

Eighth Circuit Upholds Health Plan's Exclusion of Emergency Services Following Bariatric Surgery

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Shafer v. Zimmerman Transfer, Inc., 2023 WL 3857343 (8th Cir. 2023)

Available at <http://media.ca8.uscourts.gov/opndir/23/06/222275P.pdf>

A self-insured health plan participant who suffered injuries and required emergency care sued his employer, as plan administrator, and the plan's TPA after benefits were denied because the emergency services were due to complications of an earlier bariatric surgery. The employer argued that the denial should be upheld because the plan specifically excluded coverage of weight reduction treatments, including "any procedure performed to alter the digestive process for the purpose of weight loss." Services due to complications arising from non-covered expenses were also excluded from coverage. A federal trial court granted judgment for the employer without a trial.

On appeal, the Eighth Circuit agreed with the trial court's decision based on the plan's exclusion of claims for weight reduction procedures or related complications. The court rejected the participant's claim that coverage for the procedure was required under Affordable Care Act (ACA) provisions relating to emergency services, explaining that the ACA's patient protections do not require a plan to cover all emergency services; rather, plans that already cover emergency services must satisfy additional requirements, such as covering out-of-network treatments. The court pointed out that the ACA's patient protection provisions specifically state that emergency coverage is subject to a plan's exclusions.

EBIA Comment: The preamble to regulations regarding the emergency services requirements states that plans covering emergency services may not "deny benefits for a participant, beneficiary, or enrollee with an emergency medical condition that receives emergency services, based on a general plan exclusion that would apply to items and services other than emergency services." The decision in this case, under which a plan could apply an exclusion for complications that arise from a non-covered expense (here, bariatric surgery) to emergency services resulting from the excluded complications, appears to conflict with that guidance. For more information, see EBIA's Self-Insured Health Plans manual at Sections XIII.C ("Federally Mandated Benefits") and XIII.E ("Coverage Limitations and Exclusions"). See also EBIA's Health Care Reform manual at Section XII.B.3 ("Surprise Medical Billing: Emergency and Non-Emergency Services") and EBIA's Group Health Plan Mandates manual at Section XIII.B ("Patient Protections").

Contributing Editors: EBIA Staff.