

Publications

Pennsylvania Supreme Court finds that State Law Claims Against Plan Decision-Makers for

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Relying on a recent Supreme Court decision, the Pennsylvania Supreme Court in *Pappas v. Asbel*, No. 98 E.D. Appeal Dkt. 1996 (Pa. April 3, 2001), concluded that medical malpractice claims against an administrator of benefits under a welfare plan covered by ERISA are not preempted by ERISA.

The plaintiff, Mr. Pappas, was covered by a welfare benefit plan that provided medical benefits through an HMO. Upon Mr. Pappas's admission to the emergency room of a community hospital, the emergency room physician determined that Mr. Pappas required treatment at a university hospital, and arranged for a transfer to a university hospital. The HMO would not approve treatment at the university hospital chosen by the emergency room physician, but advised that the HMO would cover treatment at any of three other university hospitals in the area. Obtaining admission to an HMO-covered hospital delayed the treatment of Mr. Pappas's neurological emergency. Mr. Pappas claimed that the delay constituted malpractice and sued the emergency room physician and the community hospital. The hospital filed a third party complaint against the entity that made the authorization decisions concerning the transfer.

The Pennsylvania Supreme Court found that the claims against the entity that made the authorization decisions are not preempted by ERISA. To reach this conclusion, the court reasoned that, in *Pegram v. Herdrich*, the Supreme Court had found that pure eligibility decisions under an ERISA plan are governed by ERISA's fiduciary standards, but treatment decisions and mixed treatment and eligibility decisions are not. The decision where to transfer Mr. Pappas was a mixed treatment and eligibility decision not governed by ERISA's fiduciary standards. Accordingly, claims based on a mixed treatment and eligibility decision are not preempted by ERISA.

In a dissenting opinion, Justice Saylor pointed out that the majority may have read too much into *Pegram*. While *Pegram* plainly established that mixed treatment and eligibility decisions are not governed by ERISA's fiduciary standards, *Pegram* did not establish whether state law claims arising from such mixed decisions are preempted. The dissent also noted that state medical malpractice standards may not be the appropriate standards to apply to an eligibility decision that has a medical judgment component. For example, a plan's determination of "medically necessary" for purposes of a coverage decision may involve different considerations than a

physician's treatment decisions. Justice Saylor cautions that neither state courts nor state legislatures have defined a standard that applies to the former decision