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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

JEFFREY KOPICKO,

Plaintiff,

v.

ANTHEM LIFE INSURANCE
COMPANY; BEYOND BENEFITS
LIFE SCIENCE ASSOCIATION TRUST
LONG TERM DISABILITY PLAN; and
DOES 1 to 10, Inclusive

Defendants.

Case No.: 20cv1524 DMS (MDD)

**MEMORANDUM OF DECISION
AND ORDER**

Plaintiff Jeffrey Kopicko filed the Complaint in this case on August 6, 2020. The Complaint alleges one claim for damages and benefits under a long-term disability plan issued by Defendant Anthem Life Insurance Company to the Beyond Benefits Life Science Association Trust. Plaintiff seeks an award of disability benefits from at least May 8, 2018, through March 24, 2019, including pre- and post-judgment interest, and attorneys’ fees and costs. Defendant argues its decision to deny Plaintiff benefits during this timeframe was correct, and therefore, it is entitled to judgment.

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I.

FINDINGS OF FACT

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3 1. Plaintiff Jeffrey Kopicko is a forty-seven (47) year old man who was formerly
4 employed as the Vice President, Biometrics, at Fate Therapeutics. (Administrative Record
5 (“AR”) at 164.)

6 2. Plaintiff began working at Fate Therapeutics on May 15, 2017, and last
7 worked at Fate Therapeutics on September 8, 2017. (*Id.*)

8 3. On December 21, 2017, Plaintiff filed a claim for long term disability benefits
9 with Defendant under the Group Policy it provided to the Beyond Benefits Life Science
10 Association Trust. (*Id.* at 164-169.)

11 4. The provisions of the Policy relevant to this case are as follows:

12 a. **Disabled** and **Disability** mean during the Elimination Period and
13 the next 24 months because of Your Injury or Illness, all of the following are
14 true:

- 15 • You are unable to do the Material and Substantial Duties of Your Own
16 Occupation; *and*
- 17 • You are receiving Regular Care from a Physician for that injury or
18 illness; *and*
- 19 • Your Disability Work Earnings, if any, are less than or equal to 80% of
20 Your Indexed Monthly Earnings.

21 (*Id.* at 125.)

22 b. You are not covered for a Disability caused or substantially
23 contributed to by a Pre-Existing Condition or medical or surgical treatment of
24 a Pre-Existing Condition. You have a Pre-Existing Condition if:

25 1. You received medical treatment, care or services for a diagnosed
26 condition or took prescribed medication for a diagnosed condition in the 3
27 months prior to Your effective date of coverage under the Policy; and,

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1 2. The Disability caused or substantially contributed to by the condition
2 begins in the first 12 months after Your effective date of coverage under the
3 Policy.

4 (*Id.* at 146.)

5 c. Coverage under the Policy ends on “The date You cease to be Actively
6 at Work.” (*Id.* at 120.)

7 **Actively at Work** means that You are performing the normal duties of Your
8 Own Occupation, and working Your normal hours. You must be working the
9 minimum number of hours per week required for the Plan Sponsor on a
10 permanent full-time basis and must be paid regular earnings.

11 Your work site must be:

- 12 • at the Plan Sponsor’s usual place of business; *or*
- 13 • at a location to which the Plan Sponsor’s business requires You to
14 travel.

15 You are not considered Actively at Work when You are off work or lose time
16 due to Illness, Injury, Leave of Absence, strike or layoff.

17 (*Id.* at 112.)

18 5. As part of his claim for benefits under the Policy, Plaintiff submitted an
19 Employee Statement wherein he stated severe psychological abuse by his spouse led to
20 major depression and anxiety, and that he was unable to leave his house unless absolutely
21 necessary for medical reasons. (*Id.* at 168.)

22 6. Plaintiff also submitted an Attending Physician’s Statement from Preeti
23 Mathur, M.D. in which she diagnosed Plaintiff with generalized anxiety disorder (“GAD”),
24 major depressive disorder (“MDD”), and post-traumatic stress disorder (“PTSD”). (*Id.* at
25 165.)

