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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ELIZABETH WILKERSON,

Plaintiff - Appellant,

v.

RIFFAGE.COM DISABILITY INCOME
PROTECTION PROGRAM and SUN
LIFE ASSURANCE COMPANY OF
CANADA,

Defendants - Appellees.

No. 06-16415

D.C. No. CV-03-04926-RMW

MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
Ronald M. Whyte, District Court Judge, Presiding

Argued and Submitted November 19, 2008
San Francisco, California

Before: HALL, T.G. NELSON, and THOMAS, Circuit Judges.

Appellant Elizabeth Wilkerson appeals the district court's Conclusions of
Law denying benefits under a pre-existing condition exclusion in the Sun Life

* This disposition is not appropriate for publication and is not precedent
except as provided by 9th Cir. R. 36-3.

Long-Term Disability (“LTD”) Plan. We affirm. Because the parties are familiar with the factual and procedural history of this case, we need not recount it here.

I

The district court correctly held that the Sun Life LTD Plan could apply its pre-existing condition exclusion to Wilkerson’s disability, despite her other later, non-disabling conditions. A pre-existing condition exclusion is valid, and bars recovery, if: (1) the provision is conspicuous; and (2) the “pre-existing condition substantially contributed to the disability.” McClure v. Life Ins. Co. of N. Am., 84 F.3d 1129, 1135 (9th Cir. 1996). So long as the pre-existing condition substantially contributed to the disability, the insurer may deny benefits even if a later condition is shown to be “the predominant or proximate cause of the disability.” Id. at 1136.

The policy’s pre-existing condition exclusion here is conspicuous. Furthermore, Wilkerson acknowledges that her primary disabling condition is multiple sclerosis and that multiple sclerosis constitutes a pre-existing condition under the Sun Life LTD Plan. Because there is thus no question that Wilkerson’s multiple sclerosis substantially contributed to her disability, Sun Life is not precluded from applying its pre-existing condition exclusion to Wilkerson’s

disability, regardless of whether her later conditions were also substantial contributors. Id.

II

Because we hold that the Sun Life LTD Plan may apply its pre-existing condition clause so long as Wilkerson's multiple sclerosis substantially contributed to her disability, we need not—and do not—reach any other issue presented by the parties.

AFFIRMED.