FOURTH DIVISION
March 16, 2017

No. 1-15-3174

IN THE APPELLATE COURT
OF ILLINOIS
FIRST JUDICIAL DISTRICT

JANE RHEINECK,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Cook County.
	)	
v.	)	No. 14 CH 20243
	)	
ILLINOIS DEPARTMENT OF CENTRAL	)	
MANAGEMENT SERVICES, ET. AL.,	)	Honorable
	)	Diane Larsen,
Defendant-Appellee.	)	Judge Presiding.

JUSTICE BURKE delivered the judgment of the court.
Justices McBride and Howse concurred in the judgment.

ORDER

Held: We affirm the judgment of the circuit court that it lacked jurisdiction to consider Rheineck's claims where she failed to exhaust her administrative remedies and the Court of Claims had exclusive jurisdiction over the cause of action.

¶ 1 Appellant, Jane Rheinick, filed a putative class action complaint in the circuit court of Cook County naming appellees, Illinois Department of Central Management Services (CMS) and

Cigna[1] (collectively, "defendants"), among others, as defendants. In her complaint, Rheineck alleged that she was challenging the defendants' practice of "unfairly limiting payments for out of network medical services" obtained by State employees who were enrolled in the State of Illinois' Quality Care Health Plan ("QCHP" or "Plan"). Cigna filed a motion to dismiss Rheinick's complaint pursuant to sections 2-615 and 2-619 of the Illinois Code of Civil Procedure (Code) (735 ILCS 5/2-615 (West 2014); 735 ILCS 5/2-619 (West 2014)), and filed a memorandum in support of that motion. Instead of responding to Cigna's motion, Rheinick filed an amended complaint, which raised many of the same issues in her original complaint and added additional claims. Both Cigna and CMS filed motions to dismiss Rheinick's amended complaint pursuant to sections 2-615 and 2-619, which the trial court granted finding that it lacked jurisdiction to consider Rheinick's claim because she failed to exhaust her administrative remedies, and that her claim could be brought only in the Court of Claims.

¶ 2 I. BACKGROUND

¶ 3 A. State Employees Group Insurance Act of 1971

¶ 4 The State Employees Group Insurance Act of 1971 (Act) provides a program of group life and group health insurance to current state employees, retired state employees, and certain of their dependents. 5 ILCS 375/2 (West 2006). The State pays the insurance claims of the participants for health care services through a Health Insurance Reserve Fund ("HIR Fund" or "Fund"). 5 ILCS 375/13.1(b) (West Supp. 2013). The Fund is funded by appropriations from the General Revenue Fund, the Road Fund, and participant premiums. 5 ILCS 375/13.1(b) (West Supp. 2013)

[1] Rheineck named Cigna Healthcare of Illinois, Inc., Cigna Corporation, Cigna Health and Life Insurance Co., and Cigna Health Management Inc. (collectively, "Cigna") defendants in her complaint.

¶ 5 B. Quality Care Health Plan

¶ 6 In her complaint,[2] Rheineck alleged that she was a State employee enrolled in the QCHP, which the State offered to its employees in connection with the Act. Rheineck contended that, consistent with the Act, the State contracted with Cigna to administer the Plan. 5 ILCS 375/6.2 (West 2004). Under the Plan, Rheineck was permitted to see health care providers that were either "in-network" or "out-of-network." If Rheineck visited an "in-network" provider, she would receive more insurance coverage and have less out-of-pocket expense. If, however, Rheineck visited an "out-of-network" provider, she would receive less coverage and have more out-of-pocket expense.

¶ 7 *1. Maximum Allowable Charge*

¶ 8 Rheineck contended that on July 1, 2013, the QCHP documents were amended to change the scope of coverage for "out-of-network" providers. Prior to the amendment, the documents stated that the State would pay a "maximum allowable charge" that was based on the "usual and customary" amount. Following the amendment, however, the "maximum allowable charge" was defined as an "allowable charge," which the Plan documents described as the "maximum amount the [P]lan will pay an out of network healthcare professional for billed services." Rheineck contended that there was no explanation for how the "allowable charge" would be determined.

¶ 9 To illustrate the effect this change had on her insurance benefits, Rheineck contended that in January 2013, another State employee who received coverage under the Plan visited an out-of-network health care provider and received health care services. Rheineck then visited the same out-of-network provider in November 2013 and received substantially the same services, but had significantly more out-of-pocket liabilities as detailed in an explanation of benefits from Cigna.

