

2. Defendant Carefirst is an insurance company, which upon information and belief is organized under the laws of the District of Columbia, with its principal place of business in the District of Columbia, and is registered to do business in the State of Maryland. Carefirst is engaged in the business of issuing and administering contracts of insurance.
3. Carefirst purports to provide health insurance to 3.4 million individuals and employers in Maryland, the District of Columbia, and Northern Virginia. *See* Carefirst, “Company Overview,” <https://individual.carefirst.com/individuals-families/about-us/company-overview.page> (Apr. 19, 2021).

Jurisdiction

4. This Court has subject matter jurisdiction to consider and determine this matter pursuant to 28 U.S.C. § 1332(d) because Plaintiffs and putative class members are citizens of Maryland and Defendant is a citizen of the District of Columbia, and the amount in controversy exceeds \$5,000,000.
5. Venue is proper in this District because the subject policy was issued in the State of Maryland and Plaintiffs reside here.

Facts

Policy Coverage for IVF and Scope of IVF Usage

6. Plaintiffs obtained a health insurance policy (the “Policy”) from Carefirst on or about 2016, through the Maryland Health Insurance Exchange (the “Exchange”), with Matthew Skipper as the primary insured and Jamie Skipper as a dependent insured spouse. *See* Policy and Summary Pages, attached hereto as *Exhibit A*.

7. Upon information and belief, the Policy is identical to others sold by Carefirst through the Exchange, and substantially similar, in relevant part, to those sold by Carefirst through other channels in Maryland.
8. Upon information and belief, Carefirst uses a limited number of standardized contracts and contractual provisions relating to pregnancy and IVF-related coverage in Maryland.
9. Pursuant to Md. Code, Insurance §15-810(c)(2), health insurers in Maryland “that provide[] pregnancy-related benefits may not exclude benefits for *all outpatient expenses* arising from in vitro fertilization procedures performed on a policyholder or subscriber or on the dependent spouse of a policyholder or subscriber.” (Emphasis supplied.)
10. The Policy specifically provides for coverage of “Assisted reproductive technologies” including in-vitro fertilization (“IVF”) where less costly methods have failed. *Exh. A. at ¶ 1.5(F)*.
11. Nationwide in 2018, 74.3% of more than 107,000 embryo transfer cycles involved frozen embryo transfers. Centers for Disease Control and Prevention, “Assisted Reproductive Technology (ART) Data,” https://nccd.cdc.gov/drh_art/rdPage.aspx?rdReport=DRH_ART.ClinicInfo&rdRequestForward=True&ClinicId=9999&ShowNational=1 (Apr. 19, 2021).
12. More than 6,000 embryo transfers were performed in Maryland in 2018. Centers for Disease Control and Prevention, “2018 Assisted Reproductive Technology Fertility Clinic Success Rates Report,” <https://www.cdc.gov/art/pdf/2018-report/ART-2018-Clinic-Report-Full.pdf>, at pp. 247-255 (Apr. 19, 2021).

Carefirst's Denial of Coverage for Plaintiffs' Embryo Thawing

13. In or around 2010, Plaintiffs sought fertility treatment from the GW Medical Faculty Associates Fertility & IVF Center, in connection with a diagnosis of female infertility.
14. Plaintiffs attempted several cycles of intrauterine insemination ("IUI") without success.
15. After Plaintiffs' physician determined that further IUI cycles were unlikely to be productive, between 2012 and 2015, Plaintiff Jamie Skipper underwent several egg retrieval cycles.
16. The initial retrieval cycles were covered by Aetna, Plaintiffs' a prior health insurer. After Plaintiffs switched insurance companies but before coverage under the Policy by Carefirst, they paid out of pocket.
17. Each retrieval cycle, in addition to the physical toll, cost either the Plaintiffs or their prior insurance company in excess of \$10,000.
18. Each retrieval cycle resulted in the collection of multiple eggs and the subsequent creation of multiple embryos.
19. Plaintiffs underwent one attempt to transfer an embryo in its "fresh" state, shortly after creation, but that transfer was unsuccessful.
20. The remaining embryos were frozen for subsequent transfer.
21. Plaintiffs successfully transferred one of the frozen embryos in 2015.
22. On or about September 7, 2018, Plaintiffs secured prior authorization from Carefirst to proceed with a transfer cycle for one of the remaining frozen embryos.
23. Plaintiffs did not seek coverage for the egg retrieval or creation of the embryos, as that had occurred several years prior.

24. Had Plaintiffs attempted a fresh embryo transfer cycle, the costs to Carefirst for the retrieval and creation would have been substantial.
25. Carefirst's preauthorization, sought by phone call by the physician's office, however, denied coverage for thawing the embryo prior to transfer. *See* Preauthorization Letter, attached hereto as *Exhibit B*.
26. Thawing an embryo is an essential component of IVF; a frozen embryo cannot be transferred without thawing.
27. Carefirst's representative admitted to Plaintiffs that Carefirst routinely denies coverage for embryo thawing though it recognizes the thawing as a necessary step for the IVF process.
28. Plaintiffs proceeded with the IVF process, paying \$900 out of pocket to cover the thawing.
29. Carefirst provided no explanation for the denial, other than indicating that it was "not a covered benefit/service." *Id.*

Appeal and MIA Complaint

30. Plaintiffs appealed the denial in a letter dated June 12, 2020. *See* Appeal Letter, attached hereto as *Exhibit C*.
31. Carefirst denied the appeal in a letter dated July 9, 2020. *See* Appeal Denial Letter, attached hereto as *Exhibit D*.
32. Though Maryland law does not require administrative process for health insurance disputes, on November 9, 2021, Plaintiffs filed a Complaint with the Maryland Insurance Administration ("MIA"), alleging lack of good faith and breach of contract and seeking declaratory judgment.

