Recovery of Overpaid Benefits Under an ERISA Plan

By V. Brandon McGrath on 03.01.2008

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The U.S. Supreme Court specifically addressed this issue in *Sereboff v. Mid Atlantic Medical Services Inc.* (2006). The Court held that a fiduciary has a right to recover overpaid benefits as a form of equitable relief under ERISA. There are two key aspects of this decision that establish the right to recover overpaid benefits under an ERISA plan. First, the Court held that “the fund over which a lien is asserted need not be in existence when the contract containing the lien provision is executed.” Second, the Court eliminated any strict tracing requirements over the funds to be recovered. This means that when a plan pays benefits, the lien is created over the benefits paid by the plan, and not another source of funds.

Recently, the Sixth Circuit Court of Appeals applied Sereboff to the recovery of overpaid disability benefits under an ERISA plan. In *Gilchrest v. Unum Life Ins. Co. of America* (2007), the Sixth Circuit held that an ERISA plan had the right to recover overpaid disability benefits under ERISA. The beneficiary, Robert Gilchrest, received long-term disability benefits under a disability insurance policy offered through his employer. Gilchrest applied for and eventually received Social Security Disability Insurance (SSDI). Under the terms of the policy, SSDI benefits were designated “deductible sources of income,” and Gilchrest’s disability benefits would be reduced by any amount he receives from Social Security. The policy also stated that Unum Life Insurance Company of America (Unum) has the right to recover any overpayments due to the receipt of deductible sources of income. When Gilchrest was awarded SSDI benefits, he received a retroactive award and was paid SSDI benefits for the same period he had already been paid disability benefits from Unum. As a result, an overpayment of disability benefits occurred, and Unum sought to recover those benefits.

Relying upon Sereboff, the Sixth Circuit held that Unum was entitled to recover the overpaid disability benefits. The court held that under ERISA, a fiduciary can enforce an “equitable lien by agreement.” The court also stated that the fund need not be in existence when the contract was executed and the fact that Gilchrest spent all the money received from Unum is not a defense. The plan specifically required Gilchrest to reimburse it for any overpayments made as a result of benefits he received from a deductible source. Accordingly, “the Plan’s overpayment provision asserts a right to recover from a specific fund distinct from Gilchrest’s general assets — the fund being the overpayments of benefits — and a particular share of that fund to which the plan was entitled — all overpayments due to the receipt of Social Security benefits.”
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Based upon Gilchrest, an ERISA plan is entitled to recover overpayments (and possibly duty-bound to do so) as long as the basis for the recovery is a specifically identifiable fund apart from the general assets of the beneficiary. This means it is critical that the plan terms specifically identify any offsets that are applied to benefits and specifically provide for the recovery of overpayments. Since neither Sereboff nor Gilchrest require the fund to be in existence at the time the equitable lien is created, there is no need for the funds to be set aside in a specific account. Instead, the right to recover follows the benefits already paid to the beneficiary. Thus, the equitable lien attaches to funds already paid to the beneficiary. There is no need to consider the source of any future funds the beneficiary might receive.

Not every federal Circuit Court of Appeals has addressed this issue since Sereboff was decided. Consequently, not all courts agree on the scope of the right to recover overpayments under ERISA. This is a constantly evolving issue, and it will likely be a hot topic among the federal circuits in the near future.