

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

GLENN S. SMITH,
Plaintiff,

v.

THE PRUDENTIAL HEALTH CARE PLAN,
INC., and THE PENNSYLVANIA
AUTOMOTIVE INSURANCE TRUST,
Defendants.

Civil Action
No. 97-891

Gawthrop, J.

September , 1997

M E M O R A N D U M

Several motions are now before the court in this action under the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. § 1001 et seq. Plaintiff Glenn Smith seeks compensatory damages and appropriate equitable relief from Defendants for an alleged failure to provide medical benefits. After finding that ERISA preempted Plaintiff's state-law claims for breach and negligent performance of a health insurance contract, this court granted Plaintiff leave to amend his complaint. Plaintiff amended his complaint not once, but twice. Defendant Prudential now asks this court to dismiss Plaintiff's Amended Complaint pursuant to Fed. R. Civ. P. 12(b)(6), to strike his Second Amended Complaint, and to award sanctions. The Trustees of the Pennsylvania Automotive Insurance Trust, named as defendants in the original Complaint, also have filed a Motion to Dismiss

pursuant to Fed. R. Civ. P. 12(b)(6), and a Motion to Strike the Demand for a Jury Trial. Because the Trustees no longer are named defendants, I shall deny their motions as moot. Upon the following reasoning, I shall grant in part Prudential's Motion to Dismiss the Amended Complaint, and strike Plaintiff's Second Amended Complaint, but I shall deny Prudential's Motion for Sanctions.

I. Background

Plaintiff Glenn Smith alleges that he had a health insurance contract with Defendant Prudential Health Care Plan, Inc. ("Prudential") through Defendant Pennsylvania Automotive Association Insurance Trust ("PAA Trust"). Under this contract, beneficiaries must obtain pre-authorization for medical treatment before insurance coverage will be provided.

Mr. Smith claims that, on January 18, 1995, he injured his leg in an automobile accident, and thus needed surgery to reduce his heel bone. Because, allegedly, no doctor participating in the Prudential HMO plan was available, he found a qualified out-of-network orthopedic surgeon to perform the heel reduction. However, because he could not obtain the necessary authorization from the defendants, he did not have the surgery. Surgical correction is no longer possible.

On January 7, 1997, Mr. Smith and his wife, Kathy Smith,

filed a Complaint in the Bucks County Court of Common Pleas against Prudential and the Trustees of the PAA Trust, alleging breach of contract, negligent performance of contract, and loss of consortium. Prudential removed this action and moved for its dismissal on the ground that ERISA preempted it. Because I found that the PAA Trust had established an employee welfare-benefit plan governed by ERISA, I agreed that ERISA preempted the state-law claims against Prudential. I thus granted Prudential's Motion to Dismiss, but gave Plaintiffs leave to amend their Complaint.

Before I ruled on Prudential's Motion to Dismiss, the Trustees of the PAA Trust also filed a Motion to Dismiss, as well as a Motion to Strike the Demand for a Jury Trial. After they filed these motions, Plaintiff Glenn Smith filed an Amended Complaint which names the PAA Trust and Prudential as defendants. The Amended Complaint claims Breach of Contract (Count I), Breach of Fiduciary Duty and Duty to Provide Information and Access to Medical Services under ERISA (Count II, against Prudential only), and Denial of Due Process in Violation of 42 U.S.C. § 1983 (Count III). In his Response, Plaintiff states that he will not pursue his § 1983 claim.

Prudential has filed a Motion to Dismiss the Amended Complaint on the grounds that ERISA preempts any state-law breach-of-contract claim, and that Plaintiff cannot state an

ERISA claim against it. Before Plaintiff received this motion, he filed a Second Amended Complaint alleging negligent provision of medical services. Prudential then filed a Motion to Strike the Second Amended Complaint as improperly filed. In the alternative, it asks the court to dismiss the Second Amended Complaint because it asserts a state-law claim preempted by ERISA. Prudential also has moved for sanctions or attorneys' fees. For the purpose of these motions, I shall assume that Prudential is a plan fiduciary, as Plaintiff alleges.

