UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
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STEPHEN FREDRICH,

Plaintiff,

-against-

LINCOLN LIFE & ANNUITY COMPANY OF NEW YORK,

Defendant.
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MEMORANDUM AND ORDER
21-cv-5482 (JMA)(SIL)

STEVEN I. LOCKE, United States Magistrate Judge:

Presently before the Court in this employment-long-term disability ("LTD") benefits action is Plaintiff Stephen Fredrich's ("Fredrich" or "Plaintiff") motion to preclude Defendant Lincoln Life & Annuity Company of New York ("Lincoln" or "Defendant") from expanding the administrative record ("AR")[1] to include information that Lincoln added after its purported October 1, 2021 denial of Fredrich's LTD benefits claim. *See* Plaintiff's Notice of Motion to Deny Defendant's Attempt to Expand the Administrative Record ("Plaintiff's Motion" or "Pl. Mot."), Docket Entry ("DE") [18]. By way of Complaint filed on October 4, 2021, Plaintiff commenced this action against Defendant pursuant to the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. §§ 1001 *et seq.*, asserting claims for: (i) payment of long-term disability benefits allegedly due to Plaintiff pursuant to a

[1] The term "administrative record" is a misnomer in an ERISA case. While an AR is normally compiled by a neutral governmental agency, like the Merit Systems Protection Board or the Social Security Administration, the AR in the ERISA context consists of the information and documents known to the administrator at the time of the administrator's final denial of a claimant's application for benefits. *See Halo v. Yale Health Plan*, 819 F.3d 42, 60 (2d Cir. 2016); *see also Hughes v. Hartford*, 507 F.Supp.3d 384, 395 (D. Conn. 2020) ("[T]he 'administrative record' is a term of art and may not always be synonymous with the insurer's claim file.").

group disability policy (the "Policy") issued by Lincoln to his former employer, Lessing's, Inc. ("Lessing's"); and (ii) breach of its fiduciary duties. *See* Complaint ("Compl."), DE [3]. For the reasons set forth herein, the Court grants Plaintiff's Motion in its entirety, and precludes Defendant from expanding the AR to include any information that Lincoln obtained after October 1, 2021.

I. BACKGROUND

A. Plaintiff's Employment with Lessing's and Policy Coverage

Plaintiff is a New York resident and at all relevant times was a participant covered under the Policy as defined by ERISA § 1002(7). *See* Compl. ¶ 5. Defendant is a company licensed to conduct business in the State of New York, and "is a fiduciary within the meaning of ERISA § 1002(21) because it acted as claims administrator under the Policy, and exercised authority and control over the payment of benefits." *Id.* at ¶¶ 6-7. Fredrich worked for Lessing's, a hospitality and food services company, from April 1, 1976, until his retirement on July 31, 2020, at 60 years old. *Id.* at ¶ 14. Upon his retirement, Plaintiff's job most closely resembled that of a "Manager of Food Service," as described by U.S. Department of Labor Dictionary of Occupational Title ("DOT") #187.167-106. *Id.* at ¶ 16. His job responsibilities included, among others, "manag[ing] 125 [Lessing's] locations[,] overseeing all capital expenditures, including food, beer[,] and liquor purchases throughout [Lessing's], servic[ing] contracts and field operations for offsite premise operations[, and] negotiating food contracts. *Id.* at ¶¶ 15, 17. Throughout his employment with Lessing's, Plaintiff was covered under the Policy, which Defendant issued to the company. *Id.* at ¶ 3. The Policy provides for a gross disability benefit of 60% of the employee's earnings, up to $8,000 a month,

and defines an employee as "disabled" if unable to perform each of the main duties of his or her own occupation, as described by the DOT. *See id.* at ¶¶ 11-12.

