

APPENDIX A

IN THE UNITED STATES DISTRICT
COURT NORTHERN DISTRICT OF
GEORGIA ATLANTA DIVISION

<p>W.A. GRIFFIN, MD,</p> <p>Plaintiff,</p> <p>v.</p> <p>MOTION PICTURE INDUSTRY HEALTH PLAN; BOARD OF DIRECTORS, MOTION PICTURE INDUSTRY HEALTH PLAN; ANTHEM BLUE CROSS LIFE AND HEALTH INSURANCE COMPANY; BLUE CROSS BLUE SHIELD HEALTHCARE PLAN OF GEORGIA, INC.</p> <p>Defendants.</p>	<p>CIVIL ACTION FILE NO. 1:21-cv- 02220-WMR</p>
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ORDER

This matter is before the Court on Defendants Motion Picture Industry Health Plan and its Board of Directors' Motion to Dismiss [Doc. 18] and Defendants Anthem Blue Cross Life and Health Insurance Company and Blue Cross Blue Shield Healthcare Plan of Georgia, Inc.'s Motion to Dismiss Motions to Dismiss [Doc. 20]. Upon consideration of the parties' arguments, applicable law, and all appropriate matters of record, the Court **GRANTS** the Defendants' respective Motions to Dismiss for the reasons set forth below.

FACTS

At the motion to dismiss stage, the Court accepts the facts alleged in the complaint as true. Plaintiff, Dr. W.A. Griffin, operates a solo dermatology practice called Intown Dermatology. [Doc. 15 at ¶2]. As a condition of service, Dr. Griffin requires patients to assign their health insurance benefits to her through an assignment form, which states, in pertinent part:

This is a direct assignment of my rights and benefits under this policy and designation of authorized representative.... I hereby authorize any plan administrator or fiduciary, insurer and my attorney to release to such provider(s) any and all plan documents, insurance policy and/or settlement information upon written request from such provider(s) in order to claim such medical benefits, reimbursement or any applicable remedies...In considering the amount of medical expenses to be incurred, I...hereby assign and convey directly to the above name healthcare provider(s), as my designated Authorized Representative(s), all medical benefits and/or insurance reimbursement, if any, otherwise payable to me for services rendered from such provider(s), regardless of such provider's managed care network participation status. Unless revoked, this assignment is valid for all administrative and judicial review under PPACA, ERISA, Medicare and applicable and state laws.[Doc. 15 at 25 (emphasis added)].

On August 22, 2014, a patient, J.A., met with Dr. Griffin and signed the assignment signed the assignment form. [Doc. 15 at 25]. On September 5, 2014, Dr. Griffin provided medical services (surgery) to the patient. [Id. ¶¶16-17]. Dr. Griffin alleges that her patient (J.A.) is a participant of the employee welfare benefit plan ("Plan") Motion Picture Industry Health Plan and governed by the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. §1001 et seq. [Doc. 15 at ¶3]. Dr. Griffin further alleges that Defendant Board of Directors, Defendant Motion Picture Industry Health Plan is the named ERISA "Plan Administrator." [Id. at ¶4]. Lastly, she alleges that Defendant Anthem Blue Cross Life and Health Insurance Company and Defendant Blue Cross Blue Shield Healthcare Plan of Georgia ("BCBC GA") are both ERISA Plan fiduciaries under the facts of this case. [Id. at ¶¶9, 10, 11]. After patient J.A.'s surgery, Blue Cross paid Dr. Griffin less than the "usual customary and reasonable benefit level." [Doc. 15-1 at ¶¶23-25]. Consequently, Griffin sought recompense from Defendants through "First Level" and "Second Level" appeals. [Id. at ¶¶25-33]. In each appeal, Dr. Griffin requested a copy of the summary plan description and documents relating to the calculation of amounts paid. [Id.]. However, defendants relayed no plan information to Dr. Griffin and denied Griffins appeals. [Id. at ¶¶28-29, 34-38].

Dr. Griffin now brings a claim against each Defendant, not for the payment of benefits for which she believes she is entitled by assignment, but for failing to provide Plan documents upon request. [Doc.15 ¶¶46, 49-52]. For this alleged violation of ERISA, she seeks the maximum statutory penalty awards, totaling \$991,760 as of the date of her complaint. [Id. ¶¶46, 48].

