

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

SUSAN OWENS-WOLKOWICZ :
Plaintiff, : CIVIL ACTION
 :
vs. : NO. 05-CV-277
 :
CORSOLUTIONS MEDICAL, INC., :
HUMANA INSURANCE COMPANY, :
JEFFERSON PILOT FINANCIAL :
INSURANCE COMPANY, and :
CORSOLUTIONS EMPLOYEE WELFARE :
BENEFITS PLAN :
Defendants :
 :
vs. :
 :
UNUM LIFE INSURANCE COMPANY :
OF AMERICA :
Third-party defendant :

MEMORANDUM AND ORDER

JOYNER, J.

June 30, 2005

This disability benefits case is now before the Court for resolution of a Motion to Dismiss Plaintiff's Complaint, brought by Defendants CorSolutions Medical, Inc. ("CorSolutions"), Humana Insurance Company ("Humana"), and the CorSolutions Employee Welfare Benefits Plan ("Plan"). For the reasons which follow, Defendants' Motion is granted in part and denied in part.

Factual Background

From 2002 through 2004, CorSolutions, a disease management service provider, sponsored and maintained short-term and long-term disability benefit programs for its employees. (Complaint, ¶ 6). As a CorSolutions employee, Plaintiff was a participant in

the Plan. (Id. at ¶ 14). At all material times, Plaintiff was insured by Humana and/or Jefferson Pilot Financial Insurance Company ("Jefferson") pursuant to CorSolutions' group insurance plan. (Id. at ¶¶ 11-13).

In May 2002, Plaintiff became disabled due to a connective tissue illness. (Id. at ¶ 18). Plaintiff submitted a timely claim for short-term disability benefits to Humana, and Humana paid Plaintiff's claim until September 18, 2002. (Id. at ¶¶ 20-21). In a letter dated October 2, 2002, however, Humana terminated Plaintiff's disability benefits. (Id. at ¶ 22). Plaintiff then engaged prior counsel to represent her in pursuing an appeal of the denial of her short-term disability claim. (Id. at ¶ 24). In a June 2, 2003 letter, however, Jefferson upheld the denial of Plaintiff's short-term disability claim. (Id. at ¶ 28). Shortly thereafter, the attorney-client relationship was terminated. (Id. at ¶ 30).

In response to a request by Plaintiff to submit additional medical information, Jefferson agreed to re-consider Plaintiff's benefits claim after analyzing the supplementary medical evidence. (Id. at ¶¶ 31-32). Thereafter, Plaintiff engaged present counsel to represent her in the claim appeal. (Id. at ¶ 33). On June 2, 2004, Jefferson informed Plaintiff's counsel that it would no longer handle Plaintiff's claim, because Plaintiff's disability arose in 2002, and Humana administered

claims arising before January 1, 2003. (Id. at ¶ 35). Jefferson further advised Plaintiff to submit her claim and medical information to Humana. (Id. at ¶ 36).

In a letter dated August 3, 2004, Plaintiff's counsel forwarded all medical records to Humana and requested clarification of its original denial of Plaintiff's claim. (Id. at ¶ 45). In a separate letter dated August 3, 2004, Plaintiff's counsel requested a copy of Jefferson's administrative record. (Id. at ¶ 46). In a response letter dated August 30, 2004, Jefferson forwarded Plaintiff's claim file to CorSolutions and instructed Plaintiff to obtain her records from CorSolutions. (Id. at ¶ 47). On September 15, 2004, Humana acknowledged that it had administered the CorSolutions benefits plan in 2002, but informed Plaintiff that as of December 31, 2002, it "no longer ha[d] access to any bank accounts to administer any monies" for Plaintiff's claim. (Id. at ¶ 50). Consequently, Plaintiff has not received further disability benefits.

On January 20, 2005, Plaintiff filed a Complaint against CorSolutions, Humana, Jefferson, and the Plan. Count I alleges that Plaintiff is entitled to short-term and long-term disability benefits under the Plan, asserting that Defendants owe short-term benefits pursuant to the Employment Retirement Security Act ("ERISA"). (Id. at ¶¶ 64-69); See, 29 U.S.C. §1132(a)(1)(B). In Count II, Plaintiff alleges that Defendants breached fiduciary

duties under 29 U.S.C. §1132(a)(2) and (a)(3). (Complaint, ¶¶ 70-87). In Count III, Plaintiff further alleges that CorSolutions, Humana, and Jefferson interfered with her reception of benefits in violation of ERISA §510. (Id. at ¶¶ 88-98).

On March 3, 2005, Jefferson filed a Cross-claim against CorSolutions alleging that to the extent Plaintiff prevails, CorSolutions must indemnify Jefferson pursuant to an "Advice to Pay" Agreement entered into on November 25, 2002. Also on March 3, Jefferson filed a Third-party complaint against Unum Life Insurance Company of America ("Unum"), the underwriter of CorSolutions' long-term disability plan in 2002. The Third-party complaint contended that if Plaintiff demonstrates long-term disability, Unum is liable to provide such benefits. On March 16, 2005, CorSolutions filed a Cross-claim against Unum and Jefferson, alleging that both companies entered into agreements to process and pay disability claims. The Cross-claim asserted that Jefferson and/or Unum must therefore pay any judgment in Plaintiff's favor.

