

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

THE RETIRED PUBLIC EMPLOYEES
OF ALASKA, INC.,

Plaintiff,

v.

STATE OF ALASKA, DEPARTMENT
OF ADMINISTRATION, DIVISION OF
RETIREMENT AND BENEFITS

Defendant.

3AN-18-6722 CI

ORDER RE:

- I. *Plaintiff's Motion for Partial Declaratory Judgment and to Establish Law of the Case Re: The Scope of Fiduciary Duties Owed to the Beneficiaries of the AlaskaCare Retiree Health Care Plan by the Alaska Division of Retirement and Benefits*
- II. *Defendant's Motion to Dismiss Pursuant to Alaska Civil Rules 12(b)(6) and 15(a)*

Both the Plaintiff and Defendant have filed motions for the Court to rule on the eighteen alleged breaches of duties listed in paragraph 45 of the RPEA's second amended complaint. Plaintiff seeks a limited declaratory judgment that the paragraph 45 duties are within the State's fiduciary duties owed to Plan beneficiaries. Paragraph 45 lists the allegations of conduct, rather than the duties themselves. Plaintiff specifies the allegedly breached duties in its proposed order filed on February 26, 2019. Defendant filed a Motion to Dismiss, but the issue is strictly a legal question that can be decided on the briefing, and this memo will treat Defendant's motion as a summary judgment motion.

The Defendant has conceded that it owes some fiduciary duties, so the question at hand is which fiduciary duties it owes. This analysis requires the Court to look at the proposed duties and determine whether this Court has Constitutional, statutory, or common law authority to enforce each duty.

Background

Plaintiff alleges that Defendant has breached its fiduciary duties in a list of eighteen points of conduct. Paragraph 45 in the fourth claim in the second amended complaint reads:

The Defendant also breached other fiduciary duties owed to the Plan beneficiaries by conduct that includes but is not limited to:

- a) Making changes to the Plan that resulted in the elimination, diminishment and impairment of vested Plan benefits/advantages earned by retired public employees of Alaska without first establishing just cause for making the changes;
- b) Making changes to the Plan that resulted in the elimination, diminishment and impairment of vested Plan benefits/advantages earned by retired public employees of Alaska without first performing the analyses required by the Alaska Supreme Court in the Duncan opinion;
- c) Making changes to the Plan that resulted in the elimination, diminishment and impairment of vested Plan benefits' advantages earned by retired public employees of Alaska without providing new Plan benefits/advantages of a similar type that offset the benefits/advantages that were eliminated, diminished or impaired;
- d) Failing to give Plan beneficiaries reasonable notice and opportunity to be heard in the Alaska courts before making changes [sic] the Plan that resulted in the elimination, diminishment and impairment of vested Plan benefits/advantages;
- e) Delegating to Aetna the Defendant's duties and responsibilities to manage medical claims-processing under the Plan and then failing to properly supervise and control Aetna to prevent Aetna from denying the legitimate claims of Plan beneficiaries for medical benefits provided by the Plan;
- f) Allowing Aetna to deny legitimate medical claims covered by the Plan by re-defining or re-interpreting words and phrases used in the Plan according to Aetna's own specialized definitions and standards developed by Aetna for its proprietary clinical policy bulletins instead of applying the plain

meaning of the words and phrases used in the Plan according to their ordinary meanings as understood by the average layperson; as they had been historically defined and interpreted by the by the [sic] DRB; and as Plan beneficiaries had come to understand and expect were the coverages provided by the Plan;

