UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

CHERYL O'CONNOR,

Plaintiff,

vs.

METROPOLITAN LIFE INSURANCE COMPANY,

Defendant.

CASE NO. 4:24-cv-08723-YGR

RULE 52 ORDER GRANTING PLAINTIFF'S MOTION FOR JUDGMENT AND DENYING DEFENDANT'S CROSS-MOTION FOR JUDGMENT

Pending before the Court are the parties' cross-motions for judgment under Federal Rule of Civil Procedure 52 on plaintiff Cheryl O'Connor's single claim to recover long-term disability benefits ("LTD benefits") under the Employment Retirement Income Security Act ("ERISA"), 29 U.S.C. § 1132(a)(1)(B). Dkt. Nos. 31, 32. Both motions are opposed. *See* Dkt. Nos. 33, 34.

Having considered the parties' briefing and the administrative record, and the arguments presented during the hearing held on July 28, 2026, the Court **ISSUES** the following determination which constitutes Findings of Fact and Conclusions of Law pursuant to Rule 52(a), and based thereon, **FINDS** in favor of plaintiff.

I. LEGAL STANDARD

Under ERISA Section 502(a)(1)(B), a participant, beneficiary, or fiduciary may bring a civil action to recover benefits due to her under the terms of an ERISA plan, to enforce her rights under the terms of the plan, or to clarify her rights to future benefits under the terms of the plan. *See* 29 U.S.C. § 1132(a)(1)(B).

The parties agree that the Court may resolve plaintiff's ERISA claim on cross-motions for judgment under Federal Rule of Civil Procedure 52. "Under Rule 52, the Court conducts what is essentially a bench trial on the record, evaluating the persuasiveness of conflicting testimony and deciding which is more likely true." *See McCulloch v. Hartford Life & Accident Ins. Co.*, No. 19-CV-07716-SI, 2020 WL 7711257, at *7 (N.D. Cal. Dec. 29, 2020) (citing *Kearney v. Standard Ins. Co.*, 175 F.3d 1084, 1094–95 (9th Cir. 1999) (en banc)); *see also* Fed. R. Civ. P. 52(a)(1) ("In an action tried on the facts without a jury or with an advisory jury, the court must find the facts specially and state its conclusions of law separately.").

A denial of ERISA benefits "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 Tire & Rubber Co. v. Bruch*, 489 U.S. 101, 115 (1989); *see also Abatie v. Alta Health & Life Ins. Co.*, 458 F.3d 955, 963 (9th Cir. 2006) (en banc) ("De novo is the default standard of review.").

The parties agree that the de novo standard of review applies. *See* Dkt. No. 31 at 23; Dkt. No. 32 at 22. Under de novo review, "the court does not give deference to the claim administrator's decision, but rather determines in the first instance if the claimant has adequately established that he or she is disabled under the terms of the plan." *Muniz v. Amec Const. Mgmt., Inc.*, 623 F.3d 1290, 1295–96 (9th Cir. 2010) (holding that, in an ERISA action for the denial of disability benefits, the burden of proof is on the claimant when the standard of review is de novo). "When a district court reviews de novo a plan administrator's determination of a claimant's right to recover long term disability benefits, the claimant has the burden of proving by a preponderance of the evidence that he was disabled under the terms of the plan." *Armani v. Nw. Mut. Life Ins. Co.*, 840 F.3d 1159, 1162–63 (9th Cir. 2016). The burden of proof remains on the claimant even "when disability benefits are terminated after an initial grant." *See Muniz*, 623 F.3d at 1296.

II. MOTION FOR LEAVE TO SUPPLEMENT THE ADMINISTRATIVE RECORD

Before turning to the merits of the parties' cross-motions for judgment, the Court addresses a threshold administrative matter. Plaintiff moves for leave to supplement the administrative record with the decision awarding her Social Security Disability benefits, which was issued on

March 17, 2026. *See* Dkt. No. 39. Plaintiff argues that the Court's consideration of the decision would be appropriate because it is relevant to, and would assist in, the determination of whether she was disabled under the Plan when her LTD benefits were terminated. *See id.*

Defendant Metropolitan Life Insurance Company opposes the motion, arguing that the decision at issue is not necessary to review its termination of plaintiff's LTD benefits. *See* Dkt. No. 40 at 3.

A request to admit evidence outside of the administrative record is governed by the "restrictive rule of *Mongeluzo*." *See Opeta v. Nw. Airlines Pension Plan for Cont. Emps.*, 484 F.3d 1211, 1217 (9th Cir. 2007) (citing *Mongeluzo v. Baxter Travenol Long Term Disability Ben. Plan*, 46 F.3d 938, 944 (9th Cir. 1995)). Under that rule, "[a] district court, when exercising de novo review of an ERISA benefits denial decision, may [in its discretion] admit additional evidence when circumstances clearly establish that additional evidence is necessary to conduct an adequate de novo review of the benefit decision." *Muniz*, 623 F.3d at 1297 (citation and internal quotation marks omitted); *see also Opeta*, 484 F.3d at 1217 (same). Non-exhaustive examples of the "exceptional circumstances" where the admission of extrinsic evidence could be considered necessary include where claims require the consideration of complex medical questions, and where there is additional evidence that the claimant could not have presented in the administrative process. *See id.*

Here, the Court finds that the decision awarding plaintiff Social Security Disability benefits is clearly necessary to conduct an adequate review of defendant's termination of her LTD benefits under the Plan for two reasons. First, the decision is relevant to the question of whether she met the applicable standard of disability under the Plan at the time her LTD benefits were terminated. *See Salomaa v. Honda Long Term Disability Plan*, 642 F.3d 666, 679 (9th Cir. 2011) (holding that Social Security Disability awards "are evidence of disability" even if they are not binding on plan administrators). Second, the decision could not have been presented during the administrative process given that it was issued well after the administrative process closed. *See Opeta*, 484 F.3d at 1217 (holding that a district court has discretion to admit extrinsic evidence where it could not have been presented during the administrative process).

Accordingly, the Court **GRANTS** plaintiff's motion to supplement the administrative record with the decision at issue.

III. FACTUAL FINDINGS

A. Plaintiff's Background and Overview of Her Claim History

Plaintiff has a bachelor's degree in electrical engineering and a master's degree in management. AR1755–59; AR2027.[1] During her career of more than twenty-five years, plaintiff held positions in marketing, business development, and client management. AR1755–59.

Plaintiff's last employer was Salesforce, where she worked for nearly ten years. AR2050–55. Her last position at the company was Success Manager-Senior Director, which paid her more than $27,000 per month, or more than $324,000 per year, plus deferred compensation in the form of restricted stock units. AR0269. The position was a customer-facing role, which involved building and maintaining relationships with upper management at large client companies; aligning at the stakeholder level; helping customers achieve business value and return from their investment; and building and utilizing knowledge of cloud specialization and industry skills to meet customer needs. AR0004; AR0269; AR1744; AR2050–55. The position also required the ability to multitask and perform effectively in a highly dynamic work environment; the ability to lead and facilitate executive meetings and workshops; and strong communication and interpersonal skills. AR0269.