On April 28, 2005, Unum filed a Counterclaim to the Cross-claim by CorSolutions, Humana, and the Plan. Unum's Counterclaim contends that CorSolutions is liable for any benefits Unum must pay Plaintiff, to the extent that Unum's lack of ability to adjudicate the claim results from CorSolutions' failure to timely instruct Plaintiff to pursue her claim with Unum. Also on April

28, Unum filed a similar Counterclaim to Jefferson's Third-party complaint, asserting that Jefferson is liable for any benefits Unum may have to pay Plaintiff which resulted from Unum's inability to adjudicate the claim due to delays attributable to Jefferson's failure to advise Plaintiff to pursue her claim with Unum.

Now before this Court is a Motion to Dismiss Plaintiff's Complaint, brought by CorSolutions, Humana, and the Plan. First, Defendants argue that Plaintiff's claim for long-term disability must be dismissed for failure to exhaust administrative remedies. Second, Defendants assert that Plaintiff's claims under ERISA §502(a)(3) should be dismissed, as Plaintiff seeks the same remedy under ERISA §502(a)(1)(B). Finally, Defendants contend that Plaintiff's claim under ERISA §502(a)(2) should be dismissed because §502(a)(2) does not provide individual recovery.

Standards Governing Motions to Dismiss

It has long been the rule that in considering motions to dismiss pursuant to Fed.R.Civ.P. 12(b)(6), the district courts must "accept as true the factual allegations in the complaint and all reasonable inferences that can be drawn therefrom." Allah v. Seiverling, 229 F.3d 220, 223 (3d Cir. 2000) (internal quotations omitted); See, also, Ford v. Schering-Plough Corp., 145 F.3d 601, 604 (3d Cir. 1998). A motion to dismiss may be granted only where the allegations fail to state any claim upon which relief

may be granted. See, Morse v. Lower Merion Sch. Dist., 132 F.3d 902, 906 (3d Cir. 1997). The inquiry is not whether plaintiff will ultimately prevail in a trial on the merits, but whether they should be afforded an opportunity to offer evidence in support of their claims. In re Rockefeller Ctr. Props., Inc., 311 F.3d 198, 215 (3d Cir. 2002). Dismissal is warranted only "if it is certain that no relief can be granted under any set of facts which could be proved." Klein v. General Nutrition Cos., 186 F.3d 338, 342 (3d Cir. 1999) (internal quotations omitted). It should be noted that courts are not required to credit bald assertions or legal conclusions improperly alleged in the complaint, and legal conclusions draped in the guise of factual allegations may not benefit from the presumption of truthfulness. In re Rockefeller, 311 F.3d at 236; In re Burlington Coat Factory Secs. Litig., 114 F.3d 1410, 1426 (1997); See, also, Angstadt v. Midd-West Sch. Dist., 377 F.3d 338, 342 (3d Cir. 2004).

Discussion

I. Failure to Exhaust Administrative Remedies

First, Defendants CorSolutions, Humana, and the Plan argue that Plaintiff's Complaint should be dismissed for failure to exhaust administrative remedies. Defendants argue that under ERISA, Plaintiff's claims for long-term disability benefits are unripe for judicial review. Defendants' argument adheres to the Third Circuit's general rule that "a federal court will not

entertain an ERISA claim unless the plaintiff has exhausted the remedies available under the plan." Weldon v. Kraft, Inc., 896 F.2d 793, 800 (3d Cir. 1990). However, courts provide an exception to this requirement when resort to administrative remedies would have proved futile. See, e.g., Kimble v. Int'l Berger v. Edgewater Steel Co., 911 F.2d 911, 916 (3d Cir. 1990); Brotherhood of Teamsters, 826 F. Supp. 945, 946 (E.D. Pa. 1993).

Plaintiff in this action explicitly avers that further attempts to cooperate with Plan administration would have been "futile." (Complaint, ¶ 69). Plaintiff bolsters this assertion with allegations that CorSolutions used evasive procedures to bounce Plaintiff's claim between Humana and Jefferson, attempting to ultimately avoid paying Plaintiff disability benefits. (Id. at ¶¶ 51, 56). Because Plaintiff's averments fall within the futility exception, this Court finds it inappropriate to dismiss Plaintiff's Complaint for failure to exhaust administrative remedies. A failure to exhaust administrative remedies argument would be properly raised in a Motion for Summary Judgment, where Plaintiff must provide evidence to support its assertions.

II. Relief Sought Under Both ERISA §502(a)(1)(B) and §502(a)(3)

Second, Defendants argue that Plaintiff's §502(a)(3) claim should be dismissed because Plaintiff seeks the same remedy, payment of disability benefits, in her §502(a)(1)(B) claim.

Defendants further contend that Plaintiff relies on the same allegations of wrongdoing to invoke both ERISA provisions, and therefore is barred from asserting the §502(a)(3) claim. ERISA §502(a)(1)(B) allows a plan participant to bring a civil action "to recover benefits due him under the terms of the plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan." ERISA §502(a)(3) additionally enables a plan participant to file a suit "to enjoin any act or practice which violates any provision of this subchapter or the terms of the plan, or to obtain other appropriate equitable relief to redress such violations or to enforce any provisions of this subchapter or the terms of the plan."

