Not Reported in F.Supp.2d, 1999 WL 447446 (S.D.N.Y.)
(Cite as: 1999 WL 447446 (S.D.N.Y.))

C
Only the Westlaw citation is currently available.

United States District Court, S.D. New York.
SILVER HILL HOSPITAL, INC., Plaintiff,
v.
Jeffery RIZZO, Defendant.
Jeffery RIZZO, Third–Party Plaintiff,
v.
DUN & BRADSTREET CORPORATION, Third–Party Defendant.

No. 97 CIV. 8207(RPP).
June 30, 1999.

Arthur Sanders, Esq., Nanuet, Counsel for Silver Hill Hospital.

Daniel F. Tritter, Esq., New York, Counsel for Jeffrey Rizzo.

Moran & d'Arcambal, New York, By Siobhan E. Moran, Andrew P. Karamouzis, Counsel for Dun & Bradstreet Corporation.

OPINION AND ORDER

PATTERSON, D.J.

*1 On June 12, 1996, in the Civil Court for the City of New York, N.Y. County, plaintiff, Silver Hill Hospital, Inc. ("Silver Hill") filed a complaint to recover payment from defendant Jeffery Rizzo ("Rizzo") for health care services provided to him. On September 10, 1997, Rizzo filed a third-party complaint charging a breach of contract by Dun & Bradstreet Corporation ("D & B"), his former employer and health insurance provider. Rizzo seeks indemnification from D & B for any liability he may incur pursuant to Silver Hill's complaint, and reimbursement for any payment made to Silver Hill. On November 5, 1997, D & B removed the action to this Court. Subject matter jurisdiction is based on Rizzo's cause of action to recover employee welfare benefits under a plan regulated by the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1001 et *seq.*.

On August 5, 1998, third-party defendant D & B filed a motion for summary judgment pursuant to Federal Rule of Civil Procedure ("Fed. R. Civ.P.") 56(c). On September 4, 1998, plaintiff Silver Hill filed a motion for summary judgment pursuant to Fed.R.Civ.P. 56(a).

Background

The following facts are drawn from the undisputed Local Rule 56.1 statements and the record evidence submitted by the parties. Silver Hill seeks to recover payment from Rizzo for health care services provided to him while he was a patient receiving treatment for substance abuse at Silver Hill from August 25, 1994, through October 20, 1994. (D & B Statement Pursuant to Local Civil Rule 56.1 "D & B 56.1" ¶ 2.) Rizzo refuses to pay based on his contention that D & B, his former employer, should pay for his hospitalization. (Rizzo Statement Pursuant to Local Civil Rule 56.1 "Rizzo 56.1" ¶ 3.) [FN1] Rizzo seeks payment from D & B for any liability he may incur pursuant to Silver Hill's complaint, and reimbursement for a $7500 payment made to Silver Hill on August 15, 1994, to cover treatment from August 15, 1994, to August 24, 1994. (D & B 56.1 ¶ 3.) D & B refuses to pay on the grounds that the treatment received by Rizzo was not covered under the terms of its policy. (D & B 56.1 ¶ 2.)

> FN1. Rizzo was no longer an employee of D & B at the time the events to this action occurred. He claims that his employee benefits continued throughout this time. (Rizzo Mem. Opp. D & B Mot. at 1.) D & B does not dispute that Rizzo was a participant in the Plan during this period. (D & B 56.1 ¶ 4.)

Facts Pertinent to D & B's Motion for Summary Judgment Against Rizzo

D & B's Comprehensive Medical Plan ("The

Plan"), adopted pursuant to ERISA, governs the terms and conditions of employee or participant benefits. (D & B 56.1 ¶ 4.) The Plan does not cover "charges for care that isn't deemed medically necessary." (*Id.* ¶ 11.) Additionally, the Plan states that "[r]ehabilitation for substance abuse is NOT covered." (*Id.* ¶ 14.) Further, under a section entitled "What the Comprehensive Medical Plan Does Not Cover," the Plan provides that "charges for rehabilitation services for psychiatric and/or substance abuse treatments" are not reimbursable. (*Id.*)