- g) Failing to adequately supervise and direct Aetna to properly apply the terms of the Plan that Defendant knew would and did result in the diminishment and impairment of benefits and coverage for medical claims previously provided to retirees and beneficiaries under the Plan;
- h) Knowingly and repeatedly allowing Aetna to deny legitimate medical claims that, prior to the changes made since 20 13, would have and should have been paid by the Plan;
- i) Knowingly and repeatedly allowing Aetna and its agents to engage in a pattern and practice of unfair and improper denials of legitimate medical claims covered by the Plan;
- j) Knowingly and repeatedly allowing Aetna and its agents to misinform retirees and other Plan beneficiaries of their appeal rights
- k) Failing to make reasonable efforts to actively notify Plan beneficiaries of decisions made by the office of administrative hearings and Alaska courts that resolved issues of coverage and benefits available under the Plan in favor of Plan beneficiaries;
- l) Issuing a Plan “amendment” as a means of circumventing a ruling by the Alaska Office of Administrative Hearings that the Plan did not allow the DRB to charge Plan beneficiaries who had paid their annual required Medicare deductible an additional deductible before receiving Plan benefits; and
- m) Knowingly and intentionally denying eligible retirees and other Plan beneficiaries their statutory and due process rights to appeal the repeated denials of their legitimate claims to the Office of Administrative Hearings (“OAH”) by: i) misinforming claimants who do not get the complete relief they are requesting when they appeal the denial of their claims(s) for benefits that they must request and obtain permission from the DRB in order to file an appeal with the OAH, and then ii) withholding permission to appeal; and iii) engaging in a pattern and practice of wrongfully denying payment of legitimate, covered claims and then, if the claimant gives notice or his or her intention to appeal the denial, paying the claim with the proviso that the payment is merely a settlement of that particular claim and not an admission that the Plan provides coverage, a method and practice that impaired and prevented retirees from obtaining a definitive decision by a hearing officer and a court that would firmly establish if the claim at issue, and others like it, was covered by the Plan and if there had been a good-faith basis for the previous denials of coverage for such claims;
- n) Failing to keep and make reasonably available to each Plan beneficiary

accurate records showing the total amount of money the Plan has paid in medical benefits for that beneficiary and the amount remaining of that beneficiary's \$2 million lifetime cap on the payment of covered medical claims;

- o) Failing to ensure that Plan beneficiaries are informed in a timely manner and in ways that are reasonably understandable to a layperson of average intelligence and education of the reasons why a claim has been denied in whole or in part;
- p) Failing to disclose to Plan beneficiaries all facts that are reasonably likely to materially affect their rights and interests or to influences [sic] their actions and decisions;
- q) Failing to administer the Plan in ways that ensure that Plan beneficiaries receive all benefits they are entitled [sic] receive under the Plan, including serving Plan beneficiaries with honesty, candor, loyalty and the disavowal of self-interest;
- r) Failing to notify Plan beneficiaries that if the changes made by the Defendant caused a serious hardship to a particular beneficiary or group of beneficiaries, that the affected beneficiary had the right to retain their [sic] existing Plan benefits; and
- s) Repeatedly failing and refusing to take corrective action in spite of being notified of certain errors and omissions in the administration of the Plan that were resulting in the elimination, diminishment or impairment of medical benefits provided under the Plan.

The Plaintiff lays out seven duties that it alleges the Defendant breached in its

proposed order as follows:

1. The duty of good faith and fair dealing, which includes the duty not to do anything to injure the rights of the Plan beneficiaries to receive the benefits of the Plan in accordance with the terms of the Plan;
2. The duty of loyalty and disavowal of self-interest, which embraces the duty to act solely in the best interests of Plan beneficiaries to ensure that A) the claim of Plan beneficiaries get a full and fair review; B) their legitimate, covered claims for medical benefits are timely paid; and C) that no claims are paid that are not legitimate or not otherwise covered by the Plan;
3. The duty to deal honestly, fairly and candidly with Plan beneficiaries in all aspects of Plan administration, including in the course of appeals by Plan beneficiaries of denials of claims;
4. When a claim is denied, the duty to advise the affected Plan beneficiary, in a timely matter and in a way that is understandable to a layperson of average intelligence and education, of all the reasons why the claim was

- denied, including references to specific Plan language relied upon by the DRB or its third-party administrators in denying the claim;
5. The duty to disclose to Plan beneficiaries all facts that materially affect their rights and interests or which might reasonably be expected to influence their action(s), including but not limited to informing them, of issues of coverage or other benefits that have been appealed to the Alaska Office of Administrative Hearings or higher than raise a legal issue whose resolution might affect the medical benefits of other Plan beneficiaries, and timely notifying Plan beneficiaries of the substance of any decision by an Alaska court or hearing officer that can reasonably be expected to affect their retirement benefits and other rights under the Plan;
 6. The duty to give Plan beneficiaries reasonably notice and opportunity to be heard concerning any proposed changes in Plan benefits or administration that the DRB has reason to believe may negatively affect any benefit(s) or other advantages provided by the Plan, including a complete and candid statement of all the reasons why the DRB wants to make the proposed changes and any new benefits/advantages that the DRB contends would offset the Plan benefits/advantages it proposes to eliminate or reduce along with a reasonable description of what the DRB has done to satisfy the condition and requirements established by the Alaska Supreme Court in *Duncan v. Retired Public Employees of Alaska, Inc.*, 71 P.3d 882 (Alaska 2003), including the evidence, methods and results of any “equivalency analyses” that were done;
 7. The duty to provide Plan beneficiaries with reasonable assistance they might need to ensure that their claims for benefits are submitted correctly.