Neither the Supreme Court nor the Third Circuit have held that §502(a)(1)(B) and (a)(3) are mutually exclusive. See, Parente v. Bell-Atlantic, Civ. No. 99-5478, 2000 U.S. Dist. LEXIS 4851 at *6 (E.D. Pa. Apr. 17, 2000)(noting that neither court has definitively ruled on this issue). Despite the lack of a clear standard, Defendants correctly indicate that courts often foreclose a §502(a)(3) claim where the plaintiff has stated a claim under §502(a)(1)(B). See, e.g., Post v. Hartford Life & Accident Ins. Co., 2002 WL 31741470, No. 02-1917 (E.D. Pa. Dec. 6, 2002)(finding that a claim seeking equitable relief for an alleged "simple wrongful denial of benefits" cannot be maintained

under §502(a)(3)). A court only may bar a plaintiff's §502(a)(3) claim, however, where "plaintiff *will certainly receive* or *actually receives* adequate relief for her injuries under §502(a)(1)(B) or some other ERISA section." Parente, 2000 LEXIS 4851 at *10-11 (emphasis in original).

The §502(a)(3) claim put forth by Plaintiff in this action alleges breaches of fiduciary duty beyond merely denying benefits. Plaintiff avers that CorSolutions breached its fiduciary obligations by failing to (1) adequately fund the plan, (2) provide Plaintiff with complete and correct Plan information, and (3) adhere to appropriate claim administration procedures. (Complaint, ¶¶ 75, 80, 81). Thus, Plaintiff's §502 (a)(3) claim for equitable relief stems from averments in addition to Defendants' denial of disability benefits. Moreover, the early procedural posture of this action renders it inappropriate for this Court to conclude that Plaintiff will receive adequate relief under §502(a)(1)(B). Accordingly, this Court will not dismiss Plaintiff's §502(a)(3) claims.

III. Recovery by an Individual Plaintiff Under ERISA §502(a)(2)

Finally, Plaintiff alleges breach of fiduciary duties under both §502(a)(3) and (a)(2). As previously stated, this Court will allow Plaintiff to assert such claims pursuant to §502 (a)(3). Defendants in this action, however, assert that §502(a)(2) does not provide recovery for an individual plaintiff,

but only provides a right of action for plaintiffs representing plan participants and beneficiaries as a whole.

Under ERISA §502(a)(2), a civil action may be brought "by a Secretary, or by a participant, beneficiary or fiduciary for appropriate relief under section 409." ERISA §409 provides:

Any person who is a fiduciary with respect to a plan who breaches any of the responsibilities, obligations, or duties imposed upon fiduciaries by this title shall be personally liable to make good to such plan any losses to the plan resulting from each such breach, and to restore to such plan any profits of such fiduciary which have been made through use of assets of the plan by the fiduciary, and shall be subject to such other equitable or remedial relief as the court may deem appropriate, including removal of such fiduciary.

The Supreme Court has held that §502(a)(2) does not provide recovery for an individual plaintiff. See, Mass. Mut. Life Ins. Co. v. Russell, 473 U.S. 134, 139-40 (1985). The Third Circuit likewise has found that a beneficiary may not recover damages on her own behalf under §502(a)(2). Ream v. Frey, 107 F.3d 147, 151 (3d Cir. 1997). Rather than being awarded to any individual plan participant, damages for breach of fiduciary duty under §502(a)(2) "inure[] to the benefit of the plan as a whole." McMahon v. McDowell, 794 F.2d 100, 109 (3d Cir. 1986). Moreover, because Congress provided appropriate equitable relief under §502(a)(3) for injuries suffered by an individual beneficiary, further equitable relief need not be provided under §502(a)(2). Ream, 107 F.3d at 152.

Plaintiff in this action seeks individual recovery, rather

than compensation for the Plan. In addition, sufficient equitable remedies are available to Plaintiff under §502(a)(3). Accordingly, to the extent Plaintiff brings fiduciary duty claims solely on her own behalf pursuant to §502(a)(2), and not also under §502(a)(3), such claims are dismissed.

An order follows.

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ORDER

AND NOW, this 30th day of June, 2005, upon consideration of Defendants CorSolutions, Humana, and the Plan's Motion to Dismiss (Doc. No. 20), Plaintiff's Response (Doc. No. 25), and Defendants' response thereto (Doc. No. 29), it is hereby ORDERED that the Motion is GRANTED in part and DENIED in part as follows:

(1) Defendants' Motion to Dismiss Plaintiff's ERISA §502 (a)(1)(B) claim is DENIED.

(2) Defendants' Motion to Dismiss Plaintiff's ERISA §502 (a)(3) claim is DENIED.

(3) To the extent that Plaintiff brings a claim under ERISA §502(a)(2), Defendants' Motion to Dismiss is GRANTED.

BY THE COURT:

s/J. Curtis Joyner
J. CURTIS JOYNER, J.