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BENEFITS - WISCONSIN

Hussey v. Milwaukee County

United States Court of Appeals, Seventh Circuit - January 29, 2014 - F.3d - 2014 WL 308413

Esther Hussey, on behalf of herself and all others similarly situated, sued Milwaukee County in state court alleging that its failure to provide cost-free health insurance to retirees constituted a taking of property without due process of law in violation of the United States and Wisconsin constitutions.

In 2012, the County again amended its health insurance plans, which further increased the deductibles, co-payments, and co-insurance charges that Hussey would have to bear. These amendments also modified the plan's coordination of benefits with Medicare for retirees over the age of 65. Prior to the 2012 amendments, the County's plan had employed the "come-out-whole" method of benefits coordination, under which any expenditures not covered by Medicare was paid in full by the County. Starting in 2012, the County began to utilize the "non-duplication" method, which designated Medicare as the primary health coverage provider and reduced the benefits to be paid under the County's plan by the amount of benefits paid by Medicare. Among other things, this change ensured that retirees over the age of 65 would pay the same deductibles, co-payments, and co-insurance charges as other retirees and active employees.

In response to Hussey's suit, the County contended that it only promised retirees the ability to participate in the same health insurance plan as active employees on a "premium-free" basis. The magistrate judge reviewed the language of the ordinances and agreed with the County, granting its motion for summary judgment and denying Hussey's cross-motion. Hussey appealed and the Court of Appeal affirmed.