26 7. Because Plaintiff submitted his claim within twelve months of the effective
27 date of coverage, Defendant began a pre-existing condition investigation into Plaintiff’s
28 claim. (*Id.* at 189-90.) The temporal focus of that investigation was March 1, 2017,
through May 3, 2017 (“the lookback period”). (*Id.* at 176.)

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1 8. As part of that investigation, Plaintiff completed a Supplemental Information
2 Questionnaire listing his treating physicians. (*Id.* at 184-88.) Based on the information
3 provided in that Questionnaire, Defendant sought records from one of Plaintiff’s treating
4 physicians, Jason R. Kornberg, M.D. (*Id.* at 175-77.)

5 9. Dr. Kornberg did not provide the requested records to Defendant, and
6 Defendant thereafter denied Plaintiff’s claim. (*Id.* at 176) (“Since the necessary medical
7 records from Dr. Kornberg have not been received we are unable to determine your
8 eligibility for Long Term Disability benefits and your claim is denied.”)

9 10. On October 11, 2018, Plaintiff appealed Defendant’s denial of his claim. (*Id.*
10 at 472.)

11 11. By November 20, 2018, Plaintiff had retained his current counsel, and counsel
12 notified Defendant of that representation. (*Id.* at 456.)

13 12. On March 28, 2019, Plaintiff filed a supplement to his appeal. (*Id.* at 386-
14 430.) In that letter, counsel indicated that the basis for Plaintiff’s claim was “Major
15 Depressive Disorder or Agoraphobia[.]” (*Id.* at 387.) Although Dr. Kornberg had
16 previously submitted a letter to Defendant outlining Plaintiff’s treatment during the
17 lookback period, (*id.* at 171-74), counsel submitted Dr. Kornberg’s complete medical
18 records, which, according to Plaintiff’s counsel, indicated that Dr. Kornberg did not treat
19 or diagnose Plaintiff with major depressive disorder or agoraphobia during the lookback
20 period. (*Id.* at 387.) Counsel also submitted a report from a forensic psychiatrist Suzanne
21 Dupée, M.D., who had conducted an independent medical examination (“IME”) of
22 Plaintiff. (*Id.*) Dr. Dupée opined that “Major Depressive Disorder and Agoraphobia are
23 new psychiatric diagnoses that have caused [Plaintiff] to be severely disabled to the point
24 where he cannot leave the house or function at his previous job as a biostatistician.” (*Id.*
25 at 430.)

26 13. After receiving Plaintiff’s supplement to his appeal, Defendant referred
27 Plaintiff’s claim to Mark Schroeder, M.D. for a records review. (*Id.* at 330-337.) Dr.
28 Schroeder reviewed Dr. Kornberg’s records and spoke with Dr. Dupée, and noted “Dr.

1 Kornberg did not diagnose Major depressive disorder, Panic disorder with agoraphobia, or
2 Alcohol use disorder.” (*Id.* at 333.) He concluded “that the evidence did not support that
3 the psychological conditions treated by Dr. Kornberg during the look-back timeframe are
4 the same conditions that impaired the claimant later.” (*Id.*) Dr. Schroeder also concluded
5 that:

6 from 11/9/17 through 5/7/18, and from 3/25/19 until the present, the claimant
7 was experiencing psychiatric impairment in the ability to: complete tasks
8 without interruption by symptoms, sustain attention and concentration,
9 maintain energy and motivation, interact appropriately with others, and adapt
10 to even minor stressors productively and without worsening of symptoms.
11 This level of impairment would be expected to preclude the claimant from
performing even simple, routine, and repetitive work duties reliably and
consistently during the timeframe as described above.

12 (*Id.*)

13 14. Despite this conclusion, Dr. Schroeder concluded that Plaintiff was *not*
14 disabled from May 8, 2018, through March 24, 2019, because there was “insufficient
15 information ... to establish or support psychiatric functional impairment” during that time.
16 (*Id.* at 332-33.) Specifically, Dr. Schroeder noted that Plaintiff had received treatment
17 during that time, but those treatment records were not made available to him. (*Id.*)

18 15. Thereafter, Defendant received Plaintiff’s missing treatment records from Dr.
19 Mathur, (*id.* at 195-206), and UC San Diego Health,¹ (*id.* at 362-83), and forwarded those
20 records to Dr. Schroeder for his review. (*Id.* at 335.)

