

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Brittany R. Tovar and Reid Olson,

Case Number: 16-cv-00100 (DWF/LIB)

Plaintiffs,

v.

Essentia Health; Innovis Health, LLC
d/b/a Essentia Health West;
HealthPartners, Inc.; and
HealthPartners Administrators, Inc.,

Defendants.

**DEFENDANTS HEALTHPARTNERS, INC. and HEALTHPARTNERS
ADMINISTRATORS, INC.'S JOINT ANSWER TO PLAINTIFF
REID OLSON'S FIRST AMENDED COMPLAINT**

Brittany R. Tovar (“Tovar”) was dismissed from this case by Order dated September 20, 2018. Defendants HealthPartners, Inc. (“HealthPartners”) and HealthPartners Administrators, Inc. (“HPAI”) as and for their Joint Answer to Reid Olson’s (“Olson”) allegations in the First Amended Complaint, state as follows:

NATURE OF ACTION

1. HealthPartners and HPAI admit that Olson purports to bring a claim for alleged violations of the Patient Protection and Affordable Care Act § 1557, 42 U.S.C. § 18116 (“Section 1557”). HealthPartners and HPAI deny that Olson has any viable claims under Section 1557 against HealthPartners and HPAI. HealthPartners and HPAI deny any factual allegations contained in Paragraph 1.

2. Paragraph 2 of the First Amended Complaint purports to quote from Section 1557. HealthPartners and HPAI state that Section 1557 speaks for itself. HealthPartners and HPAI deny any factual allegations contained in Paragraph 2.

3. The allegations contained in Paragraph 3 of the First Amended Complaint do not relate to defendants HealthPartners and HPAI. HealthPartners and HPAI deny any allegations relating to them contained in Paragraph 3.

4. In response to the allegations contained in Paragraph 4 of the First Amended Complaint, HealthPartners and HPAI admit that HPAI served as a third-party administrator to defendant Essentia with respect to the health care plan offered by Essentia to Tovar and her dependents, including Olson. HealthPartners and HPAI deny the remaining allegations contained in Paragraph 4.

PARTIES

5. HealthPartners and HPAI state that plaintiff Brittany Tovar's claims have been dismissed. (Court Document 96.) HealthPartners and HPAI further state that they are without information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 5, and as a result, HealthPartners and HPAI deny those allegations.

6. HealthPartners and HPAI are without information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 6, and as a result, HealthPartners and HPAI deny those allegations.

7. HealthPartners and HPAI are without information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 7, and as a result, HealthPartners and HPAI deny those allegations.

8. HealthPartners and HPAI are without information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 8, and as a result, HealthPartners and HPAI deny those allegations.

9. HealthPartners and HPAI they are without information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 9, and as a result, HealthPartners and HPAI deny those allegations.

10. HealthPartners and HPAI admit the allegations contained in Paragraph 10.

11. In response to the allegations contained in Paragraph 11, HealthPartners and HPAI admit that HPAI is a wholly-owned subsidiary of HealthPartners, and that, HPAI provides third-party administrator services for employer-sponsored self-insured plans. HealthPartners and HPAI deny the remaining allegations, if any, contained in Paragraph 11.

12. In response to the allegations contained in Paragraph 12, HealthPartners and HPAI admit that HealthPartners is eligible to receive certain federal financial assistance within the meaning of Section 1557. HealthPartners and HPAI deny the HPAI receives any federal financial assistance within the meaning of Section 1557. HealthPartners and HPAI deny the remaining allegations, if any, contained in Paragraph 12.

JURISDICTION AND VENUE

13. HealthPartners and HPAI admit that the Court has jurisdiction over this matter and denies any factual allegations contained in Paragraph 13.

14. Paragraph 14 sets forth legal conclusions to which no response is required. HealthPartners and HPAI deny any factual allegations contained in Paragraph 14.

15. Paragraph 15 sets forth legal conclusions to which no response is required. HealthPartners and HPAI deny any factual allegations contained in Paragraph 15.

FACTUAL ALLEGATIONS

16. HealthPartners and HPAI are without information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 16, and as a result, HealthPartners and HPAI deny those allegations.

