IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

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| ELIZABETH WILSON | : | CIVIL ACTION |
| | : | |
| v. | : | |
| | : | |
| CHESTNUT HILL HEALTHCARE, CHESTNUT HILL REHABILITATION HOSPITAL, and AETNA U.S. HEALTHCARE | : | NO. 99-CV-1468 |

**M E M O R A N D U M**

Giles, C.J. February____, 2000

This is a personal injury/medical malpractice action in which Elizabeth Wilson ("Wilson") sues for damages from injuries she incurred while attempting to enter her daughter's Sports Utility Vehicle after discharge from Chestnut Hill Rehabilitation Hospital ("Chestnut Hill"). Aetna U.S. Healthcare ("Aetna") is alleged to have instructed Chestnut Hill to discharge Wilson on April 14, 1997 before she was "medically ready" for release. Wilson asserts that Aetna's instruction to Chestnut Hill was a substantial factor in causing her injuries. Now before the court is Aetna's Motion for Summary Judgment on the various counts asserted against it. For the reasons which follow, Aetna's motion is granted and Wilson's claims are dismissed.

## BACKGROUND

### Procedural History

On or about February 11, 1999, Wilson filed a Complaint in the Philadelphia Court of Common Pleas against defendants, Chestnut Hill Hospital, Chestnut Hill Rehabilitation Hospital, and Aetna. On or about March 24, 1999, Wilson's action was removed to the U.S.

District Court for the Eastern District of Pennsylvania by Aetna pursuant to 28 U.S.C. § 1441(b). Wilson filed a Motion to Remand which was denied by this court in a June 8, 1999 Order. Subsequently, Wilson filed a Motion to Vacate the June 8, 1999 Order which was also denied by the court on June 24, 1999. Wilson then filed a Motion for Certification of the June 8, 1999 Order for Interlocutory Appeal which too was denied. On April 4, 1999, Wilson instituted a separate lawsuit by filing a Writ of Summons in the Court of Common Pleas of Philadelphia against Dr. Leonard Tananis ("Dr. Tananis"); Dr. Tananis removed the lawsuit to this court pursuant to 28 U.S.C. § 1332. Subsequently, Wilson filed her Complaint against Dr. Tananis. Because the allegations in the Tananis Complaint stem for the same occurrence as alleged in the Complaint against the Chestnut Hill defendants and Aetna, Dr. Tananis filed a Motion to Consolidate the two actions; this motion was granted on December 1, 1999.

On December 17, 1999, Aetna filed the instant Motion for Summary Judgment on the counts against it.

**Material Facts**

Wilson was transferred to Chestnut Hill Hospital's Rehabilitation facility on March 25, 1997 to further recuperate from a stroke. She was a Medicare beneficiary enrolled in Aetna's Medicare Plan. (Pl.'s Compl. ¶ 6). As is the routine at Chestnut Hill, Wilson was assigned a rehabilitation team which consisted of: (a) a treating physician, Dr. Tananis; (b) an occupational therapist, David Brady; (c) a physical therapist, Catherine Gordon; and (d) a case manager, Joanne Busch ("Busch"). The rehabilitation team held conferences to discuss, inter alia, Wilson's treatment goals, her progress, and her discharge date.

Joanne Busch ("Busch"), as the case manager on the team, acted as a liaison

between Chestnut Hill and Aetna, Wilson's Medicare provider, and between Chestnut Hill and Wilson's family. Specifically, Busch relayed information to Aetna concerning Wilson's medical history, functional status, rehabilitation goals and progress, and proposed release date.

Dr. Tananis scheduled Wilson for an April 12, 1997 discharge to a personal care facility, Springfield Residence ("Springfield"). Aetna was made aware of the discharge date and never received a subsequent request for a further stay. Nonetheless, because Springfield did not have a room available for her until April 14, 1997, Chestnut Hill elected to postpone Wilson's discharge two days to accommodate the anticipated Springfield admission. On the morning of April 14, 1997, Wilson's daughter, Ann Glass ("Glass"), who had expressed great disagreement with her mother's April 12th discharge date, advised Chestnut Hill that she had decided that Wilson would not go to Springfield but that she would be taking her mother to her own apartment where Glass planned to help Wilson care for herself with the aid of home nurses. Aware of Glass' intended care plan, Dr. Tananis discharged Wilson that day to her daughter's care. After leaving the hospital building, but while still on the hospital's grounds, Wilson suffered a fractured ankle when she fell. The leg upon which she was temporarily balancing gave way as she was attempting to step up into her daughter's Ford Explorer. It is undisputed that Wilson attempted to access the sports utility vehicle without assistance from her daughter or the Chestnut Hill nurse, Theodorika Sandstrom ("Sandstrom"), who had wheeled her to the vehicle. Wilson's broken ankle occurred solely as a consequence of her fall.