At the time of Rizzo's hospitalization, D & B had an Administrative Service Agreement (the "ASA") with Metropolitan Life Insurance Company ("MetLife"), pursuant to which D & B, the ERISA plan administrator, delegated to MetLife, as Claims Administrator, "complete discretionary authority to construe the terms of the plan to determine whether a Claim is properly payable." (D & B 56.1 ¶ 7.) The ASA further stated that "MetLife will review claims to determine whether the Plan's 'medical necessity' and 'reasonable and customary' requirements, if any (as more fully described in Exhibit I) have been met." (*Id.*) [FN2]

> FN2. A copy of Exhibit I is not attached to the ASA.

*2 On January 1, 1995, MetLife transferred its health insurance business to The MetraHealth Company ("MetraHealth"), which assumed administration of all of MetLife's group health affairs. (*Id.* ¶ 8) Thereafter, United Health Care ("UHC") acquired MetraHealth. (*Id.*) United Behavior Health ("UBH"), a division of UHC, reviewed Rizzo's claims. (*Id.*) On January 1, 1996, the ASA was terminated and D & B entered into a new ASA agreement with MetraHealth that stated that MetraHealth had taken over as Claims Administrator from MetLife. (*Id.* ¶ 10.)

The Claims Administrators' determinations concerning Rizzo's eligibility were based on a review of hospital and other records prepared by Dr. Carlotta Schuster, Rizzo's Silver Hill physician, who filed a claim on his behalf. (Affidavit of Martin Held, MD, dated August 6, 1998 "Held Aff." ¶ 3.) According to Dr. Schuster's Discharge Summary, dated September 14, 1994, Rizzo's stay at Silver Hill from August 15, 1994, through August 25, 1994, "had to do with aftercare placement and continued commitment to abstinence." (D & B 56.1 ¶ 19.) Silver Hill records indicate that Rizzo's referral to The Cottage, and participation in the partial day program, on August 25, 1994, were to "maintain abstinence" and to "develop sober independent living skills." (D & B 56.1 ¶ 22.)

MetLife denied Rizzo's claim on February 24, 1995, because "daycare and nightcare are not considered covered expenses under the terms of [his] Plan." (*Id.* ¶ 23.) The letter also instructed the patient to "refer to page 26 of your plan booklet for further explanation" for why the claim was denied. (Held Aff. Ex. H at 2.) On page 26, within a section entitled What the Comprehensive Medical Plan Does Not Cover, the Plan states that coverage will not be granted for "charges for rehabilitation services for psychiatric and/or substance abuse treatments." (Declaration of Andrew P. Karamouzis, dated August 6, 1998, "Karamouzis Decl." Ex. C at 26.)

On December 21, 1995, Rizzo appealed to MetraHealth, which had since assumed the duties of Claims Administrator. (D & B ¶ 23.) On April 1, 1996, his claims were again denied. (*Id.*) Rizzo's coverage was denied because the treatment was not deemed medically necessary. (Held Aff. Ex. I.) MetraHealth found Rizzo's treatment not medically necessary since "the services being delivered could be safely and effectively accomplished in an alternative setting of lesser intensity." (*Id.*) Apparently, in March 1997, UHC received an appeal from Dr. Schuster on Rizzo's behalf. (*Id.* Ex. J.) Dr. Martin Held, Associate Medical Director of UBH, sent Dr. Schuster a letter dated March 31, 1997, explaining that Rizzo's claim was denied on the grounds that Rizzo's treatment was not medically necessary since "the services being delivered could be safely

and effectively accomplished in an alternative setting of lesser intensity." (*Id.*)

Facts P*ertinent to Silver Hill's Motion for Summary Judgment Against Rizzo*

*3 On August 25, 1994, Rizzo was admitted to Silver Hill's halfway house, The Cottage, and Silver Hill's Partial Day Hospitalization Program. (D & B 56.1 ¶ 20.) [FN3] He was fully discharged from Silver Hill on October 20, 1994. (*Id.* ¶ 21.)

