

## Court Finds No Employer Misrepresentation Regarding Coordination of Medicare Benefits and COBRA (03/01/2018)

EBIA Weekly

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*Topic(s): COBRA: The Developing Law; Group Health Plans: Federal Mandates Other Than COBRA & HIPAA; Self-Insured Health Plans*

*White v. Home Depot USA Inc., 2018 WL 704328 (D. Ariz. 2018)*

As part of a larger employment discrimination suit, a former employee sued his employer under state law for "negligent misrepresentation" of the nature of his COBRA coverage. The employee and his spouse, who suffered from multiple sclerosis, had elected COBRA coverage following the employee's termination of employment. The spouse subsequently received a notice reversing the coordination of her benefits with Medicare so that Medicare was her primary coverage and COBRA was secondary. After that, her previously submitted claims were rejected, disrupting her treatment schedule and leaving bills unpaid. The employee contended that the employer had misrepresented that their insurance coverage under COBRA would be identical to their coverage during active employment.

The court found no evidence of negligent misrepresentation, noting that the employee and his spouse acknowledged in depositions that they had not had conversations with the employer about continued coverage or how benefit claims would be handled. Rather, they relied on a statement in the plan's summary plan description (SPD) that continuation coverage would be identical to that offered to similarly situated active employees, as required under COBRA. Finding no affirmative misrepresentation, the court ruled in favor of the employer.

**EBIA Comment:** Under the Medicare Secondary Payer (MSP) rules, group health plans generally must pay claims for active employees and their families on a primary basis. However, former employees and their family members with COBRA coverage generally will not be subject to the MSP requirements when Medicare entitlement is based on age or disability because they are not considered to have coverage based on current employment status. Therefore, Medicare is the primary payer for an age-based or disability-based Medicare beneficiary who also has COBRA coverage. (Different rules apply if Medicare entitlement is due to end-stage renal disease.) As this case illustrates, the MSP rules can be complex, and plan administrators should consult with experienced legal counsel when questions arise in this area. For more information, see EBIA's COBRA manual at Section **XXX.D.4** ("Medicare Secondary Payer (MSP) Rules: Coordination of Benefits"). See also EBIA's Group Health Plan Mandates manual at

Sections **XXIV.A.4** ("MSP Requirements Apply to Individuals in Current Employment Status") and **XXIV.D** ("Coordination of Benefits (COB) With Medicare"), and EBIA's Self-Insured Health Plans manual at Section **XXV.C** ("Coordination of Benefits With Medicare, TRICARE, and Medicaid"). You may also be interested in our recorded webinar "Medicare and COBRA: Understanding the Interaction and Avoiding Common Mistakes" (*recorded on 11/9/2017*).

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