LEGAL STANDARD

Failure to State a Claim Upon Which Relief Can be Granted

The Court may dismiss a pleading for “failure to state a claim upon which relief can be granted.” Fed. R. Civ. P. 12(b)(6). A pleading fails to state a claim if it lacks allegations that support recovery under any recognizable legal theory. 5Charles Alan Wright & Arthur R. Miller, Federal Practice & Procedure § 1216 (3ded. 2002); see also Ashcroft v. Iqbal, 556 U.S. 662, 677-78 (2009). In considering a Rule 12(b)(6) motion, the Court construes the pleading in the non-movant’s favor and accepts the allegations of facts therein as true. See Duke v. Cleland, 5 F.3d 1399,1402 (11th Cir. 1993). A plaintiff need not provide “detailed factual allegations” to survive dismissal, but the “obligation to provide the ‘grounds’ of his ‘entitle[ment] to relief requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do.” Bell Atlantic Corp. v. Twombly, 550 U.S.544, 555 (2007).

In essence, the pleading "must contain sufficient factual matter accepted as true, to 'state a claim to relief that is plausible on its face.'" Iqbal, 556 U.S. at 678 (quoting Twombly, 550 U.S. at 570). Employee Retirement Income Security Act (ERISA)

ERISA establishes the standards for employee benefit plans, such as the healthcare plan at issue in this case. See 29 U.S.C. §§ 1001-03. Among other requirements, ERISA compels plan administrators to produce requested information to plan participants. 29 U.S.C. § 1024(b)(4). Upon a plan administrator's failure to provide the required information, ERISA provides plan participants with the right to pursue statutory penalties. 29 U.S.C. § 1132(c)(1). A plaintiff bringing a cause of action under ERISA must have standing to sue under the statute. Physicians Multispecialty Grp. v. Health Care Plan of Horton Homes, Inc., 371 F.3d 1291, 1293-94 (11th Cir. 2004). However, statutory standing is limited to plan participants, beneficiaries, fiduciaries, and the Secretary of Labor. 29 U.S.C. § 1132(a). "Healthcare providers. . . are generally not 'participants' or 'beneficiaries' under ERISA and thus lack independent standing to sue under ERISA." Physicians Multispecialty Grp. v. HealthCare Plan of Horton Homes, Inc., 371 F.3d 1291, 1294 (11th Cir. 2004) (citing Hobbs v. Blue Cross Blue Shield of Ala., 276 F.3d 1236, 1241 (11th Cir. 2001)).

Yet, while a plan participant or beneficiary's written assignment of the right to payment of medical benefits may provide an assignee—including healthcare providers—derivative standing for *payment-related claims* (Griffin v. Coca-ColaRefreshments USA, Inc., 989 F.3d 923, 932 (11th Cir. 2021) (citing Gables Ins. Recovery, Inc. v. Blue Cross & Blue Shield of Fla., Inc., 813 F.3d 1333, 1339 (11th Cir. 2015))), it does not necessarily provide derivative standing for *non-payment-related claims*. (Id. at 932-33).

DISCUSSION

In this case, Dr. Griffin does not seek recovery for unpaid benefits. Rather, she brings a claim solely for statutory penalties under ERISA. [Doc. 15 at ¶¶46 49-52]. Dr. Griffin asserts that her patient, J.A., assigned his or her "rights to sue for breaches of fiduciary duties and statutory penalties." [Id. at ¶2]. Specifically, she contends that the assignment, when considered as a whole, gives her the right to bring non-payment-related claims. [Doc. 21 at 2-3; Doc. 22 at 2-3]. In their respective Motions to Dismiss, the Defendants raise common arguments for the dismissal of Dr. Griffin's complaint: (1) that Dr. Griffin does not have standing to bring statutory penalty claims under ERISA; (2) that the statute of limitations bars a penalty claim. she did not request documents from the Plan Administrator; and (3) that the statute of limitations bars a penalty claim. [See Docs. 18, 20-1]. In addition, Defendant Blue Cross requests attorneys' fees and costs. [Doc. 20-1 at 14-15]

