

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
BROWARD DIVISION

NANCY PRITCHARD,

Plaintiff,

Case No.:

v.

KAPLAN HIGHER EDUCATION CORPORATION;
KAPLAN HIGHER EDUCATION CORPORATION,
as PLAN ADMINISTRATOR; and KAPLAN HIGHER
EDUCATION CORPORATION GROUP LONG-TERM
DISABILITY PLAN;

Defendants.

COMPLAINT

COMES NOW, Plaintiff, Nancy Pritchard, by and through undersigned counsel hereby files her Complaint against the Defendants, KAPLAN HIGHER EDUCATION CORPORATION; KAPLAN HIGHER EDUCATION CORPORATION, as PLAN ADMINISTRATOR; and KAPLAN HIGHER EDUCATION CORPORATION GROUP LONG-TERM DISABILITY PLAN, and says:

I. JURISDICTION AND VENUE

1. Plaintiff's claims are filed pursuant to 29 U.S.C. § 1001, *et seq.* (ERISA). Venue and jurisdiction are, therefore, proper pursuant to 29 U.S.C. § 1132. This Court has supplemental jurisdiction over Plaintiff's state law claims pursuant to 28 U.S.C. § 1367.

II. PARTIES

2. Plaintiff, Nancy Pritchard, is a resident of Ft. Lauderdale, Florida. Plaintiff was an employee of Kaplan Higher Education Corporation and was an eligible plan participant of the

Salary Continuation Plan and Group Long-term Disability Plan at all times material to this action.

3. Defendant, Kaplan Higher Education Corporation (hereinafter “KHEC”), is the insurer and administrator for the Salary Continuation Plan at issue in this cause.

4. Kaplan Higher Education Corporation, as Plan Administrator (hereinafter “Kaplan Plan Administrator”), was the Plan Administrator of the Kaplan Higher Education Corporation Group Long-Term Disability Plan at all times material to this action.

5. Kaplan Higher Education Corporation Group Long-Term Disability Plan (hereinafter “Kaplan LTD Plan”) is the **assumed** insurer and administrator for the Group Long-term Disability Plan at issue in this cause.

III. FACTS

6. As part of Plaintiff’s compensation package, Defendant KHEC agreed to provide benefits under the Salary Continuation Plan. The Salary Continuation Plan established by Defendant KHEC is not subject to ERISA. The Plan is attached hereto as “Exhibit A”.

7. The purpose of the Salary Continuation Plan was to continue Plaintiff’s salary in accordance with a stated schedule in the event she became disabled due to an illness or injury. The Salary Continuation Plan was to provide thirteen weeks of benefits based on Plaintiff’s salary.

8. At all times material to this action there was in full force and effect an insurance plan for long-term income disability benefits (“long-term plan”) constituting a binding contract of insurance between the parties.

9. The purpose of the long-term plan was to provide Ms. Pritchard long-term disability benefits in the event she became disabled.

10. Ms. Pritchard suffers from numerous disabling conditions, including but not limited to, severe and chronic pain and stiffness due to severe degenerative changes of the lumbar spine, lumbar spondylosis and radiculopathy, and annular tears; fibromyalgia; Major Depression Disorder; and anxiety. Ms. Pritchard has had numerous surgeries on her lumbar spine as a result of her multiple conditions. The effects of Ms. Pritchard's medical conditions prevent her from performing the duties of any occupation.

11. Ms. Pritchard has been unable to perform the duties of her occupation, or any other occupation, at all times material to this claim; she is disabled under the Salary Continuation Plan and long-term plan.

12. Ms. Pritchard has been found disabled by the Social Security Administration and receives Social Security Disability Income benefits.

13. In or around January 2006, Ms. Pritchard was forced to leave her occupation due to her disabling medical conditions. Ms. Pritchard informed the Defendants she was unable to return to work due to her disabling conditions and submitted a request for leave of absence. Her doctors communicated to the Defendants that Ms. Pritchard is totally disabled.

14. On February 10, 2006, Ms. Pritchard wrote the Defendants a letter explaining she was unable to return to her position on February 13, 2006 as was directed by the Defendants, specifically, Mr. Javier DeMarco, who was or still is the Senior Manager of Human Resources, due to her disabling conditions. In that letter, Ms. Pritchard requested the plan documents relative to the Salary Continuation Plan and the long-term plan, as well as claim forms necessary for her to apply for salary continuation benefits and long-term disability benefits.

15. Shortly thereafter, Defendants informed Ms. Pritchard her employment with the company was terminated. Ms. Pritchard was asked to sign a Separation Agreement and General Release (“Agreement”) dated February 14, 2006. Ms. Pritchard did not sign this Agreement.

16. Plaintiff has been required to retain an attorney. In a letter dated March 22, 2006, Plaintiff, through counsel, informed Defendants that she was entitled to salary continuation benefits and long-term disability benefits under the respective plans and requested the Salary Continuation Plan and long-term plan documents as well as the applications forms relative to these benefits.

