

**United States Court of Appeals
FOR THE EIGHTH CIRCUIT**

No. 09-2039

Barbara A. Schermer,

Appellant,

v.

BCBSM, Inc., doing business as
Blue Cross Blue Shield of Minnesota,

Appellee.

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No. 09-2041

Appeals from the United States
District Court for the
District of Minnesota.

Irvin E. Schermer,

Appellant,

v.

BCBSM, Inc., doing business as
Blue Cross Blue Shield of Minnesota,

Appellee.

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[UNPUBLISHED]

Submitted: December 14, 2009
Filed: December 18, 2009

Before BYE, BEAM, and COLLOTON, Circuit Judges.

PER CURIAM.

Barbara and Irvin Schermer challenge the district court's¹ dismissal of their amended complaint. These appeals arise out of a denial of a claim for home health care benefits for Barbara Schermer. Barbara Schermer and her husband, the primary insured on the group health insurance policy issued by BCBSM, sought reimbursement from BCBSM for the expense of having a person come to their home to assist Barbara in tasks such as "walking, bathing, getting around, getting into bed, [and] getting dressed." As the district court pointed out, and as is apparent in the complaint, it is clear that medical reports recommend such care for Barbara, and that such care was likely needed. Yet, the issue is whether the relevant BCBSM policy covers the expenses associated with the receipt of these services. In a thorough and detailed analysis, the magistrate judge² concluded that the requested custodial care was not covered. The district court, in response to objections to the Report and Recommendation, agreed, as set out in the court's similarly detailed analysis. The Schermers appeal, raising various legal theories and statutory claims challenging BCBSM's claims procedure and ultimate denial of benefits as well as challenging particular plan language.

Having reviewed the complaint and those portions of the plan that the pleadings necessarily embrace, see Mattes v. ABC Plastics, Inc., 323 F.3d 695, 697-98 n.4 (8th Cir. 2003), as well as the Schermers' arguments on appeal, we conclude that dismissal was proper for the very reasons stated in the district court's opinion, which expressly adopts the report and recommendation of the magistrate judge. Friends of Lake View Sch. Dist. Inc. No. 25 v. Beebe, 578 F.3d 753, 757-58 (8th Cir. 2009) ("We review de

¹The Honorable John R. Tunheim, United States District Judge for the District of Minnesota.

²The Honorable Franklin L. Noel, United States Magistrate Judge for the District of Minnesota.

novo a district court's decision to grant a motion to dismiss."); Hillstrom v. Kenefick, 484 F.3d 519, 524 (8th Cir. 2007) (discussing judicial review of a decision to deny benefits under an ERISA plan—whether for abuse of discretion or plenary).

Accordingly, we affirm. See 8th Cir. R. 47B.
