UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 20-80545-CIV-MARRA

SHARON PROLOW, on behalf of herself and all others similarly situated,

Plaintiff,

vs.

AETNA LIFE INSURANCE COMPANY,

Defendant.
_____/

ORDER GRANTING IN PART AND DEYING IN PART DEFENDANT'S MOTION FOR PARTIAL DISMISSAL OF PLAINTIFF'S AMENDED COMPLAINT [DE 49]

This is an action under the Employee Retirement Income Security Act ("ERISA") 29 U.S.C. §1001, *et seq*. Plaintiff Sharon Prolow ("Prolow") seeks damages and equitable relief from Aetna Life Insurance Company ("Aetna"), the administrator of an employee welfare benefit health plan established by Ms. Prolow's employer, AllianceBernstein P.L. The matter is currently before the Court on Aetna's Motion to Dismiss Plaintiff's breach of fiduciary duty claim under ERISA Section 502(a)(3), as set forth in Count 2 of Plaintiff's Amended Complaint, for failure to state a claim on which relief can be granted [DE 49]. Aetna also challenges Plaintiff's standing to bring a claim for prospective injunctive relief, on behalf of herself or the putative class members, under her benefits claim or breach of fiduciary duty claim. Plaintiff has filed her opposition to the motion [DE 60], and Aetna has filed is reply [DE 62]. For the reasons that follow, the motion is granted in part and denied in part.

I. BACKGROUND[1]

At all relevant times, Ms. Prolow was a participant in an "employee welfare benefit health plan" ("the Plan") offered and funded by her employer and administered by Aetna (FAC ¶¶41-43). The Plan incorporates an exclusion for services which are deemed "experimental or investigational" (the "E/I Exclusion"). In October 2017, Ms. Prolow was diagnosed with breast cancer. She underwent a double mastectomy in November 2017, and remained cancer-free until August 2018, when she suffered a recurrence of her breast cancer (FAC ¶48). After undergoing chemotherapy in late 2018, Ms. Prolow's radiation oncologist, Dr. Marcio Fagundes of Miami's Cancer Institute ("MCI") at Baptist Health South Florida, recommended Proton Beam Radiation Therapy ("PBRT")[2] as the best course of treatment for her (FAC ¶50).

Aetna denied Ms. Prolow's request for preauthorization of PBRT, and Ms. Prolow appealed the denial (FAC ¶51). On March 6, 2019, Aetna upheld the denial of Ms. Prolow's request for preauthorization based on the application of Aetna's PBRT Clinical Policy Bulletin No. 270 ("Proton Beam, Neutron Beam, and Carbon Ion Radiotherapy"), which excludes coverage for PBRT as "experimental and investigational" for treatment of most cancers in patients over 21 years of age (FAC ¶¶ 3,52). Aetna explained that its decision was based on application of its PBRT Clinical Bulletin "and the information we have," and asserted "[c]linical studies have not proven that this procedure is effective for treatment of the member's condition." (FAC ¶ 52).

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[1] The recited facts are taken from the Plaintiff's (First) Amended Class Action Complaint ("FAC") filed January 25, 2021 [DE 45].

[2] PBRT is a procedure that uses protons to deliver a curative radiation dose to a tumor, while reducing radiation doses to healthy tissues and organs. With PBRT, protons deposit energy over a small area, called the "Bragg peak," which can be used to target high doses of proton beams to a tumor. It is designed to minimize damage to normal tissues in front of and behind the tumor, enabling patients to tolerate higher total doses of radiotherapy than traditional Intensity Modulated Radiotherapy ("IMRT") (FAC ¶¶ 27-28).

On March 14, 2019, Dr. Fagundes contacted Aetna on Ms. Prolow's behalf, asking it to reconsider its decision. As support, he cited the FDA's approval of proton therapy dating back to February 22, 1988 and stated that Ms. Prolow presented "a perfect example of a very complex scenario" that would benefit from PBRT in order to avoid "significant cardiac exposure." (FAC ¶¶53-54). He also noted that Baptist Health had set the charge for PBRT at the same rate as traditional IMRT in order to facilitate decision-making which focused on the clinical efficacy of the treatment (FAC ¶55). Aetna, however, refused to revisit its decision, without comment, and did not acknowledge the information provided by Dr. Fagundes (FAC ¶56).