B. Plaintiff's Medical Diagnosis and Dr. Cesa's Recommendations

In Spring 2014, Fredrich suffered a heart attack, and thereafter began treating with Dr. Christopher Cesa, a cardiologist. *Id.* at ¶ 22. In May 2014, Plaintiff underwent a cardiac catheterization, which revealed a myocardial infarction and necessitated cardiac stenting. *Id.* Fredrich underwent another catheterization in October 2016, which revealed restenosis and required angioplasty and restenting. *Id.* at ¶ 23. In July 2018, Plaintiff underwent yet another cardiac catheterization, revealing artery disease. *Id.* at ¶ 24. After Fredrich's third cardiac catheterization, Dr. Cesa advised him to stop working, which Plaintiff did on July 31, 2020. *Id.* at ¶ 25. Fredrich then applied for LTD benefits from Defendant, pursuant to the Policy. *Id.*

On October 23, 2020, Dr. Cesa advised Lincoln that: (i) Plaintiff should not work full-time due to "work increased symptoms" tied to his heart disease; and (ii) because Fredrich's cardiovascular status improved after he stopped working, he should not return to work. *Id.* at ¶ 26. Dr. Cesa reiterated his recommendation on October 26, 2020. *Id.* at ¶ 27. On December 26, 2020, Lincoln contracted with Dr. Marc Schweiger to review Plaintiff's medical records and Dr. Cesa's recommendation. *Id.* at ¶ 29. Dr. Schweiger disagreed with Dr. Cesa's recommendation that Plaintiff was disabled and could not work. *See id.*

C. Defendant's Initial Denial and Plaintiff's First Appeal

On January 5, 2021, Defendant rejected Fredrich's LTD benefits claim based on Dr. Schweiger's findings and disagreement with Dr. Cesa's recommendation. *Id.* at ¶ 30. On February 4, 2021, at Fredrich's request, Dr. Cesa submitted a letter to Lessing's stating that he (Dr. Cesa) had been treating Plaintiff since his 2014 heart attack, and that because Fredrich's incurable heart condition is "aggressive, and had to be managed with medical therapy and lifestyle modification," Plaintiff should stop working so as to avoid another heart attack. *Id.* at ¶¶ 33-34. Dr. Cesa also explained that Dr. Schweiger should have taken Dr. Cesa's recommendation into account in his (Dr. Schweiger's) analysis, and attributed Defendant's denial of Fredrich's application to Dr. Schweiger's failure to do so. *Id.* at ¶ 35. Lessing's included Dr. Cesa's letter with Plaintiff's appeal, which Lessing's filed on February 8, 2021. *Id.* at ¶ 36. Lessing's also implored Lincoln to approve Fredrich's benefits application, and wrote a letter stating, in part, that it was "evident [to Lessing's] that having Mr. Fredrich continue to work at [Lessing's] pose[d] significant risk to his life… that neither Lessing's nor Lincoln should require him to take," and notwithstanding Lessing's attempts to accommodate Plaintiff's requests, "[h]is symptoms continue[d] to get worse, and [Lessing's could] no longer modify the role. It [was] quite clear to [Lessing's that Fredrich was] unable to perform" his duties. *Id.*

Lincoln asked Amy Monroe ("Monroe"), a nurse, to review Plaintiff's appeal, which she did on March 1, 2021. *Id.* at ¶ 37. Monroe agreed with Dr. Schweiger's prior assessment. *See id.* In a March 7, 2021 response to Monroe's review, Dr. Cesa

emphasized that the improvement in Plaintiff's heart condition was due to his change of "lifestyle and occupational status" and "that [Fredrich] was no longer subjected to job stressors. *Id.* at ¶ 38. On March 24, 2021, Lincoln denied Fredrich's initial appeal and claimed that, according to the DOT, Plaintiff's actual occupation was "Director, Financial Responsibility Division (government ser[vices])," despite his private sector employment. *Id.* at ¶ 41. The DOT description for Director, Financial Responsibility Division includes, among other roles: (i) directing "administration of state financial responsibility law requiring deposit of surety bonds by uninsured motorists involved in highway accidents"; (ii) coordinating "activities of personnel engaged in compiling and analyzing personal injury and property damage reports and related data to determine applicability of law and amount of surety deposit required for compliance"; and (iii) recommending changes in law 'to remove inequities and maintain surety requirements consistent with trends in accident statistics and jury damage awards." *Id.* at ¶ 42. Lincoln's March 24, 2021 rejection letter listed Plaintiff's job duties as:

- Overseeing: (i) all Capital Expenditures for 125 Locations; (ii) all Service and Maintenance throughout company; and (iii) field operations for all large off premises events; including supervising and providing hands on management of all set up, break down and back of house operations during these events;

- Regular on-site meetings with each General Manager on Weekly Basis; Quarterly Meeting with Out of State General Managers; Travel to Long Island and N.Y.C. operations, as well as monthly traveling throughout the Northeast Region; on-site meeting with vendors to pursue quotes for prospective repairs, or equipment replacement; approval of all repairs; and setup of all service contracts;

- Responsible for all Food Purchases, Supply Purchases and Beer and Liquor Purchases throughout company, including negotiating all food contracts; and

- Weekly reviews of physical appearances of all venues; requiring on-site inspections and thorough walk throughs of each location; attendance at all Trade Shows throughout United States to pursue new buying contacts, equipment purchases, etc.; and receipt of weekly price quotes on commodity items and award purchase to weekly approved vendors for said commodity.

