

Participants' Cross-Plan Offsetting Lawsuit Dismissed Due to Lack of Concrete Injury

EBIA Weekly (August 15, 2024)

Smith v. UnitedHealth Grp. Inc., 2024 WL 3321646 (8th Cir. 2024)

Available at <https://media.ca8.uscourts.gov/opndir/24/07/232369P.pdf>

Two participants in different self-insured health plans sued the common third-party administrator (TPA) for both plans over its practice of “cross-plan offsetting.” In cross-plan offsetting, the TPA recovers overpayments to a health care provider by withholding or reducing subsequent payments to that provider—even when the overpayment and offset involve different plans, including self-insured plans. The participants argued that in applying offsets instead of paying the billed amounts in full, the TPA left them potentially liable for the unpaid difference. They further asserted that cross-plan offsetting benefited the TPA to the detriment of self-insured plans, breaching the TPA’s fiduciary duties and violating other ERISA rules. After a trial court dismissed the case because the participants had not suffered a concrete injury and thus lacked standing to bring the lawsuit, the participants appealed.

Both plans contained identical language that provided for recovery of overpayments by reallocating overpaid amounts to pay future benefits under other plans administered by the TPA. (This was structured as an exchange of one plan’s overpayment recovery rights for another plan’s remittance of the amount of the reallocated payment.) In addition, both plans granted the TPA discretion to decide how to implement cross-plan offsets when paying benefits. Because the plans expressly provided for offsets, there was no violation of plan terms. Rather, the participants argued that the plan language was inconsistent with ERISA. The appellate court explained that ERISA allows participants to sue for breach of fiduciary duty or to enforce ERISA’s terms, but a concrete injury is nevertheless required. The participants were not harmed by the offsets because they were not entitled to have benefit payments made in cash. And while risk of future harm can satisfy the concrete injury requirement, the court said the possibility of providers seeking to collect outstanding debts from the participants in the future was insufficient to satisfy that requirement here. The appellate court affirmed the trial court’s dismissal.

EBIA Comment: The fact that the plans expressly provided for cross-plan offsetting was a key element here; this language is sometimes included in standard plan documents furnished by TPAs to self-insured health plans. Self-insured plan sponsors may wish to review their plan documents and, if applicable, make sure they understand the implications of cross-plan offsetting for the plan, plan sponsor, and participants. The topic could also be raised in negotiations with the TPA. For more information, see EBIA’s Self-Insured Health Plans manual at Sections XXI.C.2 (“Exclusive Benefit Rule and Cross-Plan Offsetting”) and XXIII.B (“Contracting With Service Providers”). See also EBIA’s ERISA Compliance manual at Sections XVI.C (“ERISA’s Exclusive Benefit Rule”) and XXVIII.C (“Fiduciary Responsibilities Imposed by ERISA”).

Contributing Editors: EBIA Staff.