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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION**

MARY A. MCCAMMON,

Case No.

Plaintiff,

v.

**KAISER FOUNDATION HEALTH PLAN
OF THE NORTHWEST,**

Defendant.

**COMPLAINT
(Employee Retirement Income
Security Act of 1974, 29 U.S.C. § 1132
(a)(1)(B))**

INTRODUCTION

1.

This action is brought on behalf of Plaintiff, Mary A. McCammon, pursuant to the Employee Retirement Income Security Act of 1974, 29 U.S.C. §1001, *et seq.* ("ERISA"). Plaintiff seeks to recover from Defendant Kaiser Foundation Health Plan of the Northwest

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(“Kaiser”), unpaid health benefits pursuant to the terms of Wells Fargo and Company Large Group Traditional Copayment Plan (“Plan”), insured by Kaiser under 29 U.S.C. § 1132(a)(1)(B). Plaintiff seeks these remedies, plus her costs and attorney fees, pursuant to 29 U.S.C. § 1132(e)(1), (f), and (g).

JURISDICTION AND VENUE

2.

Jurisdiction is conferred on this court by ERISA, 29 U.S.C. § 1132(e)(1), (f), and (g), which gives the United States district courts jurisdiction to hear civil actions brought to recover plan benefits due under the terms of an employee welfare benefit plan, as well as other declarative relief and attorney fees and costs, under ERISA.

3.

Venue is proper in this district court pursuant to ERISA, 29 U.S.C. § 1132(e)(2), and pursuant to 28 U.S.C. § 1391.

THE PARTIES

4.

At all times material herein, Plaintiff has been an individual residing in the state of Oregon.

5.

At all times material herein, Plaintiff was a participant under the Plan insured by Kaiser.

6.

The Plan is an employee welfare benefit plan specifically covered under ERISA, 29 U.S.C. § 1002(1).

7.

At all times material herein, Wells Fargo and Company was the sponsor of the Plan within the meaning of ERISA, 29 U.S.C. § 1002(16)(B). At all times material herein, Wells Fargo and Company was the plan administrator of the Plan within the meaning of ERISA, 29 U.S.C. § 1002(16)(A).

8.

At all times material herein, Kaiser was the claims administrator of the Plan, within the meaning of ERISA, 29 U.S.C. § 1002(16)(A).

STATEMENT OF FACTS

9.

In July, 2011, Plaintiff's clinical history included lumbar radiculopathy and low back pain.

10.

On July 6, 2011, Plaintiff underwent a lumbar spine MRI that revealed large sacral Tarlov cysts measuring up to 2.3 centimeters.

11.

On September 23, 2011, Plaintiff had an outpatient neurosurgical consultation by Dr. Charles Wrobel, a Kaiser Permanente physician, regarding surgical options for her Tarlov cysts.

12.

On October 10, 2011, Plaintiff saw Dr. Frank Feigenbaum, a Kansas City, Missouri neurosurgeon, regarding surgical treatment for her Tarlov cysts.

13.

On October 20, 2011, Plaintiff saw Dr. Wrobel and requested a referral to Dr. Feigenbaum.

14.

On October 20, 2011, Dr. Wrobel submitted an external referral for Plaintiff to see Dr. Feigenbaum for treatment of her Tarlov cysts.

15.

By letter dated October 24, 2011, Kaiser notified Plaintiff that her referral request to see Dr. Feigenbaum for treatment of her Tarlov cysts was denied.

16.

By letter dated October 28, 2011, Plaintiff notified Kaiser that she was appealing the denial of her referral request to Dr. Feigenbaum for treatment of her Tarlov cysts and that Dr. Feigenbaum would make the appeal on her behalf.

17.

By letter dated November 7, 2011, Dr. Feigenbaum, on plaintiff's behalf, appealed Kaiser's denial of Plaintiff's request for referral to Dr. Feigenbaum for treatment of her Tarlov cysts.

18.

By letter dated December 13, 2011, Kaiser notified Dr. Feigenbaum that it had denied his appeal of Plaintiff's referral request for treatment of her Tarlov cysts.

19.

By letter dated February 23, 2012, Plaintiff notified Kaiser that she required surgery to treat her large, symptomatic Tarlov cysts that were severely limiting her quality of life, and asked several questions regarding the availability of a Kaiser physician or a referral physician that was experienced in the surgical treatment of large Tarlov cysts.

20.

By email dated March 8, 2012, Plaintiff informed Kaiser she was leaving March 11, 2012, for Kansas City, Missouri, in order to have Tarlov cyst surgery performed by Dr. Feigenbaum, scheduled for March 13, 2012.

21.

By email dated March 8, 2013, Dr. Robert House, Director of Operations, Surgical Specialties, notified Plaintiff that he was not able to authorize care by Dr. Feigenbaum and that Plaintiff's care was currently under active review to determine comparable care within the Kaiser system.

22.

By letter dated March 9, 2012, Plaintiff notified Kaiser that her care had been under active review by Kaiser since July 2011, and that she could not continue to let her health deteriorate awaiting Kaiser's response.

23.

On March 13, 2012, Plaintiff underwent surgical treatment of her Tarlov cysts by Dr. Feigenbaum.

24.

By letter dated May 10, 2012, Plaintiff requested and submitted a “first level of appeal” of Kaiser’s denial of her request for referral to Dr. Feigenbaum for treatment of her Tarlov cysts.

25.

By letter dated May 29, 2012, Kaiser notified Plaintiff that her final appeal requesting that Kaiser pay for Dr. Feigenbaum’s surgery was denied because the service was not authorized by Kaiser.

26.

Plaintiff has completed all steps required prior to the filing of this Complaint under the Plan and ERISA, pursuant to 29 U.S.C. § 1133.

27.

29 U.S.C. § 1132(a)(1)(B) authorizes Plaintiff to recover benefits due to her under the terms of the Plan, to enforce her rights under the terms of the Plan, and/or to clarify her right to future benefits under the terms of the Plan.

28.

By denying Plaintiff payment of benefits under the Plan, Defendant has violated and continues to violate ERISA, 29 U.S.C. § 1132 (a)(1)(B).

29.

As the result of the denial of the benefits due and owing Plaintiff under the terms of the Plan, Plaintiff has suffered financial loss.

As a result of Kaiser's denial of Plaintiff's claim for benefits under the Plan, Plaintiff has incurred attorney fees and costs, pursuant to 29 U.S.C. § 1132(g)(1).

WHEREFORE, Plaintiff prays that she have and recover judgment in her favor and against Kaiser as follows:

- (1) For payment of requested services regarding treatment of her Tarlov cysts pursuant to 29 U.S.C. § 1132(a)(1)(B);
- (2) For her attorney fees and costs, pursuant to 29 U.S.C. § 1132(g)(1);
- (3) For such other relief as this court deems just and proper.

DATED this 23rd day of July, 2013.

s/ John C. Shaw

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Of Attorneys for Plaintiff