



Court Decides ACA's Individual Out-Of-Pocket Limits Do Not Apply Retroactively

The U.S. District Court for the Southern District of New York, in *Fisher v. Aetna Life Ins. Co.*, has upheld its prior determination that a beneficiary was required to meet the ACA's family out-of-pocket cost-sharing limit rather than the individual limit. In reaching this outcome, the court concluded that HHS regulations interpreting the ACA's cost-sharing provisions were not retroactively applicable.

Law

Under the ACA, annual cost-sharing under a non-grandfathered group health plan may not exceed certain ACA limits on an individual's out-of-pocket costs. HHS regulations issued in 2015, which became effective in 2016, say that the ACA's annual cost-sharing for self-only coverage should apply to individuals with either self-only or non-self-only coverage. Under these regulations, plans could not require individuals with family coverage to spend more than the out-of-pocket limit for self-only coverage.

Under Second Circuit precedent, an interpretive rule may be applied to a matter retroactively, but a legislative rule may not. An interpretive rule is one that clarifies an existing rule or regulation, while a legislative rule alters the law in some way.

Facts

In *Fisher*, the plaintiff was a beneficiary under a non-grandfathered ERISA group health plan sponsored by her husband's employer. The plan contained the following cost-sharing provisions:

- Before reaching a \$4,000 deductible, covered individuals (e., participants and beneficiaries) were responsible for their medical expenses.
- After reaching the out-of-pocket limit, the plan paid 100% of the covered amount for the rest of the plan year.

In 2015, the plaintiff purchased a drug prescribed by her treating physician. The claims administrator denied the plaintiff's claim for benefits, concluding that the family, rather than individual, out-of-pocket limit applied to the plaintiff's claim because she had family coverage.

In turn, the plaintiff sued the claims administrator in federal district court to challenge the claim denial. The district court determined that the claims administrator's determination was arbitrary and capricious and remanded the matter to the claims administrator for further review. On review, the claims administrator reached the same conclusion. The beneficiary again challenged the claims administrator's determination, and this time the court ruled in favor of the claims administrator. The plaintiff responded by filing a motion to request that the court reconsider its decision in the matter.

District Court

The plaintiff asserted that in determining she was required to meet the family and not the individual out-of-pocket limit, the court had ignored the HHS regulations' interpretation of the ACA cost-sharing requirements. As support for this position, the plaintiff cited HHS regulations which provide that the ACA's limits for self-only coverage would apply to individuals with both self-only and family coverage. The outcome of the plaintiff's challenge depended on whether HHS's 2015 regulations applied retroactively.

The district court denied the plaintiff's motion for reconsideration. In reaching this determination, the court concluded that it did not fail to consider HHS regulations interpreting the ACA's cost-sharing provisions when it interpreted the terms of the plan because the regulations were not retroactive. The court further noted that the ACA does not specify which out-of-pocket limit should apply when an individual has family coverage.

In reaching this conclusion, the court explained that:

- The rule contained in the regulations involved a change, as evidenced by the ACA's silence on which limit applied in this situation and the fact that insurers typically required individuals to meet the family out-of-pocket limit before the regulation went into effect.
- The regulations were issued using the notice-and-comment rulemaking process under the Administrative Procedure Act.
- HHS indicated that the rule applied prospectively.

Because the court found the regulations were not retroactive, the court concluded that it did not fail to apply the ACA's cost-sharing provisions when it interpreted the plan's terms to require the plaintiff to meet the out-of-pocket limit for family coverage.

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