As an employee of Salesforce, plaintiff participated in an ERISA-governed plan that covers long-term disability (hereinafter, "the Plan"). AR2800–02. Defendant is the Plan's administrator, and it also issued the group disability insurance policy that funds LTD benefits under the Plan. PLAN0053, Dkt. No. 27–3.[2]

On September 23, 2021, plaintiff stopped working at the age of fifty-two due to sudden hearing loss in her left ear, tinnitus, and associated impaired cognition. AR0269. Defendant paid

[1] AR refers to the administrative record, which was filed on the docket in three separate docket entries, as follows: (1) docket number 27–3 (AR0001 to AR0864); (2) docket number 27–4 (AR0865 to AR1904); and (3) docket number 27–5 (AR1905 to AR3287).

[2] The Plan documents are a part of the administrative record but are bates-stamped with the prefix "PLAN." They were filed as docket number 27–3.

plaintiff LTD benefits under the Plan from March 23, 2022, to April 9, 2024, at which point it terminated the benefits on the ground that plaintiff had not established that she was disabled under the Plan's "any occupation" standard. AR0415. Defendant concluded that plaintiff had essentially normal hearing functionality after receiving a cochlear implant in her left ear and that there was no clinical evidence that she was cognitively impaired. AR0415-16.

Plaintiff appealed the termination and submitted additional evidence in support of her claim, but defendant ultimately upheld the termination on November 12, 2024. AR0004.

Plaintiff then filed this action on December 4, 2024, for reinstatement of benefits under ERISA. Dkt. No. 1.

B. Relevant Plan Provisions

The Plan provides that a claimant is "Disabled" for the purpose of LTD benefits if, as a result of "Sickness" or injury, she is "Totally Disabled" or "Partially Disabled." PLAN0026. Only the "Totally Disabled" definition is relevant in this action.

"Totally Disabled" means that, during the elimination period of 180 days and the next twenty-four months, the claimant is unable to perform with reasonable continuity the "Substantial and Material Acts" necessary to pursue her "Usual Occupation" in the usual and customary way. *Id.*

After 24 months of LTD payments, the standard for proving disability changes to the "any occupation" standard, which provides, in relevant part, that a claimant is disabled if she is "not able to engage with reasonable continuity in any occupation in which [she] could reasonably be expected to perform satisfactorily in light of [her]: age; education; training; experience; station in life; and physical and mental capacity" (hereinafter, the "any occupation" standard). *Id.*

"Sickness" is defined in the Plan as "illness, disease or pregnancy, including complications of pregnancy." PLAN0024.

C. Proof of Disability Prior to Approval of LTD Benefits

On September 13, 2021, Dr. Erin Lester, plaintiff's family medicine physician, diagnosed plaintiff with sensorineural hearing loss in her left ear and restricted hearing in her right ear. AR2281. Dr. Lested noted that plaintiff had had sudden onset of hearing loss in her left ear while

traveling in May 2021 and that, since then, she had been experiencing hearing difficulties and cognitive deficits that affected her ability to perform her job effectively. AR2278. According to Dr. Lester, plaintiff reported that she was having trouble hearing people, putting together what she was hearing into coherent thoughts, and completing tasks on time. *Id.*

Plaintiff applied for short-term disability benefits under the Plan and defendant approved them starting on September 24, 2021. AR2034.

In early February 2022, plaintiff applied for LTD benefits based on an inability to perform her executive-level job duties. AR2642. Plaintiff represented that, since she experienced sudden hearing loss in her left ear in May 2021, she could not hear and comprehend at an executive level, could not adequately respond to others, could not complete tasks on a timely basis, and could not multitask. AR2825-26. Plaintiff explained that, because of her hearing loss, her brain was struggling to process information, which rendered her unable to focus and to perform as she had prior to her hearing loss. *Id.*

On February 25, 2022, plaintiff underwent cochlear implant surgery on her left ear, which was performed by Dr. Elina Kari, plaintiff's treating otolaryngologist. AR2314. Dr. Kari diagnosed plaintiff with asymmetric sensorineural hearing loss, left-sided tinnitus, and left-sided hyperacusis. AR2266.

On March 8, 2022, Dr. Kari opined that plaintiff could not work because she was experiencing common symptoms associated with cognitive overload caused by sudden asymmetric hearing loss, which negatively impacted her ability to consistently process information accurately, quickly, and effectively. AR2266-67. Dr. Kari noted that plaintiff was experiencing difficulties with the ability to absorb and process written and aural information and with communicating her assessment of information, and that these difficulties were incompatible with her executive-level job, which involved advising executives and having high-stakes conversations. *Id.* Dr. Kari explained that, because plaintiff could not hear clearly, her brain was working harder to make sense of the information it received, causing her to experience cognitive fatigue, cognitive overload, and auditory processing symptoms that impacted her ability to process information. *Id.* Dr. Kari further explained that these symptoms were significantly magnified in

noisier environments, when under pressure, or when multiple people were sharing information with plaintiff. *Id.* Dr. Kari also indicated that the first nine months after surgery were most critical to success, "[n]o do-overs." AR2268.

D. Approval of LTD Benefits as of March 23, 2022

On March 29, 2022, defendant approved plaintiff's claim for LTD benefits on the ground that the medical information she submitted supported her inability to perform her usual occupation in the usual and customary way due to sensorineural hearing loss and associated symptoms. AR2027, AR0415. Defendant awarded plaintiff 66.67% of her pre-disability earnings, or $18,276.75 per month. AR2027. The benefits were payable as of March 23, 2022. *Id.*

E. Medical History and Other Relevant Information Submitted Between the Approval and Subsequent Termination of LTD Benefits

On May 24, 2022, after a follow-up visit with plaintiff, Dr. Kari noted that plaintiff's tinnitus symptoms had improved and that plaintiff had noticed an improvement in her hearing. AR1987. Dr. Kari also noted that plaintiff continued to experience cognitive issues with memory and in finding the right words, and that her Benign Paroxysmal Positional Vertigo ("BPPV") symptoms had returned. AR1987.

On June 21, 2022, plaintiff reported to defendant that her recovery following her cochlear implant had plateaued, that she was still not able to hear 30% of words, and that her cognitive issues had not improved. AR2965.

On September 20, 2022, plaintiff underwent neuropsychological testing by Mara Lynn Katzman, Ph.D. (hereinafter, "Dr. Katzman"), a clinical psychologist, to assess her current level of functioning. AR1882–83. Overall, plaintiff scored above average in all the domains tested (e.g., general intellectual functioning, memory, abstract reasoning, verbal comprehension, psychomotor speed, and perceptual organization). AR1889. Dr. Katzman diagnosed plaintiff with post-traumatic stress disorder ("PTSD"), persistent depressive disorder, and anxiety due to hearing loss. *Id.* Dr. Katzman noted that her diagnostic impressions also pointed to difficulties with visual processing, which could be traced to confusion in processing of information due to hearing loss. *Id.* Dr. Katzman also noted that plaintiff's weakness was in visual motor coordination, which

produced difficulty in cognitive processing of information. *Id.* Additionally, Dr. Katzman observed that: plaintiff's attention span was good to fair; she had a "scattered" approach to completing tasks; she sometimes failed to remember words or phrases to describe ideas; and she sometimes became stuck and could not cognitively grasp what was being asked. AR1883–84. Dr. Katzman opined that she "appeared to require more time to heal and repair." AR1891.

