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The Battle Lines of Mental Health Parity Litigation: Utah District Court Grants Motion to Dismiss, Finds Conclusory Allegations Insufficient

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On June 5, 2019, in the matter *Kerry W. v. Anthem Blue Cross and Shield*, No. 2:19cv67, Judge Dee Benson of the U.S. District Court for the District of Utah granted Anthem Blue Cross and Shield's motion to dismiss the plaintiffs' cause of action for violation of the Mental Health Parity and Addiction Equality Act (MHPAEA). The district court in Utah continues to determine that a denial of a mental health benefit claim based on medical necessity cannot be transformed into a cause of action for violation of the MHPAEA through conclusory allegations.

This case demonstrates the current litigation battle lines. Plaintiffs seek to overcome motions to dismiss and get to discovery based on the allegation that the handling of a claim violates the MHPAEA, while plans and plan administrators continue to insist that the plaintiffs must plead a factual basis for their allegations.

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Significant Facts

Kerry W. and her daughter, N.W., were beneficiaries of a group health plan insured by Anthem. N.W. had a history of mental health issues and substance abuse. She received treatment from Elevations Residential Treatment Center from September 14, 2015, through August 25, 2016, and again from October 5, 2016, through January 23, 2017. Elevations is a licensed facility that provides subacute inpatient treatment to adolescents with mental health, behavioral, and substance abuse problems.

Anthem paid for the treatment for four-and-one-half months and then denied authorization for further treatment based on the conclusion that it was not medically necessary. Anthem concluded that N.W. was no longer harming herself and was able to control her behavior. N.W. submitted an administrative appeal, but Anthem upheld its decision.

The plaintiffs alleged in their complaint that Anthem failed to properly evaluate N.W.'s "dual diagnosis" of mental health and substance abuse issues. In addition, they argued that Anthem wrongly concluded that N.W. did not meet the medical necessity guidelines for a continued stay at Elevations and that, in fact, N.W. was at risk of serious harm and needed 24-hour care. These types of allegations are common in cases involving the issue of the medical necessity regarding continued mental health treatment.

Legal Analysis

On these fairly typical facts, the plaintiffs tried to allege a violation of the MHPAEA. Quoting *Bushnell v. UnitedHealth Group, Inc.*, the court explained that the MHPAEA "prohibits the imposition of more stringent treatment limitations for mental health treatment than for medical treatment." Pointing to 29 U.S.C. § 1185a(a)(3)(A)(ii), the court found that if a health plan provides both medical and surgical benefits and mental health or

substance abuse disorder benefits, then the MHPAEA requires the plan to ensure that "the treatment limitations applicable to such mental health or substance use disorder benefits are no more restrictive than the predominant treatment limitations applied to substantially all medical and surgical benefits covered by the plan."

Anthem moved to dismiss the MHPAEA claim under Federal Rule of Civil Procedure 12(b)(6). The plaintiffs opposed the motion with the argument that "the allegations of the Complaint demonstrate that Anthem's actions, in operation, imposed a treatment limitation on mental health and substance abuse benefits that are [sic] more restrictive than the treatment limitations the Plan imposes on medical/surgical benefits." The trend in MHPAEA cases is to attack the *application* of the plan terms by arguing that the plan administers the plan in such a way as to limit mental health benefits as compared to medical or surgical benefits. This trend makes sense, as plaintiffs were having difficulty stating a claim under the MHPAEA based on plan terms as written.

The court rejected the plaintiffs' argument and dismissed the MHPAEA cause of action. The court held that the plaintiffs alleged specific facts concerning errors by Anthem in the handling of the claim, but these errors did not relate to an analogous treatment in the medical or surgical setting. According to the court, "[a]side from legal conclusions, Plaintiffs' Complaint fails to provide a sufficient factual basis in support of their claim that there was disparate treatment in the way Defendant handled, processed, or evaluated N.W.'s claim for treatment at Elevations in comparison to the way Defendant handles, processes, or evaluates claims for treatment at skilled nursing facilities and inpatient rehabilitation facilities." The plaintiffs did not allege facts demonstrating that, through the administration of claims, the plan provided more generous coverage on the medical/surgical side as compared to the mental health side. The court agreed with Anthem's positon that the plaintiffs' arguments that Anthem handled the appeal erroneously did not identify a treatment limitation or make some comparison to Anthem's decision-making process in the context of a claim for inpatient rehabilitation or at a skilled nursing facility.

The court relied on *Anne M. v. United Behavioral Health*, a case in which the district court in Utah dismissed an MHPAEA cause of action with leave to amend because the plaintiff's "merely conclusory" allegations that the administrator applied less rigorous standards when evaluating analogous medical/surgical claims could not survive a motion to dismiss.

Key Takeaways

The opinion in *Kerry W.*, like the decision in *Anne M.*, illustrates the battle lines for MHPAEA claims. Plaintiffs are trying to convert typical medical necessity claim denials into MHPAEA causes of action by focusing on the application of plan terms. The goal is to survive a motion to dismiss and then go forward with discovery on the administration of the claim.

Some plaintiffs are successful in doing so. For example, in a case out of a federal district court in Washington, the plaintiff contended that "while [the entity] generally covers medical and surgical services when provided in intermediate settings, it has a practice of excluding wilderness therapy—a form of intermediate therapy to treat mental illness." Based on this allegation, the court held that the case should move on to discovery because the plaintiff "should be permitted to test the processes Defendants employ in denying coverage for outdoor/wilderness behavioral healthcare programs."

Plans and plan administrators may want to pay careful attention to plan administration to ensure that mental health claims are not handled in a way that restricts benefits as compared to benefits paid on the medical/surgical side. To the extent possible, they can apply claim-handling standards and procedures in the same manner regardless of the coverage involved. In addition, when facing litigation, plans and plan administrators will likely want to continue to aggressively challenge plaintiffs' causes of action to prevent the conversion of a denial of a claim based on medical necessity into a MHPAEA cause of action.