” (AR 285.) MetLife stated that
9 it was investigating whether “benefits would continue beyond your plan’s benefit under the plan’s
10 limited disability benefit provision.” (AR 285.) MetLife also announced that it would continue
11 paying benefits under a reservation of rights pending the results of that investigation. (AR 285.)

12 9. On June 14, 2012, MetLife denied Dr. Tash’s claim. MetLife’s denial stated that
13 Dr. Tash’s condition was within one of the 12-month limited conditions, although it failed to
14 state whether it was within the “Soft Tissue Limitation” or one of the other limiting conditions.
15 (AR 239–242.)

16 10. Dr. Tash obtained counsel, George Kingsley, who submitted an appeal on Dr.
17 Tash’s behalf. (AR 167.)

18 11. On December 7, 2012, MetLife upheld its June 14, 2012 denial. (AR 5–11.)

19 12. Dr. Tash responded to this denial by filing a lawsuit, which ultimately settled. (AR
20 1161).

21 13. Under the terms of that settlement, MetLife agreed to pay Dr. Tash a certain sum
22 in return for Dr. Tash waiving his claim to any further benefits for the remaining 24-month “own
23 occupation” period. MetLife also agreed to evaluate whether Dr. Tash was entitled to benefits for
24 the “any occupation” period, which began on February 11, 2013. (AR 1160–62.)

25 14. The settlement also expressly incorporated the timing requirements from the
26 Department of Labor’s (“DOL”) claims handling regulations. “The time frames governing the
27 remand of Tash’s LTD claim shall be in accordance with 29 C.F.R. Section 2560.503-1”
28 (AR 1161–62.) This means that MetLife was required to decide Dr. Tash’s claim “not later than

1 45 days after receipt of the claim by the plan.” 29 C.F.R. § 2560.503-1(f)(3).

2 15. On August 8, 2014, Mr. Horrow submitted the documents that Dr. Tash would
3 rely on in making his claim under the “any occupation” provision of the Plan. (AR 770–1157).

4 16. Mr. Horrow’s submission to MetLife was complete on August 8, 2014. So under
5 the DOL regulations and the terms of the settlement, MetLife had until September 22, 2014 —
6 45 days from August 8, 2014 — to decide Dr. Tash’s claim. But on September 22, 2014, MetLife
7 didn’t decide Dr. Tash’s claim. On September 24, 2014, MetLife acknowledged the claim, writing
8 Mr. Horrow that the file had been submitted for a physician review, and that Mr. Horrow “will be
9 notified upon completion of our review and assessment of your clients’ claim file.” (AR 769.)

10 17. But that wasn’t true, as the claim had not yet been submitted for a physician
11 review. According to Dr. Glass’s December 23, 2014 report, MetLife did not refer this case to
12 MCN for a file review until December 12, 2014, after the start of this litigation. (AR 729.)

13 18. By November 11, 2014, MetLife had still not issued a decision, or provided any
14 explanation for the lack of a decision. On that date, Mr. Horrow wrote to MetLife, in “a good
15 faith effort to avoid litigation over Raymond Tash, D.D.S.’s claim for any occupation disability
16 benefits to Metropolitan Life Insurance Company.” Mr. Horrow stated that Mr. Tash’s
17 documents had been submitted on August 8 and that MetLife’s decision was untimely under
18 ERISA’s guidelines. (AR 762.) Mr. Horrow stated that it had been more than three months since
19 Dr. Tash’s submission and asked for an immediate decision. (AR 763.)

20 19. MetLife provided no response at all to Mr. Horrow’s letter, so on December 3,
21 2014, Mr. Horrow filed the present lawsuit.

22 20. Only after Dr. Tash filed this lawsuit did MetLife provide Mr. Horrow with a
23 December 23, 2014 report from a new MCN reviewer, Dr. Jon Glass. (AR 729.) Dr. Tash has
24 objected to this report (as well as Dr. Glass’s report of March 25, 2015).

25 21. MetLife did not deny Dr. Tash’s claim until February 24, 2016. (AR 1468.) Along
26 with the denial, MetLife provided Dr. Tash’s counsel, for the first time, an investigative report by
27 Ethos Risk Services (“the Ethos Report”) dated August 17, 2015 (AR 1400) and several other
28 documents. Dr. Tash objected to those documents.

1 and

2 c. The Declaration of Raymond M. Tash, DDS with Exhibit (Dkt. 31-2) is
3 excluded as unnecessary, as the Court has previously excluded the Ethos
4 Report.