II. Standard of Review

A court should dismiss a complaint pursuant to Fed. R. Civ. P. 12(b)(6) for failure to state a cause of action only if it is clear that no relief could be granted under any set of facts consistent with the complaint's allegations. Hishon v. King & Spalding, 467 U.S. 69, 73 (1984). In deciding a Rule 12(b)(6) motion, a court must accept as true the facts pleaded in the complaint and will draw all reasonable inferences in the plaintiff's favor. See D.P. Enterprises, Inc. v. Bucks County Community College, 725 F.2d 943, 944 (3d Cir. 1984). At this stage, a court may consider only the complaint, exhibits attached to the complaint, matters of public record, and undisputedly authentic documents if the plaintiff's claims are based upon those documents. Pension Benefit Guar. Corp. v. White Consol.

Indus., 998 F.2d 1192, 1196 (3d Cir. 1993), cert. denied, 510 U.S. 1042 (1994).

III. Discussion

A. Trustees' Motions

The Trustees of the PAA Trust have filed a Motion to Dismiss the claims against them for breach of contract, negligent performance of contract, and loss of consortium. They also request that this court strike Plaintiff's demand for a jury trial. After they filed these motions, however, Plaintiff filed an Amended Complaint which names the PAA Trust, rather than the Trustees, as a defendant. Because the Trustees no longer are defendants in this action, I shall deny as moot their Motion to Dismiss and their Motion to Strike.

B. Prudential's Motion to Dismiss the Amended Complaint

Next, Prudential moves to dismiss all claims against it in Plaintiff's Amended Complaint. Because Plaintiff no longer wishes to pursue his § 1983 claim against either defendant, I shall dismiss Count III of Plaintiff's Amended Complaint.¹ The

¹ Even if Plaintiff had not abandoned this claim, I would dismiss it. To state a claim under § 1983, plaintiff must allege that (1) the defendant deprived the plaintiff of a constitutional right, and that (2) the defendant was acting under color of state law. See West v. Atkins, 487 U.S. 42, 48 (1988). The plaintiff cannot show that any defendant in this action acted under color of state law.

viability of Counts I and II, however, cannot be resolved so quickly.

To the extent that Count I seeks to state a claim under state law for breach of contract, I shall dismiss that count. In my Memorandum Opinion filed May 27, 1997, I found that the PAA Trust is an employee welfare-benefit plan governed by ERISA. Because any state-law breach of contract claim here would "relate" to this employee benefit plan, ERISA preempts. See, e.g., Pilot Life Ins. Co. v. Dedeaux, 481 U.S. 41, 47 (1987).

In his Response, Plaintiff characterizes his breach of contract claim as arising not under state law, but rather under ERISA § 502(a)(1)(A), codified at 29 U.S.C. § 1132(a)(1)(A). This section authorizes a plan participant to bring a civil action to enforce ERISA § 502(c), which provides in pertinent part:

Any administrator who fails or refuses to comply with a request for any information which such administrator is required . . . to furnish . . . may in the court's discretion be personally liable to such participant or beneficiary in the amount of up to \$100 a day from the date of such failure or refusal, and the court may in its discretion order such other relief as it deems proper.

29 U.S.C. § 1132(c). In his Complaint, however, Plaintiff has not identified Prudential as the plan administrator.² He apparently assumes that the plan and any plan fiduciary are

² I note that, in its Motion to Dismiss the original Complaint, Prudential submitted an exhibit identifying the PAA Trust's Managing Trustee as the plan administrator.

jointly liable for a plan administrator's alleged wrongdoing. The law is otherwise. See Groves v. Modified Retirement Plan for Hourly Paid Employees of the Johns Manville Corp. And Subsidiaries, 803 F.2d 109, 116 (3d Cir. 1986) ("Section 502(c) provides for personal sanctions against plan administrators for certain breaches of their statutory duties. It does not provide for sanctions against plans."). Because Plaintiff does not allege that Prudential is the plan administrator, I shall dismiss any claim against it arising under ERISA § 502(a)(1)(A).³

Plaintiff also argues that Counts I and II arise under ERISA §§ 502(a)(1)(B), 502(a)(2), and 502(a)(3). Prudential disputes whether these provisions can support a claim against it. I shall address each section in turn.

