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United States District Court, D. Massachusetts.

Pamela WEDDLE, Plaintiff,
v.
LIFE INSURANCE COMPANY OF NORTH AMERICA, Defendant.

No. 17-cv-12372-RGS
|
Signed 05/10/2018

Attorneys and Law Firms

Jonathan M. Feigenbaum, Boston, MA, for Plaintiff.

David B. Crevier, Katherine R. Parsons, Crevier & Ryan LLP, Springfield, MA, for Defendant.

REPORT AND RECOMMENDATION ON DEFENDANT'S MOTION TO DISMISS (DKT. NO. 15)

DONALD L. CABELL, U.S.M.J.

***1** Plaintiff Pamela Weddle has brought suit against the defendant Life Insurance Company of North America ("LINA") for terminating her long-term disability benefits. LINA moves pursuant to Fed. R. Civ. P. 12(b)(6) to dismiss Count III of the complaint, which alleges intentional infliction of emotional distress. LINA moves also to strike the plaintiff's jury demand. (Dkt. No. 15). After careful consideration of the parties' briefings, I recommend that the defendant's motion be granted.

I. RELEVANT BACKGROUND

Accepting the facts in the complaint as true, the plaintiff was employed as a full-time "One Path Case Manager" for Shire Pharmaceuticals, Inc. (Compl. ¶ 5). Shire provided long-term disability benefits to its employees through a plan fully insured by LINA. (Id. at ¶ 6). The plaintiff at all relevant times was a participant of LINA's long-term disability plan. (Id. at ¶ 9).

In February 2013, the plaintiff resigned from her position at Shire due to significant and ongoing physical impairments that impacted her ability to perform work in any capacity. (Id. at ¶¶ 10, 12-15). Having fulfilled all of the requirements under the plan, the plaintiff started receiving long-term disability benefits. (Id. at ¶¶ 21-22).

In or around February 2017, MES Solutions, a vendor working on behalf of LINA, scheduled a medical examination of the plaintiff for later that month. (Id. at ¶ 25). MES did not consult with the plaintiff prior to scheduling the appointment. (Id.). The plaintiff notified MES that she had a conflicting medical appointment on the designated date and would therefore not be able to attend. (Id. at ¶ 26). MES rescheduled the examination for March 21, 2017, again without consulting the plaintiff. (Id. at ¶ 27). By letter dated February 7, 2017, the plaintiff's attorney provided MES a list of dates on which the plaintiff had scheduled other medical appointments, and would therefore not be available for a medical examination. (Id. at ¶ 28).

MES then rescheduled the examination for March 28, 2017, a date on which the plaintiff was available. (Id. at ¶ 29). On March 5, 2017, however, the plaintiff advised MES that she could not attend the March 28th examination after all because she intended to visit her very ill father in hospice care. The plaintiff offered to reschedule the examination to on or after April 17, 2017. (Id. at ¶ 30).

LINA instead terminated the plaintiff's benefits three days later, on March 8, 2017, for failing to cooperate in the administration of her long-term disability claim. (Id. at ¶ 31).

On May 18, 2017, the plaintiff appealed LINA's adverse benefits decision. (Id. at ¶ 35). As part of that appeal, the plaintiff's attorney submitted a letter to LINA, which stated in part:

> CIGNA [LINA] appears to have terminated Ms. Weddle for not attending a medical examination scheduled by CIGNA and its vendor. As I advised CIGNA by numerous letters in March and February 2017, Ms. Weddle had many scheduled medical appointments and her father was dying. In fact, Ms. Weddle went to visit her father while he was in hospice and he died during April

> 2017. CIGNA had ample warning to reschedule the exam. Frankly it is shocking that CIGNA would not reschedule a medical appointment given that Ms. Weddle's father was dying, and instead chose to terminate her benefits.

***2** (Id. at ¶ 36). LINA denied the plaintiff's initial appeal and she pursued a second appeal. (Id. at ¶¶ 40-41). LINA had not yet rendered a decision on the second appeal at the time this lawsuit was filed. (Id. at ¶ 44).