See id. According to Plaintiff, Defendant's selected DOT occupation was "sedentary," and did not match Fredrich's actual job requirements, which were more strenuous. *Id.* at ¶ 43. Based on the above job requirements and Dr. Schweiger's conclusion that Fredrich had the physical ability to work in such a role, Lincoln denied Plaintiff's first appeal on the basis that he lacked the "functional impairments that would preclude [him] from performing work in [his] own occupation." *Id.* at ¶ 44.

D. Plaintiff's Second Appeal

On August 17, 2021, Fredrich filed his second appeal of Lincoln's denial of his LTD benefits. *Id.* at ¶ 45. This second appeal included a June 7, 2021 letter from Lessing's, reiterating its belief that Plaintiff was entitled to LTD benefits under the Policy, as well as a June 27, 2021 letter from Dr. Cesa, which again purported to explain why Fredrich could not resume his employment. *Id.* at ¶¶ 45-46. Dr. Cesa contended that Plaintiff's cardiac condition prevented him from returning to work, averring that Dr. Schweiger had disregarded the link between occupational stress and aggravation of cardiovascular symptoms, and ignored "that the risk of another heart attack, stroke, or death are what render Mr. Fredrich disabled from work, not that he lacks physical capability." *Id.* Dr. Cesa also: (i) identified the objective evidence supporting his opinion; and (ii) attempted to rebut Lincoln's position that Plaintiff's condition was "stable," stating that Fredrich's coronary artery disease

appeared to be stable because he was no longer exposed to the job stressors that had been present in his role at Lessing's. *See id.* at ¶¶ 47-51.

Plaintiff's second appeal also included letters from: (i) Dr. Michele Becker-Hamou, an internist; and Ruth Baruch ("Baruch"), a certified rehabilitation counselor. *See id.* at ¶¶ 52, 55. Dr. Becker-Hamou, who examined Fredrich on June 28, 2021, concurred with Dr. Cesa's assessment that Fredrich could not work without risk to his health. *Id.* at ¶ 52. Baruch provided a vocational assessment, wherein she described Plaintiff's role with Lessing's as a "composite occupation," defined by the DOT as "Manager of Food Services" and "Director of Operations," neither of which was performed as sedentary, and both of which are more highly skilled work than Director, Financial Responsibility Division. *See id.* at ¶ 55. Based on her assessment and expertise, Baruch concluded that Fredrich "would be unable to perform any occupation in the national economy," and "would return to his work immediately if he was able to do so without substantial risk to his health." *Id.* at ¶ 56.

E. Lincoln's Second Review and Plaintiff's Subsequent Response

In response to Fredrich's second appeal, on or about August 27, 2021, Lincoln contracted with Dr. Giancarlo Speziani, a cardiac electrophysiologist, to review some of Plaintiff's medical records. *See id.* at ¶ 57. According to Dr. Speziani, Fredrich's records "did not support any restrictions and limitations for Mr. Fredrich from August 1, 2020, to the present," and due to Plaintiff's lack of specific treatment plan "other than to perform regular exercise, [and] monitor his diet and risk factors," Fredrich's

symptoms did not "warrant the placement of restrictions or limitations from 08/01/2020 moving forward." *Id.* at ¶¶ 58-60.

Contrary to Dr. Cesa's advice that Plaintiff cease working for Lessing's on a full-time basis "due to work-related stress, fatigue, and his current cardiac condition," Dr. Speziani found "no evidence of any acute or abnormal cardiac findings on multiple recent assessments to support restrictions or limitations," nor did he believe that Plaintiff's "current cardiac presentation… present[ed] with any abnormal findings from a diagnostic, objective, or clinical standpoint that would preclude [Fredrich] from" working for Lessing's. *Id.* at ¶¶ 61-65. Moreover, Dr. Speziani asserted that Plaintiff's medical records "did not indicate any side effects from [Fredrich's] prescription medications and found "no indication that medication use would preclude [Plaintiff] from occupational functioning." *Id.* at ¶¶ 66-67.

