

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

LEHIGH VALLEY HOSPITAL : CIVIL ACTION
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: :
v. : :
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UAW LOCAL 259 SOCIAL SECURITY : NO. 98-4116
DEPARTMENT : :

O'Neill, J. August , 1999

MEMORANDUM

Plaintiff Lehigh Valley Hospital commenced this action under the Employee Retirement Income Security Act (ERISA), 29 U.S.C. § 1001 et seq., to recover the cost of health care services provided to the late Charles C. Porta, a participant of the UAW Local 259 Social Security Department Plan (hereinafter referred to as “Defendant” or “the Plan”). Now before the Court is defendant’s motion to dismiss the complaint or, in the alternative, for summary judgment. Since I find that plaintiff lacks standing to sue under ERISA, I will grant the motion and dismiss the complaint.

A motion to dismiss pursuant to Rule 12(b)(6) tests the legal sufficiency of the complaint. In considering a motion to dismiss, I must accept as true all well-pleaded factual allegations contained in the complaint and draw all reasonable inferences in plaintiff’s favor. I may consider matters of public record, orders, exhibits attached to the complaint and items appearing in the record of the case without converting a Rule 12(b)(6) motion into a motion for summary judgment. See Oshiver v. Levin. Fishbein, Sedran & Berman, 38 F.3d 1380, 1385, n. 2 (3d Cir. 1994). I may grant

defendant's motion only if I conclude that plaintiff would not be entitled to relief under any set of facts consistent with his allegations. See Jordan v. Fox, Rothschild, O'Brien & Frankel, 20 F. 3d 1250, 1261 (3d Cir. 1994).

The specific issue now before this Court is whether plaintiff has standing under ERISA to seek reimbursement from the Plan as the assignee of a Plan participant, despite the existence of a Plan provision barring the assignment of any rights or benefits due under the terms of the Plan.¹ Under § 1132, the civil enforcement provision of ERISA, only participants and beneficiaries may sue to recover benefits or to enforce rights due under a plan. See 29 U.S.C. § 1132 (a)(1)(B). Plaintiff clearly does not fall within ERISA's definition of a participant.² Thus, to have standing to

¹ The Summary Plan Description states that:

No participant, dependent or beneficiary entitled to any benefits under this Plan shall have the right to assign, alienate, encumber, pledge, mortgage, hypothecate, anticipate or impair, in any manner, his/her legal or beneficial interest in the benefits or assets of this Plan to which he or she may be entitled under the Plan. [...] A participant, dependent or beneficiary may request that, to the extent benefits are payable under the Plan, such benefits payments be made directly to a health care provider on behalf of the participant, dependent or beneficiary by making written authorization to that effect on forms usually used for such purpose.

Every health care provider to whom such direct benefit payments are made and the participant, dependent or beneficiary agrees that benefit payments made in this manner are the limit of the Plan's obligations and that any differential between such benefit payments and the amount billed is the personal responsibility of a participant, dependent or beneficiary entitled to benefits under this Plan.

² A participant is:

any employee or former employee of an employer, or any member or former member of an employee organization, who is or may become eligible to receive a benefit of any type from an employee benefit plan which covers employees of

sue, plaintiff must qualify as a beneficiary for purposes of § 1132(a). A beneficiary is defined under ERISA as “a person designated by a participant, or by the terms of an employee benefit plan, who is or may become entitled to a benefit thereunder.” 29 U.S.C. § 1002(8).

The Court of Appeals has instructed that § 1132(a) must be read “narrowly and literally.” Northeast Dept. ILGWU v. Teamsters Local Union No. 229, 764 F.2d 147, 153 (3d Cir. 1988). Although the court has not directly addressed whether an assignee of plan benefits has standing, it has noted that “Congress simply made no provision in § 1132(a)(1)(B) for persons other than participants and beneficiaries to sue, including persons purporting to sue on their behalf.” Id. at 154, n. 6. A number of courts within the Third Circuit have interpreted that statement as clear guidance that standing to sue under ERISA does not extend to assignees of either plan participants or beneficiaries. See e.g. The Horsham Clinic, Inc. v. Principal Mutual Life Ins. Co., 1992 WL 165109, at *2 (E.D. Pa. June 12, 1992); Health Scan, Ltd. v. Travelers Ins. Co., 725 F. Supp. 268, 269 (E.D. Pa. 1989); Nationwide Mutual Ins. Co. v. Teamsters Health & Welfare Fund of Philadelphia, 695 F. Supp. 181, 184 (E.D. Pa. 1988). Other courts within this circuit have read the court’s statement in ILGWU less restrictively and have held that health care providers have standing to sue where there has been an assignment of rights under the plan. See e.g. Zaslow v. Miles, 1998 WL 855496, at *2 (E.D. Pa. Dec. 9, 1998); Charter Fairmont Institute, Inc. v. Alta Health Strategies, 835 F. Supp. 233, 239 (E.D. Pa. 1993); Northwest Institute of Psychiatry, Inc. v. Travelers Ins. Co., 1992 WL 236257,

such employer or members of such organization, or whose beneficiaries may be eligible to receive any such benefit.