A. Claim for Statutory Penalties Under ERISA

The assignment in the case is either exactly the same or materially indistinguishable from the assignments in at least seven of Dr. Griffin's previous cases.¹ All of which, this Court and the Eleventh Circuit have held, do not assign Dr. Griffin the right to bring non-payment related claims under ERISA § 502(c)(1), 29U.S.C. § 1132(c)(2). See, e.g., Griffin v. Coca-Cola Refreshments USA, Inc., 989F.3d 923, 933 (11th Cir. 2021) ("[T]he assignments make clear that the patients only assigned their right to bring claims for payment"); Griffin v. SunTrustBank, Inc., 648 F. App'x 962, 967 (11th Cir. 2016) ("Nothing in an assignment of benefits

¹ Compare Compl. Ex. A at 3, ECF 1-1, with Griffin v. Coca-Cola Refreshments USA, Inc., No. 1:17-cv-04656-AT, ECF 3-3; Griffin v. SunTrustBank, Inc., No. 1:15-cv-00147-AT, ECF 10-2; Griffin v. Verizon Commc'ns, No. 1:15-cv-00569-AT, ECF 1-1; Griffin v. Habitat for Humanity Int'l, Inc., No. 1:15-cv-00369-AT, ECF 10-1; Griffin v. Health Sys. Mgmt., No. 1:15-cv-00171- AT, ECF 1-1; Griffin v. Focus Brands, Inc., No. 1:15-cv-00170-AT, ECF 8-1; and Griffin v. S. Co. Servs., No. 1:15-cv-00115-AT, ECF 7-2.

transfers the patient's right to bring a cause of action" for non-payment-related claims); Griffin v. Verizon Communications, 641 Fed. Appx. 869, 873 n. 4 (11th Cir. 2016) ("Because the insured never assigned to Dr. Griffin the right to bring [civil penalty] claims, she lacks derivative standing to bring these claims under Section 502 of ERISA"); Griffin v. Habitat for Humanity Int'l, Inc., 641 Fed. Appx. 927, 931 n. 4 (11th Cir. 2016); Griffin v. Health Sys. Mgmt., 635 Fed. Appx. 768, 772 n. 4 (11th Cir. 2015); Griffin v. Focus Brands, 635 Fed. Appx. 796, 799 n. 4 (11th Cir. 2015); Griffin v. S. Co. Servs., 635 Fed. Appx. 789, 793 n. 4 (11th Cir. 2015).

In the most recent opinion on one of Dr. Griffin's many ERISA suits, the Eleventh Circuit affirmed the dismissal of her complaint and published its decision specifically "in hopes of resolving this recurring litigation." Griffin v. Coca-Cola Refreshments USA, Inc., 989 F.3d 923, 927 (11th Cir. 2021). In that case, Griffin argued that the assignment—with the same language as the assignment in the current case—"transfer[ed] the participant's rights to bring claims for both unpaid payments and non-payment related claims." Id. at 932. The Eleventh Circuit unequivocally rejected Griffin's argument.

The general form assignments on which Griffin relies contain 10 separately listed paragraphs outlining the scope of the assignments. The patients checked the box next to each one. None of the paragraphs mention breach of fiduciary duty or statutory penalty claims. Rather, they provide the details of Griffin's "right" to receive the patients' "medical information" and "payment of benefits" under the Plan. Therefore, the assignments make clear that the patients only assigned their right to bring claims for payment pursuant to 29 U.S.C. § 1132. Accordingly, the district court was correct to dismiss Griffin's non-payment claims. *Id.* at 932-33. Again, the language of the assignments in that case and the case at hand are essentially the same. Notably, the assignments in Griffin v. Coca-Cola Refreshments USA, Inc. likewise provided that the plan participant "authorize[d] any plan administrator or fiduciary, insurer, and my attorney to release to such provider(s) any and all plan documents, insurance policy and/or settlement information upon written request from such provider(s) in order to claim such medical benefits, reimbursement or any applicable remedies[.]"