21 16. After reviewing those records, Dr. Schroeder maintained his original
22 conclusion that Plaintiff was not disabled from May 8, 2018, through March 24, 2019. (*Id.*
23 at 336.) In an addendum report, Dr. Schroeder stated: “The additional records did not
24 describe severe mental status abnormalities, psychiatric functional impairment of the
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27 ¹ At UCSD, Plaintiff received treatment primarily from a psychiatry resident, Leopoldine
28 Matialeu, M.D., along with attending physicians Lawrence Malak, M.D., Jessica
Thackaberry, M.D., and Priti Ohja, M.D.

1 claimant’s daily activities, or participation in intensive mental health treatment. The
2 treating provider stated that the claimant was more focused on obtaining disability benefits
3 rather than on treatment for his psychiatric condition.” (*Id.*)

4 17. Based on Dr. Schroeder’s findings, Defendant overturned its original denial
5 of Plaintiff’s claim, but only for the period of November 9, 2017, through May 7, 2018.
6 (*Id.* at 328.) For the period of May 8, 2018, through March 24, 2019, Defendant found
7 Plaintiff was not disabled. (*Id.*) Defendant also found that although Plaintiff was again
8 disabled as of March 25, 2019, he did not have coverage at that time because he was not
9 “Actively at Work.” (*Id.*)

10 18. Approximately six months after that decision, Plaintiff filed a second appeal.
11 (*Id.* at 56-59.)

12 19. With that appeal, Plaintiff submitted a supplemental report from Dr. Dupée.
13 (*Id.* at 61-66.) Dr. Dupée reviewed Plaintiff’s medical records, Dr. Schroeder’s reports,
14 and Defendant’s decision on Plaintiff’s appeal, (*id.* at 63), and opined that Plaintiff was
15 disabled from September 8, 2017, through the date of her supplemental report, January 10,
16 2020. (*Id.* at 65.) She wrote:

17 It is not logical that Mr. Kopicko’s disability would suddenly start and stop
18 given his extensive psychiatric history documented in the medical records and
19 from my evaluation. He was not functioning the day, week, month, or year
20 before he came to my office in February 2019. The records from three
21 psychiatrists, Dr. Kornberg, Dr. Mathur, and Dr. Matialeu all noted similar
22 findings of severe anxiety. He had deteriorated because his agoraphobia
23 spiraled, he was unable to access mental health treatment, and his disability
24 was denied, thereby causing him further emotional and financial stress. Mr.
25 Kopicko is a highly intelligent man who previously functioned at a high level
26 professionally, albeit with [] a long history of anxiety, alcohol abuse, and
27 suicide attempts in the context of a severely dysfunctional family of origin.
28 When I evaluated him, I opined that he was disabled from his work due to the
severity of his mental health diagnoses. He is in dire need of psychiatric
treatment.

(*Id.* at 65-66.)

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1 ‘only when circumstances clearly establish that additional evidence is necessary to conduct
2 an adequate de novo review of the benefit decision.’” *Id.* (quoting *Mongeluzo*, 46 F.3d at
3 944). In *Opeta v. Northwest Airlines Pension Plan for Contract Employees*, 484 F.3d 1211
4 (9th Cir. 2007), the court set out:

5 a non-exhaustive list of exceptional circumstances where introduction of
6 evidence beyond the administrative record could be considered necessary:
7 “claims that require consideration of complex medical questions or issues
8 regarding the credibility of medical experts; the availability of very limited
9 administrative review procedures with little or no evidentiary record; the
10 necessity of evidence regarding interpretation of the terms of the plan rather
11 than specific historical facts; instances where the payor and the administrator
12 are the same entity and the court is concerned about impartiality; claims which
would have been insurance contract claims prior to ERISA; and circumstances
in which there is additional evidence that the claimant could not have
presented in the administrative process.”

13 *Id.* at 1217 (quoting *Quesinberry v. Life Ins. Co. of N. Am.*, 987 F.2d 1017, 1027 (4th Cir.
14 1993) (en banc)).