On September 20, 2021, Lincoln Appeals Claim Specialist Lisa Kurtz ("Kurtz") provided Dr. Speziani's report to Fredrich's counsel. *See* Defendant's Opposition to Plaintiff's Motion ("Def. Opp."), DE [20], Exhibit ("Ex.") A, at 20-21 (the "Letter"). The Letter: (i) explained that Plaintiff had the right to respond to Dr. Speziani's report before Lincoln made its final claim determination; and (ii) acknowledged the approaching October 1, 2021 deadline, by which Defendant had to render its final determination under ERISA. *See id.* Specifically, Kurtz stated:

> At this time, we are providing you a copy of the report to review and provide any response prior to Lincoln making a final determination on your client's appeal. We will allow you 21 days to review and respond, which will expire on 10/11/2021…..

> We are not making a final determination on your disability claim at this time as we want to provide you an opportunity to review our assessment and provide a response. We are approaching our initial deadline for deciding your appeal under the Employee Retirement Income Security Act (ERISA). The ERISA deadline for deciding you[r] appeal will expire on 10/01/2021 which is prior to the 21 day deadline stated above.
>
> If you require our decision by the 45 day ERISA timeframe and do not want to utilize the full 21 days to review and respond, please notify us immediately.
>
> If we do not receive a response by 10/01/2021, then we will render our decision after allowing you the full 21 days to review as directed by the Department of Labor guidelines.

See id. On September 28, 2021, Fredrich faxed Dr. Cesa's response to Dr. Speziani's assessment to Lincoln. *See* Compl. ¶ 69. Dr. Cesa's asserted that "[a]ccepting Dr. Speziani's assertion would require Mr. Fredrich to return to work and put him at risk for another heart attack…." *Id.* Plaintiff also faxed an addendum from Baruch, which purported to "explain how the side effects of Mr. Fredrich's medications adversely impacted his employability[,]" and that the combination of Fredrich's symptoms would render him an unreliable worker." *Id.* at ¶ 70.

In the accompanying cover letter, Plaintiff's counsel explicitly stated that "[n]o extension of time is requested, so a decision is still expected within the 45 days," meaning by October 1, 2021. *See* Pl. Opp., Ex. A at 18-19. Notwithstanding this response, Lincoln did not render its final decision (another denial) until October 26, 2021 – over three weeks after the October 1, 2021, deadline. *See id.* at 9-17.

F. <u>Procedural History</u>

Based on the above, Plaintiff commenced this ERISA action against Defendant on October 4, 2021, asserting claims for: (i) payment of LTD benefits due to Plaintiff

under the Policy; and (ii) breach of its fiduciary duties. *See generally* Compl. Lincoln filed its Answer on November 29, 2021, *see* DE [8], and the parties appeared before this Court for an initial conference on January 31, 2022. *See* DE [12]. Fredrich served Plaintiff's Motion on February 25, 2022, *see* Pl. Mot., which Lincoln opposed on March 18, 2022. *See* Def. Opp. On April 28, 2022, the parties appeared before this Court for a status conference and oral argument on Plaintiff's Motion, *see* DE [31], and submitted supplemental letter briefs requested at oral argument, shortly after. *See* DEs [32], [34]-[35]. For the reasons set forth below, the Court grants Plaintiff's Motion in its entirety, and precludes Defendant from expanding the AR to include any information that Lincoln obtained after October 1, 2021.