ERISA § 502(a)(1)(B) permits a participant or beneficiary of an ERISA plan "to recover benefits due to him under the terms of his 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" 29 U.S.C. § 1132(a)(1)(B). Prudential correctly argues that the plan is the only proper defendant in a claim for money damages under this section. See, e.g., Reinert v. Giorgio

³ I also would note that Plaintiff could not obtain compensatory damages under § 502(c). The primary purpose of this section is to induce plan administrators to comply with ERISA's mandates, not to make participants whole for any damages they may have incurred because of the administrator's failure to fulfill its obligations under ERISA. See Groves, 803 F.2d at 117.

Foods, Inc., No. 97-CV-2379, 1997 WL 364499 at *4 (E.D. Pa. June 25, 1997) (citing cases); Lee v. Burkhardt, 991 F.2d 1004, 1009 (2nd Cir. 1993) ("ERISA permits suits to recover benefits only against the Plan as an entity."). Because Prudential is not a plan,⁴ Plaintiff may not recover money damages from it under this section. However, Plaintiff may be entitled to some form of equitable relief. Thus, I shall not dismiss this claim.

Plaintiff has not stated a claim against Prudential under § 502(a)(2). This section states that a civil action may be brought "by the Secretary, or by a participant, beneficiary or fiduciary for appropriate relief under section 1109 of this title." 29 U.S.C. § 1132(a)(2). Section 1109 in turn provides liability for breach of fiduciary duty. However, actions under ERISA § 502(a)(2) to enforce § 1109 may be brought against a fiduciary only for damages to the ERISA plan itself, not for damages to an individual plan participant. See Massachusetts Mut. Life Ins. Co. v. Russell, 473 U.S. 134, 144 (1985) ("Congress did not intend that section to authorize any relief except for the plan itself."). Because Plaintiff alleges injuries only to himself, not the plan, he has failed to state a

⁴ Even if Plaintiff could show that Prudential is a plan fiduciary, a plaintiff may not proceed under § 502(a)(1)(B) in a suit to recover damages for a breach of fiduciary duty. Haberern v. Kaupp Vascular Surgeons Ltd. Defined Benefit Pension Plan, 24 F.3d 1491, 1501 (3d Cir. 1994), cert. denied, 513 U.S. 1149 (1995).

claim under § 502(a)(2).

Next, ERISA § 502(a)(3) allows a participant, beneficiary, or fiduciary to bring a civil action "(A) to enjoin any act or practice which violates any provision of this subchapter or the terms of the plan, or (B) to obtain other appropriate equitable relief (i) to redress such violations or (ii) to enforce any provisions of this subchapter or the terms of the plan." 29 U.S.C. § 1132(a)(3). Thus, under this section, a plaintiff may bring a private cause of action against a plan fiduciary for an alleged improper processing of benefits. Varity Corp. v. Howe, ___ U.S. ___, 116 S.Ct. 1065 (1996). Although courts generally do not award compensatory damages under this section, see Mertens v. Hewitt Associates, 508 U.S. 248, 255 (1993) and Ream v. Frey, 107 F.3d 147, 152 n. 5 (3d Cir. 1997), courts may grant appropriate equitable relief. Because Plaintiff seeks equitable remedies, in addition to monetary ones, I shall not dismiss this claim.