17. In response to the allegations contained in Paragraph 17, HealthPartners and HPAI admit, upon information and belief, that Tovar enrolled in Essentia's self-insured health plan for 2015 (the "Plan"). HealthPartners and HPAI deny the remaining allegations contained in Paragraph 17.

18. In response to the allegations contained in Paragraph 18, HealthPartners and HPAI admit, upon information and belief, that Olson received coverage under the Plan. HealthPartners and HPAI deny the remaining allegations contained in Paragraph 18.

19. HealthPartners and HPAI are without information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 19, and as a result, HealthPartners and HPAI deny those allegations.

20. HealthPartners and HPAI admit, upon information and belief, that Olson identifies as transgender. HealthPartners and HPAI deny the remaining allegations, of any, contained in Paragraph 20.

21. Paragraph 21 purports to quote from the DSM-5. HealthPartners and HPAI state that the DSM-5 speaks for itself. HealthPartners and HPAI deny any factual allegations contained in Paragraph 21.

22. In response to the allegations contained in Paragraph 22, HealthPartners and HPAI admit that, for certain individuals, symptoms of gender dysphoria may be relieved by certain medical treatments. HealthPartners and HPAI deny the remaining allegations, if any, contained in Paragraph 22.

23. In response to the allegations contained in Paragraph 23, HealthPartners and HPAI have been informed that Olson was assigned the female sex at birth, but currently identifies as male. HealthPartners and HPAI further admit, upon information and belief, that Olson has sought coverage under the Plan. HealthPartners and HPAI deny the remaining allegations, if any, contained in Paragraph 23.

24. In response to the allegations contained in Paragraph 24, HealthPartners and HPAI admit that the Plan was self-insured, sponsored by Essentia, and Essentia was required to pay covered claims under the Plan and at all times bore all financial risk under the Plan. HealthPartners and HPAI deny the remaining allegations contained in Paragraph 24.

25. In response to the allegations contained in Paragraph 25, HealthPartners and HPAI admit that HPAI contracted with Essentia to provide third-party administrator

services with respect to the Plan. HealthPartners and HPAI deny the remaining allegations contained in Paragraph 25.

26. HealthPartners and HPAI deny the allegations contained in Paragraph 26.

27. In response to the allegations contained in Paragraph 27, HealthPartners and HPAI state that the Plan speaks for itself. HealthPartners and HPAI deny that the Plan corresponds to an insurance policy. HealthPartners and HPAI deny the remaining allegations, if any, contained in Paragraph 27.

28. Paragraph 28 purports to paraphrase something said by an Essentia employee. HealthPartners and HPAI deny the allegations contained in Paragraph 28.

29. HealthPartners and HPAI deny the allegations contained in Paragraph 29.

30. Paragraph 30 purports to quote from Essentia's self-insured plans for years 2014 and 2015. HealthPartners and HPAI state that Essentia's self-insured plans speak for themselves. HealthPartners and HPAI deny the remaining allegations contained in Paragraph 30.

31. HealthPartners and HPAI deny the allegations contained in Paragraph 31.

32. HealthPartners and HPAI deny the allegations contained in Paragraph 32.

33. In response to the allegations contained in Paragraph 33, HealthPartners and HPAI admit that Essentia selected what coverage it would provide under its Plan. HealthPartners and HPAI deny the remaining allegations contained in Paragraph 33.

34. In response to the allegation contained in Paragraph 34, HealthPartners and HPAI admit that the Essentia Plan included an exclusion for "[s]ervices and/or surgery

for gender reassignment.” HealthPartners and HPAI deny the remaining allegations contained in Paragraph 34.

35. In response to the allegations contained in Paragraph 35, HealthPartners and HPAI admit that in March 2015, Tovar wrote a letter regarding insurance coverage concerns related to Olson. HealthPartners and HPAI state that Tovar’s March 2015 correspondence speaks for itself. HealthPartners and HPAI deny the remaining allegations, if any, contained in Paragraph 35.

36. In response to the allegations contained in Paragraph 36, HealthPartners and HPAI admit that Tovar sent a letter dated March 24, 2015, addressed “To Whom It May Concern,” and a copy of that letter is attached as Exhibit A to the First Amended Complaint. HealthPartners and HPAI state that Exhibit A speaks for itself. HealthPartners and HPAI deny the remaining allegations contained in Paragraph 36.

