

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

STEPHANO E. LEWIS : CIVIL ACTION
 :
 v. :
 :
 SHERATON SOCIETY HILL and :
 PRU CARE HMO : NO. 96-7936

MEMORANDUM AND ORDER

HUTTON, J.

July 10, 1997

Presently before this Court are Defendants Sheraton Society Hill and Pru Care HMO's respective Motions to Dismiss the Plaintiff's Amended Complaint, and the Plaintiff's Response thereto.

I. BACKGROUND

After frequent absences from his job, the plaintiff, Stephano E. Lewis, an admitted drug abuser, entered into an agreement with defendant, Sheraton Society Hill ("Sheraton") in November, 1995, in which Sheraton promised him continued employment in exchange for his promise to, inter alia, successfully complete a drug treatment program and cease all attendance problems. The defendants contend that he lost his job there in January, 1996, after failing to both successfully complete an intensive out-patient drug treatment program and resolve his attendance problems. The plaintiff argues that the defendants are liable because they wrongfully denied his request for in-patient treatment for his substance abuse problems. Accordingly, in his Amended Complaint,

the plaintiff asserts nine causes of action against the defendants under Pennsylvania common law, the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 701 et seq., and the Americans with Disabilities Act ("ADA"), as amended, 42 U.S.C. § 12181 et seq. The defendants now move this Court to dismiss all nine counts of the plaintiff's Amended Complaint.

II. DISCUSSION

A. Standard for Dismissal

When considering a motion to dismiss under Rule 12(b)(6)¹ of the Federal Rules of Civil Procedure, this Court shall take all allegations contained in the complaint as true and construe them in the light most favorable to the Plaintiff. H.J. Inc. v. Northwest Bell Tel. Co., 492 U.S. 229, 249-50 (1989); Markowitz v. Northeast Land Co., 906 F.2d 100, 103 (3d Cir. 1990). The complaint shall only be dismissed if "'it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations.'" Northwest Bell, 492 U.S. at 249-50 (quoting Hishon v. King & Spalding, 467 U.S. 69, 73 (1984)).

B. Preemption Under ERISA of State Law Claims

The defendants contend that the state law claims of Breach of Contract (Count IV), Breach of Implied Contract (Count

1. Rule 12(b)(6) states as follows:

Every defense, in law or fact, to a claim for relief in any pleading . . . shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: . . . (6) failure to state a claim upon which relief can be granted

Fed. R. Civ. P. 12(b)(6).

V), Intentional Infliction of Emotional Distress (Count VI), and Negligent Infliction of Emotional Distress (Count VII) are preempted by the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. § 1144(a).

Section 1144 states as follows:

Except as provided in subsection (b) of this section, the provisions of this subchapter and subchapter III of this chapter shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan described in section 1003(a) of this title and not exempt under section 1003(b) of this title. This section shall take effect on January 1, 1975.

29 U.S.C. § 1144(a); accord Ingersoll-Rand Co. v. McClendon, 498 U.S. 133, 138-39 (1990).

"Employee welfare benefit plan" and "welfare plan" mean any plan, fund, or program which was heretofore or is hereafter established or maintained by an employer or by an employee organization, or by both, to the extent that such plan, fund, or program was established or is maintained for the purpose of providing for its participants or their beneficiaries, through the purchase of insurance or otherwise, (A) medical, surgical, or hospital care or benefits, or benefits in the event of sickness, accident, disability

29 U.S.C. § 1002(1); see Shaw v. Delta Air Lines, Inc., 463 U.S. 85, 96-97 (1983)(holding that a "law 'relates to' an employee benefit plan, in the normal sense of the phrase, if it has a connection with or reference to such a plan"); Pilot Life Ins. Co. v. Dedeaux, 481 U.S. 41, 47 (1987)(stating that under the broad meaning of the preemption section, a state law may "relate to" a benefit plan, and thereby be pre-empted, even if the law is not

specifically designed to affect such plans, or the effect is only indirect).

This Court finds that the Sheraton Plan, under which the plaintiff sought to receive treatment for his drug addiction, constitutes an "employee welfare benefit plan" as contemplated by ERISA. The plan was established for the purpose of providing for Sheraton's employees, through the purchase of insurance, "medical, surgical, or hospital care or benefits, or benefits in the event of sickness, accident, disability" The benefit consisted of professional treatment for his addiction to narcotics.

Next, in his complaint, the plaintiff avers as follows:

5. In October 1995, Plaintiff was employed as a doorman at the Sheraton Society Hill. During this time he was receiving out-patient treatment for his drug addiction which was ineffective. He then notified the Sheraton Society Hill that he would need in-patient drug treatment, which was guaranteed by his HMO PruCare the provider for employees at the Sheraton Society Hill. The Plaintiff was refused in-patient drug treatment by PruCare and shortly thereafter was terminated from his job at the Sheraton Society Hill.
6. Both Sheraton Society Hill and PruCare refused to make a reasonable accommodation for the Plaintiff.

The plaintiff complains that he did not receive in-patient treatment as he requested. Furthermore, the plaintiff states that such treatment was guaranteed by defendant HMO PruCare the provider for employees at the Sheraton Society Hill, and that both defendants refused to make a reasonable accommodation for him. This Court finds that the plaintiff's complaint states that he did not receive a benefit he was entitled to under the employee benefit

plan at Sheraton. Therefore, the plaintiff's complaint invokes the provisions of ERISA, 29 U.S.C. § 1001 et seq. Consequently, this Court finds that the state law claims averred in the plaintiff's complaint are preempted by ERISA pursuant to 29 U.S.C. § 1144(a). As such, this Court grants the defendants' respective motions to dismiss the state law claims in Counts IV, V, VI, and VII.

