

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

RECEIVED

JAN 12 2005

THOMAS TURPIN and
FLORA TURPIN,

Plaintiffs,

v.

HIGHMARK, INC,

Defendant.

LEWIS, FEINBERG,
RENAKER & JACKSON

Civil Action No. 99-1886

TH
ORDER OF COURT

AND NOW, this 10 day of January, 2005, for the reasons set forth in the opinion filed this day, IT IS ORDERED that plaintiffs' motion for class certification (Doc. 69) be, and the same hereby is, granted in part. The following class is certified for the purpose of adjudicating plaintiffs' claim for prospective injunctive and declaratory relief:

All participants in and all beneficiaries of employee benefit plans, as those terms are defined in ERISA § 3, 29 U.S.C. § 1002, that are not exempt from the claims procedures set forth in 29 C.F.R. § 2560.503-1(g) (formerly § 2560.503-1(f)) through the operation of 29 C.F.R. § 2560.503-1(b)(2)(i)(A) & (B), to whom Highmark, Inc. ("Highmark") (1) has provided, provides or will provide benefits and/or has administered, administers or will administer benefit claims and (2) has issued, issues or will issue an Explanation of Benefits Form denying in whole or part a claim for benefits.

For the purposes of this class definition, "denying in whole or in part a claim for benefits" means the payment of less than the full amount of the claim submitted to Highmark on behalf of the participant or beneficiary as a result of the failure to comply with a term or condition of the group health plan, whether submitted directly by the participant or by a medical services provider or other third party, but excluding the failure to pay that portion of a request for payment that is in excess of what the participant or beneficiary would be entitled to receive under the terms of the particular group health plan.

The following subclass is certified for the purpose of adjudicating plaintiffs' request for retrospective relief:

All past and present participants in and all beneficiaries of employee benefit plans, as those terms are defined in ERISA § 3, 29 U.S.C. § 1002, that are not exempt from the claims procedures set forth in 29 C.F.R. § 2560.503-1(g) (formerly §

2560.503-1(f) through the operation of 29 C.F.R. § 2560.503-1(b)(2)(i)(A) & (B), to whom Highmark, Inc. ("Highmark") (1) has provided and/or has administered benefit claims and (2) has issued an Explanation of Benefits Form after November 18, 1993, denying in whole or part a claim for benefits.

For the purposes of this class definition, "denying in whole or in part a claim for benefits" means the payment of less than the full amount of the claim submitted to Highmark on behalf of the participant or beneficiary as a result of the failure to comply with a term or condition of the group health plan, whether submitted directly by the participant or by a medical services provider or other third party, but excluding the failure to pay that portion of a request for payment that is in excess of what the participant or beneficiary would be entitled to receive under the terms of the particular group health plan.

The subclass will be limited to an opt in class, and Highmark's retroactive re-issuance of Explanation of Benefit Forms will be limited to those subclass members who present a prima facia showing during a subsequent phase of this litigation that they lost the ability to appeal and obtain payment for an otherwise covered claim as a result of Highmark's failure to include in its EOBs denying a claim for medical services (1) reference to the specific provision(s) of an employee benefit plan upon which the denial was based or (2) clear notice of the steps necessary to effectuate a timely review of the denial. Lewis & Feinberg, P.C., Claudia Davidson, Allan N. Karlin & Associates and AARP Foundation Litigation are appointed as counsel for the certified class and Thomas and Flora Turpin are appointed as class representatives. In all other aspects the motion is denied.



David Stewart Cercone
United States District Judge

cc: Mary Ellen Signorille, Esquire
AARP Foundation Litigation
601 "E" Street, N.W.
Washington, DC 20049

Allan Carlin, Esquire
175 Chancery Row
Morgantown, WV 26505

Jeffrey Lewis, Esquire
Todd F. Jackson, Esquire
Lewis Feinberg Renaker & Jackson, P.C.
1330 Broadway, Suite 1800
Oakland, CA 94612

Claudia Davidson, Esquire
429 Fourth Avenue
5th Floor
Law & Finance Building
Pittsburgh, PA 15219

W. Thomas McGough, Jr., Esquire
Donna M. Doblack, Esquire
Traci Sands Rea
Reed, Smith LLP
435 Sixth Avenue
Pittsburgh, PA 15219