UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS - HOUSTON DIVISION

GUARDIAN FLIGHT, LLC,	§	
Plaintiff,	§	**Civil Action No. 4:22-cv-03805**
VS.	§	
	§	**Consolidated (Case No. 4:22-cv-03979)**
AETNA HEALTH, INC., ***et al***	§	
Defendants.	§	

AETNA HEALTH INC.'S REPLY IN SUPPORT OF ITS
MOTION TO DISMISS PLAINTIFF'S ORIGINAL COMPLAINT AS MOOT

Mootness in this case does not depend upon a "voluntary cessation" of any conduct on Aetna's part.[1] Instead, it depends upon the simple fact that Guardian has been made whole and, thus, there is no longer a controversy between the parties. That is, even if the Court were to vacate the IDR award, there is *nothing* to re-submit to the NSA's IDR process, as there is no longer a payment dispute. Under these circumstances, Article III and binding precedent require dismissal.

Guardian's argument that its request for declaratory relief staves off mootness is unpersuasive. First, because there is no longer a controversy between the parties, any declaration by the Court would be a textbook advisory opinion—something Guardian itself freely (and repeatedly) admits. *See* Dkt. 57 at 9. More importantly, the declaratory relief Guardian seeks as it relates to Aetna is nothing more than a retrospective opinion that Aetna's conduct harmed Guardian. Ample caselaw holds that a party cannot, as a matter of law, sustain a claim for retrospective declaratory relief.

[1] Guardian invokes the voluntary-cessation exception to the mootness doctrine, which applies when a defendant voluntarily ***stops engaging in the challenged conduct*** that allegedly violates the plaintiff's rights. However, the concern giving rise to this mootness exception—that a defendant might voluntarily cease the challenged conduct to avoid judicial scrutiny only to return to its wrongful ways after the case has ended—is not present here. Guardian (by its own admission) sues Aetna to challenge how Aetna calculated its QPA. *See* Dkt. 57 at 5 (arguing case is not moot because Guardian seeks relief "that Aetna 'misrepresented facts by submitting a purported QPA that was not properly calculated under federal law'" (quoting Dkt. 1, ¶ 31)). While Aetna adamantly maintains that its QPA calculation is proper and regulated by the Departments, *see* Dkt 43 at 2–3, suffice it to say that Aetna's payment mooting this case is not tantamount to the cessation of any conduct and, thus, the voluntary-cessation doctrine does not apply.

A. Aetna's Payment of the Full Billed Amount Moots This Dispute

Guardian's flagship argument is that it "seeks only declaratory and equitable relief—not damages." Dkt. 57 at 3. As explained in Aetna's motion to dismiss, Guardian cannot hope to recover a penny more than the amount it initially billed Aetna for the February 18 air-ambulance flight, as those rates represent its unadulterated charges for the services at issue (i.e., no reductions, discounts, write-offs, etc.). *See* Dkt. 46 at 3–4. Regardless of Guardian's protestations concerning the check, the fact remains that Aetna's payment of the full amount of Guardian's charges eliminates any controversy between the parties.[2] That is, even if the Court were to vacate the IDR award, it could not be resubmitted to arbitration under the IDR process because there is *no payment dispute* to resolve—Guardian has been made entirely whole. As explained in the following sections, the idea that Guardian's request for declaratory relief somehow revives this case rests on its fundamental misunderstanding of how the Federal Declaratory Judgment Act ("FDJA") works.

B. Because This Case is Moot, a Declaration Would Be an Impermissible Advisory Opinion

The FDJA is a procedural device that creates no substantive rights or causes of action. *See Aetna Life Ins. Co. v. Haworth*, 300 U.S. 227, 240 (1937). Consequently, the FDJA provides no relief unless there is a justiciable controversy between the parties. *See Maryland Cas. Co. v. Pac. Coal & Oil Co.*, 312 U.S. 270, 272–73 (1941). In the context of this case, that means "there must be a substantial ***and continuing controversy*** between two adverse parties." *Bauer v. Texas*, 341 F.3d 352,

[2] Guardian's baseless argument that it can recover more than this amount—because "Aetna has forced Guardian to go through the IDR process and file a lawsuit"—is entirely without merit. Dkt. 57 at 9 n.2. The NSA's IDR process is limited to determining the appropriate out-of-network payment for the services at issue. The statute's text plainly prohibits a party from recovering post-treatment costs. For proof, one need only turn to the NSA's definition of "Qualifying Payment Amount," *see* 42 U.S.C. 300gg-111(a)(3)(E), or the factors an IDR entity is allowed to consider when determining the appropriate out-of-network rate. *See id.* § 300gg-111(c)(5)(C). Moreover, the section Guardian cites in its response expressly limits consideration to "information ***relating to***" an "offer for a payment amount" for the "***services***" furnished by a "provider." *Id.* § 300gg-112(b)(5)(B) (emphasis added).

358 (5th Cir. 2003) (emphasis added). As explained above, there is simply no continuing controversy in this case.

In its effort to avoid this unfortunate fact, Guardian inadvertently admits that it seeks nothing more than an advisory opinion it can use in future IDR disputes involving Aetna:

> The declaratory relief that Guardian seeks has multiple uses.[3] Under the NSA, an IDR entity can consider any further information related to an offer and submitted by a party. A court's declaratory judgment that Aetna misrepresented its QPA . . . ***would be valuable to Guardian in this and future proceedings*.**" Dkt. 57 at 9 (emphasis added).