Standard of Review

Summary judgment is appropriate when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law.¹ In this case, there are no disputed issues of material fact, and the focus is on whether the moving party is entitled to judgment as a matter of law.

A trial court may render declaratory relief when doing so would clarify and settle legal relations or terminate and afford relief from the uncertainty, insecurity, and

¹ Alaska R. Civil P. 56.

controversy giving rise to the proceeding.² “The two principal criteria guiding the policy in favor of rendering declaratory judgments are (1) when the judgment will serve a useful purpose in clarifying and settling the legal relations in issue, and (2) when it will terminate and afford relief from the uncertainty, insecurity, and controversy giving rise to the proceeding.”³

Applicable Law

1. Constitutional duties

Article 1 Section 7 of the Alaska Constitution states: “No person shall be deprived of life, liberty, or property, without due process of law. The right of all persons to fair and just treatment in the course of legislative and executive investigations shall not be infringed.”

Article 12 Section 7 prohibits the diminishment of health insurance coverage provided by the State.⁴ A plan may be amended under limited circumstances to keep the plan from becoming obsolete, but the Supreme Court of Alaska has found that the concern of rise of medical costs, and other “practical considerations,” is not sufficient to allow diminishment.⁵ Plaintiff’s claims regarding diminishment of benefits rely on Duncan because it established the Alaska Supreme Court’s strict diminishment analysis

² AS § 22.10.020.

³ Anchorage Chrysler Ctr., Inc. v. DaimlerChrysler Corp., 129 P.3d 905, 912 (Alaska 2006).

⁴ Duncan v. Retired Pub. Employees of Alaska, Inc., 71 P.3d 882, 889 (Alaska 2003); see also Alaska Const. art. 12 §7 (“Membership in employee retirement systems of the State or its political subdivisions shall constitute a contractual relationship. Accrued benefits of these systems shall not be diminished or impaired”).

⁵ Duncan, 71 P.3d at 889 (“With respect to the state’s argument that practical considerations should lead to a narrow construction excluding health benefits from constitutional protection, we acknowledge that medical costs are rapidly rising, making health insurance increasingly difficult to provide. But we do not believe that this fact is of sufficient weight to change the meaning of the plain language of article XII, section 7”).

of Plan amendments.⁶

In oral argument, the parties agreed that in addition to the benefit itself, the Constitution prohibits diminishment in regards to burdens placed on the beneficiaries in receiving the benefit.⁷ Parties agreed that a claim must be reasonably available to the general beneficiary or it is considered a diminishment. However, diminishment claims must be assessed by looking at the group as a whole, not at individual cases.⁸

2. Statutory duties

Alaska Statute 39.30.097 states:

- (a) The commissioner of administration is authorized to prefund medical benefits provided by AS 14.25.168 , AS 22.25.090 , and AS 39.35.535 by establishing an irrevocable trust that is exempt from federal income tax under 26 U.S.C. 115 and subject to the applicable financial reporting, disclosure, and actuarial requirements of the Governmental Accounting Standards Board.
- (b) The commissioner of administration is authorized to prefund medical benefits provided by AS 14.25.480 , AS 39.30.300 , and AS 39.35.880 by establishing an irrevocable trust that is exempt from federal income tax under 26 U.S.C. 115 and subject to the applicable financial reporting, disclosure, and actuarial requirements of the Governmental Accounting Standards Board.
- (c) The plans and assets of the Alaska retiree health care trusts shall be under the governance and investment authority of the Alaska Retirement Management Board, which shall serve as trustee of the trust as provided in AS 37.10.210 . The commissioner of administration or the commissioner's designee shall serve as administrator of the Alaska retiree health care trusts.
- (d) All employer contributions, appropriations, earnings, and reserves for the payment of retiree medical obligations shall be credited to the retiree health care trusts. The prefunded amounts shall be available without fiscal year limitations for retiree medical benefits and administration costs. The amounts remaining in the trusts, if any, after retiree medical benefits and administration costs have been paid in any year shall be retained in the trusts for future payments until the satisfaction of all employer liabilities

⁶ See generally, *id.*

⁷ *Id.*

⁸ *Id.*

under the trusts for retiree medical benefits. All prefunded amounts shall be used solely for the payment of retiree medical benefits and administration costs and for no other purpose.