Ms. Prolow next requested an external review of Aetna's decision. On April 1, 2019, the review organization hired by Aetna, Medical Care Management Corporation ("MCMC"), rejected Ms. Prolow's request for reconsideration and concluded that PBRT was not covered by the Plan. (FAC ¶¶58-59). According to Plaintiff, MCMC did not actually conduct an independent evaluation of the efficacy of PBRT for her breast cancer treatment, but simply rubber-stamped Aetna's decision to deny coverage (FAC ¶60).

Ms. Prolow received PBRT to treat her breast cancer, despite Aetna's refusal to cover it, incurring total out-of-pocket expenses of approximately $100,000 (FAC ¶63). She alleges that the PBRT was successful, and that she would undergo PBRT again if her breast cancer recurs and her oncologist recommended it (FAC ¶ 64).

Based on the above, Ms. Prolow filed this lawsuit on March 31, 2020 asserting claims for improper denial of benefits under ERISA Section 502(a)(1)(B) and breach of fiduciary duty under ERISA Section 502(a)(3). On January 4, 2021, the Court dismissed the breach of fiduciary duty claim for failure to state a claim on which relief may be granted, finding it duplicative of the

benefits claim [DE 40]. However, it allowed Plaintiff an opportunity to amend in an effort to correct this pleading deficiency, finding Ms. Prolow could pursue claims under 502(a)(1)(B) and 502(a)(3) simultaneously if pled in the alternative, alleging different theories of liability and separate losses [DE 40, p. 8-10].

II. Plaintiff's (First) Amended Class Action Complaint

On January 25, 2021, Plaintiff filed her (First) Amended Class Action Complaint [DE 45], asserting claims for improper denial of benefits under ERISA Section 502(a)(1)(B), codified at 29 U.S.C. §1132 (a)(1)(B) (Count 1) and breach of fiduciary duty under ERISA Section 502(a)(3), codified at 29 U.S.C. §1132 (a)(3) (Count 2). She asserts claims on her own behalf and on behalf of a putative nationwide "PBRT Class," defined as:

> All participants or beneficiaries in ERISA Plans underwritten or administered by Aetna who, citing the application of the PBRT Clinical Policy Bulletin, were denied health insurance coverage for Proton Beam Radiation Therapy to treat their cancer, on grounds that included the assertion that it was "experimental or investigational" or not "medically necessary." The PBRT Class includes both persons whose post-service claims for reimbursement were denied and persons whose pre-service requests for authorization were denied.

(FAC ¶ 66).

ERISA Section 502(a)(1)(B) allows a participant to bring a civil action "to recover benefits due to [her] under the terms of [her] plan, to enforce [her] rights under the term of the plan, or to clarify [her] rights to future benefits under the term of the plan." 29 U.S.C. §1132(a)(1)(B). In bringing a claim under this provision, Plaintiff alleges that PBRT is neither experimental nor investigational for persons over 21 years of age, and that the E/I Exclusion cited by Aetna as a basis for denying her claim is not properly applied to PBRT (FAC ¶¶ 83-84). She contends that Aetna breached the terms of the Plan by applying its outdated Policy Bulletin to deny her claim,

and breached the group health care plans of other Class members who had similar PBRT claims in like fashion. For relief on this claim, she seeks reimbursement of her out-of-pocket costs in obtaining PBRT, and similar relief for putative Class members through creation of a common fund out of which payments for unpaid benefits may be made or reimbursed (FAC, Prayer for Relief "A.ii.," p. 22). Alternatively, she seeks an injunction requiring Aetna to reprocess her claims and the claims of putative Class members for preauthorization or reimbursement of PBRT for treatment of cancer, without application of Aetna's PBRT Clinical Policy Bulletin, and with "full weight" granted to information supplied by Plaintiff, PBRT Class members and their treating physicians (FAC, Prayer for Relief, "A. iii.," p. 22).

ERISA Section 502(a)(3), in turn, allows a participant to bring a civil action "to enjoin any act or practice which violates [ERISA] or the terms of the plan," or "to obtain other appropriate equitable relief" to "redress such violations" or "enforce any provisions of [ERISA] or the terms of the plan." 29 U.S.C. §1132 (a)(3). In Count 2 of her Amended Complaint, Ms. Prolow asserts a claim for breach of fiduciary duty under this provision, contending that Aetna violated its fiduciary obligation to administer the claims process in a prudent and diligent manner by relying on its own outdated internal guidelines and the opinions of supposedly independent claims reviewers that were conflicted and predisposed to deny coverage in processing claims, while ignoring relevant medical information showing the need for PBRT offered by patients and their medical providers (FAC ¶¶89-91). She further alleges that Aetna filed to give Plaintiff and PBRT Class members a full and fair opportunity to participate in the claims adjudication process, and ignored or gave improper weight to information provide by Class members and their treating physicians throughout the claims adjudication and handling process, all in breach of its

obligations as an ERISA fiduciary (FAC ¶92).

