

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF OKLAHOMA

OU MEDICINE, INC, d/b/a OU MEDICAL
CENTER, an Oklahoma non-profit corporation,

Plaintiff,

v.

W.H. BRAUM GROUP HEALTH BENEFIT
PLAN, a welfare benefit plan; and W.H.
BRAUM, INC., an Oklahoma corporation, as
plan sponsor,

Defendants.

Case No: CIV-21-67-D

COMPLAINT

Plaintiff, OU Medicine, Inc., d/b/a OU Medical Center (“OUMC”), for its claims against Defendants, W.H Braum Group Health Benefit Plan (“Plan”), and W.H. Braum, Inc. (“Braum”), sponsor of the Plan, alleges and states as follows:

Parties, Jurisdiction and Venue

1. OUMC is a non-profit Oklahoma corporation that operates OU Medical Center located in Oklahoma City, Oklahoma.
2. The Plan is a welfare benefit plan pursuant to the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. § 1001 *et seq.*
3. Braum is an Oklahoma corporation with its principal place of business located in Oklahoma. Braum is the sponsor of the Plan.
4. This Court has subject matter jurisdiction over the claims alleged herein pursuant to 29 U.S.C. § 1132(a)(1)(B) (benefits due under an ERISA plan); 29 U.S.C.

§ 1132 (a)(3)(B) (equitable relief); 29 U.S.C. §§ 1332(e)(1) and (f) (exclusive jurisdiction in federal district court), and pursuant to 28 U.S.C. § 1331 (federal question jurisdiction).

5. Venue is proper is the United States District Court for the Western District of Oklahoma pursuant to 29 U.S.C. § 1132(e)(2) and 28 U.S.C. § 1391 because the events, transactions and occurrences relevant to OUMC's claims occurred within the Western District of Oklahoma, and Defendants maintain facilities and/or engage in business in the Western District of Oklahoma.

Background Facts

6. At all times relevant to OUMC's claims herein, Joshua Hale was an employee of Braum and a participant in the Plan and his wife, Leah Hale, was a beneficiary of the Plan.

7. On or about August 3, 2018, Leah Hale was transferred, on an emergency basis, to OUMC from St. Anthony's Hospital while in pre-term labor due to her gestational stage and the fact that she was carrying twins. She gave birth to twin boys, Ln. H. and Lg. H., prematurely (25 weeks gestation) with birth weights of 1 lb. 15 oz. each. Leah Hale was transferred to OUMC because it is the only hospital in this region of the State of Oklahoma capable of providing the level of services required by Ln. H. and Lg. H. upon their births.

8. Section 3.01 of the Plan provides that it "is structured to provide Participants with access to high quality care at an affordable cost." It also provides that "the Plan provides open access to any Facility or Hospital of the Participant's

choosing.” *See*, W.H. Braum, Inc. Group Health Benefit Plan Effective January 1, 2018 at p. 5, attached hereto as Exhibit 1. However, unlike most employee benefit plans, the Plan offers employee health plan benefits based on alleged “reference-based pricing” and does not have a contracted network of providers, so there is no “in network” facility option available to a participant or beneficiary of the Plan, leaving the participant or beneficiary potentially liable for any charges not paid by the Plan. In a letter dated July 2, 2018, prior to the time of Leah Hale’s transfer, OUMC notified Braum, as the sponsor of the Plan, that OUMC and its employed physicians do not recognize or participate in health plans without a written agreement signed by an authorized OUMC representative. The letter also notified Braum that OUMC would not recognize or accept any language on claim forms or beneficiary designation cards that purported to condition OUMC’s acceptance of the beneficiary’s assignment of benefits upon OUMC’s acceptance of plan benefits as payment in full for OUMC’s services. *See* Letter dated July 2, 2018 from Lance Torcom of OUMC to Tomi Osborne of Braum attached hereto as Exhibit 2.

9. The Plan expressly provides in Section 5.03(2) that “[i]f a Dependent Child is born after the date the Employee’s coverage for himself or herself under the Plan becomes effective, coverage shall take effect from and after the moment of birth, to the extent of the benefits provided herein, and any limitations of this Plan with respect to congenital defects shall not apply to such Child.” Plan, Exhibit 1 at p. 29.

10. At the time of her admission, Leah Hale was a beneficiary of the Plan. As part of the Conditions of Admission and Consent for Outpatient Care (“Consent

Form”) she agreed to “**irrevocably appoint** [OUMC] as my authorized representative to pursue any claims, penalties, and administrative and/or legal remedies on my behalf for collection against any responsible payer, employer-sponsored medical benefit plans, third party liability carrier or, any other responsible third party (“Responsible Party”) for any and all benefits due me for the payment of charges associated with my treatment.” *See* Consent Form attached hereto as Exhibit 3, ¶ 7. Paragraph 7 of the Consent Form also provides that the Hales agree to take all actions necessary to assist OUMC in collecting payment from the Braum Plan “including allowing [OUMC] to bring suit against [the Braum Plan] in my name.”

11. At birth, the APG scores of Ln. and Lg. H. at 1 minute were respectively 2 and 1. Each child required immediate intubation and positive pressure ventilation.

12. Due to their extremely low birth weights, Ln. and Lg. H. were immediately placed in OUMC’s Level IV NICU, which is the only Level IV NICU in the Oklahoma City area. The only other Level IV NICU in Oklahoma is located at St. Francis Hospital in Tulsa, Oklahoma, and OUMC was able to provide a higher level of needed services to Ln. and Lg. H. such as Extracorporeal Membrane Oxygenation (EMCO) services and the services necessary to care for cases involving extreme prematurity. Accordingly, OUMC was uniquely positioned to provide the care necessary to Ln. and Lg. H. following their premature births, and OUMC provided services crucial to their survival.

13. During their over three-month hospitalization at OUMC both children required Total Parenteral Nutrition multiple times. Lg. H. also suffered from Necrotizing Enterocolitis, and from Osteopenia due to his prematurity, requiring endocrine management care.

14. During their hospitalization at OUMC, both Ln. and Lg. H. experienced repeated bouts of feeding intolerance and apneic episodes. Due to their failure to maintain weight, and concern regarding their continued development, both children required multiple formula changes to maintain their caloric intake, and the development of specialized plans to monitor their weight closely upon discharge.

15. Ln. and Lg. H. received necessary medical care and treatment from OUMC from August 3, 2018 through November 16, 2018.

16. Ln. H.'s hospitalization resulted in medical bills through November 16, 2018 for necessary medical care and treatment rendered by OUMC in the amount of \$2,131,240.97, and Lg. H.'s hospitalization also resulted in medical bills through November 16, 2018 for necessary medical care and treatment rendered by OUMC in the amount of \$1,997,015.09.

17. Throughout the hospitalization of Ln. and Lg. H., OUMC provided periodic updates to the Plan through its third-party administrator, HealthSCOPE Benefits, Inc. ("HealthSCOPE"), regarding the level of care being provided, and HealthSCOPE did not dispute the existence of coverage for the care being provided, or dispute the level of care being provided by OUMC.

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