

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

SHARON K. GRIFFIN

Plaintiff,

vs.

Case No. 12-1295-JTM

RELIANCE STANDARD LIFE INSURANCE
COMPANY

Defendant.

ORDER

The matter before the court is defendant Reliance Standard Life Insurance Company's Motion to Dismiss (Dkt. 3). Reliance argues that plaintiff Sharon Griffin's Complaint fails to state a claim upon which relief may be granted. In Griffin's Response (Dkt. 6), she argues that her Amended Complaint (Dkt. 5) renders Reliance's Motion moot, which the court finds persuasive. Accordingly, Reliance's Motion is denied.

Sharon Griffin filed suit against Reliance in Sedgwick County District Court on August 1, 2012, alleging state law claims of breach of contract, denial of coverage without just cause or excuse, promissory estoppel and conversion. Reliance removed the suit to this court on August 15 and filed its Motion to Dismiss on August 17. Griffin filed her Amended Complaint on August 24, asserting three ERISA violations in addition to her state law claims.

Federal Rule of Civil Procedure 15(a)(1) allows one amendment of a complaint as a matter of course within 21 days after service of the complaint, or 21 days after receiving service of an answer or motion to dismiss under Rule 12(b), (e), or (f), whichever is earlier. Griffin amended her complaint seven days after Reliance's Motion to Dismiss under Rule 12(b)(6). This

amendment was proper as a matter of course under Rule 15(a)(1). Reliance, in its Motion to Dismiss, argues that ERISA claims preempt Griffin's state law claims. Griffin's Amended Complaint adds ERISA claims, which renders Reliance's Motion moot.

IT IS ACCORDINGLY ORDERED this 1st day of November, 2012, that defendant's Motion to Dismiss (Dkt. 3) is denied as moot.

s/J. Thomas Marten
J. THOMAS MARTEN, JUDGE