C. Count I and II Against Defendant Sheraton Society Hill

Defendant Sheraton states that Counts I and II of the complaint only contain claims against defendant PruCare HMO. After reviewing the complaint, this Court finds that Count I and II do not state claims against defendant Sheraton Society Hill.

D. Count I Against Defendant PruCare HMO

Defendant PruCare HMO states that Count I of the Complaint alleging a claim under the Rehabilitation Act should be dismissed because the plaintiff does not qualify under the Act. The Rehabilitation Act provides in pertinent part, as follows:

No otherwise qualified individual with a disability in the United States, as defined in section 706(8) of this title, shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency or by the United States Postal Service.

29 U.S.C. § 794(a).

Defendant PruCare HMO contends that the plaintiff does not qualify as an individual with a disability protected by the

Rehabilitation Act. The term "'individual with a disability' means . . . any person who (i) has a physical or mental impairment which substantially limits one or more of such person's major life activities, (ii) has a record of such an impairment, or (iii) is regarded as having such an impairment." 29 U.S.C. § 706(8)(B). The term, however, does not include "an individual who is currently engaging in the illegal use of drugs, when a covered entity acts on the basis of such use." 29 U.S.C. § 706(8)(C)(i). In the instant matter, the plaintiff has conceded that at the time he allegedly was wrongfully denied in-patient treatment for his drug use, he was still engaging in the illegal use of drugs. Consequently, as section 706(8)(C)(i) is abundantly clear, the plaintiff does not constitute an "individual with a disability" for purposes of 29 U.S.C. § 794. Accordingly, this Court grants defendant PruCare HMO's motion to dismiss Count I of the plaintiff's Complaint.

E. Count II Against Defendant PruCare HMO

In Count II of the Amended Complaint, the plaintiff alleges a claim against PruCare HMO under Title III of the Americans with Disabilities Act ("ADA"), 42 U.S.C. § 12101 et seq. Specifically, the plaintiff brings his claim pursuant to section 12182 of the ADA which prohibits discrimination by public accommodations. Section 12182 provides as follows:

No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases

(or leases to), or operates a place of public accommodation.

42 U.S.C. § 12182(a). To state a cause of action under this section, the plaintiff must prove that he: "(1) has a disability; (2) was discriminated against on the basis of that disability; (3) was thereby denied goods or services; (4) by a place of public accommodation by the owner or operator of that facility." Sharrow v. Bailey, 910 F. Supp. 187, 191 (M.D. Pa. 1995). "The term 'disability' means, with respect to an individual -- (A) a physical or mental impairment that substantially limits one or more of the major life activities of such individual; (B) a record of such an impairment; or (C) being regarded as having such an impairment." 42 U.S.C. § 12102(2)(A)-(C). The term "individual with a disability", however, "does not include an individual who is currently engaging in the illegal use of drugs, when the covered entity acts on the basis of such use." 42 U.S.C. § 12210(a).

As stated above, the plaintiff has admitted in his Amended Complaint that his out-patient drug treatment was unsuccessful, i.e. that he is still a drug user. Consequently, this Court finds that the plaintiff is not an individual with a disability as contemplated under the ADA. Accordingly, this Court grants defendant PruCare HMO's motion to dismiss Count II of the Complaint.²

2. Because this Court finds that the plaintiff is not "disabled" for the purposes of a claim under the ADA, it is unnecessary for this Court to address the remaining elements of the cause of action under 42 U.S.C. § 12182(a).

F. Counts III and VIII Against Defendant PruCare HMO

Defendant PruCare HMO states that Counts III and VIII (alleging Retaliation) of the complaint only contain claims against defendant Sheraton. After reviewing the complaint, this Court finds that Count III and VIII (alleging Retaliation) do not state claims against defendant PruCare HMO.

G. Counts III and VIII Against Defendant Sheraton

Count III of the Complaint avers that defendant Sheraton violated ADA, 42 U.S.C. § 12182. As this Court stated in section E of this opinion, the plaintiff is not a disabled individual for purposes of the ADA. Therefore, this Court grants defendant Sheraton Society Hill's motion to dismiss Count III of the Complaint.

Count VIII of the Amended Complaint avers that defendant Sheraton Society Hill retaliated against the plaintiff because the plaintiff opposed an act or practice made unlawful by the ADA in violation of 42 U.S.C. § 12203. As this Court finds that no violation of the ADA occurred, this Court grants defendant Sheraton Society Hill's motion to dismiss Count VIII alleging Retaliation.

H. Count VIII Alleging Punitive Damages

In a section also labeled Count VIII, the plaintiff seeks punitive damages. This Court finds that because all of the plaintiff's substantive claims have been dismissed, any count seeking any damages is dismissed as well.

An appropriate Order follows.

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O R D E R

AND NOW, this 10th day of July, 1997, upon consideration of Defendant Sheraton Society Hill's Motion to Dismiss the Amended Complaint (Docket No. 8) and Defendant PruCare HMO's Motion to Dismiss the Amended Complaint (Docket No. 9), and the Plaintiff's Response thereto, IT IS HEREBY ORDERED that the Defendants' respective Motions are **GRANTED**.

IT IS FURTHER ORDERED that All Counts in the Amended Complaint are **DISMISSED**.

BY THE COURT:

HERBERT J. HUTTON, J.