By operating its claims adjudication processes in this manner, Ms. Prolow asserts that Aetna elevated its own interests and those of its corporate affiliates above the interests of the plan participants and beneficiaries, did not act "solely in the interests of the participants and beneficiaries" and for the "exclusive purpose" of "providing benefits," and generally failed to administer its claims processes in a fair, prudent and diligent manner (FAC ¶¶ 93-94). As a result, Ms. Prolow avers that she and the Class members were harmed because their claims did not receive the full proper consideration of all relevant evidence by Aetna (FAC ¶95).

For relief on this count, Plaintiff seeks a declaration that Aetna violated its fiduciary duties under ERISA as a result of its flawed claims adjudication and handling processes; an injunction requiring Aetna to reprocess her claim and the PBRT Class members' claims for preauthorization or reimbursement of PBRT for cancer treatment without application of the PBRT Clinical Policy Bulletin, and with "full and fair weight" afforded to information provided to Aetna by Plaintiff, PBRT Class members and their treating physicians; and an injunction ordering Aetna to institute a claims process for future claims handling that does not apply the PBRT Policy Bulletin and grants full and fair weight to information supplied by members and their treating physicians (FAC, at pp. 22-23, Prayer for Relief, "B").

III. AETNA'S MOTION TO DISMISS

Aetna seeks dismissal of Plaintiff's re-pled ERISA Section 502(a)(3) breach of fiduciary duty claim (Count 2) with prejudice for failure to state a claim on which relief can be granted. It contends this claim cannot be maintained because it seeks, at its essence, the same relief as that pursued under the denial of benefits claim pled under Section 502(a)(1)(B) (Count 1). Because

Plaintiff has not identified meaningfully different legal theories or separate losses to distinguish these claims, Aetna contends she has failed to cure the core pleading deficiency which prompted the dismissal of her initial complaint.

In addition, Aetna argues that Plaintiff lacks Article III standing to seek prospective declaratory and injunctive relief governing Aetna's future claims handling, on behalf of herself or putative Class members, because she does not demonstrate a "real and immediate threat" of future injury linked to Defendant's alleged misconduct. Finally, Aetna argues that two of the four equitable remedies sought by Plaintiff -- a reprocessing of claims and an injunction requiring Aetna's future implementation and adherence to full and fair claims review processes - are "unavailable as a matter of law," citing *Blankenship v. Metropolitan Life Ins. Co.*, 644 F.3d 1350, 1356 (11th Cir. 2011); *Oates v. Walgreen Co.*, 573 Fed. Appx. 897 (11th Cir. 2014).

IV. LEGAL STANDARD

A motion to dismiss is properly granted where the complaint fails to state a claim on which relief can be granted. Fed. R. Civ. P. 12(b)(6). To survive a motion to dismiss, plaintiff must allege facts that are enough "to state a claim to relief that is plausible on its face." *Bell Atlantic. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). A claim has "facial plausibility" when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

In ruling on a motion to dismiss, the Court must accept the factual allegations in the complaint as true and must construe them to include any theory on which the plaintiff may recover. *Linder v. Portocarrero*, 963 F.2d 332, (11th Cir. 1992) (citing *Robertson v. Johnston*, 376 F.2d 43 (5th Cir. 1967). However, a court need not take allegations as true if they are merely "threadbare

recitals of a cause of action's elements supported by mere conclusory statements." *Iqbal*, 129 S. Ct. at 1949. In ruling on a motion to dismiss, the court ultimately asks "not whether the plaintiff will ultimately prevail, but whether the claimant is entitled to offer evidence to support the claims." *Twombly*, 550 U.S. at n. 8.

V. DISCUSSION

A. Failure to State A Claim for Breach of Fiduciary Duty

This Court previously held that Plaintiff may plead dual claims for equitable relief under §1132(a)(3) and monetary relief under §1132(a)(1), provided that her claims are based on different legal theories and seek different remedies for separate losses [DE 40, p. 10]. Aetna contends that Plaintiff has failed to meet this standard because her claims are essentially based on the same alleged misconduct – failure to pay benefits due under the Plan – and the relief sought under the breach of fiduciary duty claim is, at its essence, the same as that requested under the benefits claim – compensation for PBRT cancer treatment which she contends is covered under the Plan. In other words, both Counts assume that benefits are due under the Plan and were wrongfully denied, with Count 1 reaching the benefits under a contract theory and Count 2 reaching the benefits under a tort theory.

