

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

BRENDA LEE SERSTAD,

Plaintiff,

v.

AMERICAN FAMILY INSURANCE,

Defendant.

OPINION & ORDER

15-cv-169-jdp

Pro se plaintiff Brenda Serstad has filed a proposed complaint alleging that her former employer, defendant American Family Insurance, has refused to pay her a lump sum retirement benefit and is instead paying her in monthly installments. Dkt. 1. The court granted plaintiff leave to proceed without prepaying her filing fee. Dkt. 3.

The next step in this case is for me to screen plaintiff's complaint and dismiss any portion that is legally frivolous, malicious, fails to state a claim upon which relief may be granted, or asks for monetary damages from a defendant who by law cannot be sued for money damages. 28 U.S.C. § 1915. In screening any *pro se* litigant's complaint, I must read the allegations of the complaint generously. *Haines v. Kerner*, 404 U.S. 519, 521 (1972). After reviewing the complaint with this principle in mind, I conclude that plaintiff has stated a claim for wrongful denial of benefits under the Employee Retirement Income Security Act (ERISA), 29 U.S.C. § 1001 *et seq.* I will therefore grant plaintiff leave to proceed.

ALLEGATIONS OF FACT

Plaintiff was a long-time employee of American Family Insurance, and by the time she left in 2012, she had worked for the company for 23 years. Plaintiff was fully vested in

American Family's pension plan. The circumstances surrounding plaintiff's departure are not entirely clear, although it appears that she was fired for poor performance. Plaintiff attributes her difficulties at work to post-traumatic stress disorder, a condition with which she was diagnosed in 2008.¹

Regardless of why plaintiff stopped working at American Family, she was eligible to receive her pension. According to documents that plaintiff submitted with the complaint, the total value of her retirement benefit was \$125,533.85. The terms of plaintiff's retirement plan allowed her to take the benefit either as a lump sum or as a single life annuity, with monthly payments of slightly less than \$500. The plan documents required plaintiff to choose the lump sum option within three months of her last day of work, otherwise she would automatically begin receiving the annuity payments.

Plaintiff's last day of work was July 30, 2012. On September 5, 2012—within the three-month deadline—plaintiff signed the necessary paperwork to request a lump sum benefit. But plaintiff forgot to mail the form, an error that she attributes to her being distracted with a medical issue that her mother was experiencing at the time. When plaintiff never received her lump sum payment, she contacted American Family. A representative informed plaintiff that the company had never received her paperwork. Plaintiff was initially convinced that it had gotten lost in the mail, but she later found the unsent form.

Plaintiff faxed the form to American Family on December 30, 2012. At this point, however, plaintiff's request for a lump sum benefit was beyond the three-month deadline. American Family therefore refused to pay plaintiff a lump sum. Plaintiff appealed the

¹ At one point in her complaint, plaintiff states that "I feel I was terminated due to my performance [sic] & health issues." Dkt. 1, at 2-3. Despite this statement, I do not construe plaintiff's complaint as challenging the lawfulness of her termination.

decision (presumably within American Family's internal grievance process), but was unsuccessful. She filed a complaint in this court on March 13, 2015.

ANALYSIS

Under 29 U.S.C. § 1132, a plan participant or beneficiary may bring an action to recover benefits due under a plan or to enforce her rights under that plan. Here, I understand plaintiff to allege that American Family's annuity payments are not consistent with the terms of her retirement benefits plan because she elected to receive a lump sum payment instead. I construe plaintiff's complaint as challenging American Family's refusal to extend the deadline for requesting a lump sum payment or, in the alternative, challenging its refusal to deem plaintiff to have met that deadline when she signed the request form but forgot to mail it.² If the plan documents did not give American Family the authority to make this decision, then plaintiff's allegations would state a claim under ERISA.