II. LEGAL STANDARD

ERISA "permits an individual who is denied benefits pursuant to an employee benefit plan to challenge that denial in federal court." *Caccavo v. Reliance Std. Life Ins. Co.*, No. 19-cv-6025, 2021 WL 1987194, at *5 (S.D.N.Y. May 18, 2021) (citing *Metro. Life Ins. Co. v. Glenn*, 554 U.S. 105, 108, 128 S. Ct. 2343, 2346 (2008)); *see also* 29 U.S.C. § 1132(a)(1)(B). Where a plan "does not accord an administrator 'discretionary authority to determine eligibility for benefits or to construe the terms of the plan,' a district court reviews all aspects of an administrator's eligibility determination, including fact issues, *de novo*." *Locher v. Unum Life Ins. Co. of Am.*, 389 F.3d 288, 293 (2d Cir. 2004) (quoting *Firestone Tire & Rubber Co. v. Bruch*, 489 U.S. 101, 115, 109 S. Ct. 948, 956-57 (1989)). While this review "is limited to the record in front of the claims administrator unless the district court finds good cause

to consider additional evidence," *DeFelice v. Am. Int'l Life Assur. Co.*, 112 F.3d 61, 67 (2d Cir. 1997); *see also Halo*, 819 F.3d at 60 (noting that, in reviewing claim denials, "district courts typically limit their review to the administrative record before the plan at the time it denied the claim"), and district courts have the discretion to admit additional evidence, that "discretion ought not to be exercised in the absence of good cause." *Garrett v. Provident Life and Cas. Ins. Co.*, No. 11-cv-00133, 2021 WL 1946330, at *4 (E.D.N.Y. May 14, 2021) (quoting *DeFelice*, 112 F.3d at 66).

III. DISCUSSION

Plaintiff's Motion is two-pronged, seeking a ruling that: (1) the AR closed on October 1, 2021, when Fredrich's LTD benefits claim was deemed denied as a matter of law; and (2) Defendant cannot show good cause to expand the AR. *See generally* Plaintiff's Memorandum of Law in Support of Motion to Deny Defendant's Attempt to Expand the Administrative Record ("Pl. Mem."), DE [19]. For the reasons set forth below, the Court grants Plaintiff's Motion in its entirety, and precludes Defendant from expanding the AR to include any information that it obtained after October 1, 2021, the date Defendant effectively denied Fredrich's LTD benefits claim.

A. The Administrative Record Closed on October 1, 2021

Initially, Fredrich contends that Lincoln's failure to reach a final decision on his LTD benefits claim by October 1, 2021, functioned as a denial by operation of law under ERISA, closed the applicable AR, and functioned as an exhaustion of his administrative remedies prior to initiating the instant action. *See* Pl. Mem. at 5-7. Under ERISA, a plan must resolve a claimant's appeal of the plan's denial of benefits within 45 days, "with one 45-day extension available for 'special circumstances (such

as the need to hold a hearing).'" *McFarlane v. First Unum Life Ins. Co.*, 274 F. Supp. 3d 150, 155 (S.D.N.Y. 2017) (citing *Heimeshoff v. Hartford Life & Acc. Ins. Co.*, 571 U.S. 99, 111, 134 S. Ct. 604, 613 (2013); 29 C.F.R. §§ 2560.503-1(i)(1)(i), (i)(3)(i)). Under 29 C.F.R. § 2560.503-1(i), a plan must notify the claimant of its benefit determination on review "within a reasonable period of time, but not later than [45] days after receipt of the claimant's request for review by the plan." 29 C.F.R. § 2560.503-1(i)(1)(i). Similarly, a plan's failure to reach a decision within the 45-day window "permits a claimant to consider [his] claim as having been denied so that [he] is free to seek judicial review of the denial." *Nichols v. Prudential Ins. Co.,* 406 F.3d 98, 104 (2d Cir. 2005) (quoting *Dunnigan v. Metropolitan Life Ins. Co.,* 277 F.3d 223, 231, n.5 (2d Cir. 2002)). Consistent with the caselaw, 29 C.F.R. § 2560.503-1(l) provides that a claimant "shall be deemed to have exhausted the administrative remedies available under the plan and shall be entitled to pursue any available remedies under section 502(a) of [ERISA] on the basis that the plan has failed to provide a reasonable claims procedure that would yield a decision on the merits of the claim." *Halo*, 819 F.3d at 54 (quoting 29 C.F.R. § 2560.503-1(l)).

