

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 96-3639SI

Sheila M. Mikkelsen,

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Appellant,

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v.

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Appeal from the United States
District Court for the Southern
District of Iowa.

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Jennie Edmundson Memorial Hospital;

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Iowa Benefits, Inc.,

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[UNPUBLISHED]

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Appellees.

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Submitted: May 23, 1997

Filed: May 30, 1997

Before McMILLIAN, FAGG, and HANSEN, Circuit Judges.

PER CURIAM.

Sheila M. Mikkelsen appeals the district court's adverse grant of summary judgment. At the time of her hospitalization for psychiatric evaluation, Mikkelsen was covered under an insurance policy through her employer. Iowa Benefits, Inc. denied coverage under a pre-existing condition clause of the insurance plan, and Mikkelsen brought this action against Iowa Benefits and the hospital for misrepresentation of the hospitalization coverage. Finding no genuine issues of material fact and that the defendants' version of the facts was admitted by Mikkelsen, the district court granted summary judgment. The district court also held that Mikkelsen's estoppel claim was

preempted by the Employment Retirement Income Security Act, and even if the claim was recognized, that Mikkelsen failed to "demonstrate the facts necessary to support her claim." Having reviewed the record and the parties' briefs, we agree with the district court's analysis and affirm for the reasons stated in the district court's memorandum opinion. We decline to consider issues raised by Mikkelsen for the first time on appeal. We also deny Iowa Benefits's request for an award of attorney's fees.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.