

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

Ronald Carey and Susan Carey, on behalf of  
themselves as parents and natural guardians  
and their minor son, Matthew Carey,

Plaintiffs,

v.

Civ. No. 02-3642 (JNE/JSM)  
ORDER

Connecticut General Life Insurance Co., a  
CIGNA Company,

Defendant.

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Diane M. Odeen, Esq., and Sheila A. Bjorklund, Esq., Lommen, Nelson, Cole & Stageberg, P.A.,  
appeared for Plaintiffs.

Tracy J. Van Steenburgh, Esq., and Tracey L. Galinson, Esq., Halleland Lewis Nilan Sipkins &  
Johnson, P.A., appeared for Defendant.

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Ronald and Susan Carey (collectively, Plaintiffs), brought this action seeking judicial review of the decision by Connecticut General Life Insurance Co., a CIGNA Company (CGLIC) to deny coverage for certain behavioral therapy for their son, Matthew Carey, a beneficiary under Mr. Carey's health insurance plan. The plan is governed by the Employee Retirement Income Security Act (ERISA), 29 U.S.C. §§ 1001-1416 (2000). The case is before the Court on the parties cross motions for partial summary judgment. Specifically, the parties seek a determination of when Plaintiffs' cause of action accrued because that date determines the applicable ERISA standard of review. For the reasons set forth below, the Court grants Plaintiffs' motion and denies CGLIC's motion.

**I. BACKGROUND**

Matthew is an autistic four-year old. Mr. Carey is an employee of Intuit Corporation, and

he participates in a health insurance policy (the Plan) under which Matthew is entitled to benefits. The Plan is a welfare-benefit plan governed by ERISA, sponsored by Intuit, insured by CGLIC, and administered by International Rehabilitation Associates, Inc. (Intracorp). While CGLIC and Intracorp are separate entities, they are wholly owned by Connecticut General Corporation. Effective August 1, 2001, the Plan was amended to provide CGLIC with discretionary authority to interpret and apply plan terms (2001 Plan). Under the 2001 Plan, the substantive benefits remained the same as they were under the original plan (1999 Plan).

Matthew engages in certain behavioral therapy programs to treat his autism. Plaintiffs first requested coverage for this therapy in April 2000. CGLIC denied coverage in June 2000 because the therapy program was not an “established medical treatment program” and because there was no “license, credentialing or medical supervision of the program.” After finding a licensed provider, Plaintiffs applied again for benefits in May 2001. CGLIC again denied Matthew coverage. The crux of the dispute before the Court is when the second denial of coverage occurred.

## II. DISCUSSION

Summary judgment is proper “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Fed. R. Civ. P. 56(c). The moving party “bears the initial responsibility of informing the district court of the basis for its motion,” and must identify “those portions of [the record] which it believes demonstrate the absence of a genuine issue of material fact.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). If the moving party satisfies its burden, Rule 56(e) requires the party opposing the motion to respond by submitting evidentiary materials that designate “specific facts showing

that there is a genuine issue for trial.” *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986). In determining whether summary judgment is appropriate, a court must look at the record and any inferences to be drawn from it in the light most favorable to the party opposing the motion. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986).

For benefit plans covered by ERISA, “a reviewing court applies a deferential abuse-of-discretion standard if the plan gives the administrator or fiduciary discretionary authority to determine eligibility for benefits or to construe the terms of the plan.” *McKeehan v. Cigna Life Ins. Co.; Life Ins. Co. of N. Am.*, 344 F.3d 789, 792 (8th Cir. 2003) (internal quotations omitted). In all other cases, the court reviews the administrator’s decision de novo. *Firestone Tire & Rubber Co. v. Bruch*, 489 U.S. 101, 115 (1989); *McKeehan*, 344 F.3d at 792. Accordingly, the parties agree that the Court reviews CGLIC’s decisions made under the 1999 Plan de novo and those made under the 2001 Plan for abuse of discretion.

Under an ERISA welfare-benefit plan, a plaintiff’s cause of action only accrues when benefits have been denied. *See Smathers v. Multi-Tool, Inc./Multi-Plastics, Inc. Employee Health & Welfare Plan*, 298 F.3d 191, 196 (3d Cir. 2002); *Grosz-Salomon v. Paul Revere Life Ins. Co.*, 237 F.3d 1154, 1159 (9th Cir. 2001). A court reviewing the denial of ERISA welfare-benefit claims is guided by federal common law in determining the time at which a plaintiff’s claim accrues. *See Union Pac. R.R. Co. v. Beckham*, 138 F.3d 325, 330 (8th Cir. 1998); *Wolfe v. 3M Short-Term Disability Plan*, 176 F. Supp. 2d 911, 915 (D. Minn. 2001). “The general rule in an ERISA action is that the cause of action accrues after a claim for benefits has been made and has formally been denied.” *Beckham*, 138 F.3d at 330. However an exception to this rule provides “an ERISA beneficiary’s cause of action accrues before a formal denial ... when there has been a repudiation by the fiduciary which is *clear* and made known to the beneficiary.” *Id.*

(internal quotation omitted, emphasis in the original); *see also Wolfe*, 176 F. Supp. 2d at 916 (noting cases finding clear repudiation when employer, not fiduciary, communicated denial to beneficiary).