[2] All references are made to Rheineck's amended complaint unless otherwise specified.

¶ 10 C. Benefits Handbook

¶ 11 Rheineck attached the State of Illinois Employees Benefits Handbook (Handbook) as an exhibit to her initial complaint.[3] The Handbook details the process for Administrative Appeals, which "pertain to benefit determinations based on plan design and/or contractual or legal interpretations of plan terms that do not involve any use of medical judgment."[4] The Handbook further provides that if a participant seeks to challenge a benefit determination, she must first file an appeal to the Plan's claims administrator within a specific timeframe. If, after exhausting every level of review through the Plan's claims administrator, the Plan participant still believes the benefit determination was incorrect, the participant "may appeal the plan administrator's decision to CMS' Group Insurance Division," within 60 days. Rheineck filed an appeal to Cigna as the Plan's administrator regarding her explanation of benefits for her November 2013 doctor visit. Cigna denied her appeal finding that the claim "was processed correctly for the geographical location where the services were provided and according to the terms of your plan provisions." Rather than appeal the Plan administrator's decision to CMS, however, Rheineck filed a complaint in the circuit court.

¶ 12 D. Pleadings

¶ 13 *1. Rheineck's Complaint*

¶ 14 In Count I of her complaint, Rheineck made claims for breach of contract against the Fund for failing to pay the "allowable charge." She contended that the Benefits Handbook and "other Plan documents" constituted a contract. In Count II of her complaint, Rheineck sought an accounting and injunctive relief against all defendants requesting that defendants "should be

[3] Although the cover page for the Handbook is attached to Rheineck's amended complaint, the remainder of the Handbook is absent.

[4] The Handbook also provides for a separate type of appeal, Medical Appeals, which pertain to benefit determinations involving medical judgment. No medical judgments are at issue in this case.

ordered to reimburse out of the Fund the difference between the amount that would have been paid before July 1, 2013[,] and the amount paid after." Counts III through VI are directed solely at Cigna and allege breach of contract (Count III), tortuous interference (Count IV), unfair and deceptive business practices (Count V), and breach of fiduciary duty (Count VI). In Count VII, Rheineck alleged that the Fund had been unjustly enriched by paying a lower allowable charge than it should have. In her prayer for relief, Rheineck contended that the court should "award compensatory damages, costs, and whatever further relief this Court may deem appropriate."

¶ 15 *2. Defendants' Motions to Dismiss*

¶ 16 Cigna filed a motion to dismiss Rheineck's complaint pursuant to sections 2-619 and 2-615 of the Code. In its memorandum filed in support of its motion, Cigna contended that the court should dismiss Rheineck's complaint because she failed to exhaust her administrative remedies by appealing the claims administrator's decision to CMS. Cigna further contended that sovereign immunity barred Rheineck's claims because her complaint alleged a contract action against the State and sounded in tort. Cigna asserted that because Rheineck's suit could subject the State to liability, her claim could only have been brought in the Court of Claims. Cigna maintained that the circuit court, therefore, lacked jurisdiction to consider Rheineck's claims. CMS also filed a motion to dismiss the complaint pursuant to section 2-619 of the Code, which included the same jurisdictional arguments contained in Cigna's motion. After a response by Rheineck, and supporting responses by CMS and Cigna, the circuit court granted defendants' motions finding that the court lacked jurisdiction because Rheineck failed to exhaust her administrative remedies and because the matter should have been brought in the Court of Claims. The court noted that its ruling was limited to jurisdictional issues and did not address any other issues. This appeal follows.

¶ 17 II. ANALYSIS

¶ 18 A. The Parties' Claims

¶ 19 On appeal, Rheineck contends that the circuit court erred in granting defendants' motions to dismiss her complaint because the circuit court had jurisdiction over her claims. Rheineck maintains that sovereign immunity did not prevent her from bringing this action in the circuit court because the HIR Fund is not a "state fund" funded by general revenue and her claims are for equitable relief, which are outside the Court of Claims' jurisdiction. Rheineck further contends that the court erred in finding that she failed to exhaust her administrative remedies because an appeal to CMS would have been "futile." Rheineck asserts that such appeal would be futile because her claims raise solely a legal issue and there are no factual determinations for CMS to make. She further asserts that CMS lacks specialized agency expertise to rule on this matter. In response, defendants repeat many of the same arguments made in their motions to dismiss Rheineck's complaint and contend that the circuit court properly granted their motions to dismiss where the court lacked jurisdiction because Rheineck failed to exhaust her administrative remedies and sovereign immunity required her to bring this action in the Court of Claims.

