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IN THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH, CENTRAL DIVISION

ERIC B., individually and on behalf of his
minor child, E.B.,

Plaintiffs,

vs.

ANTHEM LIFE AND HEALTH
INSURANCE COMPANY; BLUE
CROSS OF CALIFORNIA dba
ANTHEM BLUE CROSS; ANTHEM
UM SERVICES; the INTEL
CORPORATION HEALTH AND
WELFARE PLAN; INTEL, INC. and
JOHN DOES 1-10,

Defendants.

COMPLAINT

Case No.

Plaintiffs Eric B. ("Eric") and E.B. ("E."), by and through undersigned counsel, complain and allege against Defendants Anthem Life and Health Insurance Company, Blue Cross of

California dba Anthem Blue Cross Inc., and Anthem UM Services (collectively, “Anthem”), Intel, Inc. (“Intel”) and the Intel Corporation Health and Welfare Plan (“the Plan”) as follows:

PARTIES, JURISDICTION AND VENUE

1. Eric B. and E. are individuals residing in Maricopa County, Arizona. Eric is E.’s father.

2. Anthem Blue Cross Life and Health Insurance Company is an insurance company headquartered in Marion County, Indiana and it or its affiliate, Anthem Blue Cross of California, was the third-party claims administrator for the Plan, as well as a fiduciary under ERISA for the plan during the treatment at issue in this case. Anthem Blue Cross of California uses the trade name Anthem Blue Cross.

3. Anthem UM Services, Inc. is an agent or affiliate of Anthem Blue Cross Life and Health Insurance Company and provides utilization review services on behalf of Anthem Blue Cross Life and Health Insurance Company.

4. Intel is a technology company headquartered in Santa Clara County, California and was the Plan Administrator for the Plan during the treatment at issue in this case.

5. The Plan is a self-funded employee welfare benefits plan under 29 U.S.C. § 1001 et seq., the Employee Retirement Income Security Act of 1975 (“ERISA”). Eric was a participant in the Plan and E. was a beneficiary of the Plan at all relevant times. Eric and E. continue to be participants and beneficiaries of the Plan.

6. At all relevant times, Anthem acted as an agent for the Plan and Intel.

7. E. received medical care and treatment, which Anthem is responsible to cover, at Elevations/Seven Stars (“Elevations”) from December 17, 2019 through May 8, 2020. Elevations is a licensed residential treatment facility that provides subacute inpatient and intermediate

behavioral health treatment to adolescents with mental health, behavioral, and/or substance use disorders. Elevations is located in Davis County, Utah.

8. Anthem denied claims for payment of E.'s medical expenses in connection with her treatment at Elevations.

9. This Court has jurisdiction over this case under 29 U.S.C § 1132 (e)(1) and 28 U.S.C. § 1331.

10. Venue is appropriate under 29 U.S.C. § 1132(e)(2) and 28 U.S.C. § 1391(c) based on ERISA's nationwide serve of process and venue provisions, and because Anthem does business in Utah, many individual participants and beneficiaries of Anthem-insured and administered ERISA benefit plans reside in Utah, and the treatment at issue took place in Utah. In addition, venue in Utah will save the Plaintiff costs in litigating this case. In light of the sensitive nature of the medical treatment at issue, it is the Plaintiff's desire that the case be resolved in the State of Utah where it is more likely her privacy will be preserved.

11. The remedies 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"), and an award of attorney fees and costs pursuant to 29 U.S.C. § 1132(g).

GENERAL ALLEGATIONS

Background

12. E. was born with two serious congenital heart defects: coarctation of the aorta (narrowing of the aortic arch) and double inlet left ventricle (only one working pumping chamber/ventricle in the heart), requiring several open heart surgeries to correct.

13. E. underwent her first open heart surgery at only 5 days old. Unfortunately, E. subsequently developed sepsis and was hospitalized for weeks. E. was first able to come home from the hospital at 3 ½ weeks of life.

14. E. underwent her second open heart surgery at two months of age, but unfortunately declined within a few weeks post-op. As a result, E. was admitted for a 6-month hospital stay that involved two additional open heart surgeries. E. was in a medically-induced coma and required ventilator support to survive.

15. After E. was finally able to go home, she remained an incredibly fragile child. She had to be weaned from powerful narcotic pain medications and her oxygen saturations were rarely above the 60's to 70's due to her weak heart. Naturally, E. suffered from chronic fatigue and generalized weakness during this time, causing her delays in reaching developmental milestones.

16. Four days before E. turned two, she underwent her fifth open heart surgery to address her single ventricle defect. It was only after this procedure that E. was able to maintain oxygen saturations in the 80's and have the energy to continue learning and developing.

17. E. struggled with attention and distraction from a very early age and was behind on her developmental milestones. E. attended a Montessori preschool but struggled to keep up with learning and processing new information, on top of her reactivity to touch and sound.

18. E. underwent her final open heart surgery when she was 5 ½ years old. Being older and more aware of what was happening, E. was fearful and struggled to cope both physically and emotionally after the procedure.

19. Following her final surgery, E. was, for the first time, able to maintain oxygen saturations in the 90's and had the stamina to walk on her own without needing a stroller.

20. E. started public kindergarten after her final open heart surgery, but immediately struggled in school. Her teach expressed concern regarding E.'s developmental delays and concentration issues and a 504 plan was put in place to ensure E. had the necessary accommodations to learn. Shortly thereafter, E. underwent neuropsychological testing and was diagnosed with ADHD, combined type.

21. E. continued to struggle academically and was transitioned out of the public school and back to a private Montessori school. E. was evaluated by the school psychologist and was diagnosed with visual spatial processing disorder in addition to her ADHD and was placed on an Individualized Education Plan ("IEP").

22. Nevertheless, E. continued to struggle with processing and concentration and fell behind in school. E. also struggled with insomnia due to her extensive early childhood medical trauma, requiring a variety of medications and supplements. E. requires this combination of medications and supplements for sleep to this day.

23. At age 11, E. was seen by specialists in cardiac neurodevelopment at Children's Mercy Hospital in Kansas City, MO, who diagnosed with periventricular leukomalacia, a form of brain damage resulting from chronic hypoxia, multiple episodes of cardiac bypass and intensive medical interventions. Psychological testing revealed that E. had cognitive impairments from this brain damage. The doctors provided recommendations as to specific recommendations to incorporate into E.'s IEP and the conditions required for E.'s school and home environment.

24. In 2016, when E. was 12, she began psychiatric treatment with Dr. Sristi Nath for both therapeutic intervention and medication management.

25. During middle school, E. attended all academic classes in a self-contained special education classroom. She only attended physical education in a mainstream setting with her peers.

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