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7 **UNITED STATES DISTRICT COURT**
8 **NORTHERN DISTRICT OF CALIFORNIA**
9

10 BRIAN A.

11 Plaintiff,

12 v.

13 BLUE CROSS OF CALIFORNIA dba
14 ANTHEM BLUE CROSS; and DOES 1
15 through 10,

16 Defendants.
17
18

Case No.

**PLAINTIFF BRIAN A.’S COMPLAINT
FOR BREACH OF THE EMPLOYEE
RETIREMENT INCOME SECURITY
ACT OF 1974 (ERISA); BREACH OF
FIDUCIARY DUTY; ENFORCEMENT
AND CLARIFICATION OF RIGHTS;
PREJUDGMENT AND POSTJUDGMENT
INTEREST; AND ATTORNEYS’ FEES
AND COSTS**

19
20 Plaintiff, BRIAN A. herein sets forth the allegations of this Complaint against Defendant BLUE
21 CROSS OF CALIFORNIA dba ANTHEM BLUE CROSS (“Anthem”); and DOES 1 through 10.
22

23 **PRELIMINARY ALLEGATIONS**

24 **JURISDICTION**

25 1. Plaintiff brings this action for relief pursuant to Section 502 (a) (1) (B) and Section 502
26 (a) (3) of the Employee Retirement Income Security Act (“ERISA”), 29 U.S.C. Section 1132 (a) (1) (B).
27 This Court has subject matter jurisdiction over Plaintiff’s claim pursuant to ERISA Section 502 (e) and
28 (f), 29 U.S.C. Section 1132 (e), (f), and (g) and 28 U.S.C. Section 1331 as it involves a claim made by

1 Jurisdiction is predicated under these code sections as well as 28 U.S.C. Section 1331 as this action
2 involves a federal question.

3 2. This action is brought for the purpose of recovering benefits under the terms of an
4 employee benefit plan and enforcing Plaintiff's rights under the terms of an employee benefit plan.

5 3. Plaintiff seeks relief, including but not limited to: past mental health benefits in the correct
6 amount related to Defendant's improper denial of Plaintiff's claim; prejudgment and post judgment
7 interest; general and special damages; and attorneys' fees and costs.

8 **PARTIES**

9 4. Plaintiff BRIAN A. is, and at all times relevant was, a resident of California.

10 5. At all relevant times, BRIAN A. participated in the Anthem Bronze PPO 5600 health Plan
11 ("the Plan"), an employee welfare benefit plan within the meaning of ERISA section 3(1), 29 U.S.C. §
12 1002(1).

13 6. Mental Health benefits under the Plan were at all relevant times administered by
14 Defendant Anthem.

15 7. Anthem is a health insurance provider authorized to transact and currently transacting the
16 business of insurance in the State of California and is the claims administrator of the Plan and coverage
17 at issue herein.

18 8. At all relevant times, the Plan was an insurance plan that offered, *inter alia*, mental health
19 benefits to employees and their beneficiaries, including Plaintiff. This action involves mental health
20 claims denied by the Plan's mental health claim administrator.

21 **FACTS**

22 9. The Plan guarantees, warrants, and promises "Mental Health Services" for members and
23 their beneficiaries, including but not limited to: health care services, mental health care, and treatment at
24 issue herein.

25 10. L.A. is BRIAN A.'s daughter, and was, at all relevant times, a beneficiary of the Plan.

26 11. At all relevant times, the Plan was in full force and effect.

27 12. The Plan guarantees, promises, and warrants benefits for medically necessary covered
28 health care services.

1 13. The Plan defines “Medically Necessary” health care services as:
2 health care services that a Physician, exercising professional clinical judgment,
3 would provide to a patient for the purpose of preventing, evaluating,
4 diagnosing or treating an illness, injury, disease or its symptoms, and that are:

- 4 • In accordance with generally accepted standards of medical practice,
- 5 • Clinically appropriate, in terms of type, frequency, extent, site and duration,
6 and considered effective for the patient’s illness, injury or disease,
- 7 • Not primarily for the convenience of the patient, Physician or other health care
8 Provider, and
- 9 • Not more costly than an alternative service, including the same service in an
10 alternative setting, or sequence of services that is medically appropriate and is
11 likely to produce equivalent therapeutic or diagnostic results as to the diagnosis
12 or treatment of that patient’s injury, disease, illness or condition. For example,
13 we will not provide coverage for an inpatient admission for surgery if the
14 surgery could have been performed on an outpatient basis or an infusion or
15 injection of a Specialty Drug provided in the outpatient department of a
16 Hospital if the Drug could be provided in a Physician’s office or the home
17 setting.

18 For these purposes, “generally accepted standards of medical practice” means
19 standards that are based on credible scientific evidence published in peer-
20 reviewed medical literature generally recognized by the relevant medical
21 community, Physician specialty society recommendations and the views of
22 Physicians practicing in relevant clinical areas and any other relevant factors.