¶ 20 B. Standard of Review

¶ 21 Defendants brought their motions to dismiss Rheineck's complaint pursuant to section 2-619 of the Code (735 ILCS 2-619 (West 2014)). A motion to dismiss under section 2-619 of the Code admits the legal sufficiency of the complaint, but asserts affirmative matters outside of the complaint. *Hoover v. Country Mut. Ins. Co.*, 2012 IL App (1st) 110939, ¶ 31. When ruling on a section 2-619 motion to dismiss, the court must view all pleadings in a light most favorable to the non-moving party (*Snyder v. Heidelberger*, 2011 IL 111052, ¶ 8), and accept as true all well-pleaded facts (*Patrick Engineering, Inc. v. City of Naperville*, 2012 IL 113148, ¶ 31). We review

the dismissal of a cause of action pursuant to section 2-619 of the Code *de novo*. *Hoover*, 2012 IL App (1st) 110939, ¶ 31.

¶ 22 C. Exhaustion of Administrative Remedies

¶ 23 In their motions to dismiss Rheineck's complaint, both defendants contended that the circuit court lacked jurisdiction because Rheineck failed to exhaust her administrative remedies. Defendants repeat that argument on appeal contending that after her claim was denied by the Cigna claims administrator, she was required to file an appeal to CMS before seeking relief in the judicial system as outlined in the Handbook. Before this court, Rheineck contends that the circuit court erred in finding that it lacked jurisdiction because she failed to exhaust her administrative remedies because she presented a primarily legal issue and CMS lacked special agency expertise. She maintains that the only issue raised by her complaint was the "purely legal questions of the construction of the new QCHP 'allowable charge' language, and whether that language change permits the radical reduction in payouts that took place from June to July 2013." She further asserts that CMS lacked specialized agency expertise for determining whether medical charges are "usual and customary" or the "maximum allowable." She also contends that she was not required to exhaust her administrative remedies because CMS lacked the ability to provide the requested relief, i.e., "injunctive and declaratory relief for all Plan members and beneficiaries."

¶ 24 *1. Exhaustion Principles*

¶ 25 Generally, "a party aggrieved by an administrative action must first pursue all available administrative remedies before resorting to the courts." *Village of South Elgin v. Waste Management of Illinois, Inc.*, 348 Ill. App. 3d 929, 930 (2004) (citing *Rockford Memorial Hospital v. Dep't of Human Rights*, 272 Ill. App. 3d 751, 757 (1995)). This doctrine allows

administrative bodies to develop a factual record and permits the agency to utilize its expertise. *Midland Hotel Corp. v. Director of Emp. Sec.*, 282 Ill. App. 3d 312, 319 (1996). In addition, it allows the aggrieved party an opportunity to succeed before the agency, rendering judicial review unnecessary. *Id.* (citing *Castaneda v. Illinois Human Rights Com'n*, 132 Ill. 2d 304, 308 (1989)). An action for a declaratory judgment cannot be used to circumvent this procedure of administrative review. *Midland*, 282 Ill. App. 3d at 319 (citing *Dudley v. Bd. of Educ.*, 260 Ill. App. 3d 1100, 1106 (1994)). Courts generally require strict compliance with the exhaustion of remedies doctrine. *Maschek v. City of Chicago*, 2015 IL App (1st) 150520, ¶ 47.

¶ 26 However, the supreme court has recognized several exceptions to the exhaustion of remedies doctrine, including:

> "where: (1) a statute, ordinance, or administrative rule or regulation is attacked on its face or in its terms; (2) the agency's jurisdiction is attacked because it is not authorized by statute; (3) irreparable harm will result from further pursuit of administrative remedies; (4) it would be patently useless to seek any relief before the administrative body; (5) the agency cannot provide an adequate remedy; (6) no issues of fact are presented or agency expertise is not involved; or (7) multiple administrative remedies exist and one has been exhausted."

Midland, 282 Ill. App. 3d at 319 (citing *Castaneda*, 132 Ill. 2d at 309). In this case, Rheineck does not dispute that she failed to exhaust her administrative remedies by complying with the Plan's review process by appealing the claims administrator's decision to CMS. She instead relies on three exceptions to the exhaustion doctrine. Specifically, she contends that there are no

issues of fact presented, that agency expertise is not involved, and that the agency cannot provide an adequate remedy.