17. On March 30, 2006, Defendants responded to Plaintiff’s request by providing a copy of the Salary Continuation Plan. Defendants did not provide any long-term disability plan documents or claim forms.

18. On June 21, 2006, Plaintiff, through counsel, made a third demand for the long-term disability plan documents and claims forms.

19. On November 9, 2006, Plaintiff, through counsel, made a fourth demand for the long-term disability plan documents and claim forms. Included in this letter was a copy of an Earnings Statement from Plaintiff’s employment with Defendants indicating deductions were made from Plaintiff’s salary for coverage under the long-term disability plan at issue. Plaintiff’s Earnings Statement is attached hereto as **“Exhibit B”**.

20. The Defendants has ignored Plaintiff’s February 10, 2006 letter, as well as Plaintiff’s March 22, 2006, June 21, 2006, and November 9, 2006 letters through counsel, and has refused to comply with Plaintiff’s request for information concerning the long-term plan at issue.

21. Plaintiff has never received any information concerning the long-term disability plan at issue.

22. Due to the Defendants' failure to provide the long-term disability plan documents as requested, Plaintiff, through counsel, submitted correspondence, dated January 15, 2008, along with medical records, that served as Plaintiff's application for long-term disability benefits under the long-term disability plan at issue.

23. In a letter dated February 26, 2008, Plaintiff, through counsel, provided Defendants with additional information in connection with Plaintiff's claim for long-term benefits.

24. On April 21, 2008, Plaintiff, through counsel, submitted further information in connection with her claim for long-term benefits. Included in this letter were additional medical records concerning Plaintiff's disabling conditions and notification of Plaintiff's award of Social Security Disability Income.

25. Plaintiff has never received a response to her claim for benefits under the long-term plan.

26. In not rendering a decision on Ms. Pritchard's claim for disability benefits under the long-term plan after her claim was submitted to the Defendants through counsel's letters, Ms. Pritchard's claim is deemed denied by the Defendants.

27. It is futile for Ms. Pritchard to exhaust the administrative remedies under ERISA where Defendants terminated Ms. Pritchard for retaliatory reasons and to prevent her from receiving benefits under the Salary Continuation Plan and long-term plans. Exhausting the administrative process under the long-term plan is also futile where the Defendants refused to render a decision on Ms. Pritchard's claim long-term benefits.

28. Ms. Pritchard notified Defendants of her disabling conditions as soon as possible and followed all reasonable procedures established by the Defendants.

29. Defendants terminated the Plaintiff for retaliatory purposes to prevent Plaintiff from receiving benefits under the Salary Continuation Plan and long-term plans. Defendants' termination of Plaintiff prevented her from applying for benefits under the Salary Continuation Plan.

30. The Defendants has breached the Salary Continuation Plan by preventing Ms. Pritchard from applying for benefits. The denial of Ms. Pritchard's claim for long-term benefits was a breach of the long-term plan and a breach of the Defendants fiduciary responsibilities owed to Ms. Pritchard.

31. In denying the Plaintiff's claim, the Defendants are guilty of bad faith and have caused the Plaintiff unnecessary trouble, expense, and emotional distress. Moreover, the Defendants' actions were intentional, willful, malicious, in bad faith, and reflect an entire want of care, which raises the presumption of conscience indifference to the consequences of the acts of the Defendants, especially in light of their inherent conflict of interest. The actions of the Defendants were done with the specific intent to harm the Plaintiff, Nancy Pritchard.

IV. COUNT I: BREACH OF CONTRACT

Plaintiff incorporates the allegations contained in Paragraphs 1 through 31 as if fully stated herein and says further that:

32. Defendant KHEC's Salary Continuation Plan provides payments to Plaintiff if the Plaintiff becomes unable to work due to an illness or injury.

33. The Plaintiff ceased work due to an illness and provided necessary proof to establish she is totally disabled and, therefore, entitled to salary continuation benefit payments.

34. Defendant KHEC has breached its contract with Plaintiff by terminating Plaintiff with the sole purpose of avoiding payments under the Salary Continuation Plan. Defendant KHEC has refused to pay salary continuation benefit payments.

35. Defendant KHEC, under the terms of its Salary Continuation Plan is indebted to the Plaintiff for weekly benefits, plus interest, commencing on or about February 7th, 2006.

36. Defendant KHEC has failed and refused to honor its obligations under the Salary Continuation Plan.

**V. COUNT II: FAILURE TO PROVIDE PLAN DOCUMENTS
IN VIOLATION OF SECTION 502(c)(1) OF ERISA**

Plaintiff incorporates the allegations contained in Paragraphs 1 through 36 as if fully stated herein and says further that:

37. Defendant Kaplan Plan Administrator violated Section 502(c)(1)(B) of ERISA, 29 U.S.C. §1132(c)(1)(B) by failing and refusing to comply with Plaintiff's requests for information that is required to be furnished to a plan participant under ERISA.

