

1998-99

**NATIONAL HEALTH LAW
MOOT COURT COMPETITION**

Transcript of Record
Docket No. 98-339

SUPREME COURT OF THE UNITED STATES

October Term, 1998

MARY DOE

Petitioner,

v.

**SPRINGFIELD HOSPITAL
ASSOCIATION HEALTH PLAN, INC.**

Respondent.

SPONSORS:

Southern Illinois University School of Law

*Southern Illinois University School of Medicine,
Department of Medical Humanities*

American College of Legal Medicine

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ABLING**

Mary Doe,)	
Plaintiff)	
)	
v.)	96-CV-1967
)	
Springfield Hospital)	
Association Health)	
Plan, Inc.)	
)	
Defendants.)	

MEMORANDUM OPINION AND ORDER

Homer J. Simpson, District Judge

Plaintiff, Doe, brings the instant action against her employer's health plan, Springfield Hospital Association Health Plan, Inc. The suit involves the health plan's amendment to cap AIDS related benefits. Pursuant to Rule 56 of the Federal Rules of Civil Procedure, the parties have filed cross motions for summary judgment.

FACTS

Plaintiff is a surgical nurse who has been employed for seventeen years at Springfield Hospital, which is wholly owned by the Springfield Hospital Association ("SHA"). The hospital has a self-funded medical plan (the "Plan"). Plaintiff is a participant in the Plan and received a Summary Plan Description ("SPD") on a yearly basis. The SPD unambiguously reserved to the Plan the right to change or discontinue any or all benefits. Participation in the Plan is a benefit offered to all full time employees of SHA. The Plan is an employee welfare benefit plan within the meaning of ERISA, 29 U.S.C. sec. 1002(1).

The hospital is located in the center of the state, in a rural community. It is the only cardiac center for two hundred miles. It is a for profit, private hospital.

In the Spring of 1995, the plaintiff was diagnosed with the Human Immunodeficiency Virus ("HIV"). She brought this to the attention of her superiors in July of 1995. She is the only HIV positive member of the Plan. She is presently asymptomatic and had not been diagnosed as suffering from Acquired Immune Deficiency Syndrome ("AIDS").

Doe was placed on AZT and other drugs to help control the development of the virus. She submitted these claims to the Plan, and they were paid.

SHA suspended nurse Doe with pay from participating in any surgical procedures on September 2, 1995, pending a recommendation from infection control regarding appropriate restrictions or precautions. Nurse Doe vigorously objected to this suspension and refused to be reassigned to a non-surgical position. SHA offered Doe a position at the intake assessment desk in the emergency room with the same shift and pay. Doe refused the transfer and requested a hearing with the SHA employee grievance committee. SHA maintained the suspension, with full pay and benefits, pending the outcome of the October 31, 1995 hearing.

On September 15, 1995, Springfield Hospital's Health Plan posted a notice to all employees that effective January 1, 1996, the Plan would be amended to limit benefits for AIDS-related illness to \$20,000 (lifetime benefit). The lifetime benefit was otherwise \$1,000,000 per member. No limitations were placed on any other catastrophic illness. SHA notified employees that this change was necessary to preserve the Plan. Mary Doe contacted her supervisor and expressed her concern over the amendment. Doe was informed of her right to appeal the amendment. However, her supervisor also informed Doe that she felt the appeal would be a "waste of her time" based upon management's response to the supervisor's verbal objection to the amendment.

Pursuant to the SPD, the Plan retained the right to amend benefits with ninety days notice to participants. The SPD also provided that amendments could include modification or limitation of funds available for care for certain medical conditions as determined to be prudent by the Plan administrator.

After discussing this notice with her supervisor, plaintiff resigned on September 18, 1995. Thereafter, she filed this suit on March 19, 1996 in three Counts¹. Count I alleges that the amendment of the Plan to cap AIDS related benefits constitutes discrimination prohibited by Title I of the Americans with Disabilities Act of 1990, 42 U.S.C. sec. 12101 et seq ("ADA").

Count II alleges that the amendment of the Plan to cap AIDS related benefits constitutes discrimination prohibited by Title III of the ADA. Count III alleges that the cap was retaliatory in violation of section 510 of the Employee Retirement Income Security Act, 29 U.S.C. sec. 1002 (1995) ("ERISA").

