(Another) Fiduciary Breach Asserted in TPA Healthcare Claims Processing

BY NEVIN E. ADAMS, JD | MAY 20, 2024

LITIGATION

The plaintiffs here—W.W. Grainger, Inc.; W.W. Grainger, Inc. Group Benefit Plan I; W.W. Grainger, Inc. Group Benefit Plan II; and W.W. Grainger, Inc. Group Benefit Plan III—are both the plan sponsor and benefit plans impacted by the actions of defendant Aetna Life Insurance Company.

The **suit alleges** that while Aetna owed Grainger "an affirmative fiduciary duty under ERISA to exercise 'care, skill, prudence and diligence' in identifying and denying fraudulent, improper, or otherwise illegitimate claims," it instead "abused its authority to enrich itself to Grainger's detriment."

More particularly, the suit[i] alleges that Aetna took money from Grainger "under the guise of claims administration, transferred the money to accounts under Aetna's control, paid a fraction of that money to health care providers to settle the claims, and kept the difference." The suit claims that, as a result of its practices, Aetna was unjustly enriched "not only by avoiding the cost of fraud prevention, but also by requesting and receiving money from the Plans to pay for claims that should never have been paid in the first place."

Beyond that, the suit claims that Aetna also engaged in "active deception to conceal its breaches of its duties to the Plans," preventing Grainger from discovering Aetna's improper conduct by, among other things, "limiting audit rights, providing false or inaccurate claims reports, and preventing Grainger from obtaining or accessing data about the actual financial transactions between Aetna and the health care providers."

Background

The plaintiffs acknowledge that Grainger lacks the expertise[ii] to evaluate claims for payment submitted by doctors and hospitals that cared for plan participants—and that, as a result, Grainger contracted that responsibility to Aetna when Aetna became one of the plans' TPAs in 2019.

In essence, Aetna served as the middleman between the plans and the health care providers by deciding which claims should be paid and how much each plan should pay for each claim. Since 2019, Grainger said it had sent more than $153 million to Aetna to pay for medical services rendered to plan participants.

Guise of Claims Administration

Instead, the suit argues that Aetna "took money from Grainger under the guise of claims administration, transferred the money to accounts under Aetna's control, paid a fraction of that money to health care providers to settle the claims, and kept the difference." In fact, the suit alleges, "Aetna did not use the fraud prevention techniques it regularly employs when administrating claims for its own fully insured plans. Aetna never refunded or credited the difference to the Plans."

Fiduciary Status

The suit states that Aetna's decision-making authority under the agreement went "far beyond mere application and compliance with its own guidelines. Because Aetna exercised discretionary authority and control over the management of the Plans and the disposition of the Plans' assets, in addition to being a named ERISA fiduciary, Aetna was also a functional fiduciary."

Moreover, the suit asserts that "as a fiduciary, Aetna agreed to be responsible for processing and reviewing claims for health benefits by Plan Participants, including: (i) the eligibility of each claimant under the terms of the Plan, and (ii) the eligibility of the claim for health benefits under the terms of the Plan."

Additionally, "as a fiduciary, Aetna agreed to be responsible for the approval and payment of only those claims that are legitimate, i.e., not those that are fraudulent or otherwise improper and otherwise failed to satisfy the requirements of the Plans. All other claims for payment were required to be denied."

That said, the suit further claims that Aetna breached its fiduciary duties by "approving and paying false, fraudulent, and improper claims and withdrawing undisclosed fees from the Plans' funds to pay those providers that cared for and treated Plan Participants"—and that "Aetna approved and paid with the Plans' assets millions of dollars in claims that never should have been paid."

As for how much—the suit states that Aetna approved more than 2,000 ("facially faulty") claims that exhibit abusive billing practices, including (a) claims with duplicate payments for the same services to the same provider for the same member; (b) submissions of claims that were untimely; (c) abusive drug testing; (d) COVID 19 testing abuse; and (e) errors in surgery claims.

"Upon information and belief, and based on the limited data available to Grainger at the time of filing this Complaint, Grainger overpaid these claims by more than 44%," according to the suit. The suit also asserts that "Aetna approved no fewer than 1,800 claims for services that were not covered by the Plans."

Finally, and "For many of these schemes to work," the suit notes that "Aetna moved funds from the Plans' accounts into Aetna's own account containing Aetna's funds and the funds of other plans. Because Aetna is an ERISA fiduciary, such commingling is not permitted."

The suit asks the court to:

- Order reimbursement for "any and all losses resulting from defendant breaching its fiduciary duties and/or having engaged in prohibited transactions";
- Order defendant to disgorge to plaintiffs any and all profits that defendant m
of fiduciary duties and/or having engaged in prohibited transactions;

qualifiers should serve as a reminder of that reality.

[i] The suit happens to be brought by the same law firm (McKool Smith, P.C.) that earlier brought a very similar suit (also against Aetna) on behalf of **Kraft Heinz** and Aramark. H/T to Wagner Law Group's Tom Clark for making the connection!

[ii] The suit notes that as a TPA, Aetna does not provide traditional medical insurance to Grainger employees or retirees, and that Aetna did not pay medical expenses for participants of the plans in exchange for premiums. Rather, Grainger "retained the financial risk of increased medical expenses among its beneficiaries and participants by funding the medical expenses incurred by the plans' beneficiaries using funds allocated from Grainger for that purpose. In other words, Grainger self-funded its employees' medical expenses (with contributions from employees)." The suit later comments that Aetna was less likely to reject claims submitted for a self-funded plan than from fully insured programs.

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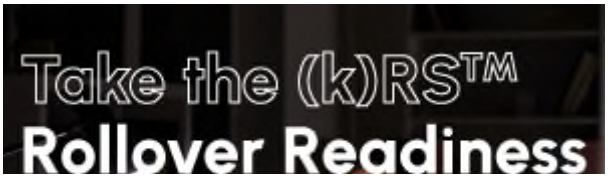

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