38. Plaintiff is entitled to \$100 a day (now increased to \$110) after 30 days from the date of Defendant Kaplan Plan Administrator's failure and refusal to comply with the Plaintiff's request for the long-term disability plan documents and such other relief as this Court deems proper, pursuant to Section 502(c)(1)(B) of ERISA, 29 U.S.C. §1132(c)(1)(B).

39. Plaintiff is entitled to the relief identified herein because:

- a. the Plaintiff has requested from Defendant Kaplan Plan Administrator long-term disability plan documents;
- b. Defendant Kaplan Plan Administrator is required by Subchapter I of Title 29, Chapter 18 of the United States Code to furnish this information to a plan participant or beneficiary;

- c. Defendant Kaplan Plan Administrator, acting for and on behalf of the long term plan, has failed and refused to comply with Plaintiff's request;

**VI. COUNT III: INTERFERENCE OF RIGHTS UNDER ERISA
IN VIOLATION OF SECTION 510 OF ERISA**

Plaintiff incorporates the allegations contained in Paragraphs 1 through 39 as if fully stated herein and says further that:

40. The Defendant KHEC violated Section 510 of ERISA, 29 U.S.C. § 1140, by terminating the Plaintiff for retaliatory purposes to prevent Plaintiff from receiving benefits under the long-term plan.

41. The Plaintiff is entitled to appropriate equitable relief pursuant to 29 U.S.C. §1132(a)(3) including, but not limited to, attorney fees and costs, and other further relief as the Court deem just and proper.

42. Plaintiff is entitled to the relief requested herein because:

- a. Plaintiff was entitled to receive benefits under the plan;
- b. Defendant KHEC terminated Plaintiff's employment while the Plaintiff was unable to work due to a disability, thereby interfering with her right to benefits as permitted by the plan;
- c. Defendant terminated the Plaintiff for retaliatory purposes to prevent Plaintiff from receiving benefits under the plan.

VII. COUNT IV: LTD PLAN BENEFITS

Plaintiff incorporates the allegations contained in Paragraphs 1 through 42 as if fully stated herein and says further that:

43. Plaintiff is entitled to certain benefits of the plan consisting of past due long-term disability benefits including prejudgment interest, retroactive to the day benefits would have begun had the Defendant not denied her claim, pursuant to 29 U.S.C. §1132(a)(1)(B).

44. Plaintiff is entitled to the benefits identified herein because:

- a. the benefits are permitted benefits under the plan;
- b. Plaintiff has satisfied all conditions to be eligible to receive the benefits;
- c. Plaintiff has not waived or otherwise relinquished her entitlements to the benefits.

45. The Defendant Kaplan LTD Plan entirely ignored Plaintiff's claim for benefits and refused to pay the benefits sought by the Plaintiff despite the medical records and clear opinions of the physicians who have personally and continuously treated the Plaintiff.

VIII. COUNT V: OTHER EQUITABLE RELIEF

Plaintiff incorporates the allegations contained in Paragraphs 1 through 45 as if fully stated herein and says further that:

46. To the extent that the Defendants violated any provisions of Subchapter I of Title 29, Chapter 18 of the United States Code, the Plaintiff is entitled to other appropriate equitable relief pursuant to 29 U.S.C. §1132(a)(3)(B) including but not limited to prejudgment interest on past due disability benefits.

IX. COUNT VI: ATTORNEY'S FEES

Plaintiff incorporates the allegations contained in Paragraphs 1 through 46 as if fully stated herein and says further that:

47. To the extent that the Defendants violated any provisions of Subchapter I of Title 29, Chapter 18 of the United States Code, the Plaintiff is entitled to reasonable attorney's fees and costs of this action pursuant to 29 U.S.C. §1132(g)(1).

X. RELIEF REQUESTED

Plaintiff incorporates the allegations contained in Paragraph 1 through 48 as if fully stated herein and says further that:

49. As a result of the acts and/or omissions of Defendant KHEC as alleged herein, the Defendant KHEC owe the Plaintiff unpaid salary continuation benefits, plus interest, commencing on or about February 7th, 2006.

50. As a result of the acts and/or omissions of Defendant Kaplan LTD Plan as alleged herein, the Defendant Kaplan LTD Plan owe the Plaintiff unpaid long-term disability benefits, plus interest and/or the Plaintiff is entitled to appropriate equitable relief as a result of the acts and/or omissions of the Defendant.

51. As a result of the acts and/or omissions of Defendant Kaplan Plan Administrator as alleged herein, the Defendant Kaplan Plan Administrator owe the Plaintiff an amount equal to \$110 per day for each day that Kaplan Plan Administrator failed to provide Plaintiff with the long-term disability plan documents under ERISA.

52. Defendants are also liable for the Plaintiff's attorney's fees and the costs of litigation in an amount to be proven at trial.

53. Defendants are also liable to place the Plaintiff in the position she would have enjoyed under the plan had she not been wrongfully denied benefits.

IX. PRAYER FOR RELIEF

WHEREFORE, Plaintiff, Nancy Pritchard, prays for a judgment against the Defendants for the relief as plead herein and for such other equitable relief as this Honorable Court deems just and proper.