UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

PAMELA SMITH, on behalf of her daughter, JANE SMITH (a pseudonym), and on behalf of all others similarly situated, Plaintiff, v. HEALTH CARE SERVICE CORPORATION, Defendant.	Case No. 19-CV-7162-JZL Judge John Z. Lee

SECOND AMENDED CLASS ACTION COMPLAINT

Plaintiff Pamela Smith, on behalf of her daughter, "Jane Smith" (a pseudonym), and on behalf of all others similarly situated, complains as follows against Defendant Health Care Service Corporation ("HCSC" or "Defendant").

INTRODUCTION

1. This case arises from Defendant HCSC's adoption and use of certain clinical coverage criteria for determining when residential treatment of mental health conditions and/or substance use disorders is medically necessary and, thus, covered by the welfare benefit plans it administers. Although purporting to summarize accepted standards of medical practice, certain criteria HCSC used in administering benefit plans were much more restrictive than those generally accepted standards. As such, they contradicted the plans' written terms and violated the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1001 *et seq.*

THE PARTIES

2. Plaintiff Pamela Smith is a participant in the Telephone and Data Systems, Inc. Health and Well-Being Plan (the "Smith Plan"), which is sponsored by Ms. Smith's employer. Plaintiff's daughter, referenced herein by the pseudonym "Jane Smith," is a beneficiary of the Smith Plan. Plaintiff Smith has been designated as her daughter's agent pursuant to a Power of Attorney. Plaintiff Smith and her daughter, Jane, are residents of Wisconsin.

3. Defendant HCSC is a Mutual Legal Reserve Company that is headquartered in Chicago, Illinois. HCSC issues and administers health insurance plans in five states (Illinois, Texas, Oklahoma, New Mexico and Montana) as a licensee of the Blue Cross Blue Shield Association.

(a) HCSC is the fourth-largest health insurance administrator in the country, with more than 16 million members. As of January 2019, it was responsible for processing mental health claims on behalf of more than 1.7 million members, including more than 727,000 members suffering from depression.

(b) As the benefit administrator for the health plans at issue herein, HCSC is responsible for determining that the services for which coverage is requested are medically necessary before it approves coverage.

(c) HCSC licensed MCG's Behavioral Health Care Guidelines (the "MCG Behavioral Health Guidelines"), including the MCG Guidelines for Residential Acute Behavioral Health Level of Care (the "MCG Acute RTC Guidelines") described in this Complaint, and systematically used them to make the medical necessity determinations at issue in this case.

JURISDICTION AND VENUE

4. Subject matter jurisdiction exists pursuant to 28 U.S.C. § 1331.

5. Personal jurisdiction exists over HCSC, and this District is the proper venue, because HCSC is headquartered in this District and regularly communicates with insureds who reside in this District.

FACTUAL BACKGROUND

I. The Smith Plan

6. The Smith Plan is governed by the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. § 1001, *et seq*.

7. Jane Smith has been a beneficiary of the Smith Plan since 2002.

8. The Smith Plan covers treatment for sickness, injury, mental illness, and substance use disorders. Residential treatment is a covered benefit under the Smith Plan. The Plan does not limit residential treatment services to acute or emergency services or to short-term crisis intervention.

9. HCSC is the benefit claims administrator for the Smith Plan. As such, the plan grants discretion to HCSC to interpret plan terms, including limitations and exclusions, in determining whether services are covered and to cause any resulting benefit payments to be made by the Plan.

10. Because HCSC exercises discretion with respect to the administration of the Smith Plan, and makes all final and binding benefit determinations under the plan, HCSC is a fiduciary within the meaning of ERISA, 29 U.S.C. § 1104. HCSC owed Jane Smith fiduciary duties in administering the Smith Plan at all times from the time she became a beneficiary of the Smith Plan through the present.

11. Under the terms of the Smith Plan, one essential condition of coverage is that the services for which coverage is sought must be "medically necessary." The Smith Plan defines "medically necessary" services to mean services that are, among other things, "appropriate and consistent with the diagnosis and which, in accordance with accepted medical standards in the state in which the service is rendered, could not have been omitted without adversely affecting the patient's condition or the quality of medical care rendered. . . ." Thus, under the terms of the Smith Plan, one essential condition of coverage is that the services for which coverage is sought must be consistent with accepted standards of medical practice.

12. In addition, in making benefit determinations on behalf of all of its plans, including the Smith Plan, HCSC applies a uniform and internal definition of "medical necessity." HCSC's uniform definition also explicitly incorporates accepted standards of medical practice as a requirement for coverage.

13. Therefore, one of the essential determinations HCSC makes when reviewing claims for coverage under the Smith Plan, and all other plans containing a medical necessity requirement, is whether the services for which coverage is sought are consistent with accepted standards of medical practice.

II. MCG Health, LLC

14. MCG Health, LLC ("MCG") is a part of the Hearst Health Network and is headquartered in Seattle, Washington.

15. MCG assists health insurance companies and claims administrators like HCSC to make medical necessity decisions by creating and selling clinical coverage guidelines that are designed as criteria for determining which services are consistent with accepted medical practice and, thus, medically necessary as required for coverage under the applicable plans.

16. MCG developed the defective MCG Acute RTC Guidelines at issue herein and licensed them to HCSC with the understanding that HCSC would rely upon the MCG Acute Residential Guidelines in making medical necessity determinations.

III. Accepted Standards of Medical Practice

17. Accepted standards of medical practice, in the context of mental health and substance use disorder services, are the standards that have achieved widespread acceptance among behavioral health professionals. The accepted medical standards at issue in this case do not vary state-by-state.

18. In the area of mental health and substance use disorder treatment, there is a continuum of intensity at which services are delivered. There are accepted standards of medical practice for matching patients with the level of care that is most appropriate and effective for treating patients' conditions. These accepted standards of medical practice are described in multiple sources, including peer-reviewed studies in academic journals, consensus guidelines from professional organizations, and guidelines and materials distributed by government agencies, including: (a) the American Association of Community Psychiatrists' ("AACP's") Level of Care Utilization System ("LOCUS"); (b) the American Society of Addiction Medicine ("ASAM") Criteria; (c) the Child and Adolescent Level of Care Utilization System ("CALOCUS") developed by AACP and the American Academy of Child and Adolescent Psychiatry ("AACAP"), and the Child and Adolescent Service Intensity Instrument ("CASII"), which was developed by AACAP in 2001 as a refinement of CALOCUS; (d) the Medicare Benefit Policy Manual issued by the Centers for Medicare and Medicaid Services; (e) the APA Practice Guidelines for the Treatment of Patients with Substance Use Disorders, Second Edition; (f) the APA Practice Guidelines for the Treatment of Patients with Eating Disorders, Third Edition; (g) the American Psychiatric Association's Practice Guidelines for the Treatment of

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