

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

MARY P. BROWNING,)
)
 Plaintiff,)
)
 V.)
)
 ALEGENT HEALTH, a Nebraska)
 non-profit corporation,)
)
 Defendant.)
 _____)

8:11CV2

MEMORANDUM AND ORDER

This matter is before the court on Defendant’s Motion to Strike Jury Demand of Plaintiff ([filing 13](#)). The motion will be granted.

This case involves allegations that Defendant is unlawfully refusing to pay Plaintiff a supplemental life insurance benefit. Plaintiff has plead two causes of action: Count I for “Breach of Contract” under Nebraska common law, and Count II for an “ERISA Violation” under [29 U.S.C. § 1132\(a\)\(1\)\(B\)](#).

Defendant requests that this court strike Plaintiff’s demand for a jury trial as it relates to Count II. Defendant argues that there is no right to a jury trial on an ERISA claim. Defendant is correct. The Eighth Circuit has concluded that there is no right to a jury trial on claims under ERISA [In re Vorpahl, 695 F.2d 318, 321 \(8th Cir. 1982\)](#); [Houghton v. SIPCO, Inc., 38 F.3d 953 \(8th Cir. 1994\)](#).

Accordingly,

IT IS ORDERED:

1. Defendant’s Motion to Strike Jury Demand of Plaintiff ([filing 13](#)) is granted;
2. Plaintiff’s demand for a jury trial on Count II of her complaint (ERISA

Violation) is denied and hereby stricken. Plaintiff retains a right to jury trial on her breach of contract claim.

DATED June 27, 2011.

BY THE COURT:

**S/ F.A. Gossett
United States Magistrate Judge**