[See Griffin v. Coca-Cola Refreshments USA, Inc., Case No. 1:17-cv-04656-AT – Doc. 3-3 at 2]. As the Eleventh Circuit concluded, none of the paragraphs in the assignments had the effect of assigning any rights to pursue breach of fiduciary duty or statutory penalty claims. Griffin v. Coca-Cola Refreshments USA, Inc., 989 F.3d at 932-33. Rather, the relevant language in the assignments merely authorized the release of the patient's Plan documents and medical information in order to receive "payment of benefits" under the Plan. Id. at 933. Therefore, "the assignments make clear that the patients only assigned their right to bring claims for payment pursuant to 29 U.S.C. § 1132." Id. Therefore, this Court adopts the Eleventh Circuit's reasoning and likewise finds that the assignment in this case does not give Dr. Griffin standing to bring non-payment related (statutory penalty) claims under ERISA. As this issue is dispositive of the case, the Court declines to address the defendants' remaining arguments for dismissal.

B. Attorneys' Fees and Costs

In their respective Motions to Dismiss, the Defendants each request attorneys' fees and costs. [See Docs. 20-1 14-15]. This matter is another case in a long line of cases brought by Griffin,² and the Court has ruled multiple times on motions for

² See Griffin v. Blue Cross and Blue Shield Healthcare Plan of Ga., Inc., et al, No. 1:14-cv-1610-AT (N.D. Ga. filed May 28, 2014); Griffin v. S. Co. Servs., Inc., No. 1:15-cv-0115-AT (N.D. Ga. filed Jan. 14, 2015); Griffin v. SunTrust Bank, Inc., No. 1:15-cv-0147-AT (N.D. Ga. filed Jan. 16, 2015); Griffin v. FOCUS Brands Inc., No. 1:15-cv-0170-AT (N.D. Ga. filed Jan. 20, 2015); Griffin v. Health Sys. Mgmt., Inc., No. 1:15-cv-0171-AT (N.D. Ga. filed Jan. 20, 2015); Griffin v. Lockheed Martin Corp., No. 1:15-cv-0267-AT (N.D. Ga. filed Jan. 28, 2015); Griffin v. Gen. Mills, Inc., No. 1:15-cv-0268-AT (N.D. Ga. filed Jan. 28, 2015); Griffin v. Oldcastle, Inc., No. 1:15-cv-0269-AT (N.D. Ga. filed Jan. 28, 2015); Griffin v. Habitat for Humanity Int'l, Inc., No. 1:15-cv-0369-AT (N.D. Ga. filed Jan. 28, 2015); Griffin v. Verizon Commc'ns, Inc., No. 1:15-cv-0569-AT (N.D. Ga. filed Feb. 26, 2015); Griffin v. Humana Employers Health Plan of Ga., Inc., No. 1:15-cv-3574-AT (N.D. Ga. filed Oct. 8, 2015); Griffin v. Aetna Health Inc. et al., No. 1:15-cv-3750-AT (N.D. Ga. filed Oct. 26, 2015); Griffin v. General Electric Co., No. 1:15-cv-4439-AT (N.D. Ga. filed Dec. 22, 2015); Griffin v. Navistar, Inc., No. 1:16-cv-0190-AT (N.D. Ga. filed Jan. 21, 2016); Griffin v. Humana Employers Health Plan of Georgia, Inc., No. 1:16-cv-0245-AT (N.D. Ga. filed Jan. 26, 2016); Griffin v. Coca-Cola Enterprises, Inc.,