A year later, on September 15, 2023, defendant sent a letter to plaintiff stating that it was reviewing her LTD benefits claim to determine whether she continued to be eligible for benefits, and that the disability standard would change to the "any occupation" standard starting on March 22, 2024. AR1826.

On the same date, during a phone call, plaintiff informed one of defendant's LTD benefits claims staff that she continued to experience cognitive difficulties, particularly relating to communication, and that despite completing a home rehabilitation program, her difficulties were not improving. AR3016–17.

On November 1, 2023, Dr. Kari submitted an Attending Physician Statement to defendant in support of an extension of plaintiff's disability benefits, wherein Dr. Kari stated that plaintiff continued to suffer from cognitive challenges that hindered her capacity to rapidly and accurately comprehend and react to both spoken and written information, and that required her to take additional time to process and respond to information. AR0837. Dr. Kari noted that plaintiff's communications often lacked proper sequencing, coherence, and connection, and caused confusion for those trying to understand her. AR0837. Dr. Kari concluded that these cognitive deficits rendered plaintiff incapable of performing her former position at Salesforce and advised that plaintiff should not work in "cognitively demanding occupations." *Id.* Dr. Kari noted that plaintiff's progress in recognizing words had not been linear and that it had been 64% in her most recent hearing test in June 2023. AR0838. Dr. Kari explained that plaintiff's hearing loss and cognitive challenges were "strongly connected" because her brain was experiencing heightened cognitive demand due to the decreased auditory input, and her brain may be engaging in tangential thinking and scattered cognitive function as a result. *Id.* Dr. Kari recommended that plaintiff engage in cognitive rehab and aural rehab. AR0839–40.

On November 15, 2023, Dr. David Burke, a board-certified neurologist who was retained by defendant, reviewed plaintiff's medical records but did not perform an examination. AR0359. Dr. Burke acknowledged that the available medical information showed that plaintiff "has cognitive deficits and brain fog" and continued to experience problems with memory and difficulty finding the right words, but he nevertheless concluded that the evidence did not suggest that she suffered from a medical condition or combination of conditions of such severity to warrant the placement of restrictions or limitations on her activities for the time period of March 2024 and beyond. *Id.* Dr. Burke reasoned that, due to the "lack of any clinical findings such as exam or imaging work-up findings for her neurological symptoms, there was no clinical evidence of impairment" from a neurological standpoint. *Id.*

On November 16, 2023, Dr. Hootan Zandifar, a board-certified otolaryngologist who was retained by defendant, reviewed plaintiff's medical records but did not perform an examination. He concluded that the evidence did not suggest that she suffered from a medical condition or combination of conditions of such severity to warrant the placement of restrictions or limitations on her activities for the time period of March 2024 and thereafter "from an ENT [ear nose and throat] standpoint." AR0567, AR0569. Dr. Zandifar noted that plaintiff's hearing had improved since she had the cochlear implant in her left ear. AR0567. Dr. Zandifar declined to comment on plaintiff's diagnoses of cognitive deficits and brain fog because those matters were outside the scope of his review. *Id.*

On November 30, 2023, defendant once again notified plaintiff that her LTD benefits claim would transition as of March 23, 2024, to the "any occupation" standard, and it noted that, under that standard, an updated medical review would need to show that she was disabled from "any occupation in which [she was] qualified to work making the same amount of income." AR0737.

On January 2, 2024, Dr. Kari wrote a letter to defendant disagreeing with Dr. Burke's and Dr. Zandifar's conclusions, identifying this as a "rare" case. AR0607. Dr. Kari noted that a cochlear implant does not fully restore normal hearing but rather offers a different perception of sound when compared with natural hearing, and that each patient has a unique recovery. AR0608.

Dr. Kari noted that plaintiff's hearing was still not perfect despite the cochlear implant, as her word recognition performance in a soundproof booth had been 80% at best, and that her most recent score in June 2023 had been only 64%. AR0608–09. Dr. Kari also stated that people with hearing loss, such as plaintiff, need to concentrate harder to hear and understand words, which can affect their ability to focus, concentrate, and multitask. AR0609–10. Dr. Kari opined that, because plaintiff's hearing loss had resulted in cognitive difficulties, which were acknowledged in the results of the neuropsychological exam performed by Dr. Katzman, plaintiff's neuropsychological and hearing symptoms and conditions must be considered jointly when assessing plaintiff's ability to work. AR0607. Dr. Kari stated that, as a highly compensated business professional, plaintiff was expected to possess an "exceptional array of skills, including the mastery of effective communication[,]" but her hearing loss and related cognitive challenges induced a significant hindrance in her capacity to accurately and rapidly comprehend and react to verbal and written communications. AR0608. Thus, Dr. Kari concluded that plaintiff's cognitive deficits rendered her "incompatible with her former roles" as well as any cognitively demanding occupations. *Id.*

On January 5, 2024, Dr. Lester wrote a letter to defendant disagreeing with Dr. Burke's and Dr. Zandifar's conclusions. AR0617. Dr. Lester noted that plaintiff continued to struggle to process speech, and that this was worsened when background noise was present or when plaintiff was stressed. *Id.*

On January 11, 2024, Dr. Burke and Dr. Zandifar issued addenda to their respective reports in which they acknowledged Dr. Kari's and Dr. Lester's rebuttals but repeated their original conclusions. *See* AR0360, AR0569–70.

On March 5, 2024, Dr. David A. Phillips, a board-certified otolaryngologist retained by defendant, performed an independent medical evaluation of plaintiff and issued a report on March 18, 2024. AR0498. Dr. Phillips concluded that plaintiff was capable of working on a full-time basis from a hearing perspective. AR0500. Dr. Phillips noted that plaintiff's hearing rehabilitation following her cochlear implant surgery had progressed well, and that plaintiff was expected to have normal hearing functionality with respect to conversational speech in work and

non-work settings because plaintiff had nearly normal hearing in her right ear except for a mild high frequency loss and had significantly improved hearing in her left ear because of the cochlear implant. AR0499–500. Dr. Phillips noted that plaintiff's speech discrimination score in her right ear was 100%. AR0500. Dr. Phillips did not provide a speech discrimination score for the left ear. *See id.* Dr. Phillips concluded that plaintiff did not have any restrictions or limitations with respect to hearing, except those related to her asymmetric hearing loss, which she experienced even with the cochlear device. *Id.* Specifically, Dr. Phillips noted that, if plaintiff were in a large room with multiple sounds, she may have some difficulty with conversational speech. *Id.* Thus, Dr. Phillips recommended positioning conversational speech toward the right ear, where plaintiff has nearly normal hearing. *Id.* Dr. Phillips acknowledged that plaintiff suffered from cognitive deficits and difficulties with visual motor coordination. AR0499, AR0500. Notably, Dr. Phillips declined to comment on plaintiff's cognitive issues and any associated impairments on the ground that they were beyond the scope of his specialty and report. AR0499, AR0500.

On March 31, 2024, plaintiff's husband, Craig Hasselberger, wrote a letter to defendant in which he reported that plaintiff had difficulty communicating; was unable to function in loud environments or in environments that had multiple stimuli, such as group gatherings; and often required his assistance in interpreting or conveying information to others. AR0457–58.

