

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

JEREMY HOCKENSTEIN, for himself and
all others similarly situated,

Plaintiff,

-against-

CIGNA HEALTH AND LIFE INSURANCE
COMPANY,

Defendant.

Civil Case Number: _____

COMPLAINT

Plaintiff alleges:

NATURE OF THIS ACTION

1. Defendant violated the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. §§ 1001 *et seq.*

JURISDICTION AND VENUE

2. Defendant regularly engages in business in the state of New York.
3. Defendant caused harm to Plaintiff in New York as alleged more fully below.
4. The Court has subject matter jurisdiction under 29 U.S.C. § 1132(e)(1); 28 U.S.C. § 1331; and 28 U.S.C. §§ 2201-2.
5. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b) and pursuant to 29 U.S.C. § 1132(b).

PARTIES

6. Named Plaintiff is a natural person and a resident of New York, New York.
7. Defendant CIGNA Health and Life Insurance Company (“Cigna”) is an insurance company organized under the laws of Connecticut with a principal place of business located at 900 Cottage Grove Road, Bloomfield, Connecticut 06002.

ERISA

8. Recognizing the centrality of employer sponsored benefits to the American healthcare system, Congress enacted the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. §§ 1001 *et seq.* To this day, millions of Americans rely on an employer sponsored plan for their healthcare coverage. To assure that beneficiaries are protected and are treated equitably, ERISA imposes fiduciary obligations on insurers – such as Cigna – in the processing of claims for healthcare benefits.
9. As a fiduciary, an insurer in this context owes the highest standard of loyalty and prudence in the processing of participant and beneficiary healthcare claims.
10. This action asserts that Cigna breached its fiduciary duties under ERISA, and under ERISA plan documents, by failing to reimburse, in full and without cost sharing or other medical cost management, the costs of diagnostic Covid-19 testing. This action further asserts Cigna failed to conduct “full and fair review” of its denial of diagnostic Covid-19 reimbursement claims, and further asserts Cigna failed to provide adequate notice of the reasons for its denials of diagnostic Covid-19 testing claims.
11. Following are relevant provisions of ERISA for purposes of this action:

ERISA §	29 USC §	Text
3(21)(A)	1002(21)(A)	“a person is a fiduciary with respect to a plan to the extent (i) he exercises any discretionary authority or discretionary control respecting management of such plan or exercises any authority or control respecting management or disposition of its assets... (iii) he has any discretionary authority or discretionary responsibility in the administration of such plan. Such term includes any person designated under section 1105(c)(1)(B) of this title.”
402(a)(1)	1102(a)(1)	“Every employee benefit plan shall be established and maintained pursuant to a written instrument. Such instrument shall provide for one or more named fiduciaries who jointly or severally shall have authority to control and manage the operation and administration of the plan.”
402(b)	1102(b)	“Every employee benefit plan shall— (1) provide a procedure for establishing and carrying out a funding policy and method consistent with the objectives of the plan and the requirements of this subchapter, (2) describe any procedure under the plan for the allocation of responsibilities for the operation and administration of the plan (including any procedure described in section 1105(c)(1) of this title, ... (4) specify the basis on which payments are made to and from the plan.”
404(a)(1)	1104(a)(1)	“a fiduciary shall discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries and— (A)for the exclusive purpose of: (i) providing benefits to participants and their beneficiaries; and... (B) with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims; [and] ... (D) in accordance with the documents and instruments governing the plan insofar as such documents and instruments are consistent with the provisions of this subchapter...”
405(c)(1)(B)	1105(c)(1)(B)	“The instrument under which a plan is maintained may expressly provide for procedures... for named fiduciaries to designate persons other than named fiduciaries to carry out fiduciary responsibilities (other than trustee responsibilities) under the plan.”
502(a)	1132(a)	“A civil action may be brought—

		<p>(1) by a participant or beneficiary</p> <p>...</p> <p>(B) to recover benefits due to him under the terms of his 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;</p> <p>(2) by the Secretary, or by a participant, beneficiary or fiduciary for appropriate relief under section 1109 of this title;</p> <p>(3) by a participant, beneficiary, or fiduciary (A) to enjoin any act or practice which violates any provision of this subchapter or the terms of the plan or (B) to obtain other appropriate equitable relief (i) to redress such violations or (ii) to enforce any provisions of this subchapter or the terms of the plan”</p>
503(1)	1133(1)	<p>“In accordance with regulations of the Secretary, every employee benefit plan shall—</p> <p>(1) provide adequate notice in writing to any participant or beneficiary whose claim for benefits under the plan has been denied, setting forth the specific reasons for such denial, written in a manner calculated to be understood by the participant.”</p>
503(2)	1133(2)	<p>“In accordance with regulations of the Secretary, every employee benefit plan shall—</p> <p>...</p> <p>(2) afford a reasonable opportunity to any participant whose claim for benefits has been denied for a full and fair review by the appropriate named fiduciary of the decision denying the claim.”</p>

FACTS

12. Cigna issued insurance policy number 00632911 to The Educational Alliance (the, “Policy”).
13. The Policy funds healthcare benefits for an employee welfare benefit plan within the meaning of 29 U.S.C. § 1002(3) (the, “Plan”).
14. The Plan is governed by ERISA.
15. Named Plaintiff was at all relevant times a beneficiary of the Policy and the Plan.

16. Cigna acts as a fiduciary with respect to the Plan pursuant to 29 U.S.C. § 1002(21)(A), and pursuant to 29 U.S.C. § 1105(c). Cigna handles all claims for healthcare benefits, including making all claims determinations, under the Policy.
17. Cigna promulgates a summary plan description (“SPD”) for the Plan, which provides in part (at p. 93):

The Plan Administrator delegates to Cigna the discretionary authority to interpret and apply plan terms.... Such discretionary authority is intended to include, but not limited to... the determination of whether a person is entitled to benefits under the plan, and the computation of any and all benefit payments. The Plan Administrator also delegates to Cigna the discretionary authority to perform a full and fair review, as required by ERISA, of each claim denial which has been appealed by the claimant or his duly authorized representative.

18. The SPD further states (at p. 5):

We [*i.e.*, Cigna] may, from time to time, offer or arrange for various entities to offer discounts, benefits, or other consideration to our members for the purpose of promoting the general health and well being of our members. We may also arrange for the reimbursement of all or a portion of the cost of services provided by other parties to the Policyholder.

19. In March 2020, to address the emerging global Covid-19 pandemic, the United States Government passed the Families First Coronavirus Response Act, Pub. L. 116-127 (the “FFCRA”), followed by the Coronavirus Aid, Relief, and Economic Security Act Pub. L. 116-134 (the, “CARES Act”). Pursuant to section 6001(a) of the FFCRA, and section 3202 of the CARES Act, an insurer, such as Cigna, is obligated to reimburse in full the cost paid by a beneficiary for diagnostic Covid-19 testing, without imposing any cost-sharing, co-payments, deductibles, or coinsurance, regardless of whether the provider is in-network or out-of-network.

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