IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

LAWANN P. BLACKSTON, Plaintiff, v. AETNA LIFE INSURANCE COMPANY, Defendant.	)	Civil Action No. 13-192-GMS

ORDER

WHEREAS the plaintiff, Lawann P. Blackston ("Blackston"), originally filed this suit as a "debt" action in the Justice of the Peace Court of the State of Delaware in and for New Castle County, Court No. 13 (D.I. 1, Ex. A);

WHEREAS, on February 5, 2013, the defendant, Aetna Life Insurance Company ("Aetna"), removed the action to the United States Court for the District of Delaware (D.I. 1);

WHEREAS presently before the court is Aetna's Motion to Dismiss (D.I. 3);

WHEREAS Blackston has filed no response to Aetna's Motion to Dismiss; and

WHEREAS the court has considered Blackston's Complaint, the Memorandum of Law in Support of Aetna Life Insurance Company's Motion to Dismiss (D.I. 4), and the applicable law;

IT IS HEREBY ORDERED THAT:

Aetna's Motion to Dismiss (D.I. 3) is DENIED.[1]

[1] Aetna advances two theories in support of its Motion to Dismiss. First, it contends that Blackston's apparent state law contract claim—labeled as a "debt" claim on the standard form provided by the Justice of the Peace Court—is preempted by the Employee Retirement Income Security Act of 1974 ("ERISA"). (D.I. 4 at 3.) Additionally, it argues that Blackston has failed to exhaust the administrative remedies available to her under the benefits plan in question and ERISA. (*Id.* at 6.)

Dated: July 31, 2013

CHIEF, UNITED STATES DISTRICT JUDGE

While the court agrees with Aetna that Blackston's state law claim is preempted, there exists a distinction between "complete preemption" under section 502(a) of ERISA, Pub. L. No. 93-406, § 502(a), 88 Stat. 829, 891 (1974) (codified at 29 U.S.C. § 1132), and "express preemption" under section 514(a) of ERISA, § 514(a), 88 Stat. at 897 (codified at 29 U.S.C. § 1144). *In re U.S. Healthcare, Inc.*, 193 F.3d 151, 160 (3d Cir. 1999). "State-law claims that are subject to express preemption are displaced and thus subject to dismissal," but "[c]laims that are completely preempted are 'necessarily federal in character,' and thus are converted into federal claims." *Id.* As Aetna itself recognizes, (D.I. 4 at 4), Blackston's apparent contract claim seeks "to recover benefits due . . . under the terms of [the] plan, to enforce . . . rights under the terms of the plan, or to clarify . . . rights to future benefits under the terms of the plan" and thus is subject to complete preemption, *Dukes v. U.S. Healthcare, Inc.*, 57 F.3d 350, 356 (3d Cir. 1995) (quoting § 502(a)(1)(B)). Accordingly, rather than dismissal, the proper course is for the court to treat the "debt" claim as a federal claim under § 502(a) going forward. *See Singh v. Prudential Health Care Plan, Inc.*, 335 F.3d 278, 292 (4th Cir. 2003); *see also Wood v. Prudential Insurance Co.*, 207 F.3d 674, 682 (3d Cir. 2000) (Stapleton, J., dissenting) ("If a claim based on state law is completely preempted, however, it is treated as a federal claim; a district court has federal question removal jurisdiction to entertain it, and the claim, after removal, should go forward in the district court as a federal claim.").

The court next turns to Aetna's exhaustion argument. "Except in limited circumstances . . . a federal court will not entertain an ERISA claim unless the plaintiff has exhausted the remedies available under the plan." *Weldon v. Kraft, Inc.*, 896 F.2d 793, 800 (3d Cir. 1990). "Courts require exhaustion of administrative remedies 'to help reduce the number of frivolous lawsuits under ERISA; to promote the consistent treatment of claims for benefits; to provide a nonadversarial method of claims settlement; and to minimize the costs of claims settlement for all concerned.'" *Harrow v. Prudential Ins. Co. of Am.*, 279 F.3d 244, 249 (3d Cir. 2002) (quoting *Amato v. Bernard*, 618 F.2d 559, 567 (9th Cir. 1980)).

Exhaustion, however, is an affirmative defense, and thus the burden is on Aetna to demonstrate that Blackston failed to exhaust her administrative remedies under the benefits plan. *See Karpiel v. Ogg, Cordes, Murphy & Ignelzi, LLP*, 297 F. App'x 192, 193 (3d Cir. 2008). While an affirmative defense may be properly raised in a motion to dismiss where the necessary facts appear on the face of the complaint, *see Victaulic Co. v. Tieman*, 499 F.3d 227, 234 (3d Cir. 2007); *In re Tower Air, Inc.*, 416 F.3d 229, 238 (3d Cir. 2005); *see also Turley v. Gaetz*, 625 F.3d 1005, 1013 (7th Cir. 2010); *Pani v. Empire Blue Cross Blue Shield*, 152 F.3d 67, 74 (2d Cir. 1998), Blackston's form Complaint alleges merely that she "applied for extension of short-term disability on 8/14 and was denied payment by Aetna Disability Claims," (D.I. 1, Ex. A). The court cannot discern from this statement alone whether Blackston exhausted her administrative remedies and accordingly must deny Aetna's Motion to Dismiss. Of course, should Aetna still wish to assert exhaustion as an affirmative defense, it may file a properly support motion for summary judgment at the appropriate juncture.