Finally, Prudential argues that even if it is a proper defendant for these ERISA claims, Plaintiff's claims must fail because he has not exhausted his administrative remedies. As a general rule, a federal court will not entertain an ERISA claim unless the plaintiff first has exhausted his administrative remedies. See, e.g., Weldon v. Kraft, 896 F.2d 793, 800 (3d Cir. 1990). However, a court may excuse a claimant from the exhaustion requirement if he has been denied meaningful access to

administrative procedures. Gray v. Dow Chem. Co., 615 F. Supp. 1040, 1043 (W.D. Pa. 1985), aff'd, 791 F.2d 917 (3d Cir. 1986). Plaintiff alleges that the defendants failed and refused to provide him with a procedure to determine the propriety of his request for medical services. Assuming these allegations are true, as I must for a motion to dismiss, I find that Plaintiff has invoked the denial of meaningful access exception to the exhaustion requirement. Thus, I shall not dismiss Plaintiff's ERISA claims for failure to exhaust administrative remedies.

C. Prudential's Motion to Strike or Dismiss
Second Amended Complaint

Prudential also has filed a Motion to Strike, or in the alternative, Dismiss, Plaintiff's Second Amended Complaint. Under Fed. R. Civ. P. 15(a), a party may amend its pleading once at any time before a responsive pleading has been served; after having been served, however, an amendment requires either leave of the court or the written consent of the adverse party. Plaintiff states that he mailed his Second Amended Complaint on July 25, 1997, before receiving, on that same day, Prudential's Motion to Dismiss the Amended Complaint. Both parties now believe that, because the Motion to Dismiss was docketed first, Plaintiff needed leave of the court to file the Second Amended Complaint. Further, it appears that Plaintiff does not wish to

pursue the Second Amended Complaint should this court deny Prudential's Motion to Dismiss the First Amended Complaint. Thus, I shall grant Prudential's Motion to Strike the Second Amended Complaint.⁵

D. Sanctions or Attorneys' Fees

In its Motions to Dismiss the Amended Complaint and to Strike the Second Amended Complaint, Prudential requests sanctions and attorneys' fees pursuant to Fed. R. Civ. P. 11, 28 U.S.C. § 1927, 29 U.S.C. § 1132(g)(1), 42 U.S.C. § 1988(b), or this court's inherent powers. Although Plaintiff's § 1983 claim was without merit, Plaintiff withdrew that claim in his Response to Prudential's Motion to Dismiss. Plaintiff's remaining claims were not frivolous, and thus I shall not award either sanctions or attorneys' fees.

An order follows.

⁵ Even if Plaintiff did not wish to abandon the claim in his Second Amended Complaint, I would deny leave to amend because the proposed claim is legally deficient. The Second Amended Complaint alleges that Defendants' negligent acts resulted in Plaintiff's receiving a substandard quality of medical services. At bottom, however, Plaintiff's claim is about the quantity, not the quality, of benefits due. ERISA preempts any state-law claim that an ERISA plan erroneously withheld benefits due. See *Dukes v. U.S. Healthcare, Inc.*, 57 F.3d 350, 356 (3d Cir.), cert. denied, ___ U.S. ___, 116 S.Ct. 564 (1995).

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O R D E R

AND NOW, this day of September, 1997, upon the reasoning
in the attached Memorandum:

1. The Motion to Dismiss and Motion to Strike Demand for Jury Trial, filed by Defendant Trustees of the Pennsylvania Automotive Association Insurance Trust, are DENIED as moot.
2. Defendant Prudential Health Care Plan, Inc.'s Motion to Dismiss Plaintiff's Amended Complaint is GRANTED IN PART and DENIED IN PART. Count III is DISMISSED. The claims within Counts I and II under state law for breach of contract, under ERISA § 502(a)(1)(A), and under ERISA § 502(a)(2) are DISMISSED. Defendant's Motion to Dismiss the remaining claims within Counts I and II is DENIED.

3. Defendant Prudential Health Care Plan, Inc.'s Motion to Strike Plaintiff's Second Amended Complaint is GRANTED.
4. Defendant Prudential Health Care Plan, Inc.'s Motion to Dismiss Plaintiff's Second Amended Complaint is DENIED as moot.
5. Defendant Prudential Health Care Plan, Inc.'s Motions for Sanctions and/or Attorneys' Fees are DENIED.

BY THE COURT

Robert S. Gawthrop, III, J.