The plaintiff was allowed to continue her benefits by paying the necessary premiums pursuant to the Consolidated Omnibus Budget Reconciliation Act of 1985 ("COBRA").

¹ A separate suit was also filed by Doe against SHA alleging discrimination under the ADA and the Rehabilitation Act of 1973 relating to the suspension and proposed reassignment to a non-surgical position. This suit is still pending.

The parties filed motions for summary judgment related to Counts I, II and III.

ANALYSIS

A. Count I

Title I of the ADA

Plaintiff alleges that the capping of benefits for the Plan relating to AIDS-related illnesses constitutes a violation of Title I of the ADA. Plaintiff argues that the cap was instituted with knowledge of her status and that it can not be applied to her, without violating her rights under the ADA. Title I of the ADA addresses disability discrimination by employers.

Title I provides:

[N]o covered entity shall discriminate against a qualified individual with a disability because of the disability of such individual in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions and privileges of employment.

42 U.S.C. Sec. 12112 (a).

A "qualified individual with a disability" is defined as "an individual who, with or without reasonable accommodation, can perform the essential functions of the employment position that the individual holds or desires." 42 U.S.C. Sec. 12111(8). *Seifken v. Village of Arlington Heights*, 65 F.3d 664 (7th Cir. 1995). This court believes that the issue under Title I is how a person who has voluntarily resigned a position of employment fits within this definition.

The plaintiff argues that Title I applies to the Plan because the EEOC has determined that health plans provided to employees by employers are a fringe benefit available by virtue of employment. See *EEOC Interim Policy Guidance on ADA and Health Insurance*, June 8, 1993. Plaintiff accurately points out that the regulations governing the ADA provide that it is unlawful to discriminate against a qualified individual with a disability in regard to fringe benefits related to employment. 29 C.F.R. Sec. 1630.4(f)(1996). Plaintiff argues that employer-provided fringe benefits are subject to the anti-discrimination provisions of the ADA. See *Gonzales v. Garner Food*

Services, Inc., 89 F.3d 1523 (11th Cir. 1996). Plaintiff further asserts that her employment position vis-a-vis the Plan is that of a health benefit recipient.

Defendant concedes that asymptomatic HIV infection is a disability as defined by the ADA. However, defendant argues that plaintiff is not a qualified individual with a disability under the ADA because she neither held nor desired to hold a position with SHA at the time the Plan amendment took effect. At the time that suit was filed, plaintiff was a participant in the Plan only as a former employee.

Defendant argues that the definition of qualified individual is necessary to "ensure that employers can continue to require that all applicants and employees, including those with disabilities, are able to perform the essential . . . functions of the job in question." H.R. Rep. No. 485 101st Cong., 2d Sess. 55 (1990). Thus, since plaintiff is not an employee nor an applicant for employment, defendant argues that Title I does not apply.

In turn, plaintiff argues that she is a qualified individual who has been prevented from performing the essential functions of her job by her former employer. The plaintiff relies on *Beavers v. American Cast Iron Pipe Co.*, 975 F.2d 792 (11th Cir. 1992), for the proposition that the continuation of a discriminatory health insurance policy constitutes a continuing violation. Plaintiff suggests that the interpretation of the ADA should be governed by the similar language of Title VII of the Civil Rights Act of 1964 and the case law allowing post-employment suits for discrimination. She cites similar case law in the age discrimination context. *Robinson v. Shell Oil*, 519 U.S. 337 (1997); *Patchenko v. C.B. Dolge Co.*, 581 F.2d 1052 (2d Cir. 1978); *EEOC v. J.M. Huber Corp.*, 927 F.2d 1322 (5th Cir. 1991). We note that the EEOC has, in the context of fringe benefits, taken the position that qualified individuals include former employees who can no longer perform the essential functions of their jobs. However, none of the cases cited by plaintiff nor the EEOC opinion involves a resignation by the employee.

The defendant counters that employment is a precondition of the action and that the amendment actually occurred months after the plaintiff's resignation. Defendant further argues that under the terms of the Plan, the plaintiff could have contested the amendment before it went into effect. The plaintiff chose not to do so.

