

In the United States Court of Federal Claims

No. 18-1983C
(Filed: July 9, 2019)

**BLUE CROSS BLUE SHIELD OF
NORTH DAKOTA,**

Plaintiff

v.

UNITED STATES,

Defendant.

ORDER

Before the Court is the Defendant’s Motion to Stay (ECF 30), to which the Plaintiff has filed an opposition (ECF 31).

The case presents a claim for cost-sharing reduction payments under Section 1402 of the Patient Protection and Affordable Care Act. The plaintiff alleges statutory and breach of contract causes of action.

The defendant’s motion is predicated on the pendency before the Federal Circuit of three cases presenting similar claims. See *Sanford Health Plan v. United States*, 139 Fed. Cl. 701 (2018), *appeal docketed*, No. 19-1290, *Montana Health Co-Op v. United States*, 139 Fed. Cl. 213 (2018), *appeal docketed*, No. 19-1302; *Community Health Choice, Inc. v. United States*, 141 Fed. Cl. 744 (2019), *appeal docketed*, No. 19-1633.

The plaintiff opposes a stay, arguing that the defendant has failed to meet its burden of showing that the balance of interests supports a stay; that there is no “pressing need” for the stay, see *Cherokee Nation of Oklahoma v. United States*, 124 F. 3d 1413, 1416 (Fed. Cir. 1997); and that the plaintiff will be harmed by a stay.

The case is fully briefed and ready for a decision. At this point, however, any decision of the Court in this case would itself not be final and have any effect until the Federal Circuit rules in the appeals now pending.

The Court finds that a stay will in fact promote the interests of justice and ultimately may produce a more expeditious final judgment while also conserving the parties’ and the Court’s resources. The Court believes that the fact that all three pending appeals in the relevant cases before the Federal Circuit will be heard and decided together by the same merits panel means

that, in the absence of any eventual *en banc* or *certiorari* petitions, the Federal Circuit's ruling will dispose of the key contested legal issues.

In this respect, the Court is of the same view as the Courts in *Harvard Pilgrim Health Care, Inc. v. United States*, No. 18-1820C, ECF 10 (Fed. 28, 2019) (granting consent motion to stay); *Health Alliance Medical Plans, Inc. v. United States*, No. 18-334C, ECF 22 (March 28, 2019) (granting consent motion to stay); *Guidewell Mutual Holding Corp. v. United States*, No. 18-1719C, ECF 21 (May 15, 2019) (granting contested motion to stay); *Sanford Health Plan v. United States*, No. 19-569C, ECF 9 (May 17, 2019) (granting contested motion to stay).

Accordingly, the defendant's motion to stay is GRANTED and the case is STAYED pending the decisions by the Federal Circuit in *Sanford Health Plan*, *Montana Health Co-Op*, and *Community Health Choice*. No later than 14 days after the first decision in these cases is rendered, the parties shall file a Joint Status Report that shall include a recommended course of action in the matter.

It is so **ORDERED**.

s/ Richard A. Hertling
Richard A. Hertling
Judge