

HAVE A HEART (TRANSPLANT)

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There aren't many cases involving the Federal Employee Health Benefit ("FEHB") program which provides medical insurance to federal employees and their families. So *UnitedHealthcare Insurance Co, Inc. v. Office of Personnel Management*, CBCA 7357, June 21, 2023 is an interesting one where the Civilian Board refused to dismiss a case and required it to continue to be developed. The case is interesting because it involves a claim for \$3,838,510 from United Healthcare ("UHC") to the Office of Personnel Management for a payment that UHC made for an employee's medical and pharmacy claims for a single heart transplant.

The facts are relatively simple. In January 1, 2019 the employee enrolled in UHC's health plan. On Feb. 10, 2019, an electronic feed to UHC stated that the employee's enrollment in medical insurance was terminated Feb. 2, 2019. On April 24, 2019, UHC requested clarification from the employee's payroll office on the employee's benefits enrollment status and on June 27, 2019 the employee's agency confirmed that the employee's medical insurance was continuing.

In April 2020, UHC approved a heart transplant procedure for the employee's dependent child. On Feb. 27, 2020 the employee's agency instructed UHC to terminate the employee's coverage effective Feb. 2, 2019. On March 12, 2020 the employee's dependent child underwent the approved heart transplant.

The Office of Personnel management refused to reimburse UHC for the heart transplant. UHC submitted a certified claim to OPM alleging that the Government failed to perform its contractual and regulatory duties to provide UHC with accurate and timely enrollment status information, which led UHC to authorize and pay the employee's claims for benefits. OPM denied the claim, asserting that UHC had no right to dispute the employing agency's enrollment decisions.

UHC appealed, and alleged that OPM breached the parties' contract by failing to provide UHC with accurate information for the employee despite repeated UHC requests for enrollment reconciliation. UHC also alleged that the government breached the duty of good faith and fair dealing by failing to provide UHC with accurate enrollment information, and by misleading UHC as to the propriety of the employee's enrollment.

The government moved for dismissal for lack of jurisdiction of the good faith violation because this was not presented to the contracting officer. The Board disagreed, finding that there was jurisdiction. The Board also disagreed with OPM's argument on the breach of contract claim—finding that the contract itself expressly stated that the Contract Disputes Act governs any disputes arising from the contract. OPM's motion to dismiss the contract for lack of subject matter jurisdiction was denied. Further the Board found that the government's retroactive determination on the healthcare enrollment eligibility, would not necessarily be a bar to any remedy under the CDA.

The Board refused to dismiss for either of the grounds asserted by UHC, and determined that the the case must have further proceedings and development.

Takeaway. When a contract expressly states that the CDA governs disputes arising from the contract, the Boards and the Court of Federal Claims will have jurisdiction of an appeal. That presumably will include the OPM's action to retroactively terminate the employee's coverage.

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