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FILED
Jul 15 2009, 8:47 am
CLERK
of the supreme court, court of appeals and tax court

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IN THE
COURT OF APPEALS OF INDIANA

BAKER & TAYLOR, INC.,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 56A03-0812-CV-610
	)	
PEGGY JOANNA STERK,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE NEWTON CIRCUIT COURT
The Honorable Jeryl F. Leach, Judge
Cause No. 56C01-0806-SC-127

July 15, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARNES, Judge

Case Summary

Baker & Taylor, Inc. ("Baker") appeals the small claims court's judgment in favor of Peggy Sterk. We affirm.

Issue

Baker raises multiple issues, which we consolidate and restate as whether the small claims court properly determined that Baker acted arbitrarily and capriciously in denying Sterk's ERISA coverage appeal.

Facts

Sterk is employed by Baker, and Baker is also the administrator of the company health plan ("the Plan"). Baker delegates individual claim administration to United Healthcare ("United"). Sterk sought treatment for varicose veins in May 2007 at an office of the Vein Clinics of America. Prior to treatment, the Vein Clinic contacted United and sought pre-approval.

Sterk underwent sclerotherapy to treat the veins between June and November of 2007. The Plan specifically mentions sclerotherapy as a procedure that "may or may not be considered cosmetic." App. p. 24. When her doctors submitted claims for the treatment, United denied coverage.

On November 14, 2007, one of her treating physicians, Dr. Demetrios Karamichos, appealed to United regarding the denial of benefits. He contended that Sterk had "significant symptomatic varicose vein disease that has affected her functional capacity." App. p. 73. United submitted the claim for review to a third party physician,

who determined that the services were excluded cosmetic procedures under the Plan. United informed Sterk of its decision to deny her appeal on December 4, 2007.

On March 10, 2008, Sterk filed a second level appeal. Such appeals are filed with Baker directly rather than United. Sterk contended the services were medically necessary. Baker denied the second level appeal on May 6, 2008, stating that sclerotherapy procedures are cosmetic and excluded.

On June 18, 2008, Sterk made a written request to Baker for all documents and records relevant to her appeal and internal rules used in denying her claim. That day Sterk also made a written request to United for information about its employee, Daisy B., who issued pre-approval, and Daisy B.'s communications with the staff at the Vein Clinic. Sterk made a verbal request to a United employee on August 25, 2008, and followed up with another written request for her records on August 26, 2008. United responded to each of these requests in writing, first informing Sterk that she had not provided the appropriate information and then later informing her that any requests must be made through her employer.

On June 23, 2008, Sterk brought suit in the small claims division of Newton County Circuit Court. Sterk alleged that she had pre-approval for the treatments and that the treatments were medically necessary. Baker filed a motion for judgment on the pleadings, which was denied.

The small claims court held a hearing on Sterk's claim on November 20, 2008. It concluded that Baker's decision to deny coverage was arbitrary and capricious. It also

found that the sclerotherapy treatments were pre-approved. The small claims court ordered Baker to pay Sterk $3,500 plus court costs. This appeal followed.

Analysis

When reviewing facts determined in a bench trial, we give due regard to the opportunity of the trial court to assess witness credibility and use the clearly erroneous standard. Morton v. Ivacic, 898 N.E.2d 1196, 1198 (Ind. 2008). "This deferential standard of review is particularly important in small claims actions, where trials are informal, with the sole objective of dispensing speedy justice between parties according to the rules of substantive law." Id. at 1199. The small claims court found:

> 1. The Court fully believes that the service[s] provided to the Plaintiff that are at dispute in this cause of action were pre-approved by United Healthcare.
>
> 2. Completely separate and distinct from the finding that the services were pre-approved, the Court now finds that the Defendant's decision to deny Plaintiff's claim and the subsequent appeals was arbitrary and capricious and against the spirit, intent, and rule of the benefit policy.
>
> 3. The documentation provided to Defendant in the claims and appeals process and the documentation that was readily available to Defendant at the time of making their decision clearly places the services provided to the Plaintiff and that are at issue here today within the coverage provided by the plan.

App. p. 4.

In the context of an ERISA claim where a plan participant challenges a denial of benefits, courts must apply a de novo standard of review unless the plan specifically vests discretionary authority with the plan administrator to make eligibility determinations.

Siho v. George, 696 N.E.2d 476, 478 (Ind. Ct. App. 1998) (citing Firestone Tire and Rubber Co. v Bruch, 489 U.S. 101, 115, 109 S. Ct. 948, 956-57 (1989)), trans. denied. According to the May 6, 2008 denial of benefits letter, this Plan does vest such authority in the administrator. When the plan does so, the decision of the administrator must stand unless it is arbitrary and capricious. Id. at 479. In order to conclude a decision is arbitrary and capricious, "a court must be very confident that the decision maker overlooked something important or seriously erred in appreciating the significance of the evidence." Id. at 480 (quoting Trombetta v. Cragin Fed. Bank Ownership Plan, 102 F.3d 1435, 1438 (7th Cir. 1996)). In this case, we conclude that the plan administrator overlooked Sterk's pre-approval and ignored its significance. Therefore, the small claims court correctly concluded that Baker's denial was arbitrary and capricious.

Baker asserts that the small claims court's determination that the procedures had been pre-approved was improper. Baker was not blindsided, however, by the issue of prior pre-preapproval. According to her testimony, Sterk had repeatedly requested pre-approval documentation. The "Insurance Coverage Worksheet" from Vein Clinics of America included written confirmation that a Vein Clinic employee had, in fact, called United to get pre-approval for the procedures. Sterk testified that United was aware of the pre-approval during the pendency of her appeal. The small claims court did not err in considering this element.

Baker contends that because Sterk did not appeal to United or Baker on the grounds of prior pre-approval, she was ineligible to have this claim reviewed because it had not been administratively exhausted. See Contilli v. Local 705 Int'l Bhd. of

Teamsters Pension Fund, 559 F.3d 720, 724 (7th Cir. 2009) ("Exhaustion of administrative remedies is one of ERISA's requirements."). However, exhaustion of remedies may be excused in certain situation where "there is a lack of meaningful access to review procedures" and when "pursuing internal remedies would be futile." Stark v. PPM America, Inc., 354 F.3d 666, 671 (7th Cir. 2004). The small claims court chose to believe Sterk's testimony regarding her repeated unanswered requests and United's refusal to provide requested documentation. Baker provided no evidence or reason of its own or United's to refute Sterk's contention that she was denied this meaningful access. Given the standard of review for small claims matters, we affirm the small claims court's decision.

Conclusion

The small claims court's decision and order for Baker to pay $3,500 plus court costs to Sterk is affirmed.

Affirmed.

BAKER, C.J., and MAY, J., concur.