29 U.S.C. § 1002(7)

at *2-*5 (E.D. Pa. Sept. 3, 1992).³

Before this Court even addresses whether the assignee of a plan participant has standing to sue under ERISA, however, it must first determine if the alleged assignment in this case is valid. That the Summary Plan Description prohibits the assignment of any “legal or beneficial interest in the benefits or assets” of the Plan is uncontested. Plaintiff contends, however, that this Court should interpret this provision as applying only to parties “other than health care providers, such as creditors who might attempt to gain assignments over debts and who have no nexus with the plan or the benefits.” Plaintiff’s Am. Mem. in Opp’n at 11-12. As support for this contention, plaintiff cites Hermann Hospital v. MEBA Medical & Benefits Plan, 959 F.2d 569 (5th Cir. 1992), and Lutheran Medical Center v. Contractors Health Plan, 25 F.3d 616 (8th Cir. 1994). In Hermann Hospital the Fifth Circuit held that an “anti-assignment clause should not be applicable . . . to an assignee who . . . is the provider of the very services that the plan is maintained to furnish,” 959 F.2d at 575, while the Eighth Circuit in Lutheran Medical Center held that the provision at issue in that case prohibited the assignment of rights or benefits under the plan but not the assignment of causes of action. 25 F.3d at 619. Defendant counters by citing to opinions from the First and Ninth Circuits which hold that an express, anti-assignment provision bars any assignment of rights under an ERISA plan from plan participants to health care providers. See Davidowitz v. Delta Dental Plan of California, 946 F.2d 1476, 1481 (9th Cir. 1991) (“ERISA plan payments are not assignable in the face of an express non-assignment clause in the plan.”); City of Hope Nat’l Med. Ctr. v. Health Plus, Inc. 156 F.3d 223,

³ The other circuit courts which have addressed this issue have also held that an assignee of a plan participant or beneficiary has standing to sue under ERISA. Kennedy v. Connecticut General Life Ins. Co., 924 F.2d 698 (7th Cir. 1991); Hermann Hosp. v. MEBA Med. & Benefits Plan, 845 F.2d 1286 (5th Cir. 1988); Misic v. Building Service Employees Health & Welfare Trust, 789 F.2d 1374 (9th Cir. 1986).

229 (1st Cir. 1998) (rejecting the Eighth Circuit's distinction in Lutheran Medical Center between the assignment of rights or benefits and the assignment of causes of action and instead holding that clear terms in an ERISA plan should be given their natural meaning).

Given the specific language of the anti-assignment provision at issue here and ERISA's instruction to enforce strictly the terms of employee benefit plans, see 29 U.S.C. § 1104(a)(1)(D) (instructing fiduciaries to administer plans "in accordance with the documents and instruments governing the plan[s]"); see also Bennet v. Conrail Matched Savings Plan Administrative Committee, 68 F.3d 671, 679 (3d Cir. 1999) ("ERISA basically requires that fiduciaries comply with the plan as written unless it is inconsistent with ERISA."), I believe that the position adopted by the First and Ninth Circuits provides the persuasive rule of law. Moreover, anti-assignment provisions are not contrary to ERISA's underlying objectives and policies since such provisions help to constrain health care costs by encouraging plan participation. See Washington Hosp. Ctr. Corp. v. Group Hospitalization and Med. Services, Inc., 758 F. Supp. 750, 753-54 (D.D.C. 1991).⁴ Since the

⁴ As the court in Washington Hospital Center explained:

Patients under such group policies are given a strong incentive to utilize participating hospitals, where the insurer will pay for the entire cost of covered services (apart from any initial deductibles) instead of the lesser reimbursement available for use of non-participating hospitals. The participating hospital gets the benefit of an increased flow of patients, and rapid, certain and direct payments from the insurer. The insurer can attract subscribers with the promise of 100 percent coverage and, at the same time, can reduce its costs through the reimbursement schedule and any other cost constraints accepted by the participating hospital.

This mechanism depends on the willingness of hospitals to participate by subjecting themselves to the constraints already described. A hospital would have far less reason to participate if non-participating hospitals could garner the same advantages without subjecting themselves to the constraints. Under the contracts between insurer and the participating hospital, the participating hospital may recover the hospital charges directly from the insurer without the delay and risk

Plan expressly prohibits any assignment of rights or benefits to which a participant may be entitled, I find that plaintiff lacks standing to bring suit under ERISA.⁵ Accordingly, plaintiff's complaint will be dismissed.

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involved in seeking reimbursement from patients. If a patient could obtain care from a non-participating hospital and assign it the patient's right to be reimbursed under a group policy, in the teeth of an anti-assignment clause, this direct payment inducement to become a participating hospital would be weakened or eliminated.

758 F. Supp. at 754.

⁵ As alternative grounds for dismissal of the complaint, defendant asserts that this action is barred by defendant's failure to exhaust its administrative remedies. Because I have found that plaintiff lacks standing under ERISA, I need not address that issue here.

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NO. 98-4116

ORDER

AND NOW this day of August, 1999, upon consideration of defendant's motion to dismiss the complaint and plaintiff's response thereto, it is hereby ORDERED that the motion is GRANTED and plaintiff's complaint is DISMISSED.

THOMAS N. O'NEILL, JR.

J.