We find that the plaintiff did not hold an employment position, nor was she an applicant for a position when the amendment took effect and, therefore, her claim under Title I of the ADA must fail. We are unpersuaded by plaintiff's reference to the cases interpreting post employment discrimination under Title VII. The reasoning of *E.E.O.C. v. CNA Ins. Companies*, 96 F.3d 1039 (7th Cir. 1996), is persuasive on this issue. We find defendant's argument on this point to be compelling and grant the defendant's motion for summary judgment on this count.

B. Count II

Title III of the ADA

Count II of the plaintiff's complaint contains claims under Title III of the ADA. Title III provides:

No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges advantages accommodations of any place of public accommodation by any person who owns, leases or operates a place of public accommodation.

Defendant denies that the Plan is a place of public accommodation. We find this argument persuasive. The defendant moves for summary judgment on the basis that the Plan is not a structure capable of being a public accommodation and that to apply Title III to a health plan is a perversion of the intentions of the section. The defendant asserts that the plaintiff's reliance on Title III is misplaced. Title III, in essence, prohibits the provision of unequal or separate benefits by a place of public accommodation. It was intended to prevent discrimination against clients or customers of a public business. It has no application to a case involving a self funded health plan provided through employment.

The plaintiff argues that Title III is worded broadly enough to apply to the Plan and that the plain meaning of the terms of Title III do not require a physical structure. Plaintiff's argument relies heavily upon the case of *Carparts Distribution Center, Inc. v. Automotive Wholesaler's Ass'n of New England, Inc.*, (1st Cir. 1994). *Carparts* does not specifically hold that a Plan can be subjected to Title III requirements.

The better reasoned view is the approach adopted in *Parker v. Metropolitan Life Ins. Co.*, 121 F.3d 1006 (6th Cir. 1997), which holds that a benefit plan offered by an employer is not a "good" offered by a place of public accommodation. Defendant's motion for summary judgment on this point is granted.

Having determined that the plaintiff can not recover under the ADA for claims related to the capping of benefits, we turn to her ERISA claim.

C. Count III

ERISA

Plaintiff also asserts that the amendment violates section 510 of ERISA. ERISA does provide a remedy directed to retaliation against a health plan member. 29 U.S.C.A. sec. 1002 (1995). Section 510 makes it unlawful to discharge, fine, suspend, expel, discipline, or discriminate against a plan participant for exercising a right which is conferred under ERISA. The plaintiff asserts that the cap is in violation of these provisions.

Defendant argues that ERISA does not expressly prohibit health plans from providing benefits on a discriminatory basis. *Shaw v. Delta Air Lines*, 463 U.S. 85, 93 (1983). Defendant relies on *McGann v. H & H Music Co.*, 946 F.2d 401 (5th Cir. 1991), which held that a \$5,000 lifetime cap for AIDS benefits was permissible because ERISA does not mandate that employers provide any particular benefits and does not proscribe discrimination in the provision of benefits.

Defendant points out that even the Solicitor General asserted in his amicus brief to the United States Supreme Court in the *McGann* case that ERISA plans have an absolute right to modify the terms of their health plans.

Section 510 is targeted to discriminatory conduct designed to interfere with the exercise or attainment of vested or other rights under the Plan. It does not forbid all types of discrimination. The section is directed to discriminatory conduct related to individuals; it does not forbid discrimination relating to the plan in general. *Deeming v. American Standard, Inc.*, 905 F.2d 1124 (7th Cir. 1990). To survive a motion for summary judgment, the plaintiff must present evidence of the employer's specific intent to violate ERISA. *Gavalik v. Continental Can Co.*, 812 F.2d 834 (3rd Cir. 1987).

Defendant argued that the amendment was necessary to preserve the Plan. We believe that ERISA does not prevent discrimination between categories of disease. Obviously, any time a Plan limits benefits in an effort to cut costs, it will adversely effect those members making benefit claims. Defendant has established a legitimate business reason for the cap. Plaintiff has not met her burden of establishing specific intent. Defendant's motion for summary judgment on this issue is granted.

Judgment is entered in favor of the defendant on Count III.

The defendant's motion for summary judgment is granted.

CONCLUSION

The plaintiff's motion for summary judgment is denied. The defendant's motion is granted. The court therefore directed the Clerk of the Court to enter judgment and that Plaintiff take nothing.