- (e) The assets of the Alaska retiree health care trusts may be pooled, for investment purposes, with assets of the retirement systems, so long as such assets are accounted for separately.

3. Medical insurance contract common law fiduciary duties

In contract interpretation, it is proper for a trial court to rely on traditional contract principles and to “not rely on legal presumptions or inferences federal courts use when considering changes in post-retirement medical benefits.”⁹ When interpreting contracts, the court’s goal is to “enforce reasonable expectations of parties.”¹⁰

The Alaska Supreme Court treats insurance policies as contracts of adhesion when interpreting policy language, where there is inequality in bargaining power.¹¹ In considering “reasonable expectations,” the Alaska Supreme Court construes terms “so as to provide that coverage which a layperson would have reasonably expected from a lay interpretation of the policy terms.”¹²

In Alaska, a fiduciary relationship is inherent in every insurance contract.¹³

a. Good faith and fair dealing

Inherent in each fiduciary relationship is an implied covenant of good faith and fair dealing.¹⁴ The Alaska Supreme Court has included “an obligation to investigate claims and to inform the insured of all settlement offers and the possibility of excess

⁹ Municipality of Anchorage v. Gentile, 922 P.2d 248, 256 (Alaska 1996).

¹⁰ *Id.* at 255.

¹¹ U.S. Fire Ins. Co. v. Colver, 600 P.2d 1, 3 (Alaska 1979).

¹² *Id.*; see also Starry v. Horace Mann Ins. Co., 649 P.2d 937, 939 (Alaska 1982) (“Ambiguities are resolved against the insurer”).

¹³ O.K. Lumber Co. v. Providence Washington Ins. Co., 759 P.2d 523, 525 (Alaska 1988).

¹⁴ *Id.*

recovery by the injured claimant” in its interpretation of the covenant.¹⁵

b. Loyalty and the disavowal of self-interest

Fiduciary relationships are “generally defined by a level of trust beyond that in ordinary business relationships,” and loyalty and the disavowal of self-interest are hallmarks of the fiduciary's role.¹⁶ A “fiduciary relationship exists when one imposes a special confidence in another, so that the latter, in equity and good conscience, is bound to act in good faith and with due regard to the interests of the one imposing the confidence.”¹⁷

c. Overseeing the third party administrator

In oral argument, the State conceded that the State has an affirmative duty to ensure that the third party administrator acts consistent with the Plan document.

Discussion

1. Amendment versus Administration of the Plan

At the heart of this case is a Duncan diminishment analysis to decide whether the Defendant diminished Plan benefits through amendments. In such an analysis, the Court will consider the high standard prohibiting diminishment of benefits and the retirees’ reliance and trust in those who facilitate the Plan. This analysis is only relevant to the sixth proposed duty, and this standard does not otherwise apply to the motions at hand. These motions primarily address administration of the Plan.

Defendant claims that many of these fiduciary duties, if enforced, would make it

¹⁵ Id.

¹⁶ Williams v. Baker, 446 P.3d 340 (Alaska 2019); Munn v. Thornton, 956 P.2d 1213, 1220 (Alaska 1998).

¹⁷ Munn, 956 P.2d at 1220.

functionally impossible to operate the Plan. If the circumstances require diminishment or else the Plan would become obsolete, the Supreme Court of Alaska indicated in Duncan that this diminishment may be permitted. This analysis only logically applies to the amendment of the Plan, so this Court only considers whether the sixth proposed fiduciary duty would make the Plan obsolete. Defendant has not yet shown that the Plan would in fact become obsolete if the Court enforces these duties.

