

Jeffrey J. Hepworth, ISB No. 3455
J. Grady Hepworth, ISB No. 10364
HEPWORTH LAW OFFICES
2229 W. State Street
P.O. Box 2815
Boise, ID 83701-2815
Telephone: (208) 333-0702
Facsimile: (208) 246-8655
courtservice@idalawyer.com
Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

MARTHA HENDERSON, an individual, PERRY
MERKEL, an individual,

Plaintiffs,

v.

ANTHEM INSURANCE COMPANIES, INC.,
ANTHEM BLUE CROSS LIFE AND HEALTH
INSURANCE COMPANY, ANTHEM LIFE
INSURANCE COMPANY OF CALIFORNIA,
and JOHN DOE CORPORATIONS I-X, unknown
individuals or business entities,

Defendants.

Case No. 1:22-cv-00164

COMPLAINT

COMES NOW the Plaintiffs Martha Henderson (“Henderson”) and Perry Merkel (“Merkel”), by and through their counsel of record, Hepworth Law Offices, and for causes of action against the above-captioned defendants for failure to provide Plan and Claim materials pursuant to 29 U.S.C. § 1132(a)(1)(A), (c)(1).

COMPLAINT

- 1

JURISDICTION AND VENUE

1. This court has jurisdiction pursuant to 28 U.S.C. § 1331 and 29 U.S.C. § 1132(e) for federal question jurisdiction regarding Plaintiff's ERISA claim arising under 29 U.S.C. § 1132 *et seq.*
2. Venue is proper in the United States District Court for the District of Idaho pursuant to 28 U.S.C. § 1391(b) and 29 U.S.C. § 1132(e)(2) because the acts and omissions which form the basis of this complaint occurred in the State of Idaho where Henderson and Merkel reside and seek benefits, and where Anthem Blue Cross Life And Health Insurance Company, Anthem Insurance Companies, Inc., and/or John Doe Corporations are registered and doing business with minimum contacts.

PLAINTIFFS

3. Martha L. Henderson is a resident of City of Boise, Ada County, Idaho. Henderson is currently 61 years old, medically disabled, and a participant and beneficiary of a group medical plan offered through her employer, Chevron Corporation, known as the Chevron Medical PPO Plan ("The Plan"). The Plan is an "employee welfare benefit plan" as defined under 29 U.S.C. § 1002(1). Henderson also receives indirect benefits by and through her husband's participation under the Plan as a spouse/dependent.
4. Perry Merkel is a 73-year-old resident of City of Boise, Ada County, Idaho, and is married to Martha Henderson. Merkel participates in the Chevron Medical PPO Plan ("The Plan") as a spouse/dependent.

DEFENDANTS

5. Defendants Anthem Blue Cross Life and Health Insurance Company and Anthem Blue Cross of California are believed to be wholly owned subsidiaries of Anthem Insurance Companies, Inc.

COMPLAINT

- 2

(collectively “Anthem”). Anthem is an insurance company registered and doing business in the State of Idaho. Anthem’s corporate headquarters are believed to be at 220 Virginia Ave, Indianapolis, IN 46204-3709. Anthem is a Sponsor, Administrator, and/or Named Fiduciary of The Plan, and therefore is a “party of interest” as defined by 29 U.S.C. § 1002(14).

6. John Doe Corporations I – X are corporations or subsidiaries who may have issued insurance policies covering Chevron Corporation employees, or otherwise may be affiliates, subsidiaries, aliases, or assignees of Anthem Blue Cross Life and Health Insurance Company and/or Anthem Blue Cross of California, but whose true names are unknown at this time. John Doe Corporations are also “part[ies] of interest” under 29 U.S.C. § 1002(14).