II. THE COMPLAINT

The three count complaint alleges: (1) a claim under the ERISA statute, 29 U.S.C. § 1132, to recover benefits due under the long-term disability plan (Count I); (2) a claim under ERISA to recover attorney's fees and costs (Count II); and (3) a state common law claim for intentional infliction of emotional distress (Count III). LINA moves to dismiss this last count; the plaintiff opposes. (Dkt. Nos. 15, 22).

III. LEGAL STANDARD

Under the Federal Rues of Civil Procedure, a complaint must contain a "short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). To survive a motion to dismiss, the plaintiff must provide "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly,* 550 U.S. 544, 570 (2007). The "[f]actual allegations must be enough to raise a right to relief above the speculative level ... on the assumption that all the allegations in the complaint are true (even if doubtful in fact)." *Id.* at 555 (internal citations omitted). "The plausibility standard is not akin to a probability requirement, but it asks for more than a sheer possibility that a defendant has acted unlawfully," and is met where "the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal,* 556 U.S. 662, 678 (2009) (*quoting Twombly,* 550 U.S. at 556).

When deciding a motion to dismiss under Rule 12(b)(6), the court must "accept as true all well-pleaded facts set forth in the complaint and draw all reasonable inferences therefrom in the pleader's favor." *Haley v. City of Boston,* 657 F.3d 39, 46 (1st Cir. 2011) (*quoting Artuso v. Vertex Pharm, Inc.*, 637 F.3d 1, 5 (1st Cir. 2011)). However, the court is "not bound to accept as true a legal conclusion couched as a factual allegation." *Iqbal,* 556 U.S. at 678 (*quoting Twombly,* 550 U.S. at 555). Simply put, the court should assume that well-pleaded facts are genuine and then determine whether such facts state a plausible claim for relief. *Iqbal,* 556 U.S. at 679.

IV. ANALYSIS

A. Count III

Count III asserts a claim for intentional infliction of emotional distress. More specifically, the plaintiff alleges that LINA engaged in "extreme and outrageous conduct beyond the bounds of decency" by: (1) scheduling a medical exam on a day the plaintiff was unavailable due to a family illness; (2) terminating her benefits for failing to meet that appointment; (3) refusing to reinstate her benefits following an appeal; and (4) requesting numerous times medical records that were already submitted by the plaintiff. (Compl. ¶¶ 78-85). LINA argues that Count III is preempted by ERISA because the claim arises directly out of the handling and administration of the plaintiff's ERISA claim. (Dkt. No. 16).

"ERISA is a comprehensive statute designed to promote the interests of employees and their beneficiaries in employee benefit plans." *Shaw v. Delta Air Lines, Inc.*, 463 U.S. 85, 90 (1983). In that spirit, "[s]ection 514(a) of ERISA contains a broad preemption provision which provides that it supersedes 'any and all State laws insofar as they may now or hereafter relate to any employee benefit plan.' " *Andrews-Clarke v. Lucent Technologies, Inc.*, 157 F. Supp. 2d 93, 103 (D. Mass. 2001)(*quoting* 29 U.S.C. § 1144(a)). "ERISA preemption analysis thus involves two central questions: (1) whether the plan at issue is an employee benefit plan and (2) whether the cause of action relates to this employee benefit plan." *McMahon v. Digital Equip. Corp.*, 162 F.3d 28, 36 (1st Cir. 1998)(internal quotation marks omitted).

***3** The parties do not dispute that the plan in question is an employee benefit plan. (Compl. ¶¶ 6-8). The salient issue is whether Count III's claim for intentional infliction of emotional distress "relates to" an employee benefit plan.