Wilson filed suit against Chestnut Hill and Aetna. As to Aetna, Wilson contends that it forced Chestnut Hill to discharge her prematurely because Aetna allegedly would not approve a hospital stay beyond April 12, and that such action was a substantial factor in making

her susceptible to the kind of fall which occurred. As to Chestnut Hill, Wilson asserts that the hospital's employee was negligent in not assisting her safely into her daughter's vehicle. Subsequently, Wilson also filed a separate state court action against Dr. Tananis claiming that he discharged her before it was medically proper to do so, thereby subjecting her to a fall because she was in a weakened condition. That case was removed to federal court and consolidated with the present matter, Civil Action No. 99-1468.

Specifically, Wilson's Complaint asserts that Aetna's "instruction" to Chestnut Hill to discharge her before she was "medically ready:" (a) was in breach of Wilson's contract with Aetna; (b) was in "bad faith" under 42 Pa.C.S.A. § 8371; (c) was tantamount to dispensing medical advice and that said advice was not given in accordance with reasonable professional standards; and (d) amounted to tortious interference with the relationship between Wilson and Chestnut Hill. Aetna avers in its summary judgment motion, inter alia, that regardless of Wilson's "artful pleading," which couches all of her allegations as state law claims, her claims actually "arise under" the Medicare Act, 42 U.S.C. § 1395, et seq., and as such, Wilson was required to bring her action under the Medicare Act's enforcement provision, 42 U.S.C. § 405(g). Further, Aetna asserts that, pursuant to § 405(g), before Wilson may present her claims for judicial review, she has to press them through all designated levels of administrative review and, because Wilson has failed to do so, her claims should be dismissed. It is also undisputed that neither Wilson nor her family, ever appealed the appropriateness of the April 12, 1997 or April 14, 1997 discharge dates. (Wilson Dep. pp. 61-62; Glass Dep. p. 22).

## DISCUSSION

**Statement of Jurisdiction**

Wilson's claims against Aetna stem from Aetna's role as her Medicare provider. At least one of her stated causes of action, breach of contract, arises by its terms under the Medicare Act, 42 U.S.C. § 1395, et seq. Wilson's other claims are so "inextricably intertwined" with her contract that they too "arise under" the Medicare Act. Heckler v. Ringer, 466 U.S. 602, 614-15 (1984). Indeed, all the other claims against Aetna are restatements in various forms of the breach of contract claim. Therefore, this court previously determined that federal question jurisdiction existed over this matter pursuant to 28 U.S.C. § 1331.

**Analysis**

Summary judgment is proper when the moving party establishes that the "pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). Once the moving party has met its burden, the nonmoving party must come forward with specific facts contradicting those set forth by the moving party, thereby showing that there is a genuine issue for trial. See Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586-87 (1986).

**I. Wilson Has Failed to Exhaust Her Administrative Remedies Before Seeking Judicial Review and Therefore Her Claims Must Be Dismissed Pursuant to the Medicare Act.**

*A. The Medicare Act.*

Title XVIII of the Social Security Act, 79 Stat. 291, as amended, 42 U.S.C. § 1395 et seq., commonly known as the Medicare Act (the "Act"), establishes a federally

subsidized health insurance program for eligible beneficiaries, including the aged and the disabled. With regards to disputes between insurance providers authorized to do business under the Act and the insured they cover, the Act provides that the Secretary of Health and Human Services (the "Secretary") must render the "final decision" with regards to such dispute or "claim" arising under the Act, *i.e.*, "whether an individual is entitled to benefits." 22 U.S.C. § 1395ff(a). Judicial review of these "claims arising under" the Act is available only after the Secretary has rendered such "final decision" on the claim, "in the same manner as is provided in 42 U.S.C. § 405(g) for old age and disability claims arising under Title II of the Social Security Act." Heckler v. Ringer, 466 U.S. 602, 605 (1984); 42 U.S.C. § 1395ff(b)(1).

