

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

SURESH KURMA)	
)	
Plaintiff,)	CIVIL ACTION NO.
)	12-11810-DPW
v.)	
)	
STARMARK, INC.,)	
)	
Defendant.)	

MEMORANDUM AND ORDER
February 9, 2016

Plaintiff Suresh Kurma's son was born approximately two months premature. He was immediately hospitalized and he remained in intensive care for over two months. His hospital bills ran in excess of \$667,000. At the time, Mr. Kurma was a participant in a health care plan for which the defendant, Starmark, Inc., was the claims processor.

Starmark has denied coverage for the hospitalization of Mr. Kurma's newborn son because the child was not properly enrolled in the health care plan. Starmark contends that Mr. Kurma failed to notify his employer, First Tek Technologies, Inc. ("First Tek") of the birth within 30 days as required for coverage by the terms of the health care plan. Mr. Kurma has filed suit pursuant to the Employee Retirement Income Security Act seeking to recover health benefits for his son.

I have kept this matter under advisement for an extended period of time in an effort to assure there is no basis available for challenging the fact, which remains undisputed on this record, that Mr. Kurma's employer was not notified of the birth of his son within 30 days or that application of the plain language of the plan, which requires specific notification to the employer even if notice has been provided to the claims processor, is appropriate. I have neither been directed to nor found any such basis and consequently will grant summary judgment to the claims processor.

I. BACKGROUND

A. *Factual Background*

1. Birth and Admission to the NICU

Mr. Kurma has been an employee of First Tek since 2006. Mr. Kurma was enrolled in the First Tek, Inc. Bluesoft Group Health Benefit Plan ("the Plan") beginning on July 1, 2010, the date that First Tek adopted this plan. Mr. Kurma's wife, Sailaja Yeddu, and their five-year-old son, were covered under the Plan from that same date. When his wife became pregnant in the early part of 2010, her pregnancy-related health care was covered by the Plan from July 1, 2010.

On October 7, 2010, his wife went into premature labor and their son "Baby Boy,"¹ was born that day at Brigham & Women's Hospital. He was admitted into the Neonatal Intensive Care Unit ("NICU") immediately upon his birth, where he remained under care until his discharge on December 16, 2010.

2. Terms of the Plan

The Plan allows for coverage for newborn children of plan participants, such as Baby Boy. The Plan states:

A child born to You while Your coverage is in force is covered from the moment of birth if You notify Us and the Claims Processor of the birth and pay any additional contribution amount required within 30 days after the date of birth in order for coverage to become effective. The newborn is covered for 30 days after the date of birth for all such Benefits provided for Dependents. If you reject Dependent coverage and later want to cover Dependents, Your Dependents may be considered Late Enrollees.

In the Plan, "We, Us, and Our" refer to the Plan Sponsor, First Tek, and "You and Your" refer to the Plan participant, Mr.

Kurma. The claims processor is Starmark. No benefits are paid under the Plan for services provided prior to the effective date of a person's coverage.

The Plan also provides language concerning the discretion granted to both First Tek, as the plan sponsor, and Starmark, as

¹ The name of Mr. Kurma and Ms. Yeddu's son is redacted in the record materials presented to me. I will refer to the child as "Baby Boy" in this opinion.

the claims processor. Under the heading "Miscellaneous Provisions," the Plan states:

We [First Tek] have full, exclusive and discretionary authority to determine all questions arising in connection with this Contract including its interpretation.

The Claims Processor [Starmark] has full, discretionary and final authority for construing the terms of the Plan and for making final determinations as to appeals of benefit claim determinations as described in the Claim Review and Appeals Section of this Plan Document. The Claims Processor is considered a fiduciary with respect to any claim prior to a request for its appeal.

3. Communications Between Mr. Kurma and Starmark Between Baby Boy's Birth and His Enrollment

There is no dispute that Starmark was timely notified of Baby Boy's birth. Mr. Kurma asserts that he first contacted Starmark on October 14, 2010 informing it of the birth of his son and his son's admission to the NICU. During this conversation, Mr. Kurma says that he was not informed by the Starmark representative that he was required to inform his employer of his son's birth or fill out any forms in order to obtain insurance coverage. Starmark denies this conversation took place, and there is no evidence in the administrative record, other than the second-hand report of Mr. Kurma's lawyer restating Mr. Kurma's recollection in a letter to Starmark, to show that this conversation occurred.²

² Starmark does not dispute, nevertheless, that *it* was notified in a timely manner under the terms of the Plan of the birth of

On October 21, 2010, Mr. Kurma received a letter from CoreSource, Inc., an affiliate of Starmark. That letter identified Mr. Kurma as the health care plan enrollee, identified the patient as "Baby Boy," bore the same reference number provided to the Hospital, and identified the admission date as October 7, 2010 (Baby Boy's birthdate). In this letter, CoreSource requested additional medical information be sent from the provider, in order to make a determination of medical necessity for the ongoing treatment. The letter was not a denial of health services and did not identify any issues beyond those of medical necessity; it did not indicate that Baby Boy was or was not enrolled in the health plan.

On October 22, 2010, a telephone call took place between Mr. Kurma and a case manager from Starmark. According to Starmark's internal case notes, "Mr. Kurma inquired how to add his son to the policy." The Starmark representative "discussed with Mr. Kurma importance of contacting his human resources department to complete the necessary paperwork" and "advised the paperwork usually needs to be completed within 30 days." The representative further indicated that Mr. Kurma responded with "verbalized understanding and agreement." Mr. Kurma, however, denies that he was told of any deadline for notifying his

Mr. Kurma's son. The consequences of the failure to notify *First Tek* in a timely manner are what is at issue in this case.

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