Without question, a declaratory judgment on the validity of Aetna's QPA calculation in this case is a textbook advisory opinion. *See Taylor v. U.S.*, 410 F.2d 392, 392 (5th Cir. 1969) ("[W]e cannot give advisory opinions which cannot in any way affect the rights of litigants."). Contrary to Guardian's insistence, federal courts do not possess a roving commission to publicly opine on abstract legal questions such as this. *See Aetna*, 300 U.S. at 241 (1937) (for declaratory relief to issue, there "must be a real and substantial controversy admitting of specific relief through a decree of a conclusive character"); *see also Long v. BATF*, 964 F. Supp. 494, 497 (D.D.C. 1997) ("a declaratory judgment may not be used to secure judicial determination of moot questions" (quotation omitted)).

C. Retrospective Relief is Not Available Under the FDJA

More importantly, "in the context of an action for declaratory relief, a plaintiff must be seeking more than a retrospective opinion that he was harmed by the defendant." *Jordan v. Sosa*, 654 F.3d 1012, 1025 (10th Cir. 2011). As it relates to Aetna, Guardian asks the Court to issue declarations that: (1) Aetna made a misrepresentation of fact to MET when it submitted its QPA; and (2) Aetna procured the IDR award through misrepresentations and undue means. Dkt. 1 at 19.

It is black-letter law: "A request for declaratory relief is moot when it fails to seek more than a retrospective opinion that the plaintiff was wrongfully harmed by the defendant and thus does not

[3] Although Guardian claims there are "multiple uses," it identifies only the one.

settle some dispute which affects the behavior of the defendant toward the plaintiff." *Hendrickson v. AFSCME Council 18*, 992 F.3d 950, 958 (10th Cir. 2021) (cleaned up). Critically, neither declaration Guardian seeks would affect Aetna's ***future conduct***—e.g., Guardian does not seek a declaration that Aetna cease the complained-of conduct. Rather, Guardian simply seeks a "retrospective opinion" that it was harmed by Aetna's alleged misconduct. Left with nothing more, Guardian lacks an actual, live controversy. *See Bauchman v. W. High Sch.*, 132 F.3d 542, 548 (10th Cir. 1997); *see also U.S. v. Washington*, 759 F.2d 1353, 1357 (9th Cir. 1985) ("Precise resolution, not general admonition, is the function of declaratory relief."); *Defs. of Wildlife v. Martin*, 454 F. Supp. 2d 1085, 1105 (E.D. Wash. 2006) (concluding declaratory relief that "would have no [future] effect" was "in the nature of an advisory opinion").

D. Acceptance of Payment is Not Necessary for Dismissal

Guardian attempts to disparage the authority cited by Aetna in its motion. *See* Dkt. 57 at 10–11. But *Demmler v. ACH Food Companies, Inc.*—and the authorities cited therein—is squarely on point: "[B]ecause [Aetna] did actually tender full relief to [Guardian], this Court cannot offer [Guardian] individually any more relief on [its] underlying claim than [Aetna] provided when it tendered the [$36,568.47] check. This dynamic served to moot the case." 2016 WL 4703875, at *4 (D. Mass. June 9, 2016) (collecting cases); *see also Masters v. Wells Fargo Bank S. Cent., N.A.*, 2013 U.S. Dist. LEXIS 101171, at *11 (W.D. Tex. July 11, 2013) ("The Fifth Circuit holds an unaccepted offer fully satisfying a claim does moot the claim." (collecting cases)).

E. This Case Does Not Fall Within the Capable-of-Repetition Exception

"The capable-of-repetition doctrine applies only in exceptional situations where the following two circumstances are simultaneously present: (1) the challenged action is in its duration too short to be fully litigated prior to cessation or expiration, and (2) there is a reasonable expectation that the same complaining party will be subject to the same action again." *Bayou Liberty Ass'n v. U.S. Army*

Corps of Eng'rs, 217 F.3d 393, 398 (5th Cir. 2000) (cleaned up). The plaintiff bears the burden of proving both prongs. *See Davis v. FEC*, 554 U.S. 724, 735 (2008).

As to the first prong, the controversy itself must be "*inherently* limited in duration." *Hamamoto v. Ige*, 881 F.3d 719, 722 (9th Cir. 2018); *see Vieux Carre Prop. Owners, Residents & Assocs. v. Brown*, 948 F.2d 1436, 1447 (5th Cir. 1991). This means the nature of the action must fall within a "class[] of cases that, absent an exception, would *always* evade judicial review." *Protectmarriage.com-Yes on 8 v. Bowen*, 752 F.3d 827, 836 (9th Cir. 2014). In other words, this exception *only* applies to the rare case that "will only ever present a live action until a particular date, after which the alleged injury will either cease or no longer be redress[a]ble." *Id.* Without question, Guardian has failed to establish the first prong. But even if the Court were to consider the second prong, Guardian has still failed to carry its burden. *See, e.g.*, *Almakalani v. McAleenan*, 527 F. Supp. 3d 205, 223 (E.D.N.Y. 2021) ("Where, as here, Plaintiffs merely demonstrate the possibility of repetition, rather than its probability, they fail to establish the kind of exceptional situation that renders the mootness doctrine inappropriate.").

CONCLUSION

For these reasons, as well as those outlined in Aetna's motion to dismiss, Aetna requests that the Court enter judgment dismissing Guardian's complaint as moot.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was filed electronically on June 6, 2023. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt.

/s/ M. Katherine Strahan
M. Katherine Strahan