> FN3. Reference is made to D & B's 56.1 statement, or Silver Hill's record because, as Rizzo notes, Silver Hill failed to submit their own 56.1 statement. In his reply declaration, Silver Hill's counsel states that in its "moving papers [plaintiff] specifically indicated to the court that it relies on [D & B's] Rule 56.1 Statement of Material Fact." Local Rule 56.1(a) requires the moving party to submit a "short and concise statement of material fact as to which the moving party contends there is no genuine issue to be tried." A "failure to submit such a statement may constitute grounds for denial." Though the Court may deny Silver Hill's motion on these grounds it is not required to do so. A court may chose to ignore a "technical deficiency" of a movant's submission. *Zeno v. Cropper,* 650 F.Supp. 138, 139 (S.D.N.Y.1986) (citing *Reisner v. General Motors Corp.,* 511 F.Supp. 1167, 1174–75 (S.D.N.Y.1981), *aff'd,* 671 F.2d 91 (2d Cir.), *cert. denied,* 459 U.S. 858 (1982)). Though the plaintiff did indeed fail to comply with Rule 56 .1(a), the material facts alleged to be undisputed are nevertheless identifiable from Silver Hill's submissions and D & B's Rule 56.1 Statement of Material Fact. Dismissal for failure to submit its own 56.1 Statement would therefore be inappropriate.

On August 24, 1994, Rizzo signed an Admission Financial Agreement, witnessed by Chris Snyder, that stated, in part, "[i]f there is no insurance or insurance coverage has been denied, the undersigned agrees to pay the hospital any amount owing within seven (7) days of receipt of the hospital bill." (Silver Hill Notice of Cross–Motion for Summary Judgment, dated September 4, 1998, "S.H." Ex. A.)

I. Standard for Summary Judgment.

The Second Circuit has summarized the standards for granting summary judgment as follows:

> First, summary judgment may not be granted unless "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed.R.Civ.P. 56(c). Second, the burden is upon the moving party to demonstrate that no genuine issue respecting any material fact exists. In considering that, third, all ambiguities must be resolved and all inferences drawn in favor of the party against whom summary judgment is sought. Fourth, the moving party may obtain summary judgment by showing that little or no evidence may be found in support of the nonmoving party's case. When no rational jury could find in favor of the nonmoving party because the evidence to support its case is so slight, there is no genuine issue of material fact and a grant of summary judgment is proper.

Gallo v. Prudential Residential Svcs., 22 F.3d 1219, 1223–24 (2d Cir.1994) (citations omitted).

II. D & B's Motion for Summary Judgment Against Rizzo.

Under section 502 of ERISA, 29 U.S.C. § 1132 , a participant or beneficiary of a plan may bring suit to recover benefits which have been denied. If a benefit plan grants a fiduciary discretion to set the standards for eligibility, a court may overturn the fiduciary's decision only if it is arbitrary and capricious. *See Firestone Tire Co. v. Bruch,* 489 U.S. 101, 115 (1989), *Yurcik v. Sheet Metal Workers National Pension Fund,* No. 96 CIV. 7849, 1998 WL

352594, at *4 (S.D.N.Y. June 29, 1998) (granting summary judgment on grounds that it was not arbitrary and capricious to deny benefits to employee deemed not to have suffered a "permanent disability" by a medical consultant to the defendant, notwithstanding an independent medical opinion that the plaintiff met the requirements for this status). When applying the arbitrary and capricious standard, a court should defer to the conclusions of the decision maker, unless there was "a clear error of judgment." *Kulakowski v. Rochester Hospital Serv. Corp.,* 779 F.Supp. 710, 716 (W.D.N.Y.1991) (quoting *Citizens to Preserve Overton Park, Inc. v. Volpe,* 401 U .S. 402, 416 (1971)). For a Claims Administrator's determination to be granted such deference, the employer must have accorded the Claims Administrator sole discretion to determine claims. If the employer retained any authority to determine eligibility, the Claims Administrator's determination should be reviewed de novo. *Zimmer v. Reliance Standard Life Ins. Co.,* No. 96 CIV. 5918, 1998 WL 661492 at *7–8 (S.D.N.Y. Sept. 25, 1998).

