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THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

<p>ANNEMARIE O. individually and on behalf of A. P. a minor,</p> <p style="text-align: center;">Plaintiffs,</p> <p>vs.</p> <p>UNITED HEALTHCARE INSURANCE COMPANY, CIGNA HEALTH and LIFE INSURANCE COMPANY, and the UTC CHOICE MEDICAL PLAN,</p> <p style="text-align: center;">Defendants.</p>	<p>COMPLAINT</p> <p>Case No. 1:20-cv-00164 TS</p>
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Plaintiff Annemarie O. (“Annemarie”), individually and on behalf of A. P. (“A.”) a minor, through her undersigned counsel, complains and alleges against Defendants United Healthcare Insurance Company (“United”), Cigna Health and Life Insurance Company, (“Cigna”) and the UTC Choice Medical Plan (“the Plan”) as follows:

PARTIES, JURISDICTION AND VENUE

1. Annemarie is a natural person residing in Dallas County, Texas and New Haven County Connecticut respectively. Annemarie is A.’s mother.

2. United is an insurance company headquartered in Hennepin County, Minnesota and was the insurer and claims administrator for the Plan during the treatment at issue in this case during the year 2017. During the year 2018, Cigna became primary insurer for the Plan and United assumed the role of secondary insurer.
3. The UTC Choice Medical Plan (“the Plan”) is a employee welfare benefits plan established to provide health benefits for employees of United Technologies and their dependents.
4. In 2017 the Plan was fully insured through United. In 2018 the Plan was self-funded and was administered by Cigna. At all times the Plan was subject to 29 U.S.C. §1001 *et. seq.*, the Employee Retirement Income Security Act of 1974 (“ERISA”). Annemarie was and remains a participant in the Plan and A. is a beneficiary of the Plan.
5. A. received medical care and treatment at ViewPoint Center (“ViewPoint”) from October 27, 2017, to December 10, 2017, and Change Academy Lake of the Ozarks (“CALO”) from December 11, 2017, to May 20, 2019 These are residential treatment facilities, which provide sub-acute inpatient treatment to adolescents with mental health, behavioral, and/or substance abuse problems. ViewPoint is located in Utah and CALO is located in Missouri.
6. United, acting in its own capacity or through its subsidiary and affiliate United Behavioral Health or under the brand name Optum, denied claims for payment of A.’s medical expenses in connection with her treatment at ViewPoint and CALO. This lawsuit is brought to obtain the Court’s order requiring United and the Plan to reimburse Annemarie for the medical expenses she has incurred and paid for A.’s treatment during the period for which it was responsible under the Plan.

7. Cigna similarly denied payment for A.'s medical expenses at CALO, either in its own capacity or through its subsidiary and affiliate Cigna Behavioral Health. This lawsuit also seeks reimbursement from Cigna and the Plan for A.'s medically necessary treatment at CALO during the period that Cigna was responsible for A.'s treatment.
8. This Court has jurisdiction over this case under 29 U.S.C. §1132(e)(1) and 28 U.S.C. §1331.
9. Venue is appropriate under 29 U.S.C. §1132(e)(2) and 28 U.S.C. §1391(c) based on ERISA's nationwide service of process and venue provisions, because the Defendants do business in Utah, and a critical portion of the treatment at issue took place in Utah. Finally, in light of the sensitive nature of the medical treatment at issue, it is the Plaintiffs' desire that the case be resolved in the State of Utah where it is more likely their privacy will be preserved.
10. The remedies the Plaintiffs seek under the terms of ERISA and under the Plan are for the benefits due under the terms of the Plan, and pursuant to 29 U.S.C. §1132(a)(1)(B), for appropriate equitable relief under 29 U.S.C. §1132(a)(3) based on the Defendants' violation of the Mental Health Parity and Addiction Equity Act of 2008 ("MHPAEA"), an award of prejudgment interest, and an award of attorney fees and costs pursuant to 29 U.S.C. §1132(g).