"[T]he Secretary has provided that a 'final decision' is rendered on a Medicare claim only after the individual has pressed the claim through all designated levels of administrative review." Ringer, 466 U.S. at 606. In observing this standard, courts are deferring to Congress' intent to have Medicare disputes resolved based "upon [the Secretary's] unique expertise in the health care field," In re University Med. Ctr., 973 F.2d 1065, 1073, so as not "to undercut Congress' carefully crafted scheme for administering the Medicare Act." Ringer, 466 U.S. at 621. Thus, this exclusive administrative appeal process of the Act applies to all disputes involving a covered individual's dissatisfaction with a Medicare decision, including the "amount of benefits" and "any other denial of . . . benefits" under the Act. 42 U.S.C. § 1395ff(b)(1)(C)-(D).

*B. Plaintiff's Claims "Arise Under" the Medicare Act.*

The Supreme Court has adopted two alternative tests for determining whether a claim "arises under" the Medicare Act. Berman v. Abington Radiology Assoc., Inc., No.

CIV.A.97-3208, 1997 WL 534804, at *3 (E.D. Pa. 1997). A claim "arises under" the Medicare Act if: (a) "both the standing and the substantive basis for the presentation of the claims is the Medicare Act," Ringer, 422 U.S. at 615; In re University Med. Ctr., 973 F.2d at 1073; or (b) it is "inextricably intertwined" with a claim for Medicare benefits. Ringer, 422 U.S. at 614. In executing this two-prong analysis, courts must discount any "creative pleading" which may transform Medicare disputes into mere state law claims, and painstakingly determine whether such claims are ultimately Medicare disputes. See, e.g., Bodimetric Health Serv., Inc. v. Aetna Life & Cas., 903 F.2d 480, 487 (7th Cir. 1990) (holding that "[a] party cannot avoid the Medicare Act's jurisdictional bar simply by styling its attack as a claim for collateral damages instead of a challenge to the underlying denial of benefits.")

Here, all of Wilson's claims against Aetna are governed by the Medicare Act as each claim "arises under" the Act pursuant to one of the aforementioned tests and/or is preempted by statute.

*1. Claim I - Breach of Contract*

Count II of Wilson's Complaint, "Breach of Contract," asserts that "Aetna instructed Defendant [Chestnut Hill] to discharge [her] and that Aetna would not pay [Chestnut Hill] past April 12, 1997 [and that] Aetna had no reasonable contractual or medical basis for said action." (Pl.'s Compl. ¶ 22). The contract at issue is the one between Wilson and Aetna whereby Aetna provides insurance for Wilson under the authority of the Medicare Act. At bottom, Wilson's claimed "breach" is the "denial of benefit" under her Medicare contract. The contractual relationship between Aetna and Wilson provides her with both the "standing and the substantive basis" for her claim of breach. The underlying refusal to provide coverage is exactly

the kind of dispute described in section 1395ff(b)(1) over which the power to "determin[e] whether an individual is entitled to benefit" is vested initially in the Secretary. 42 U.S.C. § 1395ff(b)(1). Before this claim may properly come under the review of the court, it must have been "pressed . . . through all designated levels of administrative review." Ringer, 466 U.S. at 606. Because Wilson has failed to do so, Count II of Wilson's Complaint must be dismissed without prejudice so that she may pursue her claim through the proper administrative channels.

*2. Claim II - Bad Faith*

Wilson specifically asserts that Aetna "acted in bad faith and without a reasonable basis for its conduct" in violation of Pennsylvania's Bad Faith in Insurance statute, 42 Pa.C.S.A. § 8371. (Pl.'s Compl. ¶ 24-25). The claim that Aetna acted "without a reasonable basis" again boils down to dissatisfaction with a decision not to provide benefits. The averment of "bad faith" perhaps implies malice; however, the denial of benefits is at the core of the claim. Thus, the basis for Wilson's bad faith claim, both substantively and in terms of standing, is the relationship between the parties under the authority of the Medicare Act. Therefore, this claim also "arises under" the Medicare Act and, as such, must be dismissed without prejudice because Wilson has failed to exhaust the administrative review process.