Applying these standards, the Court concludes that Lincoln's failure to provide Fredrich with a final decision on the merits by October 1, 2021, functioned as a denial of his second appeal by operation of law, and closed the AR as of that date. Here, Fredrich filed his second appeal on August 17, 2021, *see* Compl. ¶ 45, and Lincoln's initial 45-day deadline under 29 C.F.R. § 2560.503-1(i)(1)(i) to render a decision on Plaintiff's second appeal, was October 1, 2021. *See generally* The Letter. The parties

further agree that: (i) the Letter stated that, "[i]f you require our decision by the 45 day ERISA timeframe and do not want to utilize the full 21 days to review and respond, please notify us immediately," *id.*; and (ii) on September 28, 2021, Plaintiff's counsel advised that "[n]o extension of time is requested, so a decision is still expected within the 45 days," meaning by October 1, 2021. *See* Pl. Opp., Ex. A at 18-19. Based on the text of the Letter and Plaintiff's response thereto, the Court concludes that Lincoln's failure to explicitly request an extension of time to review Fredrich's second appeal required it to render a final determination on the merits by October 1, 2021. *See* 29 C.F.R. § 2560.503-1(i)(1)(i).

In reaching this conclusion, the Court rejects Defendant's arguments that: (i) the Letter functioned as a permissible request for an extension of time for Lincoln to review Fredrich's second appeal; or (ii) Plaintiff did not exhaust his administrative remedies because Defendant's violations of 29 C.F.R. § 2560.503-1(l)(2)(i) were, at worst, *de minimis*. *See* Def. Opp. at 10-14. As to the first argument, multiple courts within this Circuit have acknowledged that while a plan is entitled, under 29 C.F.R. §§ 2560.503-1(i)(1)(i), (i)(3)(i)), to a single, 45-day extension to process a claimant's application, an extension notice must be provided "to the claimant prior to the termination of the initial [45]-day period.'" *McQuillin v. Hartford Life and Acc. Ins. Co.*, No. 20-cv-2353, 2021 WL 2323214, at *4 (E.D.N.Y. Feb. 12, 2021), *report and recommendation adopted*, 2021 WL 2102480 (E.D.N.Y. May 25, 2021) (quoting *McFarlane*, 274 F. Supp. 3d at 155; 29 C.F.R. § 2560.503-1(l)(1)). That extension notice must "indicate the special circumstances requiring an extension of time and

the date by which the plan expects to render the determination on review.'" *Id.* Here, the Letter did not explicitly request an extension of time to review Fredrich's second appeal, nor supply a date by which Lincoln expected to render its final determination. *See generally* The Letter. Moreover, the Letter fails to identify any "special circumstances" that would have supported a request for an extension, and the Court expressly concludes that Lincoln's need to seek yet another medical opinion in order to rebut Dr. Cesa's findings does not suffice. *See Satter v. Aetna Life Ins. Co.*, No. 3:16-cv-1342, 2019 WL 2896410, at *6 (D. Conn. Mar. 20, 2019) (citing *Salisbury v. Prudential Ins. Co.*, 238 F. Supp. 3d 444, 450 (S.D.N.Y. 2017)) (finding defendant's desire to seek an additional medical reviews insufficient to establish "special circumstances" to support an extension request, because "virtually any request for an extension would be permissible, an outcome the Department of Labor has expressly rejected."); *Aitken v. Aetna Life Ins. Co.*, No. 16-cv-4606, 2018 WL 4608217, at *13 (S.D.N.Y. Sept. 25, 2018) (internal citation omitted) (holding that, because "virtually every appeal of the denial of a disability benefits claim [would] require physician review," defendant's "desire for a specialty matched medical opinion does not present an extraordinary circumstance."). For these reasons, the Court rejects Defendant's argument that the Letter could serve as a valid extension notice.

The Court similarly rejects Lincoln's argument that Fredrich did not exhaust his administrative remedies because Defendant substantially complied with ERISA's regulations, and its violations of 29 C.F.R. § 2560.503-1(l)(2)(i) were, at worst, *de*

minimis. *See* Def. Opp. at 11-13. In support of its position, Lincoln points to the 2018 revisions of the ERISA regulations, namely § 2560.503-1(l)(2)(ii), which states:

> Notwithstanding paragraph (l)(2)(i) of this section, the administrative remedies available under a plan with respect to claims for disability benefits will not be deemed exhausted based on de minimus violations that do not cause, and are not likely to cause, prejudice or harm to the claimant so long as the plan demonstrates that the violation was for good cause or due to matters beyond the control of the plan and that the violation occurred in the context of an ongoing, good faith exchange of information between the plan and the claimant.