37. In response to the allegations contained in Paragraph 37, HealthPartners and HPAI admit that HealthPartners’ Member Services sent a letter to Tovar, dated April 9, 2015. HealthPartners and HPAI state that the April 9, 2015, letter speaks for itself. HealthPartners and HPAI deny the remaining allegations contained in Paragraph 37.

38. In response to the allegations contained in Paragraph 38, HealthPartners and HPAI admit that Tovar sent a letter To Whom It May Concern, dated May 9, 2015. HealthPartners and HPAI state that Tovar’s May 9, 2015, letter speaks for itself. HealthPartners and HPAI deny the remaining allegations, if any, contained in Paragraph 38.

39. In response to the allegations contained in Paragraph 39, HealthPartners and HPAI admit that HealthPartners Member Services sent a letter to Tovar, dated May 27, 2015. HealthPartners and HPAI state that the May 27, 2015, letter speaks for itself. HealthPartners and HPAI deny the remaining allegations contained in Paragraph 39.

40. HealthPartners and HPAI deny the allegations contained in Paragraph 40.

41. In response to the allegations contained in Paragraph 41, HealthPartners and HPAI admit that HealthPartners Member Services sent a letter to Tovar, dated June 9, 2015. HealthPartners and HPAI state that the June 9, 2015, letter speaks for itself. HealthPartners and HPAI deny the remaining allegations contained in Paragraph 41.

42. In response to the allegations contained in Paragraph 42, HealthPartners and HPAI admit that Tovar was reimbursed for certain medical expenses relating to Olson. See also Court Document 96. HealthPartners and HPAI deny the remaining allegations contained in Paragraph 42.

43. HealthPartners and HPAI are without information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 43, and as a result, HealthPartners and HPAI deny those allegations.

44. Paragraph 44 purports to identify certain medical features of the drug Lupron. HealthPartners and HPAI deny any factual allegations contained in Paragraph 44.

45. Paragraph 45 purports to identify certain medical features of the drug Lupron. In addition, HealthPartners and HPAI are without information sufficient to form a belief as to the truth or falsity of the allegations concerning the recommendation of Lupron to Olson, and as a result, HealthPartners and HPAI deny those allegations. HealthPartners and HPAI deny the remaining allegations contained in Paragraph 45.

46. In response to the allegations contained in Paragraph 46, HealthPartners and HPAI admit that on or about May 20, 2015, HPAI informed Tovar that Lupron was not covered under Essentia's Plan as presented. HealthPartners and HPAI state that HPAI's denial speaks for itself. HealthPartners and HPAI deny the remaining allegations contained in Paragraph 46.

47. In response to the allegations contained in Paragraph 47, HealthPartners and HPAI admit that Essentia's Plan contained an exclusion for "[s]ervices and/or surgery for gender reassignment." HealthPartners and HPAI deny the remaining allegations contained in Paragraph 47.

48. In response to the allegations contained in Paragraph 48, HealthPartners and HPAI admit that in May 2015, Tovar left messages relating to Olson's claim for Lupron. HealthPartners and HPAI deny the remaining allegations, if any, contained in Paragraph 48.

49. In response to the allegations contained in Paragraph 49, HealthPartners and HPAI admit that on or about May 26, 2015, HealthPartners Member Services informed Tovar that Olson's doctor could provide a Prior Authorization / Exception

Form. HealthPartners and HPAI deny the remaining allegations contained in Paragraph 49.

50. In response to the allegations contained in Paragraph 50, HealthPartners and HPAI admit that HealthPartners Member Services informed Tovar that, as presented, Lupron was not covered under Essentia's Plan. HealthPartners and HPAI deny the remaining allegations contained in Paragraph 50.

51. HealthPartners and HPAI are without information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 51, and as a result, HealthPartners and HPAI deny those allegations.

52. In response to the allegations contained in Paragraph 52, HealthPartners and HPAI admit that HealthPartners Member Services informed Tovar that, as presented, Lupron was not covered under Essentia's Plan. HealthPartners and HPAI deny the remaining allegations contained in Paragraph 52.