33. In or around March 2021, the MIA referred the matter to the Maryland Office of the Attorney General for further action.

Class Allegations

34. Plaintiffs Matthew and Jamie Skipper bring this class action pursuant to Fed. R. Civ. P. 23 and case law thereunder on behalf of herself and a Class of all others similarly situated.

35. The Class is defined as: All individuals in Maryland who, within three years prior to the date of filing of this Complaint, were denied coverage for embryo thawing but not other IVF-related expenses pursuant to a Carefirst health insurance policy issued in Maryland that purports to cover “pregnancy-related benefits.”

36. Excluded from the Class are: (a) any Judge or Magistrate presiding over this action and members of their families; (b) Defendant and its subsidiaries, affiliates, present and former employees, and family members; and (c) all persons who properly execute and file a timely request for exclusion from the Class.

37. *Numerosity*: The Class is comprised of likely at least dozens of individuals, making joinder impractical. Moreover, the Class is composed of an easily ascertainable set of individuals for whom Defendant denied coverage for embryo thawing during the relevant period. The precise number of Class members can only be ascertained through discovery, which includes Defendant’s records. The disposition of their claims through a class action will benefit both the parties and this Court.

38. *Commonality*: The critical questions of law and fact common to the Plaintiff Class that will materially advance the litigation is whether Maryland law requires Carefirst to cover embryo thawing pursuant to Md. Code, Insurance §15-810(c)(2).

39. *Typicality*: Plaintiffs' claims are typical of the claims of the members of the Class, as all such claims arise out of identical or substantially similar contractual provisions and Defendant's denial of coverage of a necessary component of IVF.
40. *Adequate Representation*: Plaintiffs will fairly and adequately protect the interests of the members of the Class and have no interests antagonistic to those of the Class. Plaintiffs have retained counsel experienced in the prosecution of complex class actions, including but not limited to consumer class actions involving unfair and deceptive trade practices, as well as counsel experienced in Maryland insurance matters.
41. *Predominance*: This class action is appropriate for certification because questions of law and fact common to the members of the Class predominate over questions affecting only individual members, and a Class action is superior to other available methods for the fair and efficient adjudication of this controversy, since individual joinder of all members of the Class is impracticable. Should individual Class members be required to bring separate actions, this Court would be confronted with a multiplicity of lawsuits burdening the court system while also creating the risk of inconsistent rulings and contradictory judgments. In contrast to proceeding on a case-by-case basis, in which inconsistent results will magnify the delay and expense to all parties and the court system, this class action presents far fewer management difficulties while providing unitary adjudication, economies of scale and comprehensive supervision by a single court.

CAUSES OF ACTION

COUNT I

VIOLATION OF MARYLAND CONSUMER PROTECTION ACT (MCPA)

Md. Comm. Law §§13-301 *et seq.*

(Brought Individually and on Behalf of the Class)

42. Each of the preceding paragraphs is incorporated by reference herein.
43. Plaintiffs, on behalf of themselves and on behalf of all others similarly situated bring this action pursuant to Md. Comm. Law Ann. §§13-301 *et seq.*
44. Defendant is a “person” under the MCPA, as that term is defined in Md. Code ann., Com. Law § 13-101(h).
45. Health insurance policies, which inherently relate to personal, family, and household needs, are “consumer services” within the meaning of the MCPA.
46. Defendant engaged in an unfair or deceptive trade practice by:
 - a. Misrepresenting in its insurance policy and correspondence that it covered IVF-related expenses where less expensive measures have failed, a material fact, in violation of Md. Code Ann., Comm. Law §§13-301(1), (2)(i) and (iv), and (5)(i).
 - b. Misrepresenting that its policy complies with the requirements of Maryland law for coverage of assisted reproductive technology, a material fact, in violation of Md. Code ann., Com. Law §§ 13-301(1), (2)(i) and (iv), and (5)(i).
 - c. Failing to inform Plaintiffs and other putative class members that its policies that purported to cover IVF-related expenses did not cover embryo thawing, a material fact, in violation of Md. Code Ann., Comm. Law § 13-301(3).
47. Defendant intentionally made these misrepresentations and omissions, knowing that they would mislead reasonable consumers, such as Plaintiffs.
48. As a result of Defendant’s unfair and deceptive trade practices detailed herein, Defendant deprived Plaintiffs and consumers of truthful information regarding their health insurance policies.

49. As a result of the above violations of the Maryland Code, Plaintiffs seek actual damages, punitive damages, and injunctive relief for themselves and all others similarly situated, as well as attorney's fees and costs.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiffs on behalf of themselves and all others similarly situated, pray for a judgment against Defendant as follows:

- Finding that this action satisfies the prerequisites for maintenance of a class action as set forth in Fed. R. Civ. P. 23;
- An award for actual damages, pursuant to Md. Comm. Law Ann. § 13-408(a);
- An award for attorney's fees and costs pursuant to Md. Comm. Law Ann. § 13-408(b);
- an award of pre-judgment and post-judgment interest;
- injunctive relief directing coverage of embryo thawing as part of coverage of other IVF-related expenses; and
- for such other and further relief as may be just and proper.

JURY DEMAND

Plaintiff hereby requests a trial by jury on all claims so triable.

Dated: Washington, DC
April 27, 2021

Respectfully submitted,

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