

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

WINIFRED MIDKIFF, on behalf of herself and
all others similarly situated,

Plaintiffs,

v.

THE ANTHEM COMPANIES, INC., ANTHEM
HEALTH PLANS OF VIRGINIA, INC. d/b/a
ANTHEM BLUE CROSS AND BLUE SHIELD,
and AMERIGROUP CORPORATION,

Defendants.

Case No. 3:22-cv-00417-HEH

**FIRST AMENDED COLLECTIVE
ACTION COMPLAINT**

PRELIMINARY STATEMENT

1. This is a collective action brought by individual and representative Plaintiff Winifred Midkiff (“Plaintiff”), on behalf of herself and all others similarly situated (the “putative FLSA Collective”), to recover overtime pay from The Anthem Companies, Inc., and two other subsidiaries of Anthem, Inc., Anthem Health Plans of Virginia, Inc. d/b/a Anthem Blue Cross and Blue Shield and Amerigroup Corporation (collectively, “Defendants”).

2. Plaintiff brings this action on behalf of herself and all similarly situated individuals for violations of the Fair Labor Standards Act, 29 U.S.C. § 201, *et seq.* (“FLSA”).

3. Plaintiff’s claim is asserted as a state-wide collective action under the FLSA, 29 U.S.C. § 216(b).

4. The putative “FLSA Collective” is made up of all persons who are or have been employed by Defendants in Virginia as Medical Management Nurses, Utilization Management Nurses, Utilization Review Nurses, Nurse Reviewers, Nurse Reviewer Associates, or other similar

positions who were paid a salary and treated as exempt from overtime laws, and whose primary job was to perform medical necessity reviews during the applicable statutory period.

5. Plaintiff and those similarly situated routinely work more than forty (40) hours in a workweek but are not paid an overtime premium for their overtime hours.

6. As a result of Defendants' willful and illegal pay practices, Plaintiff and those similarly situated were deprived of overtime compensation for their hours worked in violation of federal law.

JURISDICTION AND VENUE

7. This Court has original jurisdiction pursuant to 28 U.S.C. § 1331 to hear this Complaint and to adjudicate these claims because this action is brought under the FLSA.

8. Venue is proper in the United States District Court for the Eastern District of Virginia pursuant to 28 U.S.C. § 1391 because a substantial part of the events or omissions giving rise to the claims occurred in this district.

PARTIES

9. Defendant The Anthem Companies, Inc. is a foreign limited liability company with its principal place of business located at 220 Virginia Ave., Indianapolis, Indiana, 46204, United States.

10. The Anthem Companies, Inc. is a wholly owned subsidiary of ATH Holding Company, LLC, which is a wholly owned subsidiary of Anthem, Inc., a publicly held corporation.

11. Defendant Anthem Health Plans of Virginia, Inc. is a Virginia corporation with its principal place of business located at 2015 Staples Mill Rd., Richmond, VA, 23230-3108, United States. The Anthem Health Plans of Virginia, Inc. does business under the fictitious name of Anthem Blue Cross and Blue Shield.

12. Anthem Health Plans of Virginia, Inc. is a subsidiary of Anthem, Inc., a publicly held corporation.

13. Anthem Health Plans of Virginia, Inc., is a managed healthcare and insurance company.

14. Anthem Health Plans of Virginia, Inc. is one of several Anthem, Inc. subsidiaries operating under the trade name of Anthem Blue Cross and Blue Shield. Anthem Blue Cross and Blue Shield and affiliated blue plans are offered in 14 states and provide 32 million individuals access to more than 1.7 million doctors and hospitals nationwide through Anthem brands and the greater Blue Cross Blue Shield network.

15. Defendant Amerigroup Corporation is a Delaware corporation with its principal place of business located at 4425 Corporation Ln., Virginia Beach, VA, 23462-3103, United States.

16. Amerigroup Corporation is a managed healthcare company.

17. Anthem, Inc. acquired Amerigroup Corporation in approximately 2013.

18. Amerigroup Corporation is a subsidiary of Anthem, Inc., a publicly held corporation.

19. Plaintiff and other similarly situated individuals performed or perform utilization reviews for Virginia residents who are members of Anthem Health Plans of Virginia, Inc. and/or Amerigroup.