2. Is the Court authorized to enforce the seven proposed fiduciary duties?

The first proposed duty explicitly states a duty of good faith and fair dealing, which it defines to include not doing anything to injure the rights of the beneficiaries. The defining language is implicit in the covenant of good faith and fair dealing, which this Court is authorized to enforce.¹⁸

The second proposed duty explicitly states a duty of loyalty and disavowal of self-interest. The language explains this duty as acting solely “in the best interests of Plan beneficiaries to ensure that A) the claim of Plan beneficiaries get a full and fair review; B) their legitimate, covered claims for medical benefits are timely paid; and C) that no claims are paid that are not legitimate or not otherwise covered by the Plan.” The language is implicit in the duty of loyalty and the disavowal of self-interest. Common law authorizes this Court to enforce the duty of loyalty and the disavowal of self-interest.¹⁹

The third proposed duty is “[t]he duty to deal honestly, fairly and candidly with

¹⁸ O.K. Lumber Co., 759 P.2d at 525.

¹⁹ Williams, 446 P.3d at 340; Munn, 956 P.2d at 1220.

Plan beneficiaries in all aspects of Plan administration, including in the course of appeals by Plan beneficiaries of denials of claims.” The language in this proposed duty is implicit in the covenant of good faith and fair dealing, which this Court is authorized to enforce.

The fourth proposed duty states a duty to advise beneficiaries, when their claims are denied, of all the reasons why their claims were denied. This proposed duty is meant to allow members to understand the Plan without needing outside help from lawyers or other specialized advisers, and to encourage filing claims in the first place. While favorable in policy, the law does not authorize this Court to enforce this duty.

The fifth proposed duty is the duty to disclose facts that materially affect or influence beneficiaries’ right, interests, or actions. The duty is implicit in neither the duty of good faith and fair dealing nor the duty of loyalty and disavowal of self-interest because it would require affirmative action on behalf of the beneficiaries, which may or may not require extra action that is not currently part of the Plan. The Court does not have explicit authority to enforce this duty.

The sixth proposed duty is the duty to give notice and opportunity to be heard concerning proposed changes to Plan benefits or administration and to provide a statement regarding these changes and what the Defendant has done to offset the changes so that no benefit is diminished pursuant to Duncan. Reasonable notice and the opportunity to be heard concerning proposed changes in the Plan benefits are implicit with the duty of due process, which the Defendant has conceded to owing.

The seventh proposed duty is to provide beneficiaries with reasonable assistance

to ensure correct submission of claims. Similar to the fifth proposed duty, if this would require affirmative action that is not currently part of the Plan, it is merely a policy point that this Court is not authorized to address.

The particularities in the Plaintiff's proposed language are not precise to the case law that authorizes this Court to enforce good faith and fair dealing and loyalty and disavowal of self-interest. The language may be reasonable to a layperson. However, the language in question is of proposed duties rather than contractual language, and this Court will not adopt the particular language proposed by the Plaintiffs, but rather enforce the covenant of good faith and fair dealing, the duty of due process, and the duty of loyalty and disavowal of self-interest.

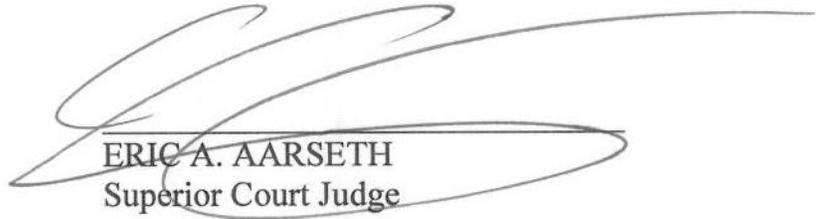
Conclusion

The Defendant owes the fiduciary duties of good faith and fair dealing, loyalty and disavowal of self-interest, and due process. This Court GRANTS IN PART Plaintiff's motion and DENIES IN PART Defendant's motion and enforces the duties of good faith and fair dealing, the duty of loyalty and disavowal of self-interest, and the duty of due process.

This Court DENIES IN PART Plaintiff's motion and GRANTS IN PART Defendant's motion because this Court does not have the authority to enforce an affirmative fiduciary duty to advise the affected Plan beneficiary of all the reasons why the claim was denied and of any fact materially affect their rights and interests or which might reasonably be expected to influence their actions.

IT IS SO ORDERED.

DATED at Anchorage, Alaska this 13th day of April, 2020.


ERIC A. AARSETH
Superior Court Judge

I certify that on 14 April, 2020, a
copy was mailed to:

W. Callow; J. Pickett;
K. Dilg
Alison Shlom, Law Clerk