15 5. In this case, Plaintiff requests that the Court consider a number of documents
16 outside the AR in resolving his claims.² Those documents are: (1) a glossary of medical
17 terms, (2) portions of the Diagnostic and Statistical Manual of Mental Disorders, 5th Edition
18 (“DSM-5”), (3) portions of an American Psychiatric Association (“APA”) document
19 highlighting the changes in the DSM-4 to the DSM-5, (4) a copy of a sample Generalized
20 Anxiety Disorder 7-Item (“GAD-7”) test, and (5) a copy of a sample Patient Health
21 Questionnaire (“PHQ-9”) test. (*See* Req. for Judicial Notice, Attachments 1-4.) Defendant
22 objects to the admission of this evidence on the grounds it is unnecessary under *Mongeluzo*.

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26 ² Plaintiff argues the Court may take judicial notice of these documents pursuant to Federal
27 Rule of Evidence 201, and that the documents are admissible under *Mongeluzo*. Defendant
28 disputes both of these arguments. Because judicial notice is unnecessary to the Court’s
consideration of these documents, the Court considers only whether the documents are
admissible under *Mongeluzo*.

1 6. The Court agrees with Defendant that Plaintiff’s glossary of medical terms,
2 the APA document, and the GAD-7 test are not necessary for the Court to conduct an
3 adequate de novo review, and thus the Court declines to consider those documents.

4 7. However, the Court will consider the two other documents. The first of those
5 documents is the DSM-5. Dr. Gratzner referenced that document in his review of Plaintiff’s
6 records, (AR at 97), and he opined that Plaintiff did not meet the DSM-5 criteria “for major
7 depression, generalized anxiety disorder, agoraphobia, and/or substance abuse.” (*Id.*)
8 Plaintiff disputes that opinion, and thus consideration of the DSM-5 is relevant to Dr.
9 Gratzner’s credibility.³

10 8. The sample PHQ-9 test is also relevant to the Court’s evaluation of Plaintiff’s
11 medical records and Dr. Gratzner’s opinions. The record reflects Dr. Matialeu employed
12 this test at each of Plaintiff’s visits on September 7, 2018, October 4, 2018, and November
13 5, 2018, (AR at 365), and that test appears to be based on the depression diagnostic criteria
14 in the DSM-4. (Req. for Judicial Notice, Attachment 4.) Thus, the Court will consider that
15 document.

16 9. With the legal standard in mind, and the record now established, the Court
17 turns to the central issue in this case, which is whether Plaintiff is entitled to benefits under
18 the Policy from May 8, 2018, through March 24, 2019.⁴

19 10. As indicated above, Plaintiff bears the burden of proving he was disabled
20 under the Policy. *Sabatino v. Liberty Life Assurance Co. of Boston*, 286 F.Supp.2d 1222,
21 1232 (N.D. Cal. 2003).

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24 ³ Although not necessary for admission, the Court also notes “[t]he DSM-IV is a proper
25 subject of judicial notice.” *Shaw v. Life Ins. Co. of N. Am.*, 144 F.Supp.3d 1114, 1126
(C.D. Cal. 2015).

26 ⁴ It is unclear whether the parties agree on Plaintiff’s entitlement to benefits after March
27 24, 2019. It appears there may be agreement that if Plaintiff is entitled to benefits from
28 May 8, 2018, through March 24, 2019, then he is also entitled to benefits after that date.
However, to clarify any uncertainty, the Court requests supplemental briefing from the
parties on this issue, as set out below.

1 11. To meet that burden in this case, Plaintiff must prove that because of an injury
2 or illness: (1) he was unable to do the material and substantial duties of his occupation, (2)
3 he was receiving regular care from a physician for the injury or illness, and (3) his disability
4 work earnings, if any, were less than or equal to 80% of his indexed monthly earnings.

5 12. Plaintiff met this burden for the period of November 9, 2017, through May 7,
6 2018. Specifically, Defendant found, based primarily on the opinion of Dr. Schroeder, that
7 Plaintiff was suffering from Major Depressive Disorder and Panic Disorder with
8 Agoraphobia, and that those conditions precluded him from performing the duties of his
9 occupation during that timeframe. (AR at 328.)

10 13. Dr. Schroeder also found Plaintiff was suffering from Major Depressive
11 Disorder and Panic Disorder with Agoraphobia, both of which precluded him from
12 performing the duties of his occupation from March 25, 2019, onward.