Opposing the motion, Plaintiff contends that the facts alleged in support of her (a)(1)(B) benefits claim and her (a)(3) equitable claim are sufficiently distinct to support alternative legal theories: In her (a)(1)(B) claim, Plaintiff asserts that Aetna breached the terms of the Plan by denying preauthorization for PBRT under application of an outdate policy bulletin which categorizes PBRT as "experimental" and "investigational'" for persons over 21 years of age. In her (a)(3) claim, Plaintiff asserts that Aetna breached its fiduciary duties by failing to afford her

and the Class members full and fair consideration of relevant evidence, due to deficiencies in its claims adjudication procedures; by placing its own self-interest and those of its corporate affiliates ahead of patient care; and by elevating the opinions of conflicted claims reviewers over those of the treating physicians of Plaintiff and the putative Class members.

Plaintiff also claims that the relief sought under each count is distinct: Under her (a)(1)(B) claim, Plaintiff seeks reimbursement of the out-of-pocket cost she incurred for her PBRT treatment and seeks like reimbursement for similarly situated PBRT Class members. Under her (a)(3) claim, she does not demand monetary relief, but instead requests an injunction requiring Aetna to reprocess her claim and those of PBRT Class members, without application of the PBRT Policy Bulletin and with full and fair consideration of relevant medical information from the patients and the patients' physicians.

Aetna argues that these distinctions are meaningless, and that the relief sought, as a practical matter, is the same – reimbursement on PBRT claims. While the breach of fiduciary duty claim does not expressly include a request for monetary relief, Aetna contends it effectively achieves this result by seeking issuance of an injunction requiring the processing of Plaintiff's claim in a manner which will trigger coverage under the Plan. This, it contends, is simply an indirect way of seeking monetary compensation for claims covered by the Plan. Similarly, it contends that Plaintiff's grievances regarding Aetna's supposedly deficient claims review processes are just another way of complaining that Aetna improperly denied benefits under the Plan and should now be required to compensate Plaintiff for its alleged wrongful denial of benefits.

The Court agrees that Plaintiff's Amended Complaint does not allege separate losses flowing from Defendant's alleged misconduct and fails to correct the pleading deficiency

identified in the Court's initial dismissal order. That Count 2 frames its request for relief in the form of equitable injunctive relief does not cure this deficiency.

As a threshold proposition, an ERISA clamant may plead an equitable claim in the alternative, especially at the pleading stage, based on allegations for which section 502(a)(1)(B) does not provide an adequate remedy. *Jones v. Am. Gen. Life & Acc. Ins. Co*, 370 F.3d 1065, 1071-74 (11th Cir. 2004). The "relevant concern" in determining the availability of a section 502(a)(3) claim is "whether the plaintiffs also ha[ve] a cause of action, based on the same allegations, under [s]ection 502(a)(1)(B) or ERISA's other more specific remedial provisions. *Jones*, 370 F.3d at 1073 (discussing *Vanity Corp. v Howe*, 516 U.S.s 489, 515)). In *Jones*, the claimants pled a section (a)(1)(B) claim, on the theory that the Plan entitled them to benefits. The claimants also pled an alternative equitable claim under (a)(3) (based on systemic fraud and misrepresentation leading claimants to believe they would be entitled to benefits) which presupposed or assumed that the plan supported the administrator's interpretation and precluded their benefits claim under section 502(a)(1)(B). *Id*. at 1070-71. Because the section (a)(3) claim assumed that no remedy was available under (a)(1)(B), the Eleventh Circuit reversed the district court's dismissal of the equitable claim. *Id.* at 1074.

In this case, in contrast, Plaintiff may not plead a breach of fiduciary duty claim, as set forth at Count 2, in the alternative to her Section 502 (a)(1)(B) benefits claim, because her benefits claim affords her an adequate remedy. Unlike the equitable (fraud) claim in *Jones*, Count 2 of Ms. Prolow's Amended Complaint does not assume that PBRT is not covered under the Plan terms. Instead, Count 2 rests on the allegation that Aetna breached its fiduciary duties by refusing to pay Plaintiff the benefits to which she was entitled under the Plan. In other words, Count 2 does not

assume that the Plan precludes her benefits claim – it assumes that the Plan covers her claim but that systemic claims handling misconduct simply led to an incorrect coverage decision.[3]

Because Section 502(a)(1)(B) provides an adequate remedy for the essential allegations of Count 2, by enabling Plaintiff to recover benefits allegedly due under the Plan, Count 2 is properly dismissed as duplicative. *Gilmore v. American Basketball Assn Players Retirement Plan*, 2015 WL 12806538, at *9 (M.D. Fla. 2015); *Pruitt v. American General Life Ins.*, 2015 WL 1524412, at *2 (M.D. Fla. 2015) (where relief sought by ERISA plaintiff, at heart, is payment of benefits under an ERISA plan, 502(a)(3) claim is not available because plaintiff has a remedy available under (a)(1)(B)).

