Court: TPA's Cross-Plan Offsetting Scheme Violated ERISA

A federal district court has ruled that a third-party administrator's (TPA) practice of conducting "cross-plan offsets," the withholding of amounts overpaid to providers on behalf of Plan A from payments due to providers of Plan B, violated ERISA's duty of loyalty under Section 404(a) and constituted a prohibited transaction under Section 406(b)(2).

The plaintiffs were health care providers who alleged that the TPA's cross-plan offsetting scheme violated ERISA. They asserted that the contract terms of Plan B only authorized an offset in lieu of payment when a plan seeks to recover the overpayment previously made under the same plan, but did not authorize cross-plan offsets.

The TPA argued that ERISA does not extend to overpayment determinations against providers for services provided on an

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in-network basis because the payment for those services is determined by the contract between the payer and the provider, not the patient's ERISA plan.

The court noted that the issue here is not the correctness of the TPA's overpayment determinations, but whether the TPA breached its fiduciary duty as a plan administrator. Under ERISA, a plan administrator must act as a "trustee-like fiduciary" in managing the plan.

Section 404(a) provides that "a fiduciary shall discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries and . . . for the exclusive purpose of . . . providing benefits to participants and their beneficiaries."

Because the offsetting scheme served another purpose unrelated to Plan B, specifically, the recovery of overpayments made under Plan A, the court found that the TPA's practice of cross-plan offsetting violated ERISA's duty of loyalty under Section 404(a).

Section 406(b)(2) prohibits a plan's fiduciary, "in his individual or in any other capacity," from "act[ing] in any transaction involving the plan on behalf of a party whose interests are averse to the interests of the plan or the interests of its participants or beneficiaries."

Here, the court found that the TPA's use of a pooled bank account for paying claims and seeking reimbursement made the interests of Plan A adverse to those of Plan B. When the TPA extracts funds from the account to pay claims for Plan A, it decreases the amount of funds available to pay claims for Plan B. This adverse action, the court said, constituted a prohibited transaction in violation of Section 406(b)(2).

Full text of Lutz Surgical Partners PLLC v. Aetna, Inc. (D.N.J. 3:15-cv-02595, Jun. 21, 2021)

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