



Cicio v. Vytra Healthcare, 385 F.3d 156 (2d Cir. 2004)

Topics Covered: ERISA Preemption, Managed Care Tort Liability

Outcome: Very Unfavorable

Issue

The primary issue in this case was whether the federal Employee Retirement Income Security Act (ERISA) preempted state laws that would otherwise hold HMOs liable when making improper coverage decisions based on “mixed” criteria of legal and medical analysis.

AMA Interest

The AMA believes that ERISA should not preempt state laws that regulate medical decision making.

Case Summary

Carmine Cicio received employer-sponsored health insurance coverage through Vytra Health Care, an HMO. Mr. Cicio was diagnosed with multiple myeloma, a form of blood cancer. His treating physician, Dr. Edward Samuel, asked Vytra to approve a double stem cell transplant for Mr. Cicio. Dr. Samuel described this treatment as medically necessary and possibly life saving. Vytra denied the request, stating that a double stem cell transplant was an “experimental/investigational” procedure and thus not covered under Mr. Cicio’s policy. Mr. Cicio appealed Vytra’s decision, and Vytra ultimately approved a single stem cell transplant. However, by that time the window of opportunity for an effective treatment had passed. Mr. Cicio died approximately 6 weeks later.

Bonnie Cicio, Mr. Cicio’s widow, sued Vytra and its medical director in the New York Supreme Court. She alleged 18 causes of action, mostly based in tort, under New York state law. Defendants removed the case to the United States District Court for the Eastern District of New York, contending that ERISA preempted Mrs. Cicio’s claims. The trial court found that ERISA preempted the state law claims and dismissed the case. Mrs. Cicio then appealed to the United States Court of Appeals for the Second Circuit.

The Court of Appeals, by a two to one decision, reversed the dismissal of the medical malpractice claim, holding that Mrs. Cicio could potentially sue the HMO and its medical director. The court did not rule on whether New York law actually recognizes a cause of action for medical malpractice in this situation but only that ERISA does not preempt such cause of action if it does exist. It found that ERISA does not apply to, and therefore does not preempt, determinations of medical necessity or utilization review.

The Court of Appeals also affirmed the dismissal of all counts in the complaint other than the medical malpractice claims. It remanded those claims to the District Court for further

determination. The defendants' attorneys sought en banc review (i.e. by all members of the court), but the Second Circuit denied that request.

The defendants then asked the United States Supreme Court to hear the case. Following its ruling in the *Aetna v. Davila* and *CIGNA v. Calad* cases, the United States Supreme Court vacated the Second Circuit judgment and remanded the case to the Second Circuit for further consideration.

On remand, the Second Circuit vacated its prior decision and affirmed the district court's dismissal of Mrs. Cicio's lawsuit.

Litigation Center Involvement

The Litigation Center filed two *amicus curiae* briefs to support Mrs. Cicio in the Second Circuit. United States Court of Appeals for the Second Circuit brief (on remand)