

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.

November 25, 1997

M E M O R A N D U M

Before the court is the motion of Defendant Prudential Health Care Plan, Inc. ("Prudential") for Reconsideration and/or Clarification of the Court's September 9, 1997 Order and Memorandum Opinion. The Memorandum Opinion filed September 9, 1997, dismissed Count III of the Amended Complaint in its entirety, denied in part Prudential's Motion to Dismiss the claim for breach of contract, and denied Prudential's Motion to Dismiss the claim for breach of fiduciary duty. Prudential now seeks to have the remaining claims asserted against it dismissed for failure to state a claim upon which relief can be granted. Prudential argues that Plaintiff seeks an award of compensatory damages for alleged personal injuries, not equitable relief, and that such relief is not available from Prudential under § 502(a)(1)(B) of the Employee Retirement Income Security Act

("ERISA"). 29 U.S.C. § 1132(a)(1)(B). Prudential further argues that to the extent Plaintiff claims entitlement to equitable relief pursuant to 29 U.S.C. § 1132(a)(3), such relief is not "appropriate" in this case. I agree and, upon the following reasoning, shall dismiss the remaining portions of Counts I and II against Prudential.

Standard of Review

A federal district court will grant a motion for reconsideration based upon one of three reasons: "(1) an intervening change in controlling law, (2) the emergence of new evidence not previously available, or (3) the need to correct a clear error of law or to prevent a manifest injustice." Environ Products, Inc. v. Total Containment, Inc., 951 F.Supp. 57, 62 n.1 (E.D.Pa. 1997); see also, Cohen v. Austin, 869 F.Supp. 320, 321 (E.D.Pa. 1994); Harsco Corp. v. Zlotnicki, 779 F.2d 906, 909 (3d Cir. 1985), cert. denied, 476 U.S. 1171 (1986) ("The purpose of a motion for reconsideration is to correct manifest errors of law or fact or to present newly discovered evidence."). Prudential bases its motion on the third reason stated above, a clear error of law.

Discussion

Prudential previously moved to dismiss with prejudice all

counts of Plaintiff's Amended Complaint pursuant to Federal Rule of Civil Procedure 12(b)(6). In its Memorandum Opinion, this court allowed Plaintiff to proceed with his remaining claims against Prudential under §§ 502(a)(1)(B)¹ and 502(a)(3)² of ERISA. 29 U.S.C. 1132(a)(1)(B) and (a)(3). Prudential disputes whether these provisions can support a claim against it. I shall address each provision in turn.

I previously dismissed Plaintiff's claims for money damages against Prudential asserted under § 502(a)(1)(B); however, I refused to dismiss all claims based on that subsection against Prudential. Despite finding that Plaintiff may not recover benefits from Prudential through ERISA § 502(a)(1)(B), I allowed the Plaintiff to proceed since he claimed entitlement to some form of equitable relief through that same provision. Prudential notes that the Plaintiff, in his Amended Complaint, neither referred to ERISA § 502(a)(1)(B) nor requested the relief which that section provides. Prudential also argues that there is no

¹ This subsection allows a participant or beneficiary to bring a civil action: "(B) 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).

²This subsection provides that a civil action may be brought: "(3) by a participant, beneficiary or fiduciary (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).

form of equitable relief from Prudential to which Plaintiff is entitled. In his response to this motion and at oral argument, Plaintiff has been unable to state the nature of the equitable relief sought for which Prudential may be responsible through ERISA § 502(a)(1)(B). Although in his response Plaintiff asks this court to grant access to administrative procedures, he fails to state how this will provide relief since, in his Amended Complaint, he alleges that the Defendant's actions or inactions caused him permanent disabilities for which surgical correction is no longer possible. Since the relief provided by this subsection is to secure benefits under a plan, it cannot provide Plaintiff relief where treatment coverage is not sought. See Turner v. Fallon Community Health Plan, Inc., No. 97-1253, 1997 WL 633699, at *3 (1st Cir. Oct. 20, 1997) ("The relief expressly provided is to secure benefits under the plan rather than damages for a breach of the plan."). I thus find that Plaintiff has failed to state a claim under § 503(a)(1)(B) for which relief can be granted.