Further, as Aetna notes, a Section 502(a)(1)(B) claim recognizes entitlement to declaratory or injunctive relief related to unpaid benefits, in addition to monetary relief in the form of payment of benefits. Indeed, in this case, Plaintiff's benefits claim includes, in its prayer for relief, an alternative request for an injunction directing the reprocessing of her claim without application of the PBRT Policy Bulletin. Ms. Prolow's (a)(3) claim asks for this same relief – and if granted this relief is plainly intended to trigger reimbursement on her PBRT claim. As such, it is effectively duplicative of the (a)(1)(B) claim and appropriately dismissed with prejudice at this juncture.[4]

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[3] See FAC ¶ 91, "Aetna relied upon its internal guidelines, policies and bulletins to deny claims and paid for supposedly independent claims reviews that were conflicted and predisposed to deny coverage for PBRT Class members," and ¶ 95, "Plaintiff and Class members have been harmed by breaches of fiduciary duty of Aetna because their claims did not receive the full and proper consideration of all evidence and information by Aetna." As relief for this misconduct, Plaintiff asks for a reprocessing of the claims under the Plan without reliance on outdated policy bulletins and with full and fair consideration of medical information supplied by members and their treating physician- - -presumably with the goal of obtaining a benefits decision in her favor *under the plan* after "full and proper" consideration of all relevant medical evidence.

4 See e.g. *Life Choice Solutions, LLC v. United Behavioral Health, Inc*., 2018 WL 3057895 (S.D. Fla. 2018)

B. Standing – Prospective Injunctive Relief

Aetna further argues that Ms. Prolow lacks standing to seek prospective relief controlling Aetna's future claims handling processes as related to PBRT claims because she does not satisfy Article III"s injury in fact requirement for prospective injunctive relief, i.e. she does not allege facts showing she faces an imminent cognizable injury. More specifically, Aetna argues that the likelihood of future injury requirement is unmet, since Plaintiff alleges her PBRT was successful; she does not allege that she has suffered a recurrence of her cancer, and she does not allege that her physicians have recommended further PBRT or other cancer treatment at this juncture.

To establish Article III standing, a plaintiff must first have suffered an "injury in fact" or "an invasion of a legally protected interest which is … concrete and particularized." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992). Next, a plaintiff must show the existence of a causal relationship between the injury and the challenged conduct of the defendant. *Id.* Finally, a plaintiff must show that it is "likely," as opposed to merely "speculative," that the injury will be redressed by a favorable judicial decision. *Id.* at 561.

Furthermore, where a plaintiff seeks prospective injunctive relief, he or she must demonstrate a "real and immediate threat" of future injury in order to satisfy the injury-in-fact requirement. *Focus on the Family v. Pinellas Suncoast Transit Authority*, 344 F.3d 1263 (11th Cir.

(dismissing breach of fiduciary duty claim under ERISA 502(a)(3) as duplicate of benefits claim); *National Laboratories, LLC v. United Healthcare Group, Inc.*, 2018 WL 11260511, at *3 (S.D. Fla. 2018)(same); *Hering v. New Directions Behavior Health, L.L.C.*, 2020 WL 4740532, at *7 (M.D. Fla. 2020) (dismissing claims for equitable relief under 1132(a)(3) pled in alternative to (a)(1)(B) claim despite facially different legal theories); *Tabb-Pope v. SAN, Inc*., 2013 WL 5707327 (N.D. Ala. 2013) (distinguishing *Amara* and dismissing breach of fiduciary duty claim as essentially a repackaged "benefits" claim premised on allegation that reduction of group plan benefits violated Policy); *Craft v. Health Care Serv. Corp.*, 2016 WL 1270433, at *5-6 (N.D. Ill. 2016) (ERISA plaintiffs' request for injunction requiring reprocessing of claims for residential mental health treatment deemed to seek essentially same relief as claim for money benefits).

