

United States District Court
For the Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CINDY KROLL,

No. C-09-1404 JSW (EMC)

Plaintiff,

**ORDER DENYING PLAINTIFF’S
MOTION FOR SANCTIONS**

v.

KAISER FOUNDATION HEALTH PLAN
LONG TERM DISABILITY PLAN,

(Docket No. 63)

Defendant.

Currently pending before the Court is Plaintiff’s motion for sanctions, including preclusive-type sanctions. Having considered the parties’ briefs and accompanying submissions, as well as the oral argument of counsel and all other evidence of record, the Court hereby **DENIES** the motion for sanctions. The Court, however, shall require a more specific declaration from Defendants.

I. DISCUSSION

In her motion, Plaintiff argues that Defendants failed to comply with this Court and Judge White’s prior orders, *see* Docket Nos. 25, 50 (orders), and therefore should be sanctioned. Because the Court does not find, at this juncture, a violation of either order, it denies the request for sanctions.

The orders of this Court and Judge White basically required Defendants to produce to documents that fall within the parameters of 29 C.F.R. § 2560.503-1(m)(8). This included:

- (iv) In the case of a group health plan or a plan providing disability benefits, [documents] constitut[ing] a statement of policy or guidance with respect to the plan concerning the denied

1 treatment option or benefit for the claimant's diagnosis, without
2 regard to whether such advice or statement was relied upon in
3 making the benefit determination.
4 29 C.F.R. § 2560.503-1(m)(8)(iv). Plaintiff contends that at least portions of Defendants' claims
5 manual should be been produced based on this category of documents. Defendants maintain that
6 there is nothing in the claims manual that falls within this category of documents – *i.e.*, that there is
7 nothing in the manual that refers to Plaintiff's diagnoses (which include phelbolic syndrome and
8 chronic pain).¹ In turn, Plaintiff argues that Defendants have an obligation to produce documents
9 beyond those that specifically refer to her diagnoses. In support of this argument, Plaintiff relies on
10 a recent decision, *Kruk v. Metropolitan Life Ins. Co.*, 267 F.R.D. 435 (D. Conn. 2010), in which a
11 court held that a claimant should be provided "with access to all the procedures that did apply,
12 should have applied, or could have applied in her case – whether or not those procedures explicitly
13 mention her plan or condition or not." *Id.* at 441.

14 The Court declines to follow *Kruk* for several reasons. First, it is not binding authority.
15 Second, several courts have indicated, contrary to *Kruk*, that for purposes of § 2560.503-1(m)(8)(iv),
16 there is a limitation to the claimant's diagnosis.² Third, the court in *Kruk* reached the above
17 conclusion based in large part on its assessment that § 2560.503-1(m)(8) was designed to ensure that
18 claimants would "receive any information demonstrating that, in making the adverse benefit
19 determination, the plan complied with its own processes for ensuring appropriate decisionmaking
20 and consistency." *Kruk*, 267 F.R.D. at 440 (quoting 65 Fed. Reg. 70,246, at 70,252 (Nov. 21,
21 2000)). But that concern appears to be more directly addressed by § 2560.503-1(m)(8)(iii), which
22 covers documents "[d]emonstrat[ing] compliance with the administrative processes and safeguards

23 ¹ The Court notes that it previously rejected Defendants' argument that the claims manual need
24 not be produced because it was not a document specifically applicable to Plaintiff's plan. *See* Docket
25 No. 50 (Order at 2) ("MetLife advocates for a narrow reading of Judge White's order based on his use
26 of the phrase 'with respect to the plan.' But the Court does not view that phrase as limiting, at least not
27 in the situation presented here. So long as, *e.g.*, the CMG was available to the adjusters working on the
28 plan applicable to Plaintiff, then the portion of the CMG relevant to chronic pain should be produced.").

² *See, e.g., Thompson v. UBS Fin. Servs.*, No. 09-033S, 2009 U.S. Dist. LEXIS 118506, at *11-
12 (D.R.I. Dec. 18, 2009); *Weed v. Prudential Ins. Co. of Am.*, No. 08cv10969-NG, 2009 U.S. Dist.
LEXIS 78524, at *10-11 (D. Mass. Aug. 28, 2009); *Garrett v. Hartford Life & Accident Ins. Co.*, No.
4:07CV00065 JLH, 2007 U.S. Dist. LEXIS 57652, at *2-3 (E.D. Ark. Aug. 6, 2007); *Hughes v. Liberty*
Life Assur. Co., No. 4:07CV00694 JLH, 2008 U.S. Dist. LEXIS 6552, at *2-3 (E.D. Ark. Jan. 28, 2008).

1 required pursuant to paragraph (b)(5) of this section in making the benefit determination.” 29 C.F.R.
2 § 2560.503-1(m)(8)(iii). Here, the question is whether there is a limitation to the claimant’s
3 diagnosis for purposes of § 2560.503-1(m)(8)(iv). Finally, the Court notes that, under the *Kruk*
4 court’s holding, the entirety of a claims manual in any given case would probably need to be
5 produced. While the *Kruk* court specifically disavowed that it was requiring production of an entire
6 manual, *see Kruk*, 267 F.R.D. at 441, as a practical matter, it is difficult to discern a definable limit.

7 In that regard the declaration from Defendants is not specific enough. The Court thus
8 requires a declaration that is more specific than that previously filed by Defendants (*i.e.*, the Sullivan
9 declaration). *See* Docket No. 52 (Sullivan Decl.). In the declaration, Defendants shall certify that
10 they have produced all documents that:

- 11 (i) Were relied upon in making the benefit determination;
- 12 (ii) Were submitted, considered, or generated in the course of making the benefit determination,
13 without regard to whether such documents were relied upon in making the benefit
14 determination;
- 15 (iii) Demonstrated compliance with the administrative processes and safeguards required
16 pursuant to § 2560.503-1(b)(5) in making the benefit determination; or
- 17 (iv) In the case of a group health plan or a plan providing disability benefits, constituted a
18 statement of policy or guidance concerning the denied treatment option or benefit for
19 Plaintiff’s diagnoses: *i.e.*, phelbolic syndrome, chronic pain, obesity, pre-diabetes, atrial
20 fibrillation, or post-thrombolic syndrome (*see* AR 243-44), without regard to whether such
21 advice or statement was relied upon in making the benefit determination.

22 Where no responsive documents exist, Defendants shall so state in the declaration. The declaration
23 shall be filed within a week of the date of this order. If documents or a portion of the claims manual
24 does address any of the diagnoses, that portion shall be produced within said timeframe.

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II. CONCLUSION

For the foregoing reasons, Plaintiff's motion for sanctions is denied.

This order disposes of Docket No. 63.

IT IS SO ORDERED.

Dated: September 21, 2010



EDWARD M. CHEN
United States Magistrate Judge