20. Plaintiff and other similarly situated individuals also performed or perform utilization reviews for subscribers in other states under the Anthem Blue Cross and Blue Shield and/or Amerigroup names.

21. Anthem, Inc. is a multi-line health insurance company that provides managed care programs and related services.

22. Upon information and belief, Anthem, Inc. rebranded itself as Elevance Health on June 28, 2022.

23. Anthem, Inc. has at least 171 subsidiaries, including 60 regulated insurance companies, that employ thousands of individuals in various jobs to provide a broad suite of insurance products and services.

24. Anthem, Inc. organizes those various companies into three divisions: the Government Business Division (GBD), the Federal Employees Program (FEP), and the Commercial and Specialty Business Division (CSBD). Within those divisions, companies' operations are divided geographically into the East, Central, or West region.

25. According to its website, Anthem provides healthcare benefits to more than 118 million members nationwide.

26. Anthem, Inc. and its subsidiaries operate in interstate commerce by, among other things, offering and selling a wide array of products and services, including but not limited to, preferred provider organizations, consumer-driven health plans, traditional indemnity, health maintenance organizations, point-of-service, ACA public exchange and off-exchange products, administrative services, Bluecard, Medicare plans, individual plans, Medicaid plans and other state-sponsored programs, pharmacy products, life insurance, disability products, radiology benefit management, personal health care guidance, dental, vision services and products, and Medicare administrative operations to customers and consumers in multiple states across the country, including Virginia.

27. The Anthem Companies, Inc., Anthem Health Plans of Virginia, Inc., and Amerigroup Corporation jointly employed Plaintiff and other similarly situated individuals and are “employers” of Plaintiff and other similarly situated individuals within the meaning of the FLSA.

28. Anthem, Inc. subsidiaries enter into a master administrative services agreement to use the same back-office operations for various functions. Those include payroll, human resources, and legal services.

29. The Anthem Companies, Inc. provides support to other subsidiaries of Anthem, Inc., including Anthem Health Plans of Virginia, Inc. and Amerigroup Corporation, in areas including finance, tax, payroll, and human resources.

30. The Anthem Companies, Inc. operates office locations in multiple states around the country, including in Virginia.

31. The Anthem Companies, Inc. determines the rate and method of payment of Plaintiff and others similarly situated.

32. Plaintiff’s paystubs list The Anthem Companies, Inc. and its principal place of business address as her employer.

33. Upon information and belief, other similarly situated individuals’ paystubs list The Anthem Companies, Inc. and its principal place of business address as their employer.

34. Anthem Health Plans of Virginia, Inc. and Amerigroup Corporation, through their parent company Anthem, Inc., provide hiring and termination paperwork to Plaintiff and other similarly situated individuals.

35. Anthem Health Plans of Virginia, Inc. and Amerigroup Corporation, through their parent company Anthem, Inc., send written human resources communications to Plaintiff and other similarly situated individuals.

36. Through their parent company, Anthem Inc., Defendants maintain data and personnel records on their employees, including the employees' names, employee ID, dates of employment, job title, job classification, work location, department, and supervisor.

37. Plaintiff and others similarly situated used both Anthem-wide and subsidiary-specific software tools and systems in the course of their employment maintained by Defendants.

38. Plaintiff and others similarly situated had access to a single intranet site maintained by Anthem.

39. Plaintiff and others similarly situated had Anthem and/or Amerigroup email addresses.

40. Defendants controlled Plaintiff's and the other similarly situated individuals' work by determining how to structure the medical necessity reviews Plaintiff and the similarly situated employees conducted.

41. Plaintiff and the other similarly situated individuals used medical policies, guidelines, and job aids published under the Anthem and/or Amerigroup names when conducting medical necessity reviews.

42. When Plaintiff and other similarly situated individuals needed to escalate a medical authorization request for higher-level approval, they contacted a Medical Director, a doctor employed by Anthem.

43. Plaintiff and those similarly situated were supervised by managers employed by Anthem and/or Amerigroup.

44. Some supervisors of Plaintiff and those similarly situated had Anthem email addresses.

45. Other supervisors of Plaintiff and those similarly situated had Amerigroup email addresses.

46. Performance review forms completed by supervisors of Plaintiff and others similarly situated bore the Anthem name.

47. Upon information and belief, Anthem's gross annual sales made, or business done has been in excess of \$500,000.00 at all relevant times.