***4** Rizzo was a beneficiary under an employee welfare benefit plan entitled The Comprehensive Medical Plan of the Dun and Bradstreet Corporation. (Karamouzis Decl. Ex. C.) Effective September 1, 1992, D & B entered into an Administrative Service Agreement whereby Metlife and its assignees were designated Claims Administrators to administer the plan and were delegated "complete discretionary authority to construe the terms of the plan to determine whether a Claim is properly payable." (*Id.* Ex. D. at 5.) Additionally, the ASA stated that the Claims Administrator "will review claims to determine whether the Plan's 'medical necessity' and 'reasonable and customary' requirements, if any (as more fully described in Exhibit I) have been met." (*Id.*) Due to this absolute grant of discretionary authority in this plan, the determinations of D & B's Claims Administrator should be reviewed under the more deferential ERISA standard.

On February 24, 1995, HealthPlan Services, which was employed as a third-party administrator by MetLife, determined that Rizzo was ineligible to receive benefits for treatment at Silver Hill from August 15, 1994, through October, 20, 1994, because "daycare and nightcare are not considered covered expenses under the terms of your plan" and the patient was instructed to "refer to page 26 of your plan booklet for further explanation." (Held Ex. H. at 2.) On or about December 21, 1995, Rizzo appealed the determination. On April 1, 1996, Dr. R. Dean Wochner of MetraHealth, the Administrator for Metlife, denied the appeal noting that inpatient hospitalization for the treatment rendered was not medically necessary "[s]ince the services being delivered could be safely and effectively accomplished in an alternative setting of lesser intensity." (*Id.* Ex. I.) In March 1997, Dr. Schuster appealed MetraHealth's denial. (*Id.* Ex. J.) On March 31, 1997, Dr. Held, Medical Director of United HealthCare Corp., in a letter to Dr. Schuster advised that her appeal of the medical necessity determination had been denied because "the medical necessity could not be determined for the services for inpatient hospitalization." (*Id.*) Dr. Held advised that the Claims Administrator construed the term "medically necessary," a requirement for coverage used in the Plan at pages 12, 17, 21 [FN4], as fol- lows:

> FN4. "[C]harges for care that isn't deemed medically necessary" are not reimbursable according to the Plan. (Karamouzis Decl. Ex. C. at 25.)

In determining Medical Necessity, MetraHealth looks to whether the service meets all of the following: 'Medical Necessity'—health care services and supplies which are determined by the Plan to be medically appropriate and (1) necessary to meet the basic health needs of the Covered Person; (2) rendered in the most cost-efficient manner and type of setting appropriate for the delivery of the Health Services; (3) consistent in type, frequency and duration of treat-

ment with scientifically based guidelines of national medical, research, or health care coverage organizations or governmental agencies that are accepted by the PLAN; (4) consistent with the diagnosis of the condition; (5) required for reasons other than the comfort or convenience of the Covered Person or his or her Physician; and (6) of demonstrated medical value.
*5 (*Id.*)

This construction of the Plan's term is reasonable and not arbitrary and capricious and must be given deference by this court. *Firestone Tire Co. v. Bruch,* 489 U.S. 101, 115 (1989).

Based on this definition, Dr. Held determined that Rizzo's inpatient treatment was not medically necessary since "the treatment being delivered could be safely and effectively accomplished in a less intensive alternative setting." (Held Aff. Ex. J.)