CGLIC asserts that the 2001 Plan applies because Matthew's benefits were not denied until October 22, 2001, when CGLIC formally denied benefits through a written letter. To the contrary, Plaintiffs contend that the 1999 Plan governs because there was a clear denial of benefits through phone conversations between Plaintiffs and Intracorp representatives on July 5, 2001.

In support of their position, Plaintiffs rely on a series of excerpts from Intracorp's case notes for Matthew. On June 20, 2001, the case notes detail a call from Mrs. Carey inquiring about receipt of the behavior therapy claims. (*See Odeen Aff.*, Ex. K at ll. 34-42.) Nine days later on June 29, 2001, the case notes show that Intracorp received evaluations by medical, psychological, and neurological providers that resulted in a determination that Matthew's behavioral therapy was educational in nature and not medically necessary. (*See id.* at ll. 114-120.) The case notes state: "THIS IS NOT A MEDICAL SERVICE AND CANNOT BE CERTIFIED THROUGH INTRACORP. FAMILY SHOULD EXPLORE WHETHER THIS WOULD BE COVERED THROUGH THEIR MENTAL HEALTH COVERAGE." (*Id.* at ll. 121-123.) On July 5, 2001, the case notes reveal that an Intracorp representative contacted Plaintiffs regarding the determination of their request for coverage of Matthew's behavioral therapy. (*See id.* at ll. 127-128.) After learning that his behavior therapy was not covered, the case notes reflect that Mrs. Carey responded that she would be hiring a lawyer to appeal this

decision and requested written confirmation of the determination, as soon as possible.<sup>1</sup> (*See id.* at ll. 129-133.) Later on that day, Mr. Carey also spoke with an Intracorp representative. (*See id.* at ll. 157.) The case notes reflect that after Mr. Carey was apprised of the rationale for denial of coverage, he angrily asserted that this denial was in violation of Minnesota state law and queried how CGLIC could be so stupid to deny Matthew's benefits.<sup>2</sup> (*See id.* at ll. 158-169.)

CGLIC asserts that the phone conversations on July 5th do not constitute clear repudiation. In support, CGLIC relies on two letters, the first written by Plaintiffs' counsel on September 13, 2001, and the second written by CGLIC's counsel dated October 22, 2001. According to CGLIC, the September letter illustrates that a denial had not been communicated to Plaintiffs before August 1, 2001, because the letter demands a written statement or the application for benefits would be deemed denied as of September 13, 2001. However, evidence in the record reflects repeated efforts by Plaintiffs from July through September, to have the denial in writing. Contrary to CGLIC assertion, Plaintiffs' resort to hiring legal counsel who wrote the September letter does not contradict Intracorp's clear repudiation in July.

As for the October 22, 2001, letter, CGLIC's assertion that this is the first communicated denial is belied by the content of the letter. Indeed, the letter references Intracorp's earlier denial of benefits as communicated to Plaintiffs in early July. The letter states in relevant part:

Intracorp's case manager and case manager supervisor had previously informed Mr. Carey that Intracorp could not review the request for pre-

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<sup>1</sup> The case notes state: "11:30 CALL FROM PP MOTHER REC'D. ADVISED OF DETERMINATION-NONCERTIFIED ABA PROGRAM. REPORTS WANT IN WRITING ASAP, GOING TO GET AN ATTORNEY TO APPEAL THIS, HAS 'HAD IT WITH CG, AND GOING AFTER W/BOTH BARRELLS.'" (*See Odeen Aff., Ex. K* at ll. 129-133.)

<sup>2</sup> The case notes state: "1237 VM REC'D AT 12N FROM RON CAREY- REPORTS JUST SPOKE W/WIFE-RE: DENIAL FOR REQ FOR SERVICE" (*Id.* at ll. 141-42.) "1245 TC TO EE – READ DETERMINATION/RATIONALE. STATES THAT IS IN VIOLATION OF MN LAW-HOW CAN WE BE SO STUPID TO DENY THIS ... REPEATS THAT THIS DECISION IS JUST 'INSANE' ...." (*Id.* at ll. 158-164.)

authorization [for the behavioral therapy] because, upon review by an Intracorp physician advisor, it was determined that the request for [behavioral therapy] should not have been reviewed under the medical plan, but rather under the behavioral benefits plan.

In sum, the evidence in the record reveals that on July 5, 2001, CGLIC, through Intracorp, communicated to Plaintiffs in an unambiguous manner that Matthew's benefits were denied. This clear repudiation to a beneficiary fits squarely in the exception described by *Beckham*. As such, Plaintiffs' cause of action accrued under the 1999 Plan, and a de novo standard of review applies to CGLIC's decision to deny benefits to Matthew.

### III. CONCLUSION

Based on the files, records, and proceedings herein, and for the reasons stated above, IT IS ORDERED THAT:

1. Plaintiffs' Motion for Partial Summary Judgment [Docket No. 19] is GRANTED.
2. CGLIC'S Motion for Partial Summary Judgment [Docket No. 22] is DENIED.

Dated: March 8, 2004

S/ Joan N. Ericksen  
JOAN N. ERICKSEN  
United States District Judge