



Another Warning to TPAs

A court recently held that a TPA both became a fiduciary and breached its fiduciary duty when it used funds provided for the payment of medical claims for its own purpose. *Guyan International, Inc. v. Professional Benefits Administrators*, 2011 WL 53105 (N.D. Ohio 2011).

In this case, the administrative services agreement (ASA) authorized the TPA to pay medical and prescription plan benefits from funds in a segregated bank account. The ASA specifically provided that the TPA could not commingle the assets in the plan's segregated bank account or use those funds for any other purpose. Nonetheless, the TPA deposited the funds into its main account, which it utilized to pay its general operating expenses. The TPA also failed to consistently write checks for claims payments.

The court noted that the plan document did not determine whether the TPA was a fiduciary under ERISA. Instead, the court focused on whether the TPA (1) exercised discretionary authority or control over the plan or (2) exercised control and authority over plan assets. Although the TPA did not have the power to make plan policies or interpretations, the court held that the TPA was an ERISA fiduciary because it exercised control and authority over plan assets.

Even if a person does not exercise discretionary authority over an ERISA Plan, they can still be an ERISA fiduciary if they exercise 'any authority or control' over the management or disposition of plan assets.'... [T]he threshold for finding fiduciary responsibility is lower for persons handling plan assets than for persons managing the plan.

This case sets forth two key planning pointers. First, TPAs can be fiduciaries in spite of language in an ASA to the contrary. This finding can take place even without onerous conduct, such as intentional mishandling of plan assets. Second, bad conduct can create fiduciary liability beyond mere contractual liability. We recommend that all TPAs review their current ASAs to provide meaningful and supportable division of liability.

Dated: March 29, 2011

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