

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA

FILED  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF LA

2004 SEP 28 PM 3:14

CIVIL ACTION  
LUCRETIA G. WHYTE  
CLERK  
NO. 04-1293

CAROLYN CUCCIA

VERSUS

ROBERSON ADVERTISING SERVICES,  
INC., WEIGHT MANAGEMENT CENTER/  
ST. CHARLES GENERAL HOSPITAL,  
AETNA INSURANCE COMPANY, AND  
AETNA, INC.

SECTION "T"(5)

Before the Court is a Rule 12(b)(6) Motion to Dismiss submitted by the defendants Weight Management Center, St. Charles General Hospital and Tenet Healthcare on July 16, 2004. The Court, having reviewed the said motion, the arguments of the parties, and the applicable law, is fully advised in the premises and ready to rule.

ORDER AND REASONS

**I. BACKGROUND:**

Carolyn Cuccia ("Cuccia") was employed by Roberson Advertising Services until January 6, 2003. During her employment, she received insurance coverage under an employee group medical plan issued by Aetna. Both parties agree that this plan was a "qualified plan" under ERISA. After her termination from Roberson, Cuccia continued to receive coverage under the Aetna plan pursuant to COBRA.

Cuccia suffered from morbid obesity and was undergoing medical treatment from the defendants Weight Management Center, St. Charles General Hospital and Tenet Healthcare

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("Tenet Defendants"). After becoming a candidate for gastric bypass surgery, she submitted documentation to the Tenet Defendants that she had met Aetna's particular requirements for gastric bypass surgery, namely, being on a diet for six months and under a doctor's supervision for two years. The Tenet Defendants needed to submit this documentation to Aetna for approval. However, Cuccia asserts that the Tenet Defendants received the information from the doctors on May 8, 2003 but did not provide this information to Aetna until mid-May 2003.

Aetna responded by requesting additional information from Cuccia's primary care physician, Dr. Joachim, about her medically supervised diet. Cuccia then claims that the Tenet Defendants misunderstood Aetna's letter and wrongly characterized it as a "denial letter." Cuccia also claims that the Tenet Defendants were dilatory in acting on Aetna's letter because Aetna's letter was dated May 21, 2003, and Dr. Joachim did not receive the letter until June 1, 2003.

As of June 2003, Cuccia was unsure if she was still going to be covered by Aetna, so she paid both her June and July premiums, which were accepted by Aetna. Cuccia also found out later in June that she would be covered by Coventry Healthcare of Louisiana, but in an abundance of caution, she maintained both coverages. Cuccia then submitted her request for gastric bypass surgery to Coventry as well as to Aetna. However, Coventry denied her request due to the specific exclusion for gastric bypass surgery.

Furthermore, Cuccia's surgery, which was scheduled for August 14, 2003, was cancelled because she was no longer covered by Aetna. On August 29, 2003, she received a refund check from Aetna for the insurance premiums that she had paid. Cuccia was able to have her surgery in April 2004, but she was forced to pay for the \$24,000 surgery on her own.

Cuccia file this lawsuit on May 5, 2004 alleging a wrongful denial of access to her health care benefits pursuant to 29 U.S.C. Section 1132 (A)(1)(B). In addition to the ERISA claim, she also asserted pendant state law claims of breach of contract, detrimental reliance, negligence, fraud, deceptive trade practices and all other state/common law causes of action not preempted by ERISA. Tenet Defendants subsequently filed this Rule 12(b)(6) Motion to Dismiss.

