UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

T.G., Civ. No. 20-564 (PAM/KMM)

Plaintiff,

v. **MEMORANDUM AND ORDER**

United Healthcare Services, Inc.,
and United Behavioral Health,

Defendants.

This matter is before the Court on the parties' cross-Motions for Summary Judgment. For the following reasons, Defendants' Motion is granted and Plaintiff's Motion is denied.

BACKGROUND

At the time of the events giving rise to this lawsuit, Plaintiff T.G. was a participant in his employer-sponsored health-insurance plan administered by Defendant United Healthcare Services, Inc. and United Behavioral Health ("UBH") (collectively, "United"). (Am. Compl. (Docket No. 21) ¶ 4.) In May 2018, T.G.'s 20-year-old son, J.G., started residential mental-health treatment at a program called Pacific Quest in Hawaii. J.G. is on the autism spectrum and had been suffering with depression and anxiety for years, but in the late winter of 2018 his condition deteriorated to the point that his treating psychologist recommended residential treatment. (Nguyen Aff. Ex. 1 ("Admin. R.") pt. 1 (Docket No.

48) at 77.[1]) J.G. participated in the Pacific Quest program until August 2018; his parents paid nearly $50,000 out of pocket for the treatment. After United denied coverage for the program, T.G. exhausted the administrative appeals process and then brought this lawsuit. The Amended Complaint raises a single claim under the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. § 1132(a)(1)(B). (Am. Compl. ¶¶ 24-26.)

T.G.'s frustration with United's handling of his son's benefits is understandable. United's six denial letters or explanations of benefits are rife with errors and shifting justifications for the denial of coverage. The first letter denying coverage, dated January 25, 2019, used the pronoun "her" to refer to J.G., who is, as noted, male; it referred to the insurer as Optum rather than United; and it stated that although "wilderness therapy [is] an experimental or unproven treatment" and thus was "not covered under her health plan benefits," Pacific Quest was "contracted with UBH," implying that Pacific Quest was an approved provider of mental-health services. (Admin. R. pt. 3 (Docket No. 48-2) at 94-95.) This document also listed the "dates of service" as 05/05/18 through 02/02/18. (Id. at 95.) United purported to "correct" the errors in a letter dated January 29, 2019, changing Optum to UBH, "her" to "you," and took out the sentence regarding the health plan's contract with Pacific Quest. (Id. at 51-52.)

[1] The complete Administrative Record is attached as Exhibit 1 to the Declaration of Ngoc Han Nguyen (Docket No. 48). Because the record is voluminous, the exhibit is in five parts. The Court will cite each part with its corresponding docket number and will cite to the pages on the Court's electronic filing system rather than the parties' Bates numbering system, for ease of reference.

In an Explanation of Benefits ("EOB") dated January 30, 2019, United sent T.G. a statement for J.G.'s treatment. (Admin. R. pt. 4 (Docket No. 48-3) at 162-63) This statement listed the treatment as "outpatient," the "amount billed" as $49,500, applied a "plan discount" of $49,500, and stated that T.G. "owe[d] the provider" $0.00. The EOB also noted that "the procedure code submitted is not eligible for payment. Therefore, no benefits are payable for this service." (Id. at 163.)

On April 12, 2019, United denied Plaintiff's appeal of the original denial of benefits. (Admin. R. pt. 3 (Docket No. 48-2) at 73-74.) The letter stated that the claim was not approved for payment because "[t]he procedure code in question is not a payable service. Therefore, the claim was appropriately processed." (Id. at 73.)

On May 7, 2019, United again denied Plaintiff's appeal, citing "Optum Level of Care Guideline for the MENTAL HEALTH RESIDENTIAL TREATMENT CENTER Level of Care." (Id. at 29-30.) The letter stated, "You were admitted for treatment of" but had no diagnosis or indeed any word or phrase after this statement. (Id. at 29.) It went on to say that "it is noted you had made progress and that your condition no longer met Guidelines for further coverage of treatment in this setting." (Id.) But as Plaintiff points out, the denial of benefits was as of J.G.'s first day in treatment, and thus his progress during that treatment could not have been relevant to that denial.

The letter also stated that benefits were denied because Pacific Quest is a "Wilderness Therapy Program"[2] that the "Optum Clinical Technology Assessment

[2] While United's Behavioral Clinical Policy specifically addressing wilderness therapy is highly critical of wilderness therapy, the policy nowhere states that wilderness therapy is

Committee . . . found to be unproven and experimental at this time. Services that are deemed to be unproven and experimental are not a covered benefit under this policy." (Id. at 29-30.) The reviewer took "the additional step of reviewing this case for medical necessity." (Id. at 30.) Because J.G. "was no longer in any serious or severe risk of harm to self or others," and "appeared to be engaged and participating in groups and activities without the need for strict supervision and monitoring," the reviewer determined that he "could have continued care in the MENTAL HEALTH INTENSIVE OUTPATIENT PROGRAM setting." (Id.)

Finally, United denied Plaintiff's May 2019 appeal in a letter dated June 24, 2019 (Admin. R. pt. 3 (Docket No. 48-2) at 84-85), and "corrected" on December 6, 2019 (id. at 40-42). The June 24 letter states that, as of May 5, 2018, J.G.'s "symptoms appeared to have been sufficiently stable, to the extent that 24/7 monitoring in a supervised Residential Treatment setting was not required to avoid risk of harm to self or others." (Id. at 84-85.) The reviewer also concluded that J.G. did not have "significant acute impairment of behavior or cognition," that he was "generally described as cooperative, responsive to staff, willing and able to engage in programming, and in reasonable behavioral control." (Id. at 85.) In addition, J.G. "had no self harm thinking; no self injurious behaviors were reported" and he did not require "24 hour care and supervision." (Id.) Accordingly, "[t]here were no clinical barriers preventing you from attending a less intensive level of care" such as an intensive outpatient setting. (Id.) Plaintiff notes that the "corrected" December 2019 letter

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not a covered service. (Lewis Decl. Ex. C (Docket No. 36-1).)

merely added "care management notes" to the list of what the reviewer examined, in addition to small non-substantive changes. (Id. at 40-42.) These letters constituted the "Final Adverse Determination" of Plaintiff's internal appeal. (Id. at 42.)

Plaintiff then requested and received an external review, as required by the Affordable Care Act. This independent review, performed by MES Peer Review Services, upheld United's denial of benefits, finding that the "Mental Health Residential Treatment level of care . . . was not medically necessary in this case." (Id. at 67, 69.) The reviewer determined that J.G.'s symptoms of depression, "such as an excessive amount of sleep, refusing to get out of bed or go to classes, and work" did not "necessitate his confinement in Residential care setting." (Id. at 69.) Further, the reviewer found that the therapy Pacific Quest provided "could have been provided in less restrictive setting such as Outpatient." (Id.) And "there is no evidence based practice guideline supporting the use of wilderness therapy for [J.G.'s] condition." (Id.)

The parties now cross-move for summary judgment, each contending that the administrative record establishes that they are entitled to judgment as a matter of law.

DISCUSSION

A. Standard of Review

Plaintiff first argues that the Court should review United's decision de novo, citing a Minnesota statute that ostensibly provides for such review. Minnesota law states that "no health plan . . . may specify a standard of review upon which a court may review denial of a claim or of any other decision made by a health plan company." Minn. Stat. § 62Q.107. Plaintiff contends that this provision "effectively writes out of existence the defendants'

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