*3. Claim III - Medical Negligence*

In Count IV of her Complaint, Wilson alleges that Aetna, in instructing Chestnut Hill to discharge her when it did, "took on the capacity of giving medical advice and instructions" but, in so doing, failed to render said advice "in accordance with reasonable professional standards." (Pl.'s Compl. ¶ 27-28). Although neatly styled as a medical negligence claim, Wilson's allegation that Aetna dispensed medical advice without complying with

established professional standards merely challenges the grounds of Aetna's alleged decision to deny subsequent benefits under her Medicare policy. That is, at the center of this count is Wilson's disagreement with the rationale employed by Aetna to allegedly deny her a benefit. Indeed, entertaining the argument that such a denial is tantamount to medical malpractice would give every aggrieved Medicare recipient an instant avenue to judicial review and a fool-proof method to skirt the "carefully crafted" Medicare administration procedures that Congress intended to be utilized. Once more, this claimed "negligence" is quite simply, at its pith, dissatisfaction with Aetna's alleged denial of benefits. Again, such dissatisfaction with a Medicare decision must be appealed through the proper administrative channels before they may be addressed by the court. Accordingly, Wilson's medical negligence claim against Aetna must be dismissed without prejudice.

*4. Tortious Interference*

In Wilson's final count against Aetna, she avers that Aetna's alleged instruction to discharge her "under threat of non-payment and without medical justification" amounted to intentional interference with "the relationship between [herself] and [Chestnut Hill]." (Pl.'s Compl. ¶ 34). Notwithstanding Wilson's artful pleading, this claim also boils down to a dispute about Aetna's alleged decision to deny future benefits. As stated in the previous section, this court will not review a Medicare claim – no matter how creatively constructed – until a "final decision" has been rendered by the Secretary on the issue. Because this claim was not raised through the appropriate appeals mechanism, it must be dismissed without prejudice.

**II. Wilson's Treating Physician, Dr. Tananis, Made the Decision to Discharge Her, Therefore, Aetna Could Not Have Given the Alleged "Instruction" to Chestnut Hill Which Wilson Claims Caused Her Injuries.**

At the heart of Wilson's claims against Aetna is the allegation that Aetna "instructed" Chestnut Hill to discharge her before she was "medically ready" for monetary reasons. (Pl.'s Compl. ¶ 21-34). The record shows that Dr. Tananis stated that he, and he alone, made the medical decision to discharge Wilson and that he did so *without* discussion with anyone from Aetna. (Tananis Dep. p. 62). There is no evidence that Aetna refused to pay for any hospital stay or extended stay deemed necessary by Dr. Tananis.

This is not a case where insurance carrier refused to pay for a diagnostic test, treatment, or continued hospitalization request from the physician such that it might be said that there was "outside interference" with a medical decision. Indeed, Wilson's treating physician takes unequivocal and sole medical responsibility for the discharge decision, and, as a result, Wilson cannot lay that medical decision onto Aetna to under any theory.

**III. Conclusion**

Any and all disputes "arising under" the Medicare Act must be pressed through all designated levels of administrative review. Such claims must receive a "final decision" rendered by the Secretary of Health and Human Services before a court may review them. Ringer, 466 U.S. at 605; 42 U.S.C. § 1395ff(b)(1). Because this court finds that Wilson's claims "arise under" the Medicare Act, and those claims were not appealed through the proper administrative procedure, this court does not have the power to review her claims. Therefore, the

counts against Aetna in Wilson's Complaint must be dismissed without prejudice.[1]

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| CHESTNUT HILL REHABILITATION | : | |
| HOSPITAL, and AETNA U.S. | : | |
| HEALTHCARE | : | NO. 99-CV-1468 |

**JUDGMENT**

AND NOW, this ___ day of February, 2000, upon consideration of Defendant's Motion for Summary Judgment, and the Plaintiff's response in opposition, for the reasons stated in the attached memorandum, it is hereby ORDERED that Defendant's motion is GRANTED. Counts II, III, IV, and V of Plaintiff's Complaint are dismissed without prejudice.

BY THE COURT:

_____

JAMES T. GILES C.J.

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to Aetna also argues that even if it somehow "caused" Chestnut Hill's April 12th discharge decision, such conduct could not have been, under the facts of this case, a substantial factor in bringing about Wilson's injuries as a matter of law. The court does not have to reach the merits

An appropriate Order follows

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of this argument in view of the above disposition.