BACKGROUND FACTS

11. A. was born in Russia and suffered from a series of medical issues in her early life, such as a rare genetic heart condition which required her to undergo heart surgery at the age of six months. A.'s medical problems led to her biological parents placing her in a Russian orphanage. A. was subsequently adopted by the Plaintiffs and moved to the United States,

but she exhibited severe behavioral problems such as attachment issues and anxiety, which got worse as she grew older.

12. A. frequently engaged in attention seeking behaviors. She would lie compulsively (including alleging false claims of abuse which she later recanted), had difficulty with self-regulation, had difficulty making or keeping friends, rarely expressed remorse for her actions, and had frequent intense outbursts.
13. A. underwent psychological testing and was found to have low self-regulation and impulse control skills. She was found to employ maladaptive coping skills such as hypervigilance, emotional outbursts, and threatening behaviors, all of which were greatly exacerbated due to transitions or stressful situations and led to her becoming easily overwhelmed. A. also exhibited hypersexualized behavior including with her 12 year old stepbrother.

United

14. A. was admitted to ViewPoint on October 27, 2017, with United's approval.
15. In a letter dated November 29, 2017, United denied payment for A.'s treatment from November 28, 2017, forward. The letter offered the following justification for the denial.

...Your child was admitted for treatment of Depression, Anxiety and Behavioral Problems. After talking with your child's provider, it is noted your child has made progress and that your child's condition no longer meets Guidelines for further coverage of treatment in this setting. Your child's symptoms have improved. Your child is not aggressive. Your child is not currently at risk of harm to self or others. Your child is making progress in treatment. Your child is able to participate in treatment. Your child does not require 24-hour nursing care. Your child could continue care in the Mental Health Outpatient setting. ...

16. On February 14, 2018, ViewPoint appealed the denial on the Plaintiffs' behalf.

ViewPoint included a copy of A.'s medical records with the appeal and argued that these records showed that A.'s treatment at ViewPoint was medically necessary to adequately

treat her diagnoses of Reactive Attachment Disorder, anxiety, and Attention-deficit Hyperactivity Disorder.

17. ViewPoint contended that it was not clear from United's denial letter why it had suddenly deemed A.'s treatment to no longer be medically necessary. ViewPoint noted that United had denied treatment due to a sudden requirement of "immaterial acute deteriorations in her condition." ViewPoint noted that A. was not treated for acute symptoms while she received treatment there.

18. In a letter dated April 20, 2018, United upheld the denial of payment for A.'s treatment.

The letter stated in part:

Your daughter's symptoms had stabilized. 24 hour monitoring in a supervised setting was no longer required to avoid risk of harm to self or others. She was not engaging in disruptive behaviors or self-injurious behaviors. There were no noted acute psychosocial and environmental problems that were likely to threaten her safety. She had no co-occurring medical or substance abuse complications that would need 24-hour care. She presented no acute behavioral management challenges. She was generally cooperative, responsive to staff, and doing better. She required no medication. She was eating, sleeping and independently doing her daily activities. She was engaged in therapeutic programming and developing coping skills. Some insight was developing. She was attending school, groups and therapies. Her care could have continued in a (non-24 hour) Intensive Outpatient setting, preferably near home, with individual therapy, family work along with standard school adjustments. This would have helped to monitor and maintain her stability, continue to increase her functioning, develop a support system and further strengthen key relationships with friends and treatment professionals, while integrating her back into family and community life.

19. On May 21, 2018, A.'s father, Duane, submitted a level one appeal of the denial of payment for A.'s treatment at ViewPoint. He noted that while A. had made some progress while she was at ViewPoint, at the time that United elected to deny care, she had not yet progressed enough for her to be safely discharged from the program.

20. Duane reminded United of its responsibilities under ERISA and urged it to comply with the statute in future reviews; he argued that United had fallen short of ERISA's

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