

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

---

No. 94-30224  
Summary Calendar

---

MINETTE M. GIRAUD,  
Plaintiff-Appellant,  
versus  
HEALTHTRUST, INC.  
Defendant-Appellee.

---

Appeal from the United States District Court  
for the Eastern District of Louisiana  
(CA-93-1914-M(5))

---

(September 8, 1994)

Before, SMITH, EMILIO M. GARZA, and PARKER, Circuit Judges.

Per curiam<sup>1</sup>:

Appellant, Minette M. Giraud (Giraud) made a claim under her ERISA benefit plan for reimbursement for the expense of Rogaine, which was prescribed to her husband for cosmetic reasons. HealthTrust denied the claim and Giraud filed suit. The trial court granted summary judgment for HealthTrust, finding that Giraud's plan covered only those drugs prescribed to treat defects or illness. We affirm.

---

<sup>1</sup> Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

## STANDARD OF REVIEW

We review a district court's ruling on motion for summary judgment *de novo*, applying the same standards as those that govern the district court's determination. *Lodge Hall Music, Inc. v. Waco Wrangler Club, Inc.*, 831 F.2d 77, 79 (5th Cir. 1987). Summary judgment must be granted if the court determines that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. FED.R.CIV.P., 56(c).

## FACTS

The parties stipulated that there were no genuine issues of material fact; the only remaining issues were issues of law. Both parties filed motions for summary judgment.

Giraud was enrolled in HealthTrust's employee benefit plan known as "Flexible Spending Accounts" at all times relevant to this suit. Giraud made a timely claim for reimbursement of \$445.53 for the cost of Rogaine, which had been prescribed for her husband to reverse hair loss caused by male pattern baldness. Mr. Giraud's hair loss was not the result of any disease or defect, nor did it impact his health in any way. Although Rogaine can be used to treat certain medical problems, Mr. Giraud's physician prescribed this Rogaine for cosmetic purposes.

## ANALYSIS

The question before us is whether the language of HealthTrust's ERISA summary plan description was ambiguous concerning coverage for prescription drugs which are prescribed for cosmetic purposes. Giraud points out that in the event we find the plan ambiguous, any

ambiguity must be resolved in her favor. *Hansen v. Continental Ins. Co.*, 940 F.2d 971 (5th Cir. 1991).

The summary plan incorporates Internal Revenue Service (IRS) Publication 502 to explain what medical care expenses are reimbursable. Publication 502 is entitled "Medical and Dental Expenses" and begins with an introduction that states, "This publication explains how to claim a deduction for your medical and dental expenses."

Medical care expenses are defined as

...amounts paid for the diagnosis, cure, treatment, or prevention of disease, and for treatments affecting any part or function of the body. The expenses must be to alleviate or prevent a physical defect or illness. Expenses for solely cosmetic reasons generally are not expenses for medical care. Also, expenses that are merely beneficial to one's general health (for example, vacations) are not expenses for medical care.

Later in the publication, Medicines are defined:

You can include in medical expenses amounts you pay for prescribed medicines and drugs. A prescribed drug is one which requires a prescription by a doctor for its use by an individual.

Giraud contends that the definition of medicines is ambiguous and could reasonably be read to include any prescription drug, whether prescribed for medical or cosmetic purposes. We disagree. Publication 502 specifically states that it concerns medical expenses, which it defines to exclude cosmetic treatments. In fact, the very paragraph relied on by Giraud limits the inclusion of medicines to "medical expenses."

The Summary Plan Description must be read as a whole. It would be error to attend only to one paragraph, page, or portion of the

summary. *Hansen v. Continental Insurance Co.*, 940 F.2d 971 (5th Cir. 1991). Taken as a whole, the plan clearly covers only prescribed drugs that treat defects or illness, and not those prescribed solely for cosmetic reasons.

The trial court's grant of summary judgment to HealthTrust is AFFIRMED.