48. At all relevant times, Defendants are, and have been, "employers" engaged in interstate commerce and/or the production of goods for commerce, within the meaning of the FLSA, 29 U.S.C. § 203(d).

49. Plaintiff Winifred Midkiff is an adult resident of Amelia County, Virginia.

50. Defendants employed Plaintiff as a Medical Management Nurse II from approximately June 2014 to July 2017. Plaintiff's claims were tolled when she opted-in to *Laura Canaday, et al. v. The Anthem Companies, Inc.*, case number 1:19-cv-01084-STA-jay on August 19, 2019.

51. Plaintiff reported to Defendants' Chesapeake, Virginia office for two to three weeks in June 2014. Plaintiff then worked from her home in Chesapeake, Virginia until June 2016, when she moved to Hampton, Virginia. Plaintiff continued to work from her home in Hampton, Virginia until the end of her employment in July 2017.

FACTUAL ALLEGATIONS COMMON TO ALL CLAIMS

52. At all times relevant herein, Defendants operated a willful scheme to deprive Plaintiff and others similarly situated of overtime compensation.

53. Plaintiff and the similarly situated individuals work or worked as Medical Management Nurses, Utilization Management Nurses, Utilization Review Nurses, Nurse Reviewers, Nurse Reviewer Associates, or in similar job titles, and were primarily responsible for performing medical necessity reviews for Defendants.

54. In conducting medical necessity reviews, Plaintiff and the other similarly situated individuals' primary job duty is non-exempt work consisting of reviewing medical authorization requests submitted by healthcare providers against pre-determined guidelines and criteria for insurance coverage and payment purposes.

55. Plaintiff and the similarly situated individuals are or were paid a salary with no overtime pay.

56. Plaintiff and the other similarly situated individuals are or were treated as exempt from overtime laws, including the FLSA.

57. Defendants suffered and permitted Plaintiff and the other similarly situated individuals to work more than forty (40) hours per week without overtime pay.

58. For example, between May 8, 2017, and May 12, 2017, Plaintiff estimates that she worked approximately 52-55 hours and did not receive overtime pay for her overtime hours.

59. Defendants have been aware, or should have been aware, that Plaintiff and the other similarly situated individuals performed non-exempt work that required payment of overtime compensation. Defendants also required Plaintiff and the similarly situated individuals to work long hours, including overtime hours, to complete all of their job responsibilities and meet Defendants' productivity standards.

60. Defendants knew that Plaintiff and the other similarly situated individuals worked unpaid overtime hours because Plaintiff and others complained about their long hours and the

workload. Specifically, when Plaintiff told her supervisor that she was working long hours, her supervisor responded that her hands were tied and that Plaintiff should be more efficient with her time.

61. Although Defendants had a legal obligation to do so, Defendants did not make, keep, or preserve adequate or accurate records of the hours worked by Plaintiff and the other similarly situated individuals.

FLSA COLLECTIVE ACTION ALLEGATIONS

62. Plaintiff restates and incorporates by reference the above paragraphs as if fully set forth herein.

63. Plaintiff brings Count I individually and on behalf of the putative FLSA Collective.

64. Plaintiff files this action on behalf of herself and all other similarly situated individuals. The putative FLSA Collective is defined as follows:

All persons who worked as Medical Management Nurses, Utilization Management Nurses, Utilization Review Nurses, Nurse Reviewers, Nurse Reviewer Associates, or in similar job titles who were paid a salary and treated as exempt from overtime laws and were primarily responsible for performing medical necessity reviews for Defendants in Virginia at any time since three years prior to the filing of this Complaint through judgment.

65. Plaintiff has consented in writing to be a part of this action pursuant to 29 U.S.C. § 216(b). Plaintiff's signed consent form is attached hereto as Exhibit A. In addition, at the time the initial complaint was filed, three (3) other individuals had consented in writing to be a part of this action. Their consent forms are attached as Exhibit B. Other individuals have since filed consent forms and have joined this case as "opt-in" plaintiffs. (*See Dkt. generally*).

