

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

DEON BAKER, individually and on)
behalf of all others similarly situated,)

Plaintiff,)

v.)

Civil Action File

THE ANTHEM COMPANIES, INC.;)

BLUE CROSS BLUE SHIELD)

No.: 1:21-CV-04866-WMR

HEALTHCARE PLAN OF)

GEORGIA, INC. d/b/a Anthem Blue)

**SECOND AMENDED
COLLECTIVE ACTION
COMPLAINT**

Cross and Blue Shield; and AMGP)

GEORGIA MANAGED CARE)

COMPANY, INC. d/b/a)

AMERIGROUP, AMERIGROUP)

Community Care, AMERIGROUP)

Georgia, and AMGP Georgia,)

Defendants.)

PRELIMINARY STATEMENT

1. This is a collective action brought by individual and representative Plaintiff Deon Baker (“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 Anthem, Inc. subsidiaries, Blue Cross Blue Shield Healthcare Plan of Georgia, Inc. d/b/a Anthem Blue Cross and Blue Shield and AMGP Georgia Managed Care Company, Inc. d/b/a AMERIGROUP,

AMERIGROUP Community Care, AMERIGROUP Georgia, and AMGP Georgia (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 Georgia as Medical Management Nurses, Utilization Management Nurses, Utilization Review Nurses, 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 Northern District of Georgia 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 corporation with its principal place of business located at 220 Virginia Ave., Indianapolis, Indiana, 46204, United States. Anthem is qualified to do business in the State of Georgia and its registered agent is CT Corporation System, 289 South Culver Street, Lawrenceville, Gwinnett County, Georgia 30046.

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 Blue Cross Blue Shield Healthcare Plan of Georgia, Inc. is a Georgia corporation with its principal place of business located at 740 W. Peachtree St., Atlanta, Georgia, 30308, United States. Blue Cross Blue Shield

Healthcare Plan of Georgia, Inc. does business under the trade name Anthem Blue Cross and Blue Shield. Its registered agent is CT Corporation System, 289 South Culver Street, Lawrenceville, Gwinnett County, Georgia, 30046.

12. Blue Cross Blue Shield Healthcare Plan of Georgia, Inc. is a subsidiary of Anthem, Inc., a publicly held corporation.

13. Blue Cross Blue Shield Healthcare Plan of Georgia, Inc. provides health insurance plans and related services to residents of Georgia. It is one of the largest and oldest health benefits providers in Georgia and employs thousands of people.

14. Blue Cross Blue Shield Healthcare Plan of Georgia, 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 AMGP Georgia Managed Care Company, Inc. is a Georgia corporation with its principal place of business located at 740 W. Peachtree St., NW, Atlanta, Georgia, 30308, United States. AMGP Georgia Managed Care Company, Inc. does business under the trade names

AMERIGROUP, AMERIGROUP Community Care, AMERIGROUP Georgia, and AMGP Georgia. Its registered agent is CT Corporation System, 289 S. Culver St., Lawrenceville, Gwinnett County, Georgia, 30046.

16. AMGP Georgia Managed Care Company, Inc. is a subsidiary of Anthem, Inc., a publicly held corporation.

17. AMGP Georgia Managed Care Company, Inc. provides health insurance plans and related services to residents of Georgia, including Medicaid and other low-cost insurance coverage.

18. Plaintiff and the others similarly situated performed or perform utilization reviews for Georgia residents who are members of Blue Cross Blue Shield Healthcare Plan of Georgia, Inc. and/or AMGP Georgia Managed Care Company, Inc.

19. Plaintiff and other similarly situated individuals also perform or performed utilization reviews for subscribers in other states under the Anthem Blue Cross and Blue Shield name.

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

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

22. 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.

23. 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.

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

25. 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 organization, consumer-driven health plans, traditional indemnity, health maintenance organization, 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 Georgia.

26. The Anthem Companies, Inc., Blue Cross Blue Shield Healthcare Plan of Georgia, Inc., and AMGP Georgia Managed Care Company, Inc. jointly employed Plaintiff and other similarly situated individuals and are “employers” of Plaintiff and other similarly situated individuals within the meaning of the FLSA.

27. 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.

28. The Anthem Companies, Inc. provides support to other subsidiaries of Anthem, Inc., including Blue Cross Blue Shield Healthcare Plan of Georgia, Inc. and AMGP Georgia Managed Care Company, Inc., in areas including finance, tax, payroll, and human resources.

29. The Anthem Companies, Inc. operates office locations in multiple states around the country, including an office located in Atlanta, Georgia.

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

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

32. Upon information and belief, other similarly situated individuals’

paystubs list The Anthem Companies, Inc. and its principal place of business address as their employer.

33. Blue Cross Blue Shield Healthcare Plan of Georgia, Inc. and AMGP Georgia Managed Care Company, Inc., through their parent company Anthem, Inc., provide hiring and termination paperwork to Plaintiff and other similarly situated individuals.

34. Blue Cross Blue Shield Healthcare Plan of Georgia, Inc. and AMGP Georgia Managed Care Company, Inc., through their parent company Anthem, Inc., send written human resources communications to Plaintiff and others similarly situated.

35. 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.

36. 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.

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

38. Plaintiff and others similarly situated generally had Anthem email addresses.

39. 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.

40. Plaintiff and the other similarly situated individuals used guidelines, policies, and job aids published under the Anthem name when conducting medical necessity reviews.

41. 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.

42. Plaintiff and those similarly situated were supervised by managers employed by Blue Cross Blue Shield Healthcare Plan of Georgia, Inc. and/or AMGP Georgia Managed Care Company, Inc.

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

44. 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.

45. 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).

46. Plaintiff Deon Baker is an adult resident of Gwinnett County, Georgia.

47. Defendants employed Plaintiff as a Medical Management Nurse II from approximately December 2015 to approximately July 2020.

48. Prior to approximately 2018, Plaintiff reported to Defendants' Atlanta, Georgia office. Beginning in approximately 2018, Plaintiff worked out of her home in Gwinnett County, Georgia.

FACTUAL ALLEGATIONS COMMON TO ALL CLAIMS

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

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

51. 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.

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

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

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

55. For example, between May 11, 2020, and May 17, 2020, Plaintiff estimates that she worked approximately 60 hours and did not receive overtime pay for her overtime hours.

56. 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.

57. 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, including working nights and weekends, her supervisor responded that she could not change the workload because the company would not be hiring additional workers.

58. 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

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

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

61. 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, 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 Georgia at any time since three years prior to the filing of this Complaint through judgment.

62. 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, to date, 13 other individuals have consented in writing to be a part of this action. Their consent forms are attached as Exhibit B.

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

64. 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.

65. 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.

66. Defendants are liable under the FLSA for failing to properly compensate Plaintiff and the entire 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 the 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.

67. Plaintiff Baker and the individuals with consent forms attached as 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)**

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

69. 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.

70. 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.

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

72. 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 attorney's fees and costs incurred in connection with this claim.

73. 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 practice of employment, in violation of the FLSA, 29 U.S.C. § 201, *et seq.*

74. 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 15, 2022

AUSTIN & SPARKS, P.C.

/s/ John T. Sparks, Sr.

John T. Sparks, Sr.

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