## II. LAW AND ANALYSIS:

Cuccia's initial argument is that she has an ERISA claim for benefits against the Tenet Defendants. The Tenet Defendants assert that a claim for benefits under ERISA 502(a)(1)(B) can only be brought against the health benefit plan. This Court, in *Roig v. The Limited Long Term Disability Program*, 200 WL 1146522 (E.D. La. 2000), *aff'd.*, 275 F.3d 45 (5<sup>th</sup> Cir. 2001), considered the issue of who is the proper party defendant in an ERISA claim for benefits. In *Roig*, Judge Vance did recognize a split in authority as to whether a plan is the only proper defendant in a suit to recover benefits under ERISA. *Id.* at 8. However, after reviewing various lines of cases, this Court "uncovered no case in which a court authorized relief against any entity other than the plan itself for wrongful denial of plan benefits." *Id.* at 9. Although the Fifth Circuit has not yet addressed the issue, other district courts in this circuit have agreed that the only proper defendant in a suit to recover benefits is the plan. *Id.*

Cuccia has not cited any authority to dispute or question the ruling set forth in *Roig*. Accordingly, this Court must follow the decision rendered by Judge Vance and conclude that the health care plan is the only proper defendant to a claim for benefits under ERISA. Thus, Cuccia has no claim against the Tenet Defendants under ERISA.

Regarding Cuccia's various state law claims, the issue is whether or not they are pre-empted by ERISA. In *Aetna Health Inc., v. Davila*, 124 S.Ct. 2488, 2495 (2004), the United States Supreme Court addressed this issue and held that "any state-law cause of action that duplicates, supplements, or supplants the ERISA civil enforcement remedy conflicts with the clear congressional intent to make the ERISA remedy exclusive and is therefore pre-empted." In addition the Supreme Court held that "if an individual, at some point in time, could have brought his claim under ERISA § 502 (a)(1)(B), and where there is no other independent legal duty that is implicated by a defendant's actions, then the individual's cause of action is completely pre-empted by ERISA § 502 (a)(1)(B)." *Id.* at 2496.

Cuccia's state law claims fall "within the scope" of ERISA. *Id.* She stated in her Opposition Memorandum that the "gravaman" of her complaint is that the Tenet Defendants failed to promptly submit her information to Aetna. She also claimed that she detrimentally relied on the Tenet Defendants to timely submit the information and that "such actions resulted in the wrongful denial of access to her health plan benefits, all in violation of ERISA."

Cuccia is also asserting that her tort claims of negligence and detrimental reliance are independent of her ERISA claims. However, the United States Supreme Court held that any potential liability derives entirely from the particular rights and obligations established by the benefit plans. *Davila*, 124 S.Ct. at 2498. In addition, the Fifth Circuit considered this issue and held that state laws "relate to" employee benefit plans whenever they "have a connection with or reference to such a plan." *Corcoran v. United HealthCare, Inc.*, 965 F.2d 1321, 1329 (5<sup>th</sup> Cir. 1992). This Court would have to refer to the plan in order to determine if there was any kind of negligent breach of a duty. Thus, Cuccia's claims derive from and are related to her health care

benefit plan, and this Court cannot consider them to be independent of ERISA.

Cuccia further asserts that it would be "unfair" for her not to have either an ERISA or state law claim against the Tenet Defendants. In addressing this "unfairness" the *Corcoran* court stated: "[w]hile we are not unmindful of the fact that our interpretation of the pre-emption clause leaves a gap in remedies within a statute intended to protect participants in employee benefit plans, the lack of an ERISA remedy does not affect a pre-emption analysis." *Id.* at 1333. Consequently, this Court agrees that Cuccia has no remedy against the Tenet Defendants and they should be dismissed from this lawsuit. However, Cuccia is still free to pursue her ERISA § 502 (a)(1)(B) claim for reimbursement of the cost of the surgery against her employer, Roberson Advertising, and her insurer, Aetna, Inc.

Accordingly,

**IT IS ORDERED** that the Motion to Dismiss filed on behalf of the defendants Weight Management Center, St. Charles General Hospital and Tenet Healthcare is hereby **GRANTED**.

New Orleans, Louisiana, this 27<sup>th</sup> day of September, 2004.

  
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**G. THOMAS PORTEOUS, JR.**  
**UNITED STATES DISTRICT JUDGE**