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Aetna Dodges ERISA Suit Over Plan Disclosures At 11th Circ.

By **Dorothy Atkins**

Law360 (August 27, 2018, 3:47 PM EDT) -- The Eleventh Circuit has affirmed a lower court's decision to toss a dermatologist's \$1.7 million lawsuit accusing Aetna Health Inc. and a subsidiary of violating the Employee Retirement Income Security Act by failing to provide her with copies of her patients' benefits plans.

In a five-page opinion Friday, a unanimous three-judge panel said plaintiff W.A. Griffin had not obtained the assignments of rights to request summaries of her patients' employer-sponsored health plans from Aetna subsidiary Coventry Healthcare of Georgia Inc. when she asked Coventry for them. Therefore, Coventry didn't violate ERISA for repeatedly refusing to hand over copies of the plans, the panel said.

"Coventry is not liable for statutory penalties for violations it did not commit," the panel said.

The ruling is the latest chapter in a string of litigation that began in October 2015, when Griffin sued Aetna and Coventry claiming that Coventry had drastically underpaid health care providers for medically necessary services that should have been entirely covered by its benefits plans.

Since 2012, Griffin had treated five patients with employer-sponsored health plans and submitted a claim to Coventry for each individual's costs. But Coventry agreed to pay only between 13 percent and 43 percent of the total bills, which Griffin appealed. During the appeals process, Griffin repeatedly asked for copies of the summary plan descriptions. After Coventry failed to turn them over, Griffin sued, claiming she was owed \$100 in statutory violations for each day after 30 days that Coventry stalled on handing over the plans.

The district court dismissed two of three claims in Griffin's initial lawsuit, finding that Griffin's patients did not assign their rights to sue under ERISA for statutory penalties. Four days later in December 2016, Griffin filed another suit, asserting identical claims after she obtained retroactive permission from the patients to collect the information, according to court documents.

But in June 2017, the district court dismissed the suit for good, finding that Griffin waited too long to bring the claims. Shortly after, Aetna asked the court to award over \$20,800 in attorneys' fees and costs, arguing that Griffin had unnecessarily dragged out litigation that primarily arose out of a denied \$8,000 insurance claim. But the district judge denied the motion, pending the outcome of the appeal.

On Friday, the appeals court found that Griffin's case should be tossed — but not because of the statute of limitations on her ERISA claims. The panel said Griffin's patients had a right to copies of their benefits plans at the time Griffin made the requests. The panel, however, said the patients themselves did not make the requests and at the time they had not given Griffin assignments of the right to request copies of the plans. The panel noted that even after Griffin eventually obtained the assignments of rights, she never renewed her requests for copies of the plans from Coventry.

"So even if, as Dr. Griffin asserts, the new assignments conveyed any right the patients had to statutory penalties, this makes no difference, because the patients had no right to statutory penalties," the order says. "They had never requested or been denied a copy of the summary plan

description.”

Counsel for Aetna declined to comment Monday. Griffin didn't immediately respond Monday to a request for comment.

U.S. Circuit Judges Gerald Bard Tjoflat and Adalberto Jordan and U.S. District Judge Robert L. Hinkle, sitting by designation, sat on the panel for the Eleventh Circuit.

Griffin is represented pro se.

Aetna is represented by Gary J. Toman and Jennifer A. Adler of Weinberg Wheeler Hudgins Gunn & Dial LLC.

The case is W.A. Griffin v. Aetna Health Inc. et al., case number 17-13113, in the U.S. Court of Appeals for the Eleventh Circuit.

--Editing by Orlando Lorenzo.

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