29 C.F.R. § 2560.503-1(l)(2)(ii). Based on this subsection, which applies to Plaintiff's LTD benefits claim, Defendant contends that any technical violations in the Letter are "insufficient to deem Fredrich's appeal exhausted" because they were "de minimus, and certainly caused Fredrich no prejudice or harm." Def. Opp. at 12. Only one court has interpreted ERISA's post-2018 revisions' "*de minimis*" standard in a context similar to the current matter, *see Hasten v. Prudential Ins. Co. of Am.*, 470 F. Supp. 3d 1076, 1080 (N.D. Cal. 2020), which the Court finds instructive in evaluating the parties' positions. In *Hasten*, defendant Prudential Insurance Company's delays in handling plaintiff Hasten's disability benefits claim were not *de minimis* because, while: (i) Hasten "d[id] not contend that she had been prejudiced or harmed by the insurer's untimely claim decision"; and (ii) "the parties were engaged in an ongoing exchange of information," defendant Prudential was unable to demonstrate "that the delays were for good cause or due to matters beyond [its] control." *Hasten*, 470 F. Supp. 3d at 1082. Here, not only does Fredrich contend that he has been prejudiced by Defendant's delays, *see generally* Compl., but Lincoln has failed, as detailed below, to demonstrate that its delays were for good cause or due to matters beyond its

control. For these reasons, the Court rejects Defendant's argument that its failures to adhere to ERISA's regulations in handling Plaintiff's LTD benefits application were *de minimis*, and concludes that Lincoln's failure to render a final decision on the merits of Fredrich's second appeal by October 1, 2021, functioned as a denial of that appeal by operation of law, closed the AR on that day, and exhausted Plaintiff's administrative remedies.

B. Lincoln May Not Expand the Administrative Record

Fredrich next contends that Lincoln should be precluded from including in the AR any documents created after the October 1, 2021 denial of his LTD benefits application. *See* Pl. Mem. at 8-13. As noted above, a Court's review of a plan's denial of benefits to a claimant "is limited to the record in front of the claims administrator unless the district court finds good cause to consider additional evidence." *DeFelice*, 112 F.3d at 67; *see also Halo*, 819 F.3d at 60. In this Circuit, the discretion to admit additional evidence "ought not to be exercised in the absence of good cause." *Garrett*, 2021 WL 1946330, at *4 (quoting *DeFelice*, 112 F.3d at 66); *see also Zervos v. Verizon N.Y., Inc.*, 277 F.3d 635, 646 (2d Cir. 2002) (same). "The burden of proof to establish good cause is on the [party] seeking to present evidence outside of the administrative record." *Garg v. Winterthur Life*, 573 F. Supp. 2d. 763, 771 (E.D.N.Y. 2008) (citing *Trussel v. Cigna Life Ins. Co. of New York,* 552 F. Supp. 2d 387, 390 (S.D.N.Y. 2008)).

Applying these standards, the Court concludes that Lincoln has failed to establish good cause to justify the expansion of the AR to include documents created after October 1, 2021. At its heart, Lincoln's "good cause" argument is that Plaintiff's

September 28, 2021 response to the Letter necessitated additional time to secure a response from Dr. Speziani and "to allow Fredrich appropriate time for review and rebuttal before the [October 1] deadline." *See* Pl. Opp. at 8-9. This position, however, is unsupported by ERISA's text or the applicable caselaw. Indeed, ERISA is clear that a plan that intends to take an additional 45 days to review a claimant's appeal must notify the claimant prior to the expiration of the initial 45-day review period. *See* 29 C.F.R. § 2560.503-1(i)(1)(i). Here, not only did Defendant fail to notify Plaintiff that it needed such an extension via the Letter, but it again failed to do so upon receipt of Fredrich's September 28, 2021, response to the Letter. This failure is Lincoln's own fault and is insufficient to establish "good cause." On the contrary, such a position would contravene ERISA's stated purpose of "promot[ing] the interest of employees and their beneficiaries[,]" *Bruch*, 489 U.S. at 103, 109 S. Ct. at 950, by permitting plans to eternally prolong and delay review of claimants' appeal review periods.