Review of the records which were before Dr. Held suggests that the inpatient treatment received by Rizzo from August 15, 1994, through October 20, 1994, was rehabilitative. The Silver Hill Admission Summary Statement for Rizzo's admission on August 15, 1994, signed by Dr. Schuster, notes that after Rizzo's discharge on August 12, 1994 "[h]e went immediately to his aftercare evaluation appointment at Regent Hospital but decided that he was not safe at home and elected to enter the Service B Alliance Program today [August 15, 1994]. Although he does not meet insurance criteria for admission, he decided to come to the hospital anyway." (Held Aff. Ex. C at 1.) And, according to Dr. Schuster's Discharge Summary of Rizzo's stay from August 15, 1994, through August 25, 1994, the purpose of his treatment during this period was "for aftercare placement and continued commitment to abstinence." (*Id.* Ex. D at 2.) [FN5] Similarly, hospital records report that Rizzo's enrollment in The Cottage, and participation in the Partial Day Hospitalization Program from August 25, 1994, to October 20, 1994, were intended to "maintain abstinence" and to "develop sober independent living skills." (D & B 56.1 ¶ 22.) Given the rehabilitative nature of the treatment described in the record, no reasonable jury would find that it was arbitrary and capricious or a clear error of judgment for Dr. Held to have concluded that Rizzo could have received the treatment he needed in a setting less intensive than that offered through Silver Hill's inpatient program and half-way house. D & B's motion for summary judgment is therefore granted. There is no obligation for D & B to pay for the treatment received by Rizzo at Silver Hill from August 15, 1994, through October 20, 1994.

FN5. Rizzo asserts that the treatment he received from August 3, 1994, through August 12, 1994, which was covered by UHC, was essentially the same as that received from August 15, 1994, through August 25, 1994, which was not covered. (Rizzo Affidavit, dated September 14, 1998, "Rizzo Aff." ¶ 18.) It is inconsistent, in his view, for coverage to have been granted in the former instance but not the latter. (*Id.*) The record, however, clearly suggests that the stay from August 3, 1994, to August 12, 1994, concerned detoxification while treatment from August 15, 1994 to August 25, 1994, was rehabilitative. According to Schuster's records concerning Rizzo's stay from August 3, 1994, through August 12, 1994, he "met [the] criteria for acute hospitalization only until 8/12 because he ... didn't [thereafter] require detoxification." (Held Aff. Ex. B at 2.) A goal of this period, she noted in her Admission Summary for Rizzo's August 3, 1994 admission, was to "[k]eep the patient safe through detoxification." (*Id.* Ex. A at 4.)

III. Silver Hill's Motion for Summary Judgment Against Rizzo

Silver Hill's Civil Court complaint, removed to this court pursuant to 28 U.S.C. 1441(c), is a claim sounding in breach of contract and account stated. [FN6] The elements of a claim for breach of contract

under New York law are (1) the existence of a contract; (2) due performance of the contract by the plaintiff; (3) breach of contract by the defendant; and (4) damages resulting from the breach. *Coastal Aviation, Inc. v. Commander Aircraft Co.,* 937 F.Supp. 1051, 1060 (S.D.N.Y.1996), *aff'd* 108 F.3d 1369 (2d Cir.1997).

> FN6. Silver Hill did not include a copy of its complaint in its motion paper. A copy of the Silver Hill complaint is annexed as Exhibit A to the Declaration of Andrew P. Karamouzis, dated August 5, 1998, in support of D & B's motion for summary judgment.

To prevail on a motion for summary judgment for accounts stated, a plaintiff must show "that an account was rendered showing a balance, and that the receiving party failed within a reasonable time to examine it and object to its correctness." *Johnson and Johnson Finance Corp. v. BSR Realty L.P.,* No. CV–96–0527, 1996 WL 546284, at *4 (E.D.N.Y. Sept. 19, 1996) (citation omitted). An account stated may be "unenforceable if fraud, ambiguity or other equitable considerations negate the binding force of the contract." *Slavenburg Corp. v. Cohen,* No. 86 Civ. 3470, 1986 WL 13467, at *2 (S.D.N.Y. Nov. 20, 1986).

***6** To overcome a motion for summary judgment, a non-moving party must do "more than simply show that there is some metaphysical doubt as to the material facts" and "must come forward with specific facts showing that there is a genuine issue for trial." *Matsushita Elec. Indus. Co. v. Zenith Radio,* 475 U.S. 574, 586–87 (1986) (citations omitted).