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No. 1:16-cv-0389-AT (N.D. Ga. filed Feb. 9, 2016); Griffin v. Sevatec, Inc., No. 1:16-cv-0390-AT (N.D. Ga. filed Feb. 9, 2016); Griffin v. Cassidy Turley Commercial Real Estate Services, Inc., No. 1:16-cv-0496-AT (N.D. Ga. filed Feb. 17, 2016); Griffin v. Americold Logistics, LLC, No. 1:16-cv-0497-AT (N.D. Ga. filed Feb. 17, 2016); Griffin v. Applied Industrial Technologies, Inc., No. 1:16-cv-0552-AT (N.D. Ga. filed Feb. 23, 2016); Griffin v. Areva, Inc., No. 1:16-cv-0553-AT (N.D. Ga. filed Feb. 23, 2016); Griffin v. FOCUS Brands, Inc., No. 1:16-cv-0791-AT (N.D. Ga. filed Mar. 10, 2016); Griffin v. Northside Hospital, Inc., No. 1:16-cv-1934-AT (N.D. Ga. filed June 10, 2016); Griffin v. CrestlineHotels & Resorts, LLC, No. 1:16-cv-2022-AT (N.D. Ga. filed June 16, 2016); Griffin v. Verizon Communications, Inc., No. 1:16-cv-2639 (N.D. Ga. filed July 20, 2016); Griffin v. RightChoiceManaged Care, Inc. et al., No. 1:16-cv-3102 (N.D. Ga. filed Aug. 23, 2016); Griffin v. United Healthcare of Georgia, Inc., et al., No. 1:17-cv-4561-AT (N.D. Ga. filed Nov. 13, 2017); Griffin v. Coca-Cola Refreshments USA, Inc. et al., No. 1:17-cv-4656-AT (N.D. Ga. filed Nov. 20, 2017); Griffin v. Delta Air Lines, Inc. et al., No. 1:17-cv-4657-AT (N.D. Ga. filed Nov. 20, 2017); Griffin v. TeamCare, a Central States Health Plan, No. 1:18-cv-00532-AT (N.D. Ga. filed Feb. 2, 2018); Griffin v. Hyatt Corp. et al., No. 1:18-cv-02946-AT (N.D. Ga. filed June 18, 2018); Griffin v. Motion Picture Indus. Health Plan et al., No. 1:21-cv-01110-WMR (N.D. Ga. filed Mar. 18, 2021); Griffin v. Blue Cross Blue Shield Healthcare Plan, No. 1:18-cv-00085-WMR (N.D. Ga. filed Jan. 7, 2022).

attorneys' fees in those cases. At this point, a defendant's entitlement to fees where Dr. Griffin has asserted the same or similar causes of action is well established. The Court, therefore, incorporates the Court's prior analyses in Griffin v. Gen. Mills, Inc., 157 F. Supp. 3d 1350 (N.D. Ga. Jan. 15, 2016); Griffin v. Humana Employers Health Plan of Ga., Inc., 167 F. Supp. 3d 1337 (N.D. Ga. Mar. 8, 2016); Griffin v. Sevatec, Inc., No. 1:16-CV-0390-AT, Doc. 24 (N.D. Ga. July 1, 2016); Griffin v. Coca-Cola Enterprises, Inc., No. 1:16-CV-0389-AT, Doc. 25 (N.D. Ga. July 27, 2016); Griffin v. Navistar, Inc., No. 1:16-CV-0190-AT, Doc. 23 (N.D. Ga. July 27, 2016); Griffin v. Applied Industrial Technologies, Inc., No. 1:16-CV-00552-AT, Doc. 25 (N.D. Ga. July 27, 2016); Griffin v. United Healthcare of Georgia, Inc., No. 1:17-CV-4561-AT, Doc. 28 (N.D. Ga. May 24, 2018); Griffin v. Coca-Cola Refreshments USA, Inc., No. 1:17-CV-4656-AT, Doc. 19 (N.D. Ga. May 24, 2018); Griffin v. Delta Air Lines, Inc., No. 1:17-CV-4657-AT, Doc. 15 (N.D. Ga. May 24, 2018); and Griffin v. Aetna Health Inc., No. 1:17-CV-0077-AT, Doc. 29 (N.D. Ga. Sept. 27, 2018).

Upon a thorough review of the record in this case, and after balancing all factors to be considered when awarding fees to the prevailing party, the Court finds that an award of attorneys' fees pursuant to 29 U.S.C. § 1132(g)(1) is appropriate in this case. See Freeman v. Continental Ins. Co., 996 F.2d 1116, 1119 (11th Cir. 1993). A movant for attorney's fees "shall file and serve a detailed specification and itemization of the requested award, with appropriate affidavits and other supporting documentation." LR 54.2(A)(2), NDGa. Accordingly, the Court directs the Defendants to submit their supported claims for attorneys' fees and costs within fourteen (14) days of this Order.

CONCLUSION

For the foregoing reasons, IT IS HEREBY ORDERED that Defendants' respective Motions to Dismiss [Docs. 18.20] are GRANTED.

IT IS SO ORDERED, this 7th day of March, 2022.

/s/ William M. Ray, II

United States District Judge

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