On April 1, 2024, Dr. Kari sent a letter to defendant in which she disagreed with Dr. Phillips' conclusion that plaintiff could return to work full-time. AR0452. Dr. Kari noted that Dr. Phillip's conclusion failed to take into account plaintiff's ongoing cognitive issues, which were associated with her asymmetric hearing loss and negatively impacted her ability to work, as well as the requirements of plaintiff's cognitively-demanding profession. *Id.* Dr. Kari explained that plaintiff's cognitive difficulties hindered her understanding and responses to written and spoken information, and that her communications continued to frequently lack coherence and to cause confusion in others. *Id.* Dr. Kari cited peer-reviewed research publications in her letter, including a publication that she co-authored, for the proposition that adults who suffer from unilateral hearing loss are "more likely to report a higher level of communication difficulties[.]" AR0455.

She also cited other publications that explain the relationship between hearing loss and diminished cognitive function. *Id.*

On April 3, 2024, Dr. Lester also sent a letter to defendant in which she disagreed with Dr. Phillips' conclusion that plaintiff could work full-time. AR0460. Dr. Lester noted that Dr. Phillips' conclusions were based only on plaintiff's hearing capacity but not on her cognitive abilities. *Id.* Dr. Lester noted that plaintiff continued to struggle with significant cognitive challenges, especially in any type of environment involving ambient noise, multiple people, or any kind of stress or deadline. *Id.* Dr. Lester concluded that plaintiff was no longer capable of functioning in her former position or a similar position that required the ability to engage in high-level communications in fast-paced environments. AR0460–61.

F. Termination of LTD Benefits as of April 9, 2024

On April 11, 2024, defendant terminated plaintiff's LTD benefits as of April 9, 2024. AR0415. Defendant explained that, based on the information in plaintiff's file, she was not disabled beyond March 22, 2024, which is the date when the standard for proving disability changed to the "any occupation" standard. *Id.* Defendant concluded that plaintiff had essentially normal functionality in terms of hearing in occupational and non-occupational settings, and that there was no clinical indication of impairment due to her cognitive difficulties. AR0416. This conclusion was based on the opinions of Dr. Burke, Dr. Zandifar, and Dr. Phillips. AR0415–16. Defendant also stated that the neuropsychological testing performed by Dr. Katzman showed that plaintiff's cognitive abilities were above average. AR0415.

G. Medical Information after Termination of LTD Benefits but Prior to Plaintiff's Appeal

On April 11, 2024, Steven Rothke, Ph.D. (hereinafter, "Dr. Rothke"), a clinical neuropsychologist, issued a report summarizing his findings from an all-day neuropsychological evaluation of plaintiff that he conducted on March 14, 2024. AR0395. Dr. Rothke noted that the testing indicated that (1) plaintiff had average or better functioning in all cognitive domains assessed, including memory, executive functioning, speech and language, working memory, and visuospatial functioning; (2) her sole low score was on a measure of fine motor dexterity in which

she exhibited slower performance with her left (compared to her right) hand; and (3) there were no neuropsychological test performance sequelae indicative of a neurocognitive disorder. AR0402. However, Dr. Rothke noted that plaintiff reported difficulties with speech and thought-process efficiency, which were corroborated with behavioral observations of her word-finding difficulties, imprecise responses, and latencies with speech expression. *Id.* Dr. Rothke noted that these cognitive difficulties would likely interfere with her ability to perform functions in a high-level work setting, such as articulating and delivering presentations at the board executive level, mentoring team members, and building trusted relationships with clients. *Id.*

Dr. Rothke explained why plaintiff's positive neuropsychological test results were not indicative of how she would perform in a high-level work setting:

> There is a significant discrepancy between her intact, and in some cases impressive, neuropsychological test performances, and what was observed of her in the interview and her self-report of difficulties at work following her hearing loss. This is reconciled by considering that the testing was performed in a very controlled environment (i.e., relatively distraction free) with an examiner directing her as to what to attend to (and what can be ignored), what needs to be remembered, what sequence a task should be performed in, with reminders provided on most tasks. These supports or this level of structure are not available in everyday life, especially in high level positions where individuals must provide the structure and organization themselves, decide what is important to pay attention to, and what is important to remember. The executive level demands on her also required processing much more complex information than the present memory tests involved, and do not permit her to ask people to slow down and simplify the information she is being provided (which she was largely able to do during the testing). It is her present compromised ability to perform these functions and provide the structure for herself that interferes with applying her good skills in a competitive work environment and meet time and productivity demands.

AR0402–03. Dr. Rothke concluded that plaintiff's cognitive difficulties were not due to PTSD, anxiety, depression, or any other psychiatric condition. AR0403. Dr. Rothke further concluded that plaintiff remained disabled from working in her prior position or in similar positions due to the cognitive impairments he observed. *Id.*

On April 30, 2024, Dr. Burke, a neurologist retained by defendant, issued an addendum to his original report after reviewing Dr. Rothke's report. AR0364. He concluded that there

continued to be no clinical evidence of cognitive impairment because plaintiff's reported cognitive challenges were "not fully reflected in controlled testing environments[.]" *Id.*

On June 11, 2024, Alan Walker, an independent management consultant and a business colleague of plaintiff, submitted a letter to defendant in which he described cognitive deficiencies he observed in plaintiff and explained why such deficiencies would preclude plaintiff from satisfying the requirements of an executive role such as the one she previously held at Salesforce. AR0278. Mr. Walker explained that he previously held positions at major consulting companies in which he worked with and recruited executives for positions equivalent to plaintiff's final position at Salesforce. *Id.* Mr. Walker represented that, based on his experience, plaintiff's final position at Salesforce and similar positions required exceptional skills in customer-relationship building and management at the most senior levels; strategic thinking; multitasking; excellent presentation, communication, and negotiation; and team leadership and mentorship. *Id.* Mr. Walker opined that plaintiff did not have the capabilities just described and that he would not recruit her into a role similar to the last position she held at Salesforce or a comparable position if he were hiring for such a position. AR0279. He explained that plaintiff was unable to follow complex discussions; to discern whether statements made in conversations were made in jest; to relate a narrative sequentially; to multitask; and to have credibility as a leader. *Id.*

On July 18, 2024, plaintiff underwent an audiology evaluation of the cochlear implant in her left hear, during which she scored 70% on whole word recognition and 79% on phonemic recognition. AR0303–04.

On July 19, 2024, plaintiff saw Dr. Lester for an annual physical exam. AR0297. Dr. Lester noted that plaintiff continued to struggle with cognitive tasks such as reading, comprehension of speech, and word finding. AR0297.

On August 22, 2024, plaintiff underwent a cognitive rehabilitation assessment by Donalee Markus, Ph.D., (hereinafter, "Dr. Markus"), a neuroscientist and cognitive therapist. AR0280–89. Dr. Markus concluded that plaintiff's cognitive skills were negatively affected by sensory integration deficits resulting from her hearing loss, which were compounded by sensory overload to sound and light. AR0280. The cognitive impairments that Dr. Markus found included:

auditory processing deficits; difficulty concentrating; inability to multitask; impaired working memory, with a limited capacity to process simple instructions; fatigue after mental challenges; impaired spatial memory; and post-traumatic visual syndrome. AR0282. Dr. Markus noted that these cognitive impairments were inconsistent with being capable of performing executive-level functions. AR0284.

On September 3, 2024, Dr. Kari noted that plaintiff remained stable but was still experiencing cognitive difficulties. AR0291.