13 14. Dr. Schroeder's opinion that Plaintiff was not disabled from May 8, 2018, to
14 March 24, 2019, but was again disabled on March 25, 2019, is problematic for two primary
15 reasons. First, the date of Plaintiff's "recurrent" disability, March 25, 2019, does not
16 appear to have been triggered by any event or incident in Plaintiff's life. Rather, March
17 25, 2019, was the date of Dr. Dupée's initial IME report. (*Id.* at 421.) Because Dr. Dupée
18 actually examined Plaintiff on February 7, 2019, Dr. Schroeder should have determined
19 Plaintiff was again disabled as of that date, not March 25, 2019. It was at that time Plaintiff
20 reported he rarely left his house, (*id.* at 424), and had limited social interaction. (*Id.*) And
21 it was during that February 7, 2019 visit that Plaintiff reported his mood as "anxious," (*id.*
22 at 426), and that Dr. Dupée noted "evidence of obsessions and compulsions" and poor
23 insight and judgment. (*Id.*) Thus, to the extent Plaintiff experienced a recurrence of his
24 previous disability, the date of that recurrence was, at a minimum, February 7, 2019, not
25 March 25, 2019.

26 15. The second problem with Dr. Schroeder's opinion concerns his interpretation
27 of Plaintiff's records from UCSD. In reviewing those records, Dr. Schroeder noted that
28 Plaintiff did not describe severe psychiatric symptoms and Dr. Matialeu's mental status

1 examination was “largely intact”. (*Id.* at 336.) Dr. Schroeder also stated Plaintiff’s
2 “primary purpose” for meeting with Dr. Matialeu “was to obtain assistance with disability
3 paperwork rather than for management of his psychiatric symptoms.” (*Id.*)

4 16. Dr. Matialeu’s records from September 6, 2018, confirm that Plaintiff did
5 “request[] assistance with getting state disability filled out as well as getting records from
6 previous psychiatrist to help appeal his denied long term disability.” (*Id.* at 379.) However,
7 the records also reflect that Dr. Matialeu took a comprehensive history from Plaintiff,
8 starting with the circumstances then-occurring in Plaintiff’s life, his past psychiatric
9 history, his substance history, his medical history, his medications, his social history and
10 his family history. (*Id.* at 375-78.) Dr. Matialeu also provided Plaintiff with supportive
11 psychotherapy during that visit. (*Id.* at 380.) Medical records from October 4, 2018, and
12 November 5, 2018, also reflect Dr. Matialeu had Plaintiff fill out both the PHQ-9
13 Questionnaire and the GAD-7 Questionnaire during his September 6, 2018 visit. (*Id.* at
14 365-66, 371-72.) Plaintiff’s score on the PHQ-9 Questionnaire was 19, (*id.* at 371), which
15 indicates a provisional diagnosis of Major depression, moderately severe, (Req. for Judicial
16 Notice, Attachment 4), which is consistent with Dr. Matialeu’s assessment of Plaintiff’s
17 psychiatric/behavioral systems as “[p]ositive for depression and substance abuse.” (*Id.* at
18 378.) Notably, none of this information is included in Dr. Schroeder’s review of Plaintiff’s
19 records from Dr. Matialeu.

20 17. Dr. Schroeder also failed to mention anything about Plaintiff’s October 4,
21 2018 visit to Dr. Matialeu. That visit is significant because Plaintiff told Dr. Matialeu “he
22 need[s] to get a job but does not feel like he is able to at this time because *it is difficult to*
23 *leave the house and interact with people.*” (*Id.* at 369) (emphasis added). That complaint
24 is consistent with Dr. Dupée’s diagnosis of agoraphobia and Dr. Schroeder’s own opinion
25 that Plaintiff was suffering from “Panic disorder with agoraphobia” from November 9,
26 2017, through May 7, 2018.

27 18. The October 4, 2018 visit is also notable as it reflects Plaintiff completed a
28 second PHQ-9 Questionnaire, and his score increased to 20, (*id.* at 371), which indicates a

1 provisional diagnosis of Major depression, severe. (Req. for Judicial Notice, Attachment
2 4.) Unlike on September 6, 2018, Dr. Matialeu included this diagnosis in his October 4,
3 2018 report. (AR at 370.) None of this information was included in Dr. Schroeder's
4 review.