The standard that I will eventually use to review plaintiff's claim will depend on the language of the plan documents. "Judicial review of an ERISA administrator's benefits determination is *de novo* unless the plan grants the administrator discretionary authority to determine eligibility for benefits or to construe the terms of the plan." *Holmstrom v. Metro. Life Ins. Co.*, 615 F.3d 758, 766 (7th Cir. 2010). If the plan documents require me to use a *de novo* standard, then I will independently determine whether plaintiff is entitled to benefits under the plan documents. *Krolnik v. Prudential Ins. Co. of Am.*, 570 F.3d 841, 843 (7th Cir. 2009). I

² At this point, I will assume without deciding that plaintiff's plan is governed by ERISA. *See* Dkt. 1-2, at 68.

will take evidence (if there are disputed material facts), and I will make a decision about how the language of the plan document applies to the facts of the case. *Id.*

But “[w]hen the administrator has . . . discretionary authority, as the vast majority now do, the court applies a more deferential standard, seeking to determine only whether the administrator’s decision was ‘arbitrary and capricious.’” *Holmstrom*, 615 F.3d at 766. If the plan documents require me to use this standard, then I will uphold the administrator’s decision if:

- (1) it is possible to offer a reasoned explanation, based on the evidence, for a particular outcome, (2) the decision is based on a reasonable explanation of relevant plan documents, or (3) the administrator has based its decision on a consideration of the relevant factors that encompass the important aspects of the problem.

Hess v. Hartford Life & Acc. Ins. Co., 274 F.3d 456, 461 (7th Cir. 2001) (internal citations and quotation marks omitted). At this early stage, I do not need to determine which standard of review will apply; that will be an issue for later in the case.

I must address one foundational issue with plaintiff’s complaint. Plaintiff names “American Family Insurance” as the defendant, and she provides a Lincolnshire, Illinois mailing address for that defendant. Dkt. 1, at 1. “Generally, in a suit for ERISA benefits, the plaintiff is limited to a suit against the [p]lan.” *Mote v. Aetna Life Ins. Co.*, 502 F.3d 601, 610 (7th Cir. 2007) (internal citations and quotation marks omitted). From the documents that plaintiff attached to her complaint, it appears that the name of her retirement benefit plan is “Retirement Plan for Employees of American Family Mutual Insurance Company, 001.” Dkt. 1-2, at 73. The documents provide Wisconsin mailing addresses for the plan’s trustee and for its administrator. *Id.* Thus, it appears that plaintiff may have named the incorrect defendant in this case.

But there are some circumstances under which a plaintiff can sue her employer for ERISA benefits, such as when the employer and the plan are “closely intertwined,” *Mein v. Carus Corp.*, 241 F.3d 581, 585 (7th Cir. 2001), or when plan documents refer to the employer and the plan interchangeably, *Riordan v. Commonwealth Edison Co.*, 128 F.3d 549, 551 (7th Cir. 1997). If plaintiff named her former employer instead of the plan itself, it may be possible for her to proceed with her complaint as drafted. But if plaintiff named a different defendant, then her suit could be vulnerable to a motion to dismiss once American Family is served.

I cannot definitively conclude that plaintiff has sued the wrong defendant, and so I will grant her leave to proceed with her complaint as drafted. But I will delay directing the U.S. Marshals to serve plaintiff’s complaint to provide her with an opportunity to reconsider whether she has named the correct defendant. If plaintiff wants to bring suit against the plan itself, then she may file an amended complaint within the next 14 days. If plaintiff chooses to proceed with her current complaint, then she does not need to do anything; I will direct the U.S. Marshals to attempt service in 14 days.

ORDER

IT IS ORDERED that:

1. Plaintiff Brenda Serstad is GRANTED leave to proceed on her ERISA claim against defendant American Family Insurance for wrongful denial of benefits.
2. The court will delay sending copies of plaintiff’s complaint and this order to the United States Marshal for service on defendant until November 2, 2015.
3. For the time being, plaintiff must send defendant a copy of every paper or document that she files with the court. Once plaintiff learns the name of the lawyer who will be representing defendant, she should serve the lawyer directly rather than defendant. The court will disregard documents plaintiff submits that

do not show on the court's copy that she has sent a copy to defendant or to defendant's attorney.

4. Plaintiff should keep a copy of all documents for her own files. If she is unable to use a photocopy machine, she may send out identical handwritten or typed copies of her documents.
5. Plaintiff is obligated to pay the \$350 filing fee for this case.

Entered October 19, 2015.

BY THE COURT:

/s/

JAMES D. PETERSON
District Judge