On September 10, 2024, plaintiff was seen by Carla D. Adams, O.D., an optometrist (hereinafter, "Dr. Adams"). AR0294. Dr. Adams opined that plaintiff had a "mismatch between the processing of central and peripheral eyesight, visual circuitry on right and left sides, and perception of auditory and visual space." *Id.* She also noted that a computerized demonstration of plaintiff's eye movements showed that her reading speed was lower than average (90 words per minute compared to the normal 224 words per minute), and that this would make it difficult for plaintiff to keep up with the rigors of a professional role. AR0294–95. Dr. Adams concluded that plaintiff was unable to return to work in her normal capacity. AR0296.

H. Appeal of Termination of LTD Benefits

On September 10, 2024, plaintiff submitted a formal appeal of the termination of her LTD benefits. AR0268. Plaintiff represented that she continued to experience cognitive difficulties associated with her asymmetric hearing loss and that these symptoms were supported by medical evidence, including the opinions of Dr. Kari, Dr. Lester, Dr. Rothke, Dr. Markus, and Dr. Adams. AR0270–71. Plaintiff further noted that Dr. Rothke's report showed that her cognitive symptoms were not caused by PTSD, anxiety, or depression. AR0271.

On September 23, 2024, Dr. Vanessa Rothholtz, a board-certified otolaryngologist retained by defendant, reviewed plaintiff's medical records but did not conduct an examination. She concluded that there were no findings to warrant the placement of restrictions or limitations on plaintiff from March 23, 2024, onward from an otolaryngology perspective. AR0177. Dr. Rothholtz expressly declined to opine on plaintiff's cognitive "complaints" and their impact on plaintiff's ability to work on the ground that they were outside of the scope of her review. *Id.*

On September 24, 2024, Dr. Nick DeFilippis, a board-certified neuropsychologist retained by defendant, reviewed plaintiff's medical records but did not conduct an examination. He concluded that there was no current diagnosis supporting an impairment from a neuropsychological perspective that would necessitate restrictions or limitations. AR0191. Dr. DeFilippis acknowledged plaintiff's cognitive difficulties, but he noted that "[n]europsychological testing did not demonstrate any significant neurocognitive disorder" and that plaintiff had tested average or better in all cognitive domains. AR0192.

On September 25, 2024, Dr. Rothke disagreed with Dr. DeFilippis' conclusions on the ground that Dr. DeFilippis failed to consider Dr. Rothke's behavioral observations of plaintiff, which indicate the presence of cognitive deficits, as well as his explanation for why plaintiff's neuropsychological test results are not indicative of an ability to perform adequately in a high-level work setting. AR0169.

On October 1, 2024, Dr. Kari also disagreed with the conclusions of Dr. DeFillipis and Dr. Rothholtz on the ground that neither considered how plaintiff's difficulties would impact her in a professional role that requires high-level cognitive, visual, and auditory capabilities in an environment replete with noise and distractions. AR0166. Dr. Kari reiterated that clinical testing and observations show that plaintiff had been experiencing cognitive difficulties that impact her auditory and visual processing and that these difficulties prevented her from returning to a high-level professional role. *Id.* Dr. Kari explained that sudden one-sided hearing loss can cause significant difficulties with hearing, comprehension, and auditory processing, even when sound is directed to the better-working ear, because of the increased cognitive load caused by the hearing loss, among other reasons. AR0168. Dr. Kari noted that plaintiff would likely face the following challenges in a demanding, high-level professional environment: (1) struggling to follow conversations in group meetings or virtual meetings; (2) impaired ability to multitask; (3) being perceived as a person who is not an effective leader; and (4) fatigue because of increased cognitive load. AR0167.

On October 24, 2024, Dr. Devin Cunning, a board-certified otolaryngologist retained by defendant, reviewed plaintiff's medical records but did not conduct an examination. He concluded

that the records did not support a level of functional impairment that would preclude plaintiff from maintaining gainful employment from the perspective of: (1) bilateral sensorineural hearing loss; (2) benign paroxysmal positional vertigo; or (3) status post bilateral cochlear implant surgery. AR0068. Dr. Cunning expressly declined to opine on whether plaintiff was precluded from working due to cognitive deficits. *Id.*

On October 30, 2024, Dr. S. Kathryn Steele, a clinical neuropsychologist retained by defendant, reviewed plaintiff's medical records but did not conduct an examination. She concluded that plaintiff was not impaired by cognitive deficits from March 2024 and thereafter on the grounds that plaintiff's neuropsychological evaluations failed to demonstrate a neurocognitive disorder and her neuropsychological test results were average or better on all cognitive domains assessed. AR0089–90.

On November 4, 2024, plaintiff wrote a letter to defendant criticizing the reports of Dr. Cunning and Dr. Steele. AR0034.

I. Decision Upholding Termination of LTD Benefits as of April 9, 2024

On November 12, 2024, defendant upheld its termination of plaintiff LTD benefits as of April 9, 2024, on the ground that there was insufficient evidence that supported any functional limitations and restrictions that would prevent plaintiff from performing "any occupation from March 23, 2024 onward." AR0004. The letter stated that, with respect to hearing loss, plaintiff had a high level of functionality because she had had significant hearing improvement in her left ear due to her cochlear implant and had normal hearing in her right ear. AR0005. The letter further stated that, other than needing to position conversational speech toward her right ear, plaintiff had no other hearing-related restrictions or limitations. *Id.* With respect to plaintiff's cognitive difficulties, the letter stated that clinical assessments failed to demonstrate significant findings that would preclude her from activity, and that neuropsychological evaluations had demonstrated essentially normal function. *Id.* The letter relied on the opinions of Dr. Rothholtz, Dr. DeFillipis, Dr. Cunning, and Dr. Steele.

J. Social Security Disability Benefits Award

On March 17, 2026, after the administrative record closed, plaintiff was awarded Social

Security Disability benefits as of January 1, 2024, which is the alleged onset date according to the award decision. *See* Dkt. No. 39–1 at 4. The decision was issued by an Administrative Law Judge ("ALJ"), and it states that plaintiff suffers from several severe impairments, including tinnitus, sensorineural hearing loss in the left ear and restricted hearing in the right ear with neurocognitive sequelae, and cognitive and visual processing disorders. *See id.* It further states that plaintiff has limitations in mental functioning, namely a moderate limitation in understanding, remembering, or applying information; a moderate limitation in interacting with others; a moderate limitation in concentrating, persisting, or maintaining pace; and a moderate limitation in adapting or managing one's self. *See id.* at 4–5. The ALJ found that plaintiff's "hearing deficits limit her ability to work around noise or handle spoken instructions" and "limit her ability to interact with others." *See id.* at 7. The ALJ further found that her "cognitive deficits and issues with processing speed also limit her to simple work and decisions, as well as limit her work pace." *See id.* As a result, the ALJ concluded that (1) plaintiff was unable to perform her "past relevant work," as the demands of her prior work exceeded her residual functional capacity; and (2) there were no jobs in the national economy that plaintiff could perform in light of her non-exertional limitations, age, education, work experience, and residual functional capacity. *See id.* at 7–8.

