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## Kaiser Must Face Suit Over Eating Disorder Treatment Claim

By Adam Lidgett

Law360 (April 2, 2018, 3:34 PM EDT) -- A California federal judge on Friday refused to toss a proposed class action accusing Kaiser Foundation Health Plan Inc. of flouting the Employee Retirement Income Security Act by refusing to cover a claim for the treatment of an eating disorder.

U.S. District Judge Jeffrey Steven White denied Kaiser's motion to dismiss Ian Moura's amended complaint that alleges he had a claim for anorexia nervosa treatment wrongfully denied, noting that the amended suit was different from an initial complaint which failed to allege a claim for benefits because he hadn't exhausted administrative remedies. The judge said that the new complaint — which makes a claim for breach of fiduciary duty — "states a claim for breach of a statutory claim."

"Based on the allegations of the amended complaint, even absent factual support indicating plaintiff's exhaustion of remedies for a benefits claim, the court finds that plaintiff has alleged a claim for breach of fiduciary duty for which exhaustion allegations are not required," the judge wrote.

Moura's suit seeks to represent beneficiaries of ERISA employee benefit health plans that were either administered or underwritten by Kaiser. The members of the class suffer from anorexia nervosa or bulimia nervosa, he said in his amended complaint, and additionally had all paid their required premiums, performed any obligation they were required to do and complied with all plan requirements.

For his part, Moura said, he was covered by a Kaiser Permanente deductible HMO plan through his father's employer, Fujitsu Technology and Business of America Inc.

He said in his amended complaint that he had seen many doctors over a number of years at various facilities, including Kaiser facilities, for his condition.

Eventually, in February 2015, Moura went to the emergency room for chest pains, finger numbness and other symptoms, he said, and was told to go see his regular doctor.

Not long after this incident, the suit said, he went to the Monte Nido Eating Disorder Treatment Center — which the defendant said is a non-Kaiser facility — and paid \$75,000 for treatment there.

The judge's decision said that Moura alleged there weren't any Kaiser plan providers that have residential treatment options for the eating disorders, and Kaiser does not "enter sufficient contracts with outside providers who provide residential treatment for bulimia nervosa or anorexia nervosa."

In its bid to dismiss the amended complaint, Kaiser said that Moura still failed to exhaust his remedies available to him under the plan, "so he cannot make an end-run around the exhaustion requirement by styling his claim as a breach of fiduciary duty."

Representatives for the parties did not immediately respond to requests for comment Monday.

Moura is represented by Lisa S. Kantor of Kantor & Kantor LLP and Kathryn M. Trepinski of the Law Offices of Kathryn Trepinski.

Kaiser is represented by Joseph E. Laska, Gregory N. Pimstone and Sarah E. Gettings of Manatt Phelps & Phillips LLP.

The case is Moura v. Kaiser Foundation Health Plan Inc., case number 4:17-cv-02475, in the U.S. District Court for the Northern District of California.

--Editing by Dipti Coorg.

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