5 The Court finds it unnecessary to decide whether these documents are admissible, as they were
6 not utilized by the Court in reaching its decision.

7 **MetLife’s Failure to Issue a Timely Denial Violated ERISA, and Has Both**
8 **Prejudiced Dr. Tash, and Disrupted this Litigation**

9 27. ERISA trials are conducted on the paper record that the insurer had when it denied
10 the claim, and the plaintiff usually has no opportunity to testify or otherwise introduce evidence
11 outside this record. To add some fairness to this process, ERISA statutory and regulatory
12 provisions create an administrative procedure in which the claimant has the opportunity to
13 introduce relevant evidence into that record.

14 28. To know what evidence is relevant, claimants must know the reasons the insurer
15 denied their claims. As such, ERISA requires an insurer making an “adverse benefit decision” to
16 provide a written denial identifying the specific reasons for the denial so the insured can address
17 them during the claim appeal process. *See* 29 U.S.C. § 1133 (“[E]very employee benefit plan shall
18 . . . provide adequate notice in writing to any participant or beneficiary whose claim for benefits
19 under the plan has been denied, setting forth the specific reasons for such denial.”); 29 C.F.R.
20 § 2560.503-1(g)(1) (“The notification shall set forth, in a manner calculated to be understood by
21 the claimant – (1) The specific reason or reasons for the adverse determination.”).

22 29. This requirement for a specific denial ensures that the insured has an opportunity
23 during the administrative appeal process to submit evidence challenging the denial. This also
24 ensures that the Court has a proper record to review the reason the insurer denied the claim and
25 the insured’s evidence challenging the denial.

26 30. But this process is undermined where, as here, the fiduciary fails to issue a proper
27 denial and fails to provide notice to the insured as to the issues in dispute. As the Ninth Circuit
28 states:

1 Requiring that plan administrators provide a participant with specific reasons for
2 denial enables the claimant to prepare adequately for any further administrative review,
3 as well as appeal to the federal courts. A contrary rule would allow claimants, who are
entitled to sue once a claim has been “deemed denied,” to be “sandbagged” by a
rationale the plan administrator adduces only after the suit has commenced.

4 *Harlick v. Blue Shield of Cal.*, 686 F.3d 699, 720 (9th Cir. 2012) (citations omitted).

5 31. MetLife’s failure to issue a timely denial letter violated ERISA. This violation of
6 ERISA caused Plaintiff the type of prejudice warned about in *Harlick*. Plaintiff was unaware until
7 February 24, 2016 — two days before trial briefings were to be filed — of the reason MetLife
8 refused to pay benefits since the “own occupation” period ended on February 10, 2013. As such,
9 Dr. Tash was denied the ability to submit evidence challenging MetLife’s grounds for denial
10 before starting this litigation.

11 32. MetLife’s procedural defaults significantly disrupted the process of litigation in this
12 Court. MetLife’s unexplained refusal to issue a denial letter until the eve of trial turned this case
13 from a straightforward issue of whether Dr. Tash was disabled under the Plan into a tangled
14 accumulation of filings and counter-filings regarding matters that distract the Court from the
15 merits of this case. For instance, the Court came to the trial facing fourteen filings with potential
16 issues that required rulings.

17 **Disposition**

18 33. Given MetLife’s violation of ERISA and the resulting prejudice to Dr. Tash, the
19 Court will exercise its authority under *Pannebecker v. Liberty Life Assur. Co. of Boston*, 542 F.3d 1213
20 (9th Cir. 2008) and orders the following.

21 34. MetLife is ORDERED to bring Dr. Tash current on his benefits and pay back
22 benefits, with interest, to Dr. Tash from the beginning of the “any occupation” period on
23 February 11, 2013, to the present. Interest shall accrue at the applicable U.S. Treasury bill rate on
24 February 11, 2013.

25 35. The Court REMANDS to MetLife for a determination that complies with ERISA
26 of Dr. Tash’s benefits under the “any occupation” provision of the Plan.

27 36. The Court further ORDERS MetLife to continue paying benefits so long as they
28 continue to remain due under the Plan, unless and until MetLife issues a denial that fully complies

1 with ERISA.

2 37. The Court will enter Judgment in favor of Plaintiff following this Order.

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5 DATED: May 19, 2016



Honorable Andrew Guilford
United States District Court Judge

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