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## Wisconsin Court of Appeals Rules an EOB is Sufficient Notice

### Related Industries

Banking & Financial Services

### Related Practices

Litigation

Monthly account statements are commonplace in the insurance, banking, and financial services industries. That is, health insurers use an Explanation of Benefits (an EOB) to inform members of the status of medical expense claims; banks and investment firms use monthly statements to itemize account activity; and other insurers use monthly invoices to serve much the same function. Longstanding Wisconsin law holds that monthly bank account statements are sufficient notice of account transactions; accordingly, bank customers have 30 days from receipt to notify the bank of any errors. See *e.g.* Wis. Stat. § 404.406(3) and (4) (customer has 30 days to examine bank statement and notify bank of unauthorized charges). But, is an EOB sufficient to notify a health plan member that benefits have been granted or denied? The Wisconsin Court of Appeals answered that question: yes.

In *Anderson v. WEA Trust*, Appeal No. 2017AP2386 (Aug. 23, 2018), the Court of Appeals held that a plan's monthly statements unequivocally informed the member that it had denied primary care coverage for claimed medical expenses. In that case, Anderson was insured under his wife's medical policy with WEA Trust. Upon her retirement, coverage switched to the WEA retirement plan. That plan provided secondary coverage and only after exhausting Medicare Part A coverage for hospital care and Medicare Part B, which covers outpatient and doctor visits.

Importantly, Medicare Part B is elective and the member must enroll to be covered. Anderson did not enroll in Medicare Part B. After incurring medical expenses for outpatient procedures, Anderson submitted a claim that WEA Trust denied in a monthly EOB. He later sued alleging his insurer breached its implied contractual duty of good faith and fair dealing. Anderson's case theory was that although WEA Trust had the right to deny benefits, it shouldn't because the EOBs did not inform him he had failed to enroll in Medicare Part B. Further, he argued, the EOBs misled him to believe the plan's secondary coverage would pay expenses after

Medicare Part A. The Court disagreed and held that the monthly EOBs were clear and unambiguous that coverage had been denied and that, under the coordination of benefits provisions of the policy, he was required to exhaust all other available coverages, including Medicare Part B. Although this is an unpublished case, it does indicate that courts are willing to equate an insurer's Explanation of Benefits to a monthly bank account statement as sufficient notice of account activity.

### **Related People**

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