IV. CONCLUSIONS OF LAW

To prevail on her claim to recover LTD benefits under ERISA, plaintiff must establish by a preponderance of the evidence that she was disabled under the Plan's "any occupation" standard at the time her benefits were terminated, which was April 9, 2024. Under that standard, plaintiff must show that, as a result of sickness or illness, she was "not able to engage with reasonable continuity in any occupation in which [she] could reasonably be expected to perform satisfactorily in light of [her]: age; education; training; experience; station in life; and physical and mental capacity" at the time her benefits were terminated. *See* PLAN0026.

Plaintiff argues that, when conducting the determination of whether she was disabled under the "any occupation" standard, the Court must consider whether she was able to "engage with reasonable continuity" in an executive-level sales management position like the one she held at Salesforce prior to her disability, or comparable positions, because (1) those are the types of

positions that are commensurate with her age, education, training, and experience; and (2) such positions would be commensurate with her station in life. *See* Dkt. No. 31 at 24–27. As support for the latter point, plaintiff contends that, during the administrative process, defendant represented to her that, under the "any occupation" standard, the occupation that plaintiff needed to be unable to perform was one that paid at least 100% of her pre-disability earnings. *See id.*

Defendant does not respond to plaintiff's arguments. *See generally* Dkt. No. 32, 34. Defendant argues only that the administrative record shows that plaintiff "has the capacity to work full time in 'any occupation' as defined by the Plan," but it does not specify what that occupation would be. *See* Dkt. No. 32 at 24, 32.

The Court agrees with plaintiff. To determine whether plaintiff was disabled under the "any occupation" standard, the relevant inquiry is whether plaintiff was "not able to engage with reasonable continuity" in an executive-level sales management position or a comparable position. That is the case for three reasons. First, such positions are ones that plaintiff "could reasonably be expected to perform satisfactorily" in light of her age, education, training, and experience, because the record shows that plaintiff held positions in marketing, business development, and client management for decades and that her career culminated with the Success Manager-Senior Director position at Salesforce, which was an executive-level sales management position. *See* AR1755–59. Second, an executive-level sales management position or comparable position likely would satisfy the wage requirement that defendant communicated to plaintiff during the administrative process. The record shows, and defendant does not dispute, that defendant stated to plaintiff on multiple occasions prior to the termination of her LTD benefits that the relevant occupation for the "any occupation" disability determination was one that "pays 100% of [her] predisability disability wages or more[.]" *See* AR0800 (defendant stating to plaintiff that, under the "any occupation" standard, "Metlife's assessment of determining your disability payment continuation relies on your ability to work in any occupation you qualify for . . . that pays 100% of your predisability wages or more"); AR3016 (defendant stating to plaintiff that the "any occupation" standard looks to whether plaintiff is disabled from any occupation in which she is qualified to work and in which she would be "making the same gainful wage"); AR0737 (defendant stating that, under the "any

occupation" standard, an updated medical review would need to show that plaintiff was disabled from "any occupation in which [she was] qualified to work making the same amount of income"). In her last position at Salesforce, plaintiff earned at least $324,000 per year. *See* AR0269. Because plaintiff's last position at Salesforce was an executive-level sales management position, it is reasonable to assume that other executive-level sales management positions (or comparable positions) likely would pay a similar wage to the wage plaintiff last earned at Salesforce and thus would satisfy the wage requirement that defendant communicated to plaintiff. Third, defendant has not identified any other occupation that plaintiff "could reasonably be expected to perform satisfactorily" in light of her age, education, training, experience, and station in life that would pay at least $324,000 per year. Accordingly, the relevant position for the disability analysis under the "any occupation" standard is an executive-level sales management position or a comparable position.

The Court now turns to the question of whether plaintiff has met her burden to show by a preponderance of the evidence that, at the time her LTD benefits were terminated, she was "not able to engage with reasonable continuity" in an executive-level sales management position or a comparable position because of a sickness or illness. The Court finds and concludes that she has. Persuasive evidence in the record shows that, around the time when plaintiff's LTD benefits were terminated on April 9, 2024, plaintiff continued to experience cognitive difficulties associated with sensorineural hearing loss in her left ear and resulting asymmetric hearing. Those cognitive difficulties negatively impacted her ability to understand, process, and respond to aural and written information, and thus precluded her from being capable of "engaging with reasonable continuity" in an executive-level sales management position or comparable position.

Dr. Kari, plaintiff's treating otolaryngologist, has repeatedly opined throughout the administrative process that plaintiff has asymmetric hearing loss and associated cognitive difficulties, which render her incapable of performing an executive-level job like the one she last held at Salesforce or similar cognitively-demanding positions. *See, e.g.*, AR2267, AR0837, AR0608, AR0166. Dr. Kari explained that plaintiff's cochlear implant had not fully restored her hearing in her left ear, as her word recognition scores in a soundproof had been 80% at best. *See,*

e.g., AR0608–09. Dr. Kari further explained that, because plaintiff cannot hear normally in her left ear, her brain has to work harder to make sense of the information it receives, causing her to experience cognitive fatigue, cognitive overload, and difficulties that impact her ability to process information accurately, quickly, and effectively, even when sound is directed to her right ear, in which she has nearly normal hearing. *See, e.g.*, AR2267, AR0838, AR0609–10; AR0168. Dr. Kari noted that, as a result of these cognitive difficulties, plaintiff's communications often lack proper sequencing, coherence, and connection and cause confusion for those trying to understand her. AR0167; AR0837. Dr. Kari opined that plaintiff would face challenges in a cognitively-demanding professional environment because of her cognitive difficulties, including: (1) struggling to follow conversations in group meetings or virtual meetings; (2) impaired ability to multitask; (3) inability to act as an effective leader; and (4) fatigue because of increased cognitive load. AR0167; AR0837.

The Court credits Dr. Kari's opinions and accords them substantial weight because (1) Dr. Kari treated plaintiff's hearing loss and symptoms for at least a couple of years before her LTD benefits were terminated; (2) her opinions are detailed and informative, as they explain the mechanism that underlies the causal relationship between plaintiff's hearing loss in her left ear and her cognitive difficulties while citing to multiple supporting peer-reviewed publications, including some that she authored, *see, e.g.*, AR0455; and (3) her opinions are consistent with other persuasive evidence in the record described below.[3]

The Court also credits and accords substantial weight to the opinions of Dr. Rothke, a clinical neuropsychologist who conducted an in-person neuropsychological evaluation of plaintiff on March 14, 2024, prior to the termination of her LTD benefits. He concluded that, although plaintiff tested in the average range or better on all cognitive domains assessed, she experienced

[3] During the hearing, defendant argued that, because this is an ERISA case and not a Social Security case, the Court is not required to accord more weight to Dr. Kari's opinions relative to other opinions in the record. Defendant is correct that, in the ERISA context, claims administrators and reviewing courts are not required to accord greater weight to the opinions of treating physicians. *See Black & Decker Disability Plan v. Nord*, 538 U.S. 822, 831 (2003). Here, however, the Court accords substantial weight to the opinions of Dr. Kari for the reasons discussed above and not because the Court is applying the treating-physician rule that applies in Social Security cases.

difficulties with thought-process efficiency and speech that would interfere with her ability to perform functions in executive-level positions, including delivering presentations to executives, building relationships with high-level clients, and mentoring team members. AR0402. The Court finds these opinions to be persuasive and reliable because Dr. Rothke is board certified in clinical neuropsychology and rehabilitation psychology and because his opinions are based on his own personal observations of plaintiff during a neuropsychological evaluation.