FACTUAL BACKGROUND

7. Henderson is an inactive employee of Chevron Corporation. In 2010, Henderson became medically disabled and was no longer able to work. Henderson receives long-term disability under an employer-paid benefits plan. Henderson remains a participant and beneficiary of the Chevron Medical PPO Plan (“the Plan”) for medical insurance coverage. Henderson is also eligible and receives medical benefits through Medicare.
8. Merkel is a Plan beneficiary as the spouse/dependent of Henderson. Merkel is also eligible and receives medical coverage through Medicare.
9. Pursuant to the Plan, Henderson’s and Merkel’s eligibility for Medicare due to age and/or disability requires Medicare to become the “primary payer” for Henderson and Merkel. However, Henderson and Merkel are eligible to remain enrolled under the Plan as a secondary payer.
10. Between approximately 2012 and 2016, the Plan was administered by entities other than

COMPLAINT

- 3

Anthem under a “Crossover Benefit” wherein Medicare fulfilled its coverage obligations first, with remaining balances submitted for secondary payment under the Plan.

11. On or about January 1, 2017, Anthem became the Plan’s designated Claims Administrator.
12. Beginning in approximately December 2018, however, Henderson began receiving adverse claims decisions from Anthem as the Plan’s designated claims administrator. Without prior notice or explanation, Anthem began applying arbitrary and capricious administration standards to Henderson’s medically necessary care. Anthem’s arbitrary and opaque claims administration procedures began to interfere with Henderson’s ongoing and medically necessary treatment.
13. In approximately January 2019, Merkel also began receiving adverse claims administration. Initially, Anthem removed Merkel entirely from Plan coverage. Merkel and Henderson were required to engage in months of communications and negotiations to finally return Merkel’s coverage under the Plan. When coverage returned, Anthem began applying arbitrary and capricious administration standards to Merkel’s medically necessary care as well.
14. In each instance when Henderson and Merkel received medically necessary treatment or care, their medical providers submitted claims to Medicare as the primary coverage provider. After write-downs and contributions, Medicare typically pays about 80% of the cost for the medical care received.
15. After Medicare pays its portion of the medical expenses, Medicare submits the remaining costs to Anthem as the secondary payer. Problematically, Anthem in many instances refuses to remit payment as secondary payer. Upon information and belief, Anthem improperly denied payments (in whole or in part) because Anthem erroneously considered some of Henderson’s and Merkel’s medical providers to be “Out-of-Network” instead of “In-Network.” In other

COMPLAINT

- 4

instances, Anthem arbitrarily sets their “price allowance” to match Medicare’s, in order to not pay any additional coverage, including coinsurance after meeting their deductible, leaving Henderson and Merkel with the remaining bill.

16. Whether a medical provider is “In-Network” or “Out-of-Network” affects Henderson’s and Merkel’s “annual out-of-pocket” deductible, as well as the amount of coverage per claim. For example, Henderson and her husband’s out-of-pocket expenses are capped at \$10,000.00 for “In-Network” providers but are capped at \$20,000.00 (double) for “Out-of-Network” providers. Similarly, in the case of diagnostic lab tests or x-rays, the Plan covers 80% of contracted rates after deductibles for “In-Network” services, but only 60% of maximum allowable amounts after deductible for “Out-of-Network” services. The percentage of coverages, deductibles, and applicable co-pays differ depending on the medical services received.
17. In order to maximize their medical coverage, Henderson and Merkel intentionally seek treatment from local “In-Network” Blue Cross providers.
18. Upon information and belief, Anthem processes Henderson and Merkel’s claims through the Anthem Blue Cross of California subsidiary, rather than forwarding Merkel and Henderson’s claims to the local Blue Cross office for pricing and processing or allowing Merkel and Henderson’s providers to submit claims directly to the local Blue Cross office. Additionally, the Anthem online member portals for Merkel and Henderson consistently and continuously code Merkel and Henderson’s “In-Network” claims as “Out-of-Network.”
19. Since approximately January 2019, Henderson and Merkel have been in regular communication with Anthem to determine the justification for the company’s inconsistent claims administration.

COMPLAINT

- 5

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.