5 19. In reviewing the November 5, 2018 visit, Dr. Schroeder mentioned that
6 Plaintiff was "working on projects at the house and enthusiastic about getting things nice.
7 Has been very active around the house painting and replacing the floor." (*Id.* at 336
8 (quoting *id.* at 363).) Dr. Schroeder found these activities suggested Plaintiff was not
9 "severely impaired by a psychiatric disorder at that time." (*Id.*) Dr. Schroeder also noted
10 Plaintiff "declined to accept more intensive mental health treatment such as regular
11 psychotherapy or an intensive outpatient program[,] which one might expect to see "[i]n
12 a case of more severe psychiatric impairment[.]" (*Id.*)

13 20. However, as with his review of Plaintiff's previous visits with Dr. Matialeu,
14 Dr. Schroeder failed to mention the results of Plaintiff's PHQ-9 Questionnaire, which
15 resulted in another increase in Plaintiff's score to 24. He also failed to mention Dr.
16 Matialeu's comment that Plaintiff "[r]eports not being fit to look [for] a job at this time
17 because of *difficulty leaving the house and interacting with people.*" (*Id.* at 366) (emphasis
18 added).

19 21. Plaintiff argues Dr. Schroeder cherry-picked information from Plaintiff's
20 UCSD records to justify his denial of Plaintiff's claim for the relevant time period, May 8,
21 2018, through March 24, 2019. Defendant disputes this argument, and asserts Dr.
22 Schroeder's opinion was fair and supported by the record. Given that the standard of
23 review here is *de novo*, the Court need not resolve this argument.

24 22. However, the Court disagrees with Dr. Schroeder's opinion that the records
25 from UCSD do not support a finding of disability during the relevant timeframe,
26 particularly given Dr. Schroeder's opinion that Plaintiff was disabled from November 9,
27 2017, to May 7, 2018, and again disabled as of March 25, 2019. As set out above, the
28 March 25, 2019 restart date for Plaintiff's disability appears to be tied solely to the date of

1 Dr. Dupée’s initial IME report. Neither Dr. Schroeder, Defendant, nor Defendant’s counsel
2 provide any explanation as to how that date otherwise factors into Plaintiff’s “recurrent”
3 disability. And to the extent Dr. Schroeder credited Dr. Dupée’s opinion of Plaintiff’s
4 condition, that condition was present on February 7, 2019, the date of Dr. Dupée’s
5 examination of Plaintiff. It did not simply appear out of nowhere on March 25, 2019.
6 Indeed, based on the records from UCSD, it appears Plaintiff’s condition had been ongoing
7 since at least October 4, 2018. (*Compare id.* at 369 (October 4, 2018 progress note from
8 UCSD) *with id.* at 424 (Dr. Dupée’s report)) (both reporting Plaintiff’s difficulty leaving
9 the house and socializing with others). Contrary to Dr. Schroeder’s opinion, the Court
10 finds the medical records from UCSD support a finding that from May 8, 2018, to March
11 24, 2019, Plaintiff had a continuing psychiatric impairment that precluded him from
12 performing full-time work.

13 23. The contrary opinion from Dr. Gratzner, Defendant’s other medical records
14 reviewer, does not change that finding. He opined the DSM-5 criteria for major depression
15 was not delineated in Plaintiff’s records from May 8, 2018, to March 24, 2019. However,
16 both Dr. Matialeu, who examined and treated Plaintiff during that time, and Dr. Dupée,
17 who also examined Plaintiff during that time,⁵ diagnosed Plaintiff with depression. (*See*
18 *id.* at 363 (Dr. Matialeu) (noting Plaintiff had “Depression, unspecified depression type”),
19 428 (Dr. Dupée) (diagnosing Plaintiff with “Major Depressive Disorder, single episode,
20 severe”)). Although the opinions of these doctors are not entitled to special weight, the
21 Court notes both doctors had “a greater opportunity to know and observe” Plaintiff than
22 Dr. Gratzner, who simply reviewed Plaintiff’s records. *Jebian v. Hewlett-Packard Co.*
23 *Employee Benefits Organization Income Protection Plan*, 349 F.3d 1098, 1109 n.8 (9th Cir.
24 2003) (quoting *Black & Decker Disability Plan v. Nord*, 538 U.S. 822, 832 (2003)).
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27 ⁵ Dr. Gratzner stated Plaintiff’s IME with Dr. Dupée was “done at a much later date,” (*id.*
28 at 98), but, as explained above, that statement is incorrect. Dr. Dupée examined Plaintiff
on February 7, 2019, which was well within the period of review.