The Court also accords significant weight to the opinions of Dr. Markus, a neuroscientist and cognitive therapist who conducted a cognitive rehabilitation assessment of plaintiff in August 2024.[4] Dr. Markus concluded that plaintiff suffered from cognitive deficits associated with her asymmetric hearing loss and that those deficits are inconsistent with being capable of performing executive-level functions. AR0280–84. The cognitive impairments that Dr. Markus observed included: auditory processing deficits; difficulty concentrating; inability to multi-task; impaired working memory; fatigue after mental challenges; impaired spatial memory; and post-traumatic visual syndrome. AR0282.

A letter submitted by plaintiff's husband, Craig Hasselberger, corroborates the opinions of Dr. Kari, Dr. Rothke, and Dr. Markus with respect to plaintiff's cognitive deficits and how those deficits manifested in plaintiff. In the letter, Mr. Hasselberger stated that plaintiff had difficulty communicating; was unable to function in loud environments or in environments that have multiple stimuli, such as group gatherings; and often required his assistance in interpreting or conveying information to others. AR0457–58.

The letter submitted by Alan Walker, an independent management consultant and a business colleague of plaintiff, also corroborates the opinions of Dr. Kari, Dr. Rothke, and Dr.

[4] Defendant argues, in passing, that the opinions of Dr. Markus are not reliable because she is not a medical doctor and her assessment does not appear to be based on peer-reviewed testing. *See* Dkt. No. 32 at 24 n.4. This argument fails because defendant did not raise it in its denial letters. *See Collier v. Lincoln Life Assurance Co. of Bos.*, 53 F.4th 1180, 1188 (9th Cir. 2022) (holding that a plan administrator is barred from raising new rationales in litigation that it did not cite "when it denied [the] claim initially and on review") (citations omitted). In any case, even if the Court were to accord no weight to the opinions of Dr. Markus, the Court's finding and conclusion that plaintiff has met her burden to show that she was disabled under the "any occupation" standard would still stand based on the other persuasive evidence discussed above.

Markus that plaintiff's cognitive deficits are inconsistent with having the ability to perform the duties of an executive-level position or similar positions. AR0278. Based on his observations of plaintiff and his prior experience in recruiting for executive-level positions equivalent to the position that plaintiff last held at Salesforce prior to her disability, Mr. Walker represented that plaintiff lacked the capabilities that those positions require, which include exceptional skills in customer-relationship building and management at the most senior levels; strategic thinking; multitasking; excellent presentation, communication, and negotiation; and team leadership. *Id.*

The award of Social Security Disability benefits that plaintiff received on March 17, 2026, which is evidence of disability, further corroborates the opinions of Dr. Kari, Dr. Rothke, and Dr. Markus. *See Salomaa*, 642 F.3d at 679 (holding that Social Security disability awards "are evidence of disability" even if they are not binding on plan administrators). The ALJ found that, since at least January 1, 2024, plaintiff has had cognitive functioning limitations associated with hearing deficits, including a moderate limitation in understanding, remembering, and applying information; a moderate limitation in interacting with others; a moderate limitation in concentrating, persisting, and maintaining pace; and a moderate limitation in adapting or managing herself. *See* Dkt. No. 39–1 at 4-6. The ALJ concluded that plaintiff was unable to perform her "past relevant work," as the demands of her prior work exceeded her abilities after taking into account her cognitive and other limitations. *See id.* at 7. The ALJ's conclusion is consistent with the opinions of Dr. Kari, Dr. Rothke, and Dr. Markus that plaintiff's cognitive impairments preclude her from engaging in executive-level positions.[5]

In light of the foregoing evidence, the Court finds and concludes that, at the time her LTD benefits were terminated, plaintiff suffered from cognitive deficits caused by her asymmetric hearing loss that precluded her from "engag[ing] with reasonable continuity" in an executive-level

[5] During the hearing, defendant argued that the ALJ's conclusions are irrelevant or have little probative value because the ALJ applied rules that are specific to the Social Security context to determine whether plaintiff is disabled, including rules that presume that a claimant's "advanced age" significantly affects his or her ability to work. However, it is well-established that Social Security disability awards "are evidence of disability" in ERISA cases even if such awards "do not bind plan administrators" or reviewing courts. *See Salomaa*, 642 F.3d at 679. The Court's finding that the findings and conclusions of the ALJ, as described above, constitute probative evidence of disability in this case is consistent with that well-settled authority.

sales management position or comparable positions, and that she was, therefore, disabled under the "any occupation" standard.

The reasons that defendant advanced for terminating plaintiff's LTD benefits, and for upholding the termination on appeal, do not compel a different conclusion.

Defendant's termination of plaintiff's LTD benefits and its decision to uphold the termination on appeal were based in part on its conclusions that (1) plaintiff was not disabled from a hearing loss standpoint, as she had improved hearing in her left ear due to her cochlear implant and had normal hearing in her right ear; and (2) plaintiff had no restrictions or limitations related to her hearing loss other than needing to position conversational speech toward her right ear. *See, e.g.*, AR0005. Because these conclusions are limited to the question of whether plaintiff had restrictions or limitations relating to her *capacity to hear*, they do not impact the Court's finding that plaintiff was disabled because of *cognitive deficits* associated with her asymmetric hearing loss. The record shows that plaintiff continued to have cognitive difficulties associated with asymmetric hearing loss that impacted her ability to process information even after her hearing improved due to her cochlear implant. *See, e.g.,* AR2267, AR0838, AR0609–10; AR0168. Accordingly, the fact plaintiff's hearing may have improved following her cochlear implant does not preclude a finding that plaintiff was disabled because of cognitive deficits associated with her ongoing asymmetric hearing loss.

Defendant's termination of plaintiff's LTD benefits and its decision to uphold the termination on appeal were also based in part on its conclusion that plaintiff was not disabled due to cognitive deficits because her neuropsychological test results had demonstrated normal cognitive function. *See, e.g.*, AR0005. Defendant relied on the results of the neuropsychological testing conducted by Dr. Rothke in March 2024 and Dr. Katzman in September 2022 to support that conclusion. *See id.*; *see also* AR0402, AR1889. The Court finds that plaintiff's neuropsychological test results do not establish the absence of cognitive impairments that preclude her from working for two reasons. First, both Dr. Rothke and Dr. Katzman noted in their reports that plaintiff experienced cognitive difficulties despite her average and above-average test results, which prevented her from adequately performing high-level work according to Dr. Rothke. *See*

AR0402; AR1889; AR1883–84. Second, Dr. Rothke explained that plaintiff's test results were not indicative of a lack of impairment to perform executive-level positions: (1) because her test results were obtained in a highly-controlled and distraction-free environment that is not comparable to working environments, particularly those at the executive level; and (2) because executive-level positions would require processing information that is much more complex than the information involved in neuropsychological testing. *See* AR0402–03. Based on that evidence, which the Court credits, the Court finds that plaintiff's neuropsychological test results do not establish, or even indicate, that plaintiff was not disabled due to cognitive deficits at the time her LTD benefits were terminated.