53. In response to the allegations contained in Paragraph 53, HealthPartners and HPAI admit that in June 2015, Tovar left messages relating to Olson's claim for Lupron. HealthPartners and HPAI deny the remaining allegations, if any, contained in Paragraph 53.

54. HealthPartners and HPAI deny the allegations contained in Paragraph 54.

55. HealthPartners and HPAI deny the allegations contained in Paragraph 55.

56. In response to the allegations contained in Paragraph 56, HealthPartners and HPAI admit that HealthPartners Member Services sent a letter to Tovar, dated June 12, 2015. HealthPartners and HPAI state that the June 12, 2015, letter speaks for

itself. HealthPartners and HPAI deny the remaining allegations contained in Paragraph 56.

57. Paragraph 57 contains an incomplete hypothetical, and as a result, HealthPartners and HPAI deny the allegations contained in Paragraph 57.

58. HealthPartners and HPAI are without information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 58, and as a result, HealthPartners and HPAI deny those allegations.

59. HealthPartners and HPAI deny the allegations contained in Paragraph 59.

60. HealthPartners and HPAI are without information sufficient to form a belief as to the truth or falsity of the allegations as to when Olson “was scheduled to begin testosterone treatment,” as referenced in Paragraph 60, and as a result, HealthPartners and HPAI deny those allegations.

61. HealthPartners and HPAI deny the allegations contained in Paragraph 61.

62. HealthPartners and HPAI deny the allegations contained in Paragraph 62.

63. HealthPartners and HPAI are without information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 63, and as a result, HealthPartners and HPAI deny those allegations.

64. In response to the allegations contained in Paragraph 64, HealthPartners and HPAI admit that Essentia’s Plan contained an exclusion for “[s]ervices and/or surgery for gender reassignment.” In addition, Paragraph 64 contains an incomplete hypothetical concerning coverage, and as a result, HealthPartners and HPAI deny those

allegations. HealthPartners and HPAI deny the remaining allegations contained in Paragraph 64.

65. In response to the allegations contained in Paragraph 65, HealthPartners and HPAI state that the notice with respect to Olson's claim for Androderm speaks for itself. HealthPartners and HPAI deny the remaining allegations contained in Paragraph 65.

66. In response to the allegations contained in Paragraph 66, HealthPartners and HPAI admit that Tovar was reimbursed for her expenses relating to Androderm payments on behalf of Olson. HealthPartners and HPAI deny the remaining allegations contained in Paragraph 66.

67. In response to the allegations contained in Paragraph 67, HealthPartners and HPAI admit that Tovar was reimbursed for her expenses relating to Androderm. HealthPartners and HPAI further admit that Essentia did not remove the exclusion for "[s]ervices and/or surgery for gender reassignment," from its Plan. HealthPartners and HPAI deny the remaining allegations contained in Paragraph 67.

68. In response to the allegations contained in Paragraph 68, HealthPartners and HPAI admit that Essentia's Plan included an exclusion for "[s]ervices and/or surgery for gender reassignment." HealthPartners and HPAI deny the remaining allegations contained in Paragraph 68.

69. Paragraph 69 contains incomplete hypothetical allegations, and as a result, HealthPartners and HPAI deny those allegations.

70. HealthPartners and HPAI deny the allegations contained in Paragraph 70.

71. HealthPartners and HPAI are without information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 71, and as a result, HealthPartners and HPAI deny those allegations.

72. HealthPartners and HPAI are without information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 72, and as a result, HealthPartners and HPAI deny those allegations.

73. In response to the allegations contained in Paragraph 73, HealthPartners and HPAI admit that the exclusion for “[s]ervices and/or surgery for gender reassignment,” was not included in the self-insured plan issued by Essentia for 2016. Upon information and belief, HealthPartners and HPAI admit that Tovar and Olson were covered under Essentia’s 2016 plan until on or about October 31, 2016.

COUNT I
VIOLATION OF THE AFFORDABLE CARE ACT, §1557
42 U.S.C. § 18116

74. Paragraph 74 of plaintiffs’ First Amended Complaint contains no new allegations. In response to Paragraph 74, HealthPartners and HPAI reasserts their answers to Paragraphs 1 to 73 above.