Generally speaking, a cause of action "relates to" an employee benefit plan "if it has a connection with or reference to such a plan." *Ingersoll-Rand Co. v. McClendon*, 498 U.S. 133, 139 (1990). In more practical terms, "a cause of action relates to an ERISA plan when a court must evaluate or interpret the terms of the ERISA-regulated plan to determine liability under the state law cause of action." *Gordon v. AstraZeneca AB*, 199 F. Supp. 3d 325, 332 (D. Mass. 2016)(*quoting Hampers v. W.R. Grace & Co. Inc.*, 202 F.3d 44, 52 (1st Cir. 2000)). "When determining whether a state law has a connection with ERISA plans, a court must avoid an uncritical literalism and look instead to the objectives of the ERISA statute as a guide to the scope of the state law that Congress understood would survive, as well as to the nature of the effect of the state law on ERISA plans." *W.E. Aubuchon Co., Inc. v. BeneFirst, LLC*, 661 F. Supp. 2d 37, 45 (D. Mass. 2009)(*quoting Pharmaceutical Care Mgmt. Ass'n v. Rowe*, 429 F.3d 294, 302 (1st Cir. 2005))(internal quotation marks omitted).

Applying the foregoing here, Weddle's emotional distress claim appears to arise from two related but somewhat different allegations.

In the first instance, Weddle appears to allege that LINA terminated her long-term disability benefits and then refused to reinstate them following her appeal, and did so knowing it would cause her emotional distress. (Compl. ¶¶ 79-81). To this extent, it is clear that Count III "relates to" an employee benefit plan, even if couched as a common law emotional distress claim, because the merits of such a claim would depend on the terms and provisions of the plan itself, that is, it would depend on whether LINA had a legitimate basis under the plan to terminate the plaintiff's benefits. To this extent, then, the emotional distress claim would be preempted by ERISA. *Lennon v. Walsh*, 798 F. Supp. 845, 849 (D. Mass. 1992)(*citing Pilot Life Ins. v. Dedeaux*, 481 U.S. 41 (1987)); *see also Spalding v. Reliance Standard Life Ins. Co.*, 835 F. Supp. 23, 30 (D. Mass. 1993)("common law tort claims for the improper processing of a claim for benefits under ERISA regulated insurance policy are preempted by ERISA"); *Best v. AGFA Compugraphic*, No. 91-13406-RWZ, 1992 WL 390713, at *4 (D. Mass. 1992)("To the extent that plaintiff asserts she suffered emotional distress as a result of [the defendant's] improper handling or denial of her claim for benefits, the claim is preempted by ERISA.").

The plaintiff also alleges, though, that LINA inflicted emotional distress on her when it scheduled her medical examination for times LINA knew she would be unavailable, and then refused to reschedule the examination to a time when she would be available. Even accepting that such a claim factually arises in the context of the plaintiff's effort to obtain disability benefits, it alleges tortious conduct that is separate and distinct from any claim regarding LINA's administration of the employee benefits plan itself. That is, this portion of Count III alleges that LINA, without regard to what the benefits plan may or may not have instructed, engaged in "extreme and outrageous conduct" in the scheduling of the plaintiff's examination. Adjudicating the claim would not require the court to evaluate or interpret the terms of the ERISA plan, or to determine whether the benefits were improperly terminated under the plan, and accordingly such a claim would not be preempted by ERISA. *See Desrochers v. Hilton Hotels Corp.*, 28 F. Supp. 2d 693, 695 (D. Mass. 1998)(denying motion to dismiss plaintiff's intentional infliction of emotional distress claim based on defendant's conduct separate from the denial of benefits); *see e.g., Pace v. Signal Technology Corp.*, 417 Mass. 154, 159 (1994)(where "the resolution of state law claims will neither determine whether any benefits are paid nor directly affect the administration of benefits under the plan, the claims do not relate to ERISA and accordingly are not preempted").