1 24. Dr. Gratzner also relied on Plaintiff’s “benign” mental status exams in
2 concluding that Plaintiff was not disabled from May 8, 2018, to March 24, 2019. (AR at
3 98.) It is unclear what Dr. Gratzner meant by “benign” mental status exams, but a
4 comparison of Plaintiff’s mental status exams during his first period of disability
5 (November 9, 2017, through May 7, 2018) and the period in question here (May 8, 2018,
6 through March 24, 2019) reveals significant similarities. (*Compare id.* at 379 (stating, *e.g.*,
7 Plaintiff had “good grooming and hygiene,” “normal rate” of speech, and his thought
8 process was “Coherent, logical”) *with id.* at 394 (stating, *e.g.*, Plaintiff was “well
9 groomed”, his speech was “normal”, his thought process was “intact”). There is no
10 explanation for why these similar results would compel a finding of disability for one
11 period but not the other. This is especially so where, in certain respects, Plaintiff’s mental
12 status examinations reflect a worsening of Plaintiff’s condition over time, not an
13 improvement. (*Compare id.* at 379 *with id.* at 394) (reflecting a change in mood from
14 “Good, but I’m nervous a lot of the time, now.” to “depressed”, and a change in
15 insight/judgment from “good” to “poor”).

16 25. The Court is also unpersuaded by Dr. Gratzner’s opinion that lack of “objective
17 psychological testing” suggested Plaintiff was not disabled from May 8, 2018, to March
18 24, 2019. As set out in *Gonzalez v. Astrue*, No. ED CV 08-1253 JEM, 2009 WL 2390843
19 (C.D. Cal. Aug. 3, 2009): “Psychiatric impairments are not as amenable to substantiation
20 by objective laboratory testing as are physical impairments. The diagnostic techniques
21 necessarily will be less tangible. Mental disorders cannot be ‘ascertained and verified’ like
22 physical ailments.” *Id.* at *7.

23 26. In sum, based on this Court’s review of the record, Plaintiff has met his burden
24 to show he was disabled under the Policy from May 8, 2018, to March 24, 2019.
25 Accordingly, Plaintiff is entitled to an award of benefits during that time.

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III.

CONCLUSION AND ORDER

Based on the foregoing findings of fact and conclusions of law, the Court orders as follows:

1. Plaintiff shall recover past benefits from the period May 8, 2018, to March 24, 2019.

2. As stated above, it is unclear to the Court whether this finding entitles Plaintiff to recover benefits beyond March 24, 2019. It appears this finding may render the denial of benefits based on the “Actively at Work” provision a nullity, but it is unclear whether the parties agree on that issue.

3. The amount of benefits owing to Plaintiff is also unclear. Plaintiff alleges in his Complaint, (Compl. ¶37), and confirms in his opening trial brief, (ECF No. 24 at 3), that he is entitled to benefits at the rate of \$15,000 per month, less appropriate or applicable offsets, but he fails to explain what those offsets are.

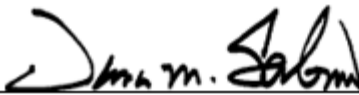
4. The rate of any prejudgment interest is also unclear.

5. To resolve these uncertainties, the Court requests supplemental briefing from the parties on these issues. Those briefs shall be no more than five pages, and they shall be filed on or before **October 12, 2021**.

6. The Court also refers the parties to the Magistrate Judge for a settlement conference to occur on **November 8, 2021**, at **9:30 a.m.** Details about that conference will be provided in a separate order from the Magistrate Judge.

IT IS SO ORDERED.

Dated: October 5, 2021



Hon. Dana M. Sabraw, Chief Judge
United States District Court