2003) (quoting *City of Los Angeles v. Lyons*, 461 US 95, 102-03 (1983)). The Eleventh Circuit has interpreted this to mean a plaintiff must "allege facts from which it appears there is a substantial likelihood that [she] will suffer injury in the future. *Bowen v. First Family Financial Services Inc*. 233 F.3d 331, 1340 (11th Cir. 2000) (quoting *Malowney v Fed. Collection Deposit Group*, 193 F.3d 1342, 1346 (11th Cir. 1999)).

Thus, to have standing to obtain forward-looking relief, a plaintiff must show a reasonably sufficient likelihood that he or she will be affected by the allegedly unlawful conduct in the future. *Johnson v. Bd. of Regents*, 263 F.3d 1234 (11th Cir. 2001); *Wooden v. Bd. of Regents*, 247 F.3d 1262 (11th Cir. 2001). This follows because "a prospective remedy will provide no relief for an injury that is, and likely will remain, entirely in the past." *Church v. City of Huntsville*, 30 F.3d 1332, 1337 (11th Cir. 1994).

These authorities do not pose a bar to Plaintiff's standing to bring a claim for prospective injunctive or declaratory relief in conjunction with her benefits claim. Ms. Prolow alleges that she has suffered one recurrence of her cancer, and that she would undergo PBRT again if she suffers another recurrence and her oncologist recommends it. She also alleges a systemic deficiency in Aetna's claims handling policy, as related to PBRT and its reliance on allegedly outdated Policy Bulletin which categorically reject the efficacy of the treatment for most cancers for patients over age 21, which makes is substantially likely that the alleged injury (denial of claim) will recur if Plaintiff does suffer a recurrence.

As to the likelihood of recurrence, she alleges an overall recurrence rate of 30% for breast cancer patients. At the motion to dismiss stage, the Court is reluctant to speculate as to whether the particular circumstances of Ms. Prolow's health render the odds of another recurrence of her

cancer better or worse than this general rate. How this factor and other unique characteristics pertaining to her medical history impact the particular likelihood of a recurrence in her specific case cannot be gauged without a further evidentiary predicate. Even assuming a 30% chance of a recurrence, however, the Court finds this is sufficient to show a "substantial likelihood" of future harm that meets the redressability requirement of Article III. *31 Foster Children v. Bush,* 329 F.3d 1255 (11th Cir. 2003) (at pleading stage, general factual allegations of injury connected to defendant's conduct may suffice to establish standing). If Plaintiff prevails on her denial of benefits claim, the parties can dispute the availability of prospective injunctive relief at that point in the litigation.

C. "Unavailable Remedies"

Finally, Aetna moves to strike the demands for relief asserted under the Prayer for Relief, "A.ii." (injunction under (a)(1)(B) claim sought requiring Aetna to give "full weight "to treating physician's opinions in reprocessing plaintiffs' claim for benefits) and the Prayer for Relief, "B.iv." (injunction under (a)(3) claim sought requiring Aetna to provide "full and fair "review of future claims) as remedies that are unavailable as a matter of law. With regard to first proposition, the Court finds it premature to reach a question on the scope of relief available on the (a)(1)(B) claim prior to ruling on merits of the underlying benefits claim. With regard to the latter proposition, the Court has dismissed the (a)(3) claim rendering any issue pertaining to scope of relief under this theory moot.

VI. CONCLUSION

Based on the foregoing, it is **ORDERED AND ADJUDGED:**

1. Defendant's Motion for Partial Dismissal of Plaintiff's Amended Complaint [DE 49] is

GRANTED IN PART AND DENIED IN PART as follows:

a. The motion to dismiss the breach of fiduciary duty claim is **GRANTED.** Count 2 of the Amended Complaint, asserting relief under ERISA Section 502(a)(3) is **DISMISSED WITH PREJUDICE** as duplicative of the benefits claim asserted under Section 502(a)(1)(B).

b. The motion to dismiss the demand for prospective injunctive relief included in Count 1 based on lack of standing is **DENIED.**

c. The motion to strike the demand for certain declaratory relief as unavailable as a matter of law is **DENIED.**

2. Defendant shall file its Answer to Count 1 of the Amended Complaint within **TEN (10) DAYS** from the date of entry of this Order.

3. Defendant's Motion for Partial Stay Discovery pending resolution of its motion to dismiss [DE 51] is **DENIED AS MOOT**.

DONE AND SIGNED in Chambers at West Palm Beach, Florida this 19th day of March, 2021.

KENNETH A. MARRA
United States District Judge

cc. all counsel