23 14. The Plan guarantees coverage for inpatient and outpatient treatment of mental
24 health conditions.

25 15. California’s Mental Health Parity Act, Health & Safety Code §1374.72, as well as the
26 Federal Mental Health Parity and Addictions Equity Act of 2008 (“MHPAEA”) specifically require that
27 health care plans provide medically necessary diagnosis, care and treatment for the treatment of specified
28 mental health illnesses at a level equal to the provision of benefits for physical illnesses.

 16. California Senate Bill 855 (“SB 855”) prohibits health care service plans from limiting
 benefits or coverage for mental health and substance use disorders to short-term or acute treatment. It
 also prohibits health insurers that use so-called level of care guidelines to determine mental health claims
 from using insurer-generated, proprietary guidelines and instead requires the use of guidelines developed
 by nonprofit organizations familiar with mental health care claims.

1 17. SB 855 requires health care service plans or insurers to apply specified clinical criteria
2 and guidelines in conducting utilization review of the covered health care services and benefits and
3 prohibits the plan or insurer from applying different, additional, or conflicting criteria than the criteria
4 and guidelines in the specified sources. SB 855 recognizes Level of Care Utilization System, Child and
5 Adolescent Level of Care Utilization System, Child and Adolescent Service Intensity Instrument, and
6 Early Childhood Service Intensity Instrument (LOCUS/CALOCUS and CASII/ECSII) criteria for mental
7 health disorders as “prime examples of level of care criteria that are fully consistent with generally
8 accepted standards of mental health and substance use care.”

9 18. L.A. was diagnosed with, *inter alia*, major depressive disorder, persistent depressive
10 disorder, and anxiety.

11 19. L.A. has a long history of depression. However, because of the shame she felt surrounding
12 her depression, L.A. did not disclose its severity to her mother until 2020.

13 20. L.A. began seeing a therapist, however, her depressive symptoms continued to increase.

14 21. L.A. was prescribed Prozac, however, her symptoms continued to worsen. She couldn't
15 focus in school, had difficulty getting out of bed, getting dressed, and lost her appetite. She also
16 verbalized the desire to commit suicide.

17 22. In an attempt to control her worsening condition, L.A.'s psychiatrist prescribed Wellbutrin
18 in addition to Prozac. Nevertheless, L.A.'s condition continued to deteriorate. She had to take a medical
19 leave from school because thoughts of suicide were so pervasive that she was unable to concentrate or
20 do any work.

21 23. At the recommendation of her treatment providers, L.A. was admitted to Newport
22 Academy Redwood (“Newport”).

23 24. At all times relevant, L.A.'s treatment at Newport was medically necessary, based upon
24 the reasoned medical opinions of her treaters.

25 25. Following her discharge from Newport, L.A.'s condition deteriorated
26 dramatically. She continued outpatient therapy and remained on medication but continued to
27 report severe levels of depression including feelings of hopelessness, low mood, suicidal
28

28 identification and minimal coping skills.

1 26. L.A.’s depression and suicidal ideations progressed to the point that she was
2 admitted to John Muir Psychiatric Hospital on a 5150 hold. Due to ongoing suicidal ideations
3 and a specific plan to hang herself, L.A. was transferred to John Muir Psychiatric Hospital’s
4 five-day inpatient program.

5 27. At the recommendation of her treatment providers, L.A. was admitted to Open Sky
6 Wilderness Program (“Open Sky”).

7 28. At all times relevant, L.A.’s treatment at Open Sky was medically necessary, based upon
8 the reasoned medical opinions of her treaters.

9 29. Plaintiff filed claims for mental health benefits pursuant to the terms of the Plan for L.A.’s
10 treatment at Newport and Open Sky.

11 30. Anthem denied Plaintiff’s claims for treatment at Newport and Open Sky.

12 31. Plaintiff timely appealed Anthem’s denials of L.A.’s claims for treatment at Newport and
13 Open Sky.

14 32. Anthem denied Plaintiff’s appeals.

15 33. Not only were Anthem’s denials unreasonable in light of the obvious medical necessity
16 for L.A.’s ongoing mental health care, but the denials also violated the California Mental Health Parity
17 Act, as well as the Mental Health Parity and Addictions Equity Act of 2008 (“MHPAEA”), which alone
18 provided a basis for approving all of the care for L.A. that is at issue herein.

19 34. In denying Plaintiff’s claim for care and treatment for L.A. at Newport, in violation of SB
20 855, Anthem used MCG “level of care guidelines” that are unfair and biased against approving claims
21 for residential treatment such as are at issue herein, and that do not reflect reasonable standards in the
22 medical community.

23 35. The level of care guidelines used by Anthem to deny L.A.’s care fall below reasonable
24 standards of care in the medical community, as explained by the court in *Wit v. United Behavioral*
25 *Health*, 2019 WL 1033730 (N.D.Cal. March 5, 2019).

26 36. Anthem breached the generally accepted standard of care herein by failing to accept and
27 consider that treatment is not limited to simply alleviating an individual’s current mental health
28

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