¶ 27 *2. No Issues of Fact*

¶ 28 In contending that the circuit court erred in granting defendants' motions to dismiss her complaint, Rheineck contends that she was not required to exhaust her administrative remedies before seeking judicial review because her claims do not raise issues of fact, but are purely legal questions proper for the circuit court's determination. Rheineck misrepresents her contentions. Contrary to Rheineck's assertions, there are numerous factual determinations that CMS should have been given the opportunity to explore before Rheineck sought review in the judicial system. *Midland*, 282 Ill. App. 3d at 319 (noting that requiring the exhaustion of administrative remedies allows an administrative body to develop a factual record).

¶ 29 Specifically, in her complaint, Rheineck contended that defendants "dramatically and arbitrarily, without adequate disclosure, reduced the amounts paid for claims for treatment by out-of-network providers." Whether the reduction was dramatic, arbitrary, or occurred without adequate disclosure are all factual questions that CMS could determine on administrative review and are at the heart of Rheineck's claim. Rheineck also alleged that "the terms 'allowable charge' and 'maximum amount' as used by Defendants are vague and ambiguous and are used by Defendants as a pretext for exercising unfettered and arbitrary discretion to pay whatever price they choose for out-of-network services." Whether these terms are "vague" or "ambiguous" are factual questions. Similarly, whether the vague terms were used as pretext to pay "whatever price they choose" for out-of-network services are also factual questions. Thus, contrary to Rheineck's contention, there are numerous factual issues that CMS should have been given the opportunity to address on external appeal. *Castaneda*, 132 Ill. 2d at 308 ("Requiring the

exhaustion of remedies allows the administrative agency to fully develop the facts of the cause before it."). Accordingly, we find no merit to Rheineck's claim that she was not required to exhaust her administrative remedies because there are no factual issues presented.

¶ 30 *3. Agency Expertise*

¶ 31 Rheineck next contends that appeal to CMS would be futile because CMS lacks any specialized agency expertise to address her claim. Rheineck asserts that Cigna, not CMS, is charged with determining the maximum allowable amount and the usual and customary allowance, and that CMS lacks "data to review the Cigna decision." Rheineck's claim is essentially a contention that her benefits were improperly reduced, calculated, and disclosed. Therefore, by contending that CMS lacks the agency expertise necessary to address her claim, Rheineck is contending that CMS lacks the agency expertise to review benefit determinations, calculations, and disclosure. Contrary to Rheineck's contentions, however, the Act and the Handbook clearly charge CMS with this responsibility. See 5 ILCS 375/5, 6 (West 2014). The Handbook explicitly provides that "if, after exhausting every level of review available through the plan administrator, the plan participant still feels that the final benefit determination by the plan administrator is not consistent with the published benefit coverage, the plan participant may appeal the plan administrator's decision to CMS' Group Insurance Division." It would render the review process outlined in the Handbook meaningless if any time an employee's challenged benefit determination were upheld by the claims administrator, the employee could claim CMS lacked agency expertise and seek review in the judicial system because the administrator, not CMS, was the entity that made the benefits determination.

¶ 32 Moreover, the Act specifically charges CMS with managing the group health insurance plans it offers. 5 ILCS 375/5 (West Supp. 2013). Such statutory authority would be meaningless

if CMS lacked the expertise or authority to address what services should be covered and the amount of benefits applicable to an employee's claim. Our determination would not be different even if Rheineck's claim were solely about benefit calculations. As discussed, however, there are numerous factual considerations applicable to Rheineck's claim for CMS' determination. There is nothing to suggest that CMS would be unable to address Rheineck's claims. Although, as Rheineck points out, CMS is not in the "business" of collecting industry statistics to determine coverage amounts, as Cigna is, that does not preclude them from addressing the issues present in this case. In addition, we find nothing in the language of the Act or the Handbook that would preclude CMS from seeking outside consultation from Cigna or another insurance provider to properly address Rheineck's claims, if necessary. Accordingly, we find no merit to Rheineck's claim that she was not required to exhaust her administrative remedies because CMS lacked specialized agency expertise.

¶ 33 *4. Adequate Remedy*

¶ 34 Finally, Rheineck contends that she was not required to exhaust her administrative remedies because CMS could not provide her with the relief requested. She maintains that her complaint sought injunctive and declaratory relief on behalf of all Plan members, requiring CMS and Cigna to define "maximum allowable amount" and "allowable charge," and disclose the methods used to determine these definitions. Initially, we recognize that Rheineck cannot circumvent the established procedure of administrative review merely by forming her claim as an action for a declaratory judgment. *Midland*, 282 Ill. App. 3d at 319. Nonetheless, we find Rheineck's contention meritless.