66. As this case proceeds, it is likely that other individuals will file consent forms and join as "opt-in" plaintiffs.

67. During the applicable statutory period, Plaintiff and the other similarly situated individuals routinely worked in excess of forty (40) hours in a workweek without receiving overtime compensation for their overtime hours worked.

68. Defendants willfully engaged in a pattern of violating the FLSA, as described in this Complaint in ways including, but not limited to, requiring Plaintiff and the other similarly situated individuals to work excessive hours and failing to pay them overtime compensation.

69. Defendants are liable under the FLSA for failing to properly compensate Plaintiff and the putative FLSA Collective. Accordingly, notice should be sent to the putative FLSA Collective. There are numerous similarly situated current and former employees of Defendants who have suffered from Defendants' practice of denying overtime pay, and who would benefit from the issuance of court-supervised notice of this lawsuit and the opportunity to join. Those similarly situated employees are known to Defendants and are readily identifiable through their records.

70. Plaintiff Midkiff and the individuals with consent forms attached at Exhibit B were previously opt-in Plaintiffs in the FLSA collective action in the U.S. District Court for the Western District of Tennessee titled *Laura Canaday, et al. v. The Anthem Companies, Inc.*, case number 1:19-cv-01084-STA-jay. The *Canaday* court limited the scope of the conditionally certified collective to individuals who worked for The Anthem Companies, Inc. within the state of Tennessee.

CAUSES OF ACTION

COUNT I – VIOLATION OF THE FAIR LABOR STANDARDS ACT
FAILURE TO PAY OVERTIME
(On Behalf of Plaintiff and the Putative FLSA Collective)

71. Plaintiff restates and incorporates by reference the above paragraphs as if fully set forth herein.

72. The FLSA, 29 U.S.C. § 207, requires employers to pay non-exempt employees one and one-half times the regular rate of pay for all hours worked over forty (40) hours per workweek.

73. Defendants suffered and permitted Plaintiff and the other similarly situated individuals to routinely work more than forty (40) hours in a workweek without overtime compensation.

74. Defendants' actions, policies, and practices described above violate the FLSA's overtime requirement by regularly and repeatedly failing to compensate Plaintiff and the other similarly situated individuals their required overtime compensation.

75. As the direct and proximate result of Defendants' unlawful conduct, Plaintiff and the other similarly situated individuals have suffered and will continue to suffer a loss of income and other damages. Plaintiff and the other similarly situated individuals are entitled to liquidated damages and attorneys' fees and costs incurred in connection with this claim.

76. By failing to accurately record, report, and/or preserve records of hours worked by Plaintiff and the other similarly situated individuals, Defendants have failed to make, keep, and preserve records with respect to each of their employees sufficient to determine their wages, hours, and other conditions and practices of employment, in violation of the FLSA, 29 U.S.C. § 201, *et seq.*

77. The foregoing conduct, as alleged, constitutes a willful violation of the FLSA within the meaning of 29 U.S.C. § 255(a). Defendants knew or showed reckless disregard for the fact that their compensation practices were in violation of these laws.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of herself and the putative FLSA Collective, prays for judgment against Defendants as follows:

- A. Designation of this action as a collective action on behalf of Plaintiff and those similarly situated, and prompt issuance of notice pursuant to 29 U.S.C. § 216(b) to all those similarly situated, apprising them of the pendency of this action and permitting them to assert timely FLSA claims in this action by filing individual consent forms;
- B. A finding that Plaintiff and the putative FLSA Collective are non-exempt employees entitled to protection under the FLSA;
- C. A finding that Defendants violated the overtime provisions of the FLSA;
- D. Judgment against Defendants in the amount of Plaintiff's and the putative FLSA Collective's unpaid back wages at the applicable overtime rates;
- E. An award of all damages, liquidated damages, pre-judgment interest and post-judgment interest;
- F. An award of attorneys' fees and costs incurred in prosecuting this action;
- G. Leave to add additional plaintiffs and/or state law claims by motion, the filing of written consent forms, or any other method approved by the Court; and
- H. For such other and further relief, in the law or equity, as this Court may deem appropriate and just.

DATED: August 24, 2022

Respectfully Submitted,
Winifred Midkiff, individually
and on behalf of all others similarly situated

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