75. Plaintiff Tovar’s claims under Count I of plaintiffs’ First Amended Complaint has been dismissed by the Court. (Court Document 96 at 17.) HealthPartners and HPAI deny the remaining allegations, if any, contained in Paragraph 75.

76. Plaintiff Tovar’s claims under Count I of plaintiffs’ First Amended Complaint has been dismissed by the Court. (Court Document 96 at 17.) Further answering, HealthPartners and HPAI deny the allegations contained in Paragraph 76.

77. Plaintiff Tovar's claims under Count I of plaintiffs' First Amended Complaint has been dismissed by the Court. (Court Document 96 at 17.) Further answering, HealthPartners and HPAI deny the allegations contained in Paragraph 77.

COUNT II
VIOLATION OF THE AFFORDABLE CARE ACT, §1557
42 U.S.C. § 18116

78. Paragraph 78 of plaintiffs' First Amended Complaint contains no new allegations. In response to Paragraph 78, HealthPartners and HPAI reasserts their answers to Paragraphs 1 to 77 above.

79. The allegations set forth in Paragraph 79 do not concern defendants HealthPartners or HPAI. HealthPartners and HPAI deny any allegations relating to them, if any, contained in Paragraph 79.

80. The allegations set forth in Paragraph 80 do not concern defendants HealthPartners or HPAI. HealthPartners and HPAI deny any allegations relating to them, if any, contained in Paragraph 80.

81. The allegations set forth in Paragraph 81 do not concern defendants HealthPartners or HPAI. HealthPartners and HPAI deny any allegations relating to them, if any, contained in Paragraph 81.

JURY DEMAND

82. HealthPartners and HPAI admit that Olson seeks a jury on all claims "for which a jury trial is available." HealthPartners and HPAI deny any factual allegations contained in Paragraph 82.

RELIEF REQUESTED

83. HealthPartners and HPAI deny that Olson is entitled to relief of any kind including any of the relief sought in the “Relief Requested” section of the First Amended Complaint.

84. HealthPartners and HPAI deny that they engaged in any unlawful practice or conduct that has damaged Olson or that would result in a judgment in favor of Olson.

85. HealthPartners and HPAI deny each and every allegation contained in the First Amended Complaint, except those allegations expressly admitted above.

AFFIRMATIVE DEFENSES

1. The First Amended Complaint fails to state a claim upon which relief can be granted.

2. Olson’s claims are barred, in whole or in part, by the applicable statutes of limitations and/or by Olson’s failure to comply with the procedural requirements for filing this action.

3. Olson may not recover damages to the extent he failed to mitigate his alleged damages.

4. HealthPartners and HPAI acted in good faith and in full compliance with state and federal law at all times relevant to the events alleged in the First Amended Complaint.

5. If Olson was damaged as alleged, his damages were caused by his own acts or the acts of those other than HealthPartners or HPAI.

6. All actions taken by HealthPartners and HPAI were for legitimate, nondiscriminatory business reasons.

7. The imposition of punitive or exemplary damages in this case would violate the due process and excessive fines clauses under the Constitutions of the United States and the State of Minnesota.

8. Neither HealthPartners nor HPAI willfully, maliciously and/or negligently violated Olson's rights under federal law.

9. Olson's claims are barred in whole or in part by the doctrines of waiver, estoppel, laches and unclean hands.

10. Olson has requested relief not authorized by law.

HealthPartners and HPAI are continuing their investigation and study of all facts and circumstances of the subject matter of the First Amended Complaint, and accordingly, reserve the right to amend, modify, revise or supplement their Answer, and to plead such further defenses and take such further actions as they may deem proper and necessary in their defense upon the completion of such investigation and study.

WHEREFORE, defendants HealthPartners and HPAI respectfully request that this Court:

- (i) Enter judgment dismissing the First Amended Complaint with prejudice against HealthPartners and HPAI;
- (ii) Award HealthPartners and HPAI their attorneys' fees, costs and disbursements incurred; and
- (iii) Award HealthPartners and HPAI any and all other relief that the Court deems just and equitable.

Date: October 4, 2018

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