

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

MICHELLE MCCRAY,	:	CIVIL ACTION
Plaintiff,	:	
	:	No. 97-5955
v.	:	
	:	
UNITED STATES HEALTHCARE	:	
SYSTEMS OF PENNSYLVANIA, INC.	:	
t/a U.S. Healthcare,	:	
Defendant	:	

**MEMORANDUM-ORDER**

**GREEN, S.J.**

**April 23, 1998**

Presently before the court is Defendant's Motion to Dismiss Plaintiff's Second Amended Complaint, Plaintiff's Response thereto and Defendant's Reply. For the reasons set forth below, Defendant's Motion is granted.

**FACTUAL AND PROCEDURAL BACKGROUND**

The present action arises from an alleged denial of health care benefits under an employee benefit plan provided by Plaintiff's employer. Plaintiff filed a Complaint against Defendant in the Court of Common Pleas of Philadelphia on August 22, 1997. Defendant filed a Notice of Removal pursuant to 28 U.S.C. § 1441 (b) and (c) on the basis that this court has original jurisdiction over the action under 28 U.S.C. § 1331. Thereafter, Defendant moved to dismiss the Complaint on the basis of ERISA preemption under 29 U.S.C. § 1001, et seq. On November 26, 1997 this court granted Defendant's Motion to Dismiss Plaintiff's First Complaint based upon the finding that Plaintiff's initial complaint pled state law causes of action which are preempted by ERISA. In that same order, this court

authorized Plaintiff to set forth her claims pursuant to ERISA.

On December 23, 1997 Plaintiff filed a First Amended Complaint which, again, failed to set forth any claims under ERISA. Defendant moved to dismiss Plaintiff's First Amended Complaint. This court held a conference in chambers to discuss the issues raised in Defendant's Motion to Dismiss the First Amended Complaint. As a result of said conference, this court issued an Order dated February 19, 1998 granting Defendant's Motion to Dismiss without prejudice to Plaintiff filing a second amended complaint specifically stating her intent to bring any claims relating to a denial of benefits pursuant to ERISA and any state law claims not preempted by ERISA.

Plaintiff filed a Second Amended Complaint on March 6, 1998. In Plaintiff's Second Amended Complaint, Plaintiff claims that Defendant negligently failed to provide physical therapy for her after a surgical operation on her left leg and negligently ignored Plaintiff and her physician who wrote to Defendant for assistance. (Second Amended Complaint ¶ 20.) Plaintiff claims that Defendant refused to provide a facility for physical therapy in the vicinity of her home or transportation to and from the designated facility for physical therapy. (Second Amended Complaint ¶¶ 7-12, 17.) Plaintiff also alleges that Defendant did not answer a letter written by Plaintiff's doctor and another letter written by Plaintiff concerning the need for physical therapy. (Second Amended Complaint ¶¶ 11-12.)

Plaintiff alleges that "[T]he claims asserted herein are not

within the scope of [the] Employee Retirement Income Security Act." (Second Amended Complaint ¶ 19.) Instead, Plaintiff asserts that her claims are based on "a common law action for breach of contract and in trespass for negligence and consequential damages and punitive damages because of the grievous abandonment by the defendant." (Second Amended Complaint ¶ 19.) Plaintiff bases this assertion on a provision in the Group Master Contract between Plaintiff's employer and Defendant that states that "[t]his Contract is governed by the laws of the state in which filed." (Second Amended Complaint ¶ 20.) Plaintiff states in her Answer to Defendant's Motion to Dismiss that her claim is not related to a denial of services, but rather "the manner in which the services were denied and the tortious conduct in the quality of the services that were offered." (Pl.'s Answer to Def.'s Motion to Dismiss ¶ 24.) Furthermore, Plaintiff argues that the "abandonment" of Plaintiff as a beneficiary by Defendant has no relationship to any aspect of the employee benefit plan. (Def.'s Mem. at 2.)

## **DISCUSSION**

A motion to dismiss a complaint for failure to state a claim may not be granted unless it appears from the face of the complaint that the plaintiff can establish no set of facts which would entitle him to relief. Conley v. Gibson, 355 U.S. 41, 45-46 (1957). The facts must be taken as true and reviewed in the light most favorable to the plaintiff. Id.

Section 502(a)(1)(B) of ERISA provides the exclusive civil

enforcement mechanism for beneficiaries to recover benefits from a covered employee benefit plan. 29 U.S.C. § 1132(a)(1)(B); Metropolitan Life Ins. Co. v. Taylor, 481 U.S. 58, 62-63 (1987). ERISA preempts all state laws insofar as they "relate to" an employee benefit plan under ERISA. 29 U.S.C. § 1144(a). A state law or common law cause of action relates to a benefit plan if it has a connection with or reference to such a plan. Pilot Life Ins. Co. v. Dedeaux, 481 U.S. 41, 47-48 (1987)(citation omitted). Where the existence of an ERISA plan is a critical factor in establishing liability and the court's inquiry must be directed to the plan, the action "relates to" an ERISA plan and is preempted. Ingersoll-Rand Co. v. McClendon, 498 U.S. 133, 139-140 (1990). Even if a plan agreement purports to be governed exclusively by state law, this type of agreement could not override the preemptive effect of ERISA. Howard v. Parisian, Inc., 807 F.2d 1560, 1565 (11th Cir. 1987)(citing Light v. Blue Cross and Blue Shield of Alabama, Inc., 790 F.2d 1247, 1248 (5th Cir. 1986)).