SO ORDERED.

DATE: August 15, 1997

/s/ Homer J. Simpson

Honorable Homer J. Simpson

Entered: August 15, 1997

**IN THE UNITED STATES COURT OF APPEALS
FOR THE TWELFTH CIRCUIT**

No. 97-1053

Mary Doe,

Plaintiff-Appellant

v.

**Springfield Hospital
Association Health
Plan, Inc.**

Defendant-Appellee

Appeal from the United States District Court
for the Middle District of Abling
Civil No. 96-CV-1967-H. J. Simpson, District Judge

Argued November 21, 1997--Decided December 19, 1997

Before, **BOGGS**, Chief Judge, **PAWLOSKI** and **SASS**, Circuit Judges.

BOGGS, Chief Judge. This action comes before the court on appeal from the district court's grant of summary judgment against Mary Doe, thereby upholding the capping of AIDS related benefits. The district court's judgment is affirmed.

I. FACTS

The district court's opinion adequately sets forth the salient facts of this case. We merely summarize them here as necessary for our analysis. The appellant, Mary Doe, challenged the actions of the defendant in capping AIDS related benefits. First, she claimed that the amendment of the SHA health plan ("the Plan") was discriminatory under Title I. Second, she challenged the action under Title III of the ADA. Finally, she alleged that the action was retaliatory under section 510 of ERISA. The district court rejected the plaintiff's claims and granted the defendant's motion for summary judgment. The plaintiff's cross motion for summary judgment was denied.

II. ANALYSIS

A. Title I of the ADA

We agree with the reasoning of the district court. The plaintiff was a member of the health plan by virtue of her status as a COBRA participant at the time of the amendment.

There is a split in the circuit courts with respect to this issue. Title I does not specify when a person must have been a "qualified individual with a disability." ("QID") Appellees assert that at the time of the amendment of the Plan, Doe was not a QID. The public policy arguments raised by the plaintiff in support of her interpretation of the statute are not compelling. They are less compelling when viewed in the light of plaintiff's resignation. We decline to adopt the plaintiff's reasoning and rather, follow *Gonzales* and its progeny.

B. Title III of the ADA

Plaintiff's claims relating to the amendment of the Plan are directed to the Plan itself. We do not believe that Title III was ever intended to be used as a sword against health plans. Unlike Title I which governs employment practices, Title III relates to "Public Accommodations and Services Operated by Private Entities." Thus, the threshold question is whether the ADA prohibits the practice engaged in here.

Plaintiff argues that the Plan is a place of public accommodation and that the amendment discriminates in the content of goods and services offered by a place of public accommodation. We disagree. Similar arguments were raised by the plaintiff in the *Parker* cases. In fact, initially Judge Merritt found them compelling and held that the plan was subject to a Title III claim. See *Parker v. Metropolitan Life Ins. Co.*, 99 F.3d 181 (6th Cir. 1996). We are persuaded by the subsequent *Parker* opinion. See *Parker v. Metropolitan Life Ins. Co.*, 121 F.3d 1006 (6th Cir. 1997). We affirm the decision of the District Court on this issue.

C. ERISA

Defendant correctly asserts that arbitrary and capricious is the standard of review applicable to our review of this issue. On the record before us, we can not conclude that there was retaliatory action or intent in the amendment of the Plan. In the absence of such evidence, ERISA does not prohibit the amendment. The judgment of the District Court is affirmed.

III. CONCLUSION

We hold that the amendment of the plan to cap AIDS related benefits was not in violation of the ADA or ERISA.

The judgment of the district court is affirmed.

No. 98-339

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1998

MARY DOE,

PETITIONER

v.

SPRINGFIELD HOSPITAL
ASSOCIATION HEALTH PLAN, INC.

RESPONDENT.

ORDER GRANTING CERTIORARI

Upon consideration of the Petition for Certiorari the Court hereby Grants the petition on the following issues:

1. Whether the amendment of the Plan to cap AIDS related benefits violated Title I of the ADA.
2. Whether the amendment of the Plan to cap AIDS related benefits violated Title III of the ADA.
3. Whether the amendment of the Plan to cap AIDS related benefits violated section 510 of ERISA.

IT IS SO ORDERED.

DATE: July 29, 1998