Lincoln's position is also belied by the prevailing caselaw within this Circuit, which counsels against expansion of an administrative record to include documents that were produced after the relevant review period. Specifically, the Second Circuit has precluded expansion of an administrative record to include additional evidence "offered to establish a historical fact pertaining to the merits of [a] claim" that was not before the administrator that denied a particular claim. *Provident Life and Acc. Ins. Co. v. McKinney*, No. 19-cv-1325, 2021 WL 7264743, at *5 (D. Conn. Sept. 14, 2021) (quoting *Daniel v. UnumProvident Corp.*, 261 Fed. App'x 316, 318 (2d Cir.

2008)); *see also Halberg v. United Behavioral Health*, 408 F. Supp. 3d 118, 135, n.11 (E.D.N.Y. 2019) (same); *Khan v. Provident Life and Acc. Ins. Co.*, 386 F. Supp. 3d 251, 276 (W.D.N.Y. 2019) (same).[2] Here, the post-review information that Lincoln seeks to add to the AR is being offered precisely to attack the merits of Plaintiff's claim; specifically, that his condition should not preclude him from working. Based on *Daniel* and its progeny, the Court declines to expand the AR here.

Defendant's implied argument that Plaintiff acted in bad faith, *see* Def. Opp. at 14, is similarly unavailing. Indeed, while "good cause" to supplement an administrative record with documents that were created after the record was closed may exist with a showing of bad faith, *see Feltington v. Hartford Life Ins. Co.*, No. 14-cv-06616, 2021 WL 5577924, at *2 (E.D.N.Y. Nov. 30, 2021), *aff'd*, 2022 WL 499079 (E.D.N.Y. Feb. 17, 2022) (citing *Reid v. Aetna Life Ins. Co.*, 393 F. Supp. 2d 256, 263 (S.D.N.Y. 2005) ("A court may not consider materials that were created after the administrative record was closed, absent a showing of bad faith or a conflict of interest.")), Lincoln has provided no evidence to suggest that Fredrich operated in bad faith or had a conflict of interest. For these reasons, the Court concludes that

[2] Courts outside of the Second Circuit have similarly precluded parties in ERISA litigation from supplementing the administrative record with evidence that: (i) was not before the administrator at the time the claim was denied; and (ii) implores those courts to consider post-review rationales for the administrator's denial. *See, e.g.*, *Lyn M. v. Premera Blue Cross*, No. 2:17-cv-01152, 2021 WL 5579710, at *3 (D. Utah Nov. 30, 2021) (quoting *Flinders v. Workforce Stabilization Plan of Phillips Petroleum Co.*, 491 F.3d 1180, 1190-91 (10th Cir. 2007) (abrogated on other grounds)) (holding that "when reviewing a plan administrator's decision to deny benefits, we consider only the rationale asserted by the plan administrator in the administrative record," so as to prevent "ERISA claimants from being "sandbagged by after-the-fact plan interpretations devised for purposes of litigation."); *Michaels v. Sedgwick Claims Mgt. Services, Inc.*, No. 4:20-cv-47, 2021 WL 1857107, at *10 (E.D. Mo. May 10, 2021) (quoting *King v. Hartford Life and Acc. Ins. Co.*, 414 F. 3d 994, 999 (8th Cir. 2005) (holding that "reviewing court[s] must focus on the evidence available to the plan administrators at the time of their decision and may not admit new evidence or consider *post hoc* rationales.").

Lincoln has failed to establish "good cause" sufficient to expand the AR to include documents created after October 1, 2021, and declines to do so.[3]

IV. CONCLUSION

For the reasons set forth above, the Court grants Plaintiff's Motion in its entirety, and precludes Defendant from expanding the AR to include any information that Lincoln obtained after October 1, 2021. A status conference is scheduled for June 16, 2022, and will be conducted at 10:30 a.m. through the AT&T teleconference center. Parties should dial 1-877-336-1829 and enter access code 3002871# at the prompt.

Dated: Central Islip, New York
May 13, 2022

s/ Steven I. Locke
STEVEN I. LOCKE
United States Magistrate Judge

[3] To the extent that Defendant's request to remand this matter for further "meaningful dialogue," Def. Opp. at 15, is within this Court's discretion, the Court declines to do so for the reasons set forth above. *See Galuzska v. Reliance Std. Life Ins. Co.*, No. 15-cv-241, 2017 WL 78889, at *4 (D. Vt. Jan. 9, 2017) (the duty to maintain meaningful dialogue applies to "both parties").