Teresa G. SMITH, Plaintiff-Appellant,
v.
Levi STRAUSS and Aetna Life Insurance Company,
Defendants-Appellees.

Court of Appeals of Tennessee, Eastern Section.
July 15, 1988.

1988 WL 73095

Knox Circuit C.A. # 1147, James M. Haynes, Judge.

William Barton Kaserman of Knoxville for appellant.

John T. Buckingham and E.H. Rayson of Knoxville for Levi Strauss.

David E. Smith of Knoxville for Aetna Life Insurance Company.

OPINION

NEARN, Special Judge.

**1 Plaintiff was employed by the defendant, Levi Strauss Company, which maintained a self funded medical plan for its employees. Plaintiff was covered under the plan. This plan was administered by the defendant, Aetna. The fund is an employee welfare benefit plan as the same is defined in the Employee Retirement Income Security Act (ERISA), 29 USC Sections 1001, 1002, et seq.

From 1980 through 1984, while employed by Strauss, plaintiff suffered from headaches, dizziness and nausea for which complaints plaintiff was treated by physicians who were reimbursed for their fees under the terms of the plan. However, plaintiff continued to suffer from her complaints. In September 1984 plaintiff found her way to Dr. Marshall Parker, who is licensed in dentistry and orthodontics. In short, he is a dentist. Dr. Parker's diagnosis was that plaintiff's complaints and condition were caused by "a uscular problem due to the malformation of her craniomandibular relationship." In other words she suffered from a misaligned jaw at its joinder with the skull. In order to correct this defect and bring the jaw into proper alignment, it was necessary to relocate plaintiff's teeth. This was accomplished by means of wire bracing. After plaintiff's teeth were moved the jaw became properly aligned and her complaints ceased. Dr. Parker is owed a balance in excess of $2,500.00 for his services; which sum the plan has refused to pay.

This suit seeks to have the plan pay for those services.

The Strauss health plan provides that a claim for medical reimbursement should first be submitted to Aetna and if the claim were denied by Aetna, a reconsideration of that decision would be had by the Health and Welfare Plans Administrative Committee for determination. Plaintiff's claim has been denied by both Aetna and the Committee. The manner of the denials will be later mentioned in the course of the Opinion.

Plaintiff filed suit in the General Sessions Court of Knox County against Strauss and Aetna "for amounts due as a result of breach of agreement under group major medical insurance plan." The General Sessions Judge rendered judgment for the plaintiff; which judgment was appealed to the Circuit Court of Knox County. The Circuit Court Judge found for the defendants and dismissed the action. Plaintiff has appealed that decision to this Court.

The plan in question excludes payment for dental work except in certain instances; such as the result of trauma. However, the plan does provide for payment of medical treatment. The plaintiff insists that she had a medical problem, that is headaches, dizziness and nausea, and that the dental work was only incidental to her medical problem and that its purpose was to cure her medical problem and therefore covered under the policy. Pro and Con proof on the issue was presented to the Circuit Court and based on the proof, the Circuit Judge concluded that the claim was excluded under the policy.

ERISA is a federal law enacted to regulate private employee benefit plans. Section 1144 of 29 USC provides that in ERISA cases the federal substantive law controls and state law is preempted relative to benefit plans unless specially exempted by federal statute. The instant plan does not form an exception. The federal law grants concurrent jurisdiction to state courts in certain instances. Section 1132 (e)(1) 29 USC provides:

**2 Except for actions under subsection (a)(1)(B) of this section, the district courts of the United States shall have exclusive jurisdiction of civil actions under this subchapter brought by the Secretary or by a participant, beneficiary, or fiduciary. State courts of competent jurisdiction and district courts of the United States shall have concurrent jurisdiction of actions under subsection (a)(1)(B) of this section.

Section 1132 (a)(1)(B) provides:

A civil action may be brought by a participant or beneficiary to recover benefits due to him under the terms of this plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan;

The weight of federal authority is that the action of the plan's administrative body must be sustained, as a matter of law, unless the claimant can prove such action was arbitrary and capricious. Fine v. Semet, 699 F.2d 1091 (4 EBC 1273) (11th Cir.1983); Bayles v. Central

States Southeast & Southwest Areas Pension Fund, 602 F.2d 97, 99-100 (1 EBC 1416) (5th Cir.1979); Peckham v. Board of Trustees, 653 F.2d 424, 426 (2 EBC 1323) (10th Cir.1981); Bueneman v. Central States Southeast & Southwest Areas Pension Fund, 572 F.2d 1208, 1209 (1 EBC 1842) (8th Cir.1978).

Accordingly, we find that those cases brought in this state to recover benefits under an ERISA plan, the function of the state court is to determine whether the denial of benefits was the result of arbitrary or capricious actions. Accord: See Felts v. Graphic Arts Employee Benefit Trust, 6 EBC 1410 (Tex.Ct.App.1984); Helper v. CBS, Inc., 6 EBC 1426 (Wash.Ct.App.1985).

Further, a decision made upon conflicting evidence does not constitute an arbitrary or capricious decision. If there is material evidence to support the decision, it is neither arbitrary, capricious or an abuse of discretion. Lawrence v. Westerhaus, 780 F.2d 1321, 1322 (8th Cir.1985).

In this case, the Circuit Court Judge refused to determine whether the matter was under ERISA review standards. Instead, he considered the matter on simple preponderance of the evidence standards and concluded that the claim was for dental services excluded under the policy provisions. The Circuit Judge erred in the manner in which he considered the case for the reasons aforesaid. However, the result reached was not error for our examination of the record reveals that the action of the committee in denying the claims was not arbitrary or capricious as there is material evidence to support its decision that the services for which payment was sought were excluded dental services under the policy. Accordingly, we must find for the defendants and dismiss the suit.

Counsel for plaintiff has argued in this Court and in the Trial Court that the long delay by the committee in deciding the claim (almost eighteen months from the time it was filed) renders its decision arbitrary and capricious. We see no relationship between the delay and the decision. If the tardy decision had been in favor of the plaintiff, we hardly believe that counsel would argue that the decision was per se arbitrary and capricious because of that delay. In neither case would delay render the ultimate decision arbitrary and capricious. Also, we note that ERISA provides that suit may be brought in either federal or state courts to require the administrators of the plan to act under the plan when they have failed to do so. To our knowledge, no such action was filed.

**3. The result is that we affirm the dismissal by the Circuit Judge with costs of appeal adjudged against appellant and surety.

GODDARD and ANDERSON, JJ., concur.