Defendant's termination of plaintiff's LTD benefits and its decision to uphold the termination on appeal also relied on the opinions of Dr. Burke (a neurologist), Dr. DeFilippis (a neuropsychologist), and Dr. Steele (a neuropsychologist), all of whom concluded that there was no clinical evidence that plaintiff was impaired from working because of cognitive deficits. *See* AR0364, AR0191–92, AR0089–90. The Court accords minimal weight to the opinions of these physicians for the following reasons. First, none of them personally examined plaintiff. Although defendant was not required to ask these physicians to conduct an in-person examination of plaintiff, their failure to conduct such an examination is an appropriate basis for the Court to accord less weight to their opinions, particularly given that the impairments at issue are cognitive in nature and arise at least in part from self-reported symptoms. *See Montour v. Hartford Life & Acc. Ins. Co*., 588 F.3d 623, 634 (9th Cir. 2009) (noting that a plan administrator's choice to rely on a paper review and to not require a physical exam by a non-treating physician can "raise[] questions about the thoroughness and accuracy of the benefits determination") (citation and internal quotation marks omitted); *Heinrich v. Prudential Ins. Co. of Am.*, No. C 04-02943 JF, 2005 WL 1868179, at *8 (N.D. Cal. July 29, 2005) ("[T]he failure of Prudential's physicians to perform their own examinations of Heinrich entitles their opinions to less weight, because fibromyalgia produces symptoms that must be reported by the patient to the physician and that can be evaluated more fully through an actual examination than by a mere review of a patient's medical record."). Second, Dr. Burke, Dr. DeFilippis, and Dr. Steele relied on plaintiff's average

and above-average neuropsychological test results to support their conclusion that she was not cognitively impaired, but they did so without taking into account Dr. Rothke's opinion that such test results are not indicative of a lack of impairment to perform executive-level positions. *See* AR0364, AR0191–92, AR0089–90. The failure of the physicians in question to consider and rebut Dr. Rothke's opinions diminishes the persuasiveness of their opinions.

Defendant's termination of plaintiff's LTD benefits and its decision to uphold the termination on appeal also relied on the opinions of Dr. Zandifar, Dr. Rothholtz, Dr. Cunning, and Dr. Phillips, all of whom are otolaryngologists and concluded that plaintiff did not have any restrictions and limitations from a hearing perspective at the time her benefits were terminated. The Court accords minimal weight to the opinions of these physicians for the following reasons. First, although each of the physicians acknowledged that plaintiff experienced cognitive deficits associated with her asymmetric hearing loss, they declined to opine on whether such cognitive deficits precluded plaintiff from working on the ground that doing so was beyond the scope of their expertise or their reports.[6] *See* AR0567–69 (Dr. Zandifar's report stating: "I defer claimant's dx of cognitive deficits, brain fog to the appropriate subspeciality reviewers as these are outside the scope of my review"); AR0177 (Dr. Rothholtz's report stating: "Cognitive complaints would fall outside the scope of this review"); AR0068 (Dr. Cunning's report stating: "Assessment and opinion regarding functionality in regards to her conditions of . . . cognitive deficits; brain fog are deferred to the respective reviewer"); AR0499 (Dr. Phillips' report stating: "I will not be able to comment on any of the associated cognitive issues which the claimant currently suffers and would defer discussion to the appropriate sub-specialty examiners"). Thus, these physicians' conclusions about whether plaintiff was able to work have little to no relevance to the determination of

[6] Even though they stated that plaintiff's cognitive deficits were outside of the scope of their reports, Dr. Zandifar, Dr. Rothholtz, Dr. Cunning, and Dr. Phillips nevertheless mentioned plaintiff's average or above-average neuropsychological test results in their reports to imply that plaintiff had no restrictions or limitations due to cognitive deficits. *See* AR567–69; AR177; AR68; AR499. The Court accords no weight to these comments because they rely on plaintiff's neuropsychological test results without taking into account or rebutting Dr. Rothke's opinion that her test results are not indicative of a lack of impairment to perform executive-level positions. *See* AR402–03.

whether plaintiff was disabled because of cognitive deficits at the time her benefits were terminated. Second, Dr. Zandifar, Dr. Rothholtz, and Dr. Cunning based their opinions only on their review of plaintiff's medical records. Although they were not required to examine plaintiff in person, their failure to conduct an in-person examination of plaintiff is an appropriate basis for the Court to accord less weight to their opinions. *See Montour*, 588 F.3d at 634; *see also Holmgren v. Sun Life & Health Ins. Co.*, 354 F. Supp. 3d 1018, 1029–30 (N.D. Cal. 2018) (noting that "courts generally give greater weight to doctors who have actually examined the claimant versus those who only review the file") (collecting cases).

In its reply brief, defendant argues that the "any occupation" standard of disability permits consideration of reasonable accommodations. *See* Dkt. No. 34 at 15. That argument fails for several reasons. First, defendant did not raise it in the letter terminating plaintiff's LTD benefits or in the letter upholding the termination. *See* AR0415–17; AR0004–10. Accordingly, defendant cannot raise the argument in this litigation. *See Collier*, 53 F.4th at 1188 (holding that a plan administrator is barred from raising new rationales in litigation that it did not cite "when it denied [the] claim initially and on review") (citations omitted). Second, even if the Court could consider the argument, the Court would reject it because defendant has not pointed to any language in the Plan showing that the "any occupation" standard of disability permits consideration of reasonable accommodations. In the absence of such language, the Court cannot read an accommodation requirement into the "any occupation" standard. *See Saffle v. Sierra Pac. Power Co. Bargaining Unit Long Term Disability Income Plan*, 85 F.3d 455, 459 (9th Cir. 1996) (holding that it is inappropriate to interpret a plan's definition of disability as covering accommodations if accommodations are not mentioned in the plan definition, because doing so would "effectively impose[] a new requirement for coverage," which is improper); *cf. Allenby v. Westaff, Inc.*, No. C 04–2423 TEH, 2006 WL 3648655, at *6 (N.D. Cal. Dec. 12, 2006) (in determining whether claimant met the plan's definition of disability, considering whether the plaintiff could have performed her normally required duties with "modifications" because "the policy language expressly includes a modification provision").

In sum, the Court finds and concludes that plaintiff has met her burden of showing by a preponderance of the evidence that, at the time her LTD benefits were terminated, she could not "engage with reasonable continuity" in an executive-level sales management position or similar position because of cognitive deficits associated with her asymmetric hearing loss. Defendant thus erred in terminating plaintiff's benefits as of April 9, 2024, and in later upholding the termination. *See Abatie*, 458 F.3d at 963 (holding that, when reviewing a decision under the de novo standard of review, the "court simply proceeds to evaluate whether the plan administrator correctly or incorrectly denied benefits").

V. CONCLUSION

Upon de novo review of the record, the Court finds that plaintiff has established by a preponderance of the evidence that she was disabled under the "any occupation" standard under the Plan at the time her LTD benefits were terminated. Accordingly, the Court **GRANTS** plaintiff's motion for judgment (docket number 31) and **DENIES** defendant's motion for judgment (docket number 32).

The parties shall, within twenty-one days of the date of this Order: (1) meet and confer to resolve the amount of disability benefits due to plaintiff; and (2) submit a proposed form judgment consistent with the terms of this Order and approved as to form.

This order terminates docket numbers 31, 32, and 39.

IT IS SO ORDERED.

Dated: July 29, 2026

YVONNE GONZALEZ ROGERS
CHIEF UNITED STATES DISTRICT COURT JUDGE

United States District Court
Northern District of California