IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF UTAH

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| PATRICK S. and NOAH S.,<br><br>Plaintiffs,<br>v.<br><br>UNITED BEHAVIORAL HEALTH d/b/a OPTUM and MOTION PICTURE INDUSTRY HEALTH PLAN FOR ACTIVE PARTICIPANTS,<br><br>Defendants. | MEMORANDUM DECISION AND ORDER DENYING DEFENDANTS' MOTION TO DISMISS PLAINTIFFS' SECOND CAUSE OF ACTION<br><br>Case No. 2:20-CV-283-TS<br><br>District Judge Ted Stewart |

This matter is before the Court on Defendants United Behavioral Health ("UBH") and Motion Picture Industry Health Plan for Active Participants' (collectively, "Defendants") Motion to Dismiss Plaintiffs' Second Cause of Action, which is a claim for a violation of the Mental Health Parity and Addiction Equity Act of 2008 ("Parity Act"). For the following reasons, the Court will deny the Motion.

## I. BACKGROUND

In their Complaint, Plaintiffs Patrick S. and Noah S. challenge Defendants' denial of insurance benefits for medical care and treatment Noah received from 2017 to 2018. Patrick is Noah's father and is a participant in the Plan, which provides health benefits for participants and their dependents.[1] Following a brief stay in an acute inpatient psychiatric unit, Noah was

[1] Docket No. 