Based on the undisputed facts, Silver Hill has established its claim of breach of contract as a matter of law. Rizzo had a contract with Silver Hill that covered services delivered between August 25, 1994 to October 20, 1994. The Admission Financial Agreement, signed by Rizzo on August 24, 1994, well after his admission on August 15, 1994, states unequivocally that he shall be responsible to Silver Hill for payment if his insurance claims are denied. (S.H.Ex. A.) The relevant clause of the contract reads: "If there is no insurance or insurance coverage has been denied, the undersigned agrees to pay the hospital any amount owing within seven (7) days of receipt of the hospital bill." (*Id.*) Once the insurance company denied coverage for the services, by the terms of D & B's Plan, the defendant became liable to Silver Hill. He was duly advised of the bills. (S.H.Ex. F.) Rizzo does not dispute the amount owed to Silver Hill, nor does he dispute that services were provided for him throughout the period covered by the contract, August 25, 1994 through October 20, 1994.

In his answer to Silver Hill's complaint, Rizzo "admits that [he] signed an instrument purporting to be an 'admission financial agreement,' but denies that at the time of such signing [that he] was legally competent to enter into any contract and affirmatively alleges that any such alleged 'admission financial agreement' is unenforceable." (Rizzo's Answer to Silver Hill's Complaint, dated August 8, 1996, "Rizzo Answer" ¶ 4.) Rizzo, however, offers no evidence to support this allegation. In his affidavit, Rizzo claimed to have been incoherent during his readmission to the hospital on August 15, 1994, and disputes that his insurance rights were explained to him at this time. (Rizzo Aff. ¶ 17.) The events surrounding his admission to the hospital on August 15, 1994, however, are independent of the contract that he signed on August 24, 1994. At no point does Rizzo, in his affidavit or elsewhere, present any evidence that he was unable to consent to the terms of the contract that he signed on August 24, 1994. Since Rizzo has failed to "come forward with specific facts showing that there is a genuine issue for trial" his mere allegation that he was unable to consent to the terms of the contract governing his stay from August 25, 1994, through October 20, 1994, is insufficient to overcome Silver Hill's motion for summary judgment. *Matsushita Elec. Indus. Co. v. Zenith Radio,* 475 U.S. 574, 586–87 (1986) (citations omitted).

The undisputed evidence here also supports a claim for account stated for which Rizzo has offered no defense. There is no dispute that plaintiff rendered services to Rizzo from August 25, 1994, to October 20, 1994. Plaintiff has shown that it rendered bills to Rizzo for these services. (S.H.Ex. F). There is no evidence that Rizzo objected to the amount due within a reasonable time. Finally, there is no evidence of fraud, ambiguity or other equitable considerations that could render the contract unenforceable.[FN7]

> FN7. Rizzo does not assert or counterclaim against Silver Hill for the $7500 allegedly deducted from his credit card account by Silver Hill when he was not legally competent on August 15, 1994. (Rizzo Memorandum of Law in Opposition to Silver Hill's Motion for Summary Judgment). Rizzo instead seeks reimbursement from D & B for payment made to Silver Hill. (Rizzo Third–Party Complaint against D & B ¶ 8). For reasons stated earlier that claim is denied.

*7 No reasonable jury could find that Rizzo did not breach his contract with Silver Hill and thus summary judgment is appropriate for both an action for breach of contact and for an action for accounts stated.

Conclusion

For the foregoing reasons D & B's motion for summary judgment is granted. Silver Hill's motion for summary judgment is also granted. The clerk shall enter judgment for Silver Hill on its complaint against Rizzo and for D & B on the third-party complaint for payment for services concerning Rizzo's stay from August 15, 1994, to October 20, 1994.

IT IS SO ORDERED.

S.D.N.Y.,1999.
Silver Hill Hosp., Inc. v. Rizzo
Not Reported in F.Supp.2d, 1999 WL 447446 (S.D.N.Y.)

END OF DOCUMENT