Section 502(a)(1)(B) of ERISA provides that a participant or beneficiary of an ERISA plan may bring a civil action "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). Thus, the Supreme Court has found that a claim for a denial of benefits asserted under common law breach of contract or tort principles is preempted by ERISA. See

Metropolitan Life Ins. Co., 481 U.S. at 62-63. Furthermore, even where a plaintiff claims that the manner of the denial of benefits was malicious or negligent, such claims are still preempted by ERISA. See Clorox Co. v. U.S. Dist. Court for the Northern Dist. of California, 779 F.2d 517, 521 (9th Cir. 1985)(holding that plaintiff's claim that the defendant wrongfully and maliciously denied her employment benefits is preempted by ERISA); Garner v. Capital Blue Cross, 859 F. Supp. 145, 148 (M.D. Pa. 1994)(holding claims for negligent denial of benefits, negligent or intentional infliction of emotional distress, bad faith denial of a claim, fraud and breach of contract all preempted by ERISA), aff'd, 52 F.3d 314 (3d Cir. 1995).

In the present case, the plan of health and welfare benefits provided by Plaintiff's employer to its employees, which included the health care services set forth in the Group Master Contract, constitutes an employee welfare benefit plan within the meaning of ERISA, 29 U.S.C. § 1001 et seq., and Plaintiff was a participant and/or beneficiary under such employee welfare benefit plan. See 29 U.S.C. § 1002. Plaintiff's claims that Defendant negligently failed to provide physical therapy for Plaintiff and negligently ignored Plaintiff and her physician who wrote to Defendant for assistance amount to a claim for a denial of benefits due Plaintiff under Plaintiff's employee benefit plan.

Plaintiff attempts to bring this action under common law

contract and tort claims and expressly disavows any intention to bring such claims under ERISA. However, the law is clear that claims for a denial of benefits from an employee welfare benefit plan fall under the exclusive enforcement mechanism provided by ERISA. Plaintiff's argument that state law should control because the Group Master Contract recites that the contract is governed by state law has no basis in the law. Also without merit is Plaintiff's argument that the manner in which the benefits were denied takes this claim out of the reach of ERISA preemption. Furthermore, Plaintiff's attempt to characterize the alleged denial of benefits as an "abandonment" does not provide an exception to ERISA preemption. Under any common law theory, Plaintiff cannot escape the fact that her cause of action necessarily relates to the employee benefit plan and, as such, is preempted by ERISA.

Plaintiff has failed to state a claim under ERISA or common law for which relief may be granted. Plaintiff has proposed an order which would remand this case to state court. Once the district court discovers that the state court had no jurisdiction over a claim, rather than engage in a fruitless remand to a state court that lacks independent subject matter jurisdiction, it should dismiss the claim without prejudice to a motion for leave to amend the complaint to add the dismissed claim. Clorox Co., 779 F.2d at 522 (9th Cir. 1985)(citations omitted). In the present case, the court has already given Plaintiff two opportunities to amend the complaint to state a cause of action

under ERISA. As Plaintiff has explicitly stated her refusal to bring her claims under ERISA, this court will not construe such claims under ERISA and will not again dismiss this action without prejudice to amend. This court also will not remand the action to state court given this court's conclusion that all of Plaintiff's claims asserted under common law are preempted by ERISA. Therefore, Defendant's Motion to Dismiss Plaintiff's Second Amended Complaint will be granted with prejudice as to the claims brought pursuant to Pennsylvania law.

An appropriate Order follows.

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

MICHELLE MCCRAY,	:	CIVIL ACTION
Plaintiff,	:	
	:	No. 97-5955
v.	:	
	:	
UNITED STATES HEALTHCARE	:	
SYSTEMS OF PENNSYLVANIA, INC.	:	
t/a U.S. Healthcare,	:	
Defendant	:	

**ORDER**

AND NOW, this            day of April, 1998 upon consideration of Defendant's Motion to Dismiss Plaintiff's Second Amended Complaint, Plaintiff's Response thereto and Defendant's Reply, IT IS HEREBY ORDERED that Defendant's Motion is GRANTED and Plaintiff's Second Amended Complaint is DISMISSED WITH PREJUDICE as to the claims brought pursuant to Pennsylvania law.

BY THE COURT:

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CLIFFORD SCOTT GREEN, S.J.