Plaintiff similarly seeks equitable remedies under § 502(a)(3) of ERISA. See Varsity Corp. v. Howe, 116 S.Ct. 1065 (1996) (finding employees entitled to reinstatement in plan as equitable relief under ERISA § 502(a)(3)). Prudential argues that such equitable relief is not appropriate here because Plaintiff has a cognizable claim for benefits based upon another

section of ERISA. Specifically, Prudential points to the Plaintiff's pending claim for benefits against the PAA Trust, under ERISA § 502(a)(1)(B), as an alternative form of relief making resort to § 502(a)(3) unnecessary and inappropriate. See Varsity, 116 S.Ct. at 1079 (stating "that where Congress elsewhere provided adequate relief for a beneficiary's injury, there will likely be no need for further equitable relief, in which case such relief would normally not be 'appropriate.'"). Further, Prudential maintains that Plaintiff cannot seek monetary damages under this section and has no claim for equitable relief for the reasons detailed above. See Mertens v. Hewitt Assoc., 508 U.S. 248, 255 (1993)) ("[W]hat petitioners in fact seek is nothing other than compensatory damages -- monetary relief for all losses their plan sustained as a result of the alleged breach of fiduciary duties. Money damages are, of course, the classic form of legal relief."). The case law of the Third Circuit supports Prudential's assertions that Plaintiff is not entitled to equitable relief. See Hein v. F.D.I.C., 88 F.3d 210, 224 (3d Cir. 1996), cert. denied, 117 S.Ct. 683 (1997) (finding pension plan participant seeking monetary damages and not restitution could not recover "appropriate equitable relief"); Ream v. Frey, 107 F.3d 147, 152-53 (3d Cir. 1997) (advising courts to use a cautious approach when considering granting "appropriate equitable relief" under ERISA § 502(a)(3)(B)). Decisions of

other courts are also in accord with Prudential's assertions. See e.g., McLeod v. Oregon Lithoprint Inc., 102 F.3d 376, 379 n.2 (9th Cir. 1996), cert. denied, 117 S.Ct. 1823 (1997) (noting that all circuits which have considered the issue have held that compensatory damages are not available as "appropriate equitable relief"). In addition, Prudential cites a plethora of case law for the proposition that a plaintiff cannot recover under § 502(a)(3) for a claim of wrongful denial of benefits, See e.g., Wald v. Southwestern Bell Corp. Customcare Med. Plan, 83 F.3d 1002, 1005 (8th Cir.1996) (finding equitable relief not appropriate because plaintiff provided adequate relief by right to bring claim for benefits under § 502(a)(1)(B)). Because, in essence, Plaintiff seeks to recover for the wrongful denial of benefits, I must agree with the decisions of these courts that Plaintiff must seek recovery under § 502(a)(1)(B). I thus conclude that Plaintiff has failed to state a claim against Prudential under ERISA § 502(a)(3).

Based upon the above analysis, I find that it was a clear error of law not to dismiss Plaintiff's remaining claims against Prudential. Accordingly, I shall do so now and grant Defendant's Motion for Reconsideration.

An order follows.

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O R D E R

AND NOW, this day of November, 1997, upon the reasoning in the attached Memorandum, and upon consideration of the Motion of Defendant, Prudential Health Care Plan, Inc., for Reconsideration and/or Clarification of the Court's September 9, 1997 Order and Memorandum Opinion, the response thereto, and the oral argument of the parties on November 10, 1997, it is hereby ordered that the Motion is GRANTED. The portions of Counts I and II of Plaintiff's Amended Complaint asserted against Prudential Health Care Plan not previously dismissed are hereby DISMISSED.

BY THE COURT

Robert S. Gawthrop, III, J.