***4** That does not end the inquiry though. Even assuming this portion of Count III falls outside the scope of ERISA and therefore is not preempted by it, the count still must state a valid claim for relief in order to survive a motion to dismiss. *See e.g., Drinkwater v. Metropolitan Life Ins. Co.*, 846 F.2d 821, 826 (1st Cir. 1988)(dismissing the plaintiff's emotional distress claim for failure to state a claim even though it was not preempted under ERISA). In the court's view, Count III fails to surmount this hurdle.

In order to prevail on a claim of intentional infliction of emotional distress a plaintiff must show that: "(1) the defendant intended to inflict emotional distress, or knew or should have known that emotional distress would likely result, (2) the defendant's conduct was extreme and outrageous to the extent that it was utterly intolerable in a civilized society, (3) the defendant's conduct caused the plaintiff's distress, and (4) the plaintiff sustained severe emotional distress." *Johnson v. Town of Nantucket*, 550 F. Supp. 2d 179, 183 (D. Mass. 2008). "Severe emotional

distress means more than mere emotional responses including anger, sadness, anxiety and distress, which though blameworthy, are often not legally compensable." *Lund v. Henderson*, 22 F. Supp. 3d 94, 105-06 (D. Mass. 2014)(internal citations and quotation marks omitted).

As noted, this non-preempted portion of Count III alleges that LINA on more than one occasion scheduled a medical exam of the plaintiff for times it knew the plaintiff would be visiting her gravely ill father and therefore would be unavailable. While such conduct if true would suggest a regretful lack of sympathy, it still would not in this court's view rise to the level of "extreme and outrageous conduct" that would be "utterly intolerable in a civilized society." *See e.g., Emerson v. Massachusetts Port Authority*, 138 F. Supp. 3d 73, 76-77 (D. Mass. 2015)(granting motion to dismiss after finding that scheduling disciplinary hearing and requiring plaintiff's attendance did not amount to extreme and outrageous conduct). In short, Count III fails to state a valid claim for intentional infliction of emotional distress and should be dismissed.

B. Jury Demand

LINA also moves to strike the plaintiff's jury demand, arguing, in essence, that a plaintiff in an ERISA case does not have a right to a jury trial. As LINA correctly points out in so arguing, the plaintiff would not have a right to a jury trial if the District Judge were to agree that Count III should be dismissed. *See Hampers,* 202 F.3d at 54 (upholding district court's denial of plaintiff's demand for a jury trial in an ERISA action); *Charlton Memorial Hosp. v. Foxboro Co.*, 818 F. Supp. 456, 459 (D. Mass. 1993)(collecting cases holding that a plaintiff in an ERISA action does not have a right to a jury trial). It follows here that, assuming Count III is dismissed as recommended, the plaintiff would not be entitled to a jury trial on her ERISA claims, and her demand for one should be denied.

V. CONCLUSION

For the foregoing reasons, the court recommends that LINA's Motion to Dismiss Count III of the Plaintiff's Complaint and to Strike the Plaintiff's Jury Demand (Dkt. No. 15) be GRANTED.

The parties are hereby advised that under the provisions of Federal Rule of Civil Procedure 72(b), any party who objects to this recommendation must file specific written objections thereto with the Clerk of this Court within 14 days of the party's receipt of this Report and Recommendation. The written objections must specifically identify the portion of the proposed findings, recommendations, or report to which objection is made and the basis for such objections. The parties are further advised that the United States Court of Appeals for this Circuit has repeatedly indicated that failure to comply with Rule 72(b) will preclude further appellate review of the District Court's order based on this Report and Recommendation. *See Keating v. Secretary of Health and Human Servs.*, 848 F.2d 271 (1st Cir. 1988); *United States v. Emiliano Valencia-Copete*, 792 F.2d 4 (1st Cir. 1986); *Park Motor Mart, Inc. v. Ford Motor Co.*, 616 F.2d 603 (1st Cir. 1980); *United States v. Vega*, 678 F.2d 376, 378-379 (1st Cir. 1982); *Scott v. Schweiker*, 702 F.2d 13, 14 (1st Cir. 1983).

All Citations

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