¶ 35 If Rheineck had followed the proper review procedure outlined in the Handbook, CMS would have had the opportunity to address and remedy, if necessary, her claims. If Rheineck

were successful before CMS' Group Insurance Division, any injunctive or declaratory relief would be unnecessary. Instead, she would have received the reimbursement she believed was due under the QCHP and no further remedy would be required. "Requiring the exhaustion of remedies *** allows the aggrieved party to ultimately succeed before the agency, making judicial review unnecessary." *Castaneda*, 132 Ill. 2d at 308.

¶ 36 Rheineck claims that such a decision by CMS would create a "double standard" because the Plan would pay a higher amount to Plan participants merely if they appealed. Such a speculative claim is not at issue in this case, however, because CMS has not been given the opportunity to address the claim. If CMS determined that Rheineck's benefits had been improperly calculated, it would have the ability, under the Act, to correct the benefit determinations consistent with its decision in Rheineck's case. If, however, CMS did not grant Rheineck the relief she requested, she would then have the opportunity to seek review of that decision consistent with the Administrative Review Law. 735 ILCS 5/3-101 *et seq.* (West 2014).[5] Accordingly, we find that the circuit court did not err in finding that it lacked jurisdiction to consider Rheineck's claims because she failed to exhaust her administrative remedies and she has failed to identify any exception that would excuse her failure to do so.

¶ 37 D. Sovereign Immunity

¶ 38 Rheineck next claims that the circuit court erred in finding that it lacked jurisdiction to consider her claim because the Court of Claims had exclusive jurisdiction over the claims in her complaint under the sovereign immunity doctrine. Rheineck maintains that the Court of Claims does not have exclusive jurisdiction over her claims because the HIR Fund in not a "state fund," and, therefore, the State is not a party to the litigation. She further asserts that sovereign

[5] The Act adopts the Administrative Review Law for any actions brought by aggrieved parties issued by the CMS under the provisions of the Act. 5 ILCS 375/15(h) (West 2012).

immunity does not bar her claims against Cigna, as an agent of the State, because Cigna was acting outside the scope of its authority. She also maintains that the Court of Claims lacked the jurisdiction to provide her with the relief requested because her complaint seeks prospective injunctive relief, which can only be granted by the circuit court. Defendants respond that the Court of Claims has exclusive jurisdiction over this matter because Rheineck's claims could subject the State to liability.

¶ 39 *1. Sovereign Immunity Principles*

¶ 40 Article XIII, section 4, of the Illinois Constitution abolishes sovereign immunity in Illinois "[e]xcept as the General Assembly may provide by law." The General Assembly has reinstated the doctrine of sovereign immunity through the enactment of the State Lawsuit Immunity Act (745 ILCS 5/0.01 *et seq.* (West 2012)). The statute provides that except as provided in the Court of Claims Act (705 ILCS 505/1 *et seq.* (West 2012)), and other specified statutes, "the State of Illinois shall not be made a defendant or party in any court." *Leetaru v. Bd. of Trustees of Univ. of Illinois*, 2015 IL 114485, ¶ 42 (citing *Township of Jubilee v. State of Illinois*, 2011 IL 111447, ¶ 22). Section 8(b) of the Court of Claims Act grants the Court of Claims exclusive jurisdiction over "[a]ll claims against the State founded upon any contract entered into with the State of Illinois" and Section 8(d) grants the Court of Claims exclusive jurisdiction over "[a]ll claims against the State for damages in cases sounding in tort." 705 ILCS 505/8(b), (d) (West 2012). Although Rheineck did not name the State of Illinois as a party to the cause of action, whether an action is in fact one against the State depends on the issues involved and the relief sought. *Leetaru*, 2015 IL 114485, ¶ 45. "[T]he prohibition 'against making the State of Illinois a party to a suit cannot be evaded by making an action nominally one against the servants or agents of the State when the real claim is against the State of Illinois itself and when

the State of Illinois is the party vitally interested.' " *Healy v. Vaupel*, 133 Ill. 2d 295, 308 (1990) (quoting *Sass v. Kramer*, 72 Ill. 2d 485, 491(1978)).

¶ 41 Generally, a claim is against the State rather than a state employee when:

> " '(1) [there are] no allegations that an agent or employee of the State acted beyond the scope of his authority through wrongful acts; (2) the duty alleged to have been breached was not owed to the public generally independent of the fact of State employment; and (3) where the complained-of actions involve matters ordinarily within that employee's normal and official functions of the State ***.' "

Management Ass'n of Illinois, Inc. v. Bd. of Regents of Northern Illinois Univ., 248 Ill. App. 3d 599, 607 (1993) (quoting *Robb v. Sutton*, 147 Ill. App. 3d 710, 716 (1986)). Even if none of these criteria are met, however, "[s]overeign immunity will apply whenever a judgment for the plaintiff could operate either to control the actions of the State or subject it to liability." *Welch v. Illinois Supreme Court*, 322 Ill. App. 3d 345, 351 (2001). "A party seeking a monetary judgment against an agency payable out of state funds must bring its action in the Court of Claims." *Meyer v. Dep't of Public Aid*, 392 Ill. App. 3d 31, 35 (2009). In this case, Rheineck contends that the Court of Claims did not have exclusive jurisdiction over her claims because the HIR fund is not a "state fund," Cigna was not an agent of the state because it exceeded its authority, and the Court of Claims lacks the jurisdiction to grant her the equitable relief requested.

¶ 42 *2. The HIR Fund*

¶ 43 The Act provides that "[a]ll contributions, appropriations, interest, and dividend payments to fund the program of health benefits and other employee benefits, and all other revenues arising from the administration of any employee health benefits program, shall be

deposited in a trust fund outside the State Treasury." 5 ILCS 375/13.1(a) (West Supp. 2013). The HIR fund is funded by participant premiums and from the General Revenue Fund and the Road Fund. 5 ILCS 375/13.1(b) (West Supp. 2013). The Act further provides that CMS "shall draw the appropriation from the General Revenue Fund and the Road Fund from time to time as necessary to make expenditures authorized under this Act." 5 ILCS 375/13.1(b) (West Supp. 2013). Expenditures from the fund may only be made for the payment of health and medical benefits, and other specified purposes. 5 ILCS 375/13.1(b) (West Supp. 2013).

¶ 44 Defendants contend that the Court of Claims has exclusive jurisdiction over Rheineck's claims because "[a] party seeking a monetary judgment against an agency payable out of state funds must bring its action in the Court of Claims." *Meyer v. Dep't of Public Aid*, 392 Ill. App. 3d 31, 35 (2009) (citing *James v. Mims*, 316 Ill. App. 3d 1179 (2000)). Rheineck contends that the HIR fund is not a "state fund" because the fund is an "employee benefits trust fund set aside for limited purposes," which, she contends, under Illinois case law, is a fund not subject to Court of Claims jurisdiction. She contends that merely because the HIR Fund contains state funds does not render it a "state fund" for Court of Claims jurisdiction purposes. Rheineck's contention is somewhat misplaced. The dispositive issue is not whether the fund at issue *contains* State funds, but whether the judgment in the case could subject the State to liability. See, *e.g.*, *Illinois State Treasurer v. Illinois Workers' Compensation Com'n*, 2013 IL App (1st) 120549WC, ¶ 19; *Welch*, 322 Ill. App. 3d at 351.

¶ 45 Here, the allegations in Rheineck's complaint are clear that a judgment in her favor could subject the State to liability. Moreover, her complaint asserts claims that are explicitly identified in the Court of Claims Act. In Count I of her complaint, she alleges breach of contract against the Fund and seeks compensatory damages and costs. In Count II she sues all defendants and

requests reimbursement "out of the Fund the difference between the amount that would have been paid before July 1, 2013[,] and the amount paid after." A judgment in Rheineck's favor in this case would undoubtedly subject the State to liability because the HIR Fund is composed of not only participant premiums, but also funds from the General Revenue Fund. Moreover, the Act provides that if the HIR Fund runs dry, the State shall use appropriations from the General Revenue Fund to make expenditures necessary under the Act. This use of appropriations from the State's General Revenue Fund means that a judgment in Rheineck's would subject the state to liability and control the actions of the State. *Welch*, 322 Ill. App. 3d at 351.

¶ 46 In contending that the HIR Fund is not a State fund, Rheineck cites *Bd. of Dirs. of 345 Fullerton Parkway Condo. Ass'n v. Teachers' Retirement Sys.*, 50 Ill. Ct. Cl. 396 (1998) and *Barry v. Ret. Bd. of Firemen's Annuity & Benefit Fund*, 357 Ill. App. 3d 749 (2005), *abrogated*, 234 Ill. 2d 446 (2009).[6] Rheineck's reliance on these cases is misplaced. In *345 Fullerton*, a claim was brought against the Teachers' Retirement System (TRS) statutory pension system for certain school district employees. *345 Fullerton*, 50 Ill. Ct. Cl. at 396. The plaintiff raised an issue regarding a real estate investment of the TRS. *Id.* The Court of Claims *sua sponte* determined that it did not have jurisdiction to hear the claim because the TRS pension fund is a trust fund for the sole benefit of present and future TRS members and is not a State fund. *Id.* at 397. The Court of Claims noted that the liabilities of the TRS pension fund are not liabilities of the State where the State was merely charged with administrating the fund. *Id.* at 397-98. The court further observed that State general funds would not be used to pay investment losses of pension trust funds like the TRS pension fund. *Id.* at 402. Crucially, the court noted that "[i]nsofar as this claim seeks to impose liability on the State, payable from State general funds,

[6] Barry was abrogated on other grounds not relevant to this appeal. See *Kouzoukas v. Ret. Bd. of Policemen's Annuity and Benefit Fund of City of Chicago*, 234 Ill. 2d 446, 473-74 (2009).

for a liability of the TRS pension fund, we have jurisdiction over such claim as it claims against the State ***." *Id.* at 397. For the reasons noted above, however, the court determined that this was not such as case because the liabilities of the TRS pension fund were not liabilities of the State where no State revenue would be used to settle the claims of the TRS fund. *Id.* at 397-98.

¶ 47 In the case at bar, unlike the TRS pension fund in *345 Fullerton*, the obligations of the HIR Fund are the liabilities of the State. This is the case because the HIR Fund is funded in part by appropriations from the General Revenue Fund. Moreover, as noted, if the HIR Fund had insufficient capital to fulfill its expenditure obligations, the Act requires the State to use funds from the General Revenue Fund to satisfy those obligations. Where the State statutorily assumes financial responsibility for the "administration and operation" expenses and thus liabilities of a fund, it thereby "opens the door to State liability" in the Court of Claims for claims that fall within the statutory standard. *345 Fullerton*, 50 Ill. Ct. Cl. at 404.

¶ 48 *Barry*, is likewise distinguishable from the case at bar. Rheineck contends that *Barry* stands for the proposition that "a fund under government control is not always a state fund" where the fund is established for the benefit of a select group rather than the public at large. However, the fund at issue in *Barry* is distinguishable from the fund at issue in this case for similar reasons as the TRS pension fund in *345 Fullerton*. We first observe that there was no jurisdictional issue present in *Barry*. Instead, the issue in Barry was whether the board of trustees who administered the fund was a "municipality" exempt from pre-judgment interest. *Barry*, 357 Ill. App. 3d at 759. Rheineck contends, citing *Barry*, that the fact that a fund may contain State money is not dispositive in determining whether it is a State fund. We agree. As discussed, the dispositive issue is whether a judgment in Rheineck's favor could subject the state to liability and control the actions of the State. *Welch*, 322 Ill. App. 3d at 351. As explained above, a

judgment in Rheineck's favor in this case would subject the State to liability because the State could be forced to pay the judgment through funds appropriated from the General Revenue Fund. The holding and reasoning in *Barry* does nothing to dispute this finding.

¶ 49 *2. Cigna as the State's Agent*

¶ 50 Rheineck next contends that the Court of Claims does not have exclusive jurisdiction over her claims against Cigna as an agent of the State because Cigna exceeded the scope of its authority. Rheineck maintains that Cigna exceeded its authority by "imposing unilateral and arbitrary reductions in payments, which reduced access to trusted family providers on substantially the same terms." By contending that Cigna is not the State's agent, Rheineck attempts to circumvent the principle that an action brought against a State employee or agent in its individual capacity, where a judgment for the plaintiff could operate to control the action of the State or subject it to liability, is deemed to be an action against the State. *Cortright v. Doyle*, 386 Ill. App. 3d 895, 900 (2008) (citing *Brandon v. Bonell*, 368 Ill. App. 3d 492, 504 (2006)). Rheineck is relying on an exception to this general rule that an action against a State employee is not deemed an action against the State where there is an allegation that an employee or agent of the State acted beyond the scope of its authority through wrongful acts. *Cortright*, 386 Ill. App. 3d at 900. Despite Rheineck's contentions, however, we cannot say that Cigna exceeded the scope of its authority.

¶ 51 The plain language of the Act makes it clear that Cigna was retained by the State to perform a role that the State is charged with fulfilling and would otherwise fulfill itself. The Act provides that "the State may provide the administrative services in connection with the self-insurance health plan or purchase administrative services from an administrative service organization." 5 ILCS 375/6.2 (West 2004). Rheineck implicitly acknowledges that within the

scope of its duties, Cigna was an agent of the State. She asserts, however, that when Cigna "unilaterally and arbitrarily" set an "unreasonably low allowable charge" it acted outside the scope of its authority by violating the Act's guarantee of continuity of benefits.

¶ 52 In making this contention, Rheineck relies on section 13.1 of the Act, which provides in part that:

> "members should have continued access, on substantially similar terms and conditions, to trusted family health care providers with whom they have developed long-term relationships through a benefit program under this Act. Therefore, the Director must administer this Act consistent with that State policy, *but may consider affordability, cost of coverage and care, and competition among health insurers and providers*"

(emphasis added.) 5 ILCS 375/13.1(b) (West Supp. 2013). In her complaint, Rheineck quotes the first sentence of this section, but overlooks the second sentence which provides that CMS may consider "affordability, cost of coverage and care, and competition among health insurers and providers." Thus, the Act commands that although the State should seek to promote continued access to trusted family health care providers on substantially similar terms, other factors may affect that determination. Cigna's role under the Act, as an administrative services organization, is to make these benefit determinations. 5 ILCS 375/6.2 (West 2004). Although Rheineck contends that Cigna acted arbitrarily and unilaterally, such contention does not indicate that Cigna was acting outside the scope of its authority. On the contrary, Cigna was performing those responsibilities specifically identified by the Act. Absent a showing of specific facts that Cigna acted for any purpose other than what it perceived to be its role as an administrative service

organization under the Act, we cannot say that its actions were beyond the scope of its authority. See *Cortright*, 386 Ill. App. 3d at 903.

¶ 53 *3. Rheineck's Requested Relief*

¶ 54 Rheineck finally contends her claims are not subject to Court of Claims jurisdiction because her claims are only for prospective injunctive relief, not damages. Rheineck contends her only claims against CMS seek an accounting and to fully define and disclose the method for calculating the "allowable charge." As discussed above, Rheineck's complaint does not merely request equitable relief as she contends. In Count II, alleged against all defendants, she requests reimbursement "out of the Fund the difference between the amount that would have been paid before July 1, 2013[,] and the amount paid after." This is not a claim for injunctive relief, but is a claim for money damages that would necessarily be paid out of the HIR Fund, which as explained above, is a State fund. "[W]hen the gravamen of the complaint is breach of contract, a prayer for injunctive relief is nothing more than a thinly disguised breach of contract action." (Internal quotation marks omitted.) *Joseph Constr. Co. v. Bd. of Trustees of Governors State Univ.*, 2012 IL App (3d) 110379, ¶ 48 (quoting *Northrop Corp. v. AIL Sys., Inc.*, 218 Ill. App. 3d 951, 954-55 (1991)). We find that Rheineck's counts seeking injunctive and declaratory relief do nothing more than restate its breach of contract claims. *Joseph Constr. Co.*, 2012 IL App (3d) 110379, ¶ 49.

¶ 55 Similarly, Count I of Rheineck's complaint alleges breach of contract against the HIR Fund. Section 8(b) of the Court of Claims Act grants the Court of Claims exclusive jurisdiction over "[a]ll claims against the State founded upon any contract entered into with the State of Illinois." 705 ILCS 505/8(b) (West 2012). She also alleges a breach of contract claim against Cigna in Count III of her complaint, which, as discussed, is an agent of the State. This court has

found that where an action is premised upon a contract between the plaintiff and an arm of the State, the breach of contract action should be litigated in the Court of Claims. *Joseph Constr. Co.*, 2012 IL App (3d) 110379, ¶ 49 (citing 705 ILCS 505/8(b) (West 2012)). Accordingly, we find that the circuit court did not err in holding that it lacked jurisdiction over this action because the Court of Claims had exclusive jurisdiction.

¶ 56 III. CONCLUSION

¶ 57 For the reasons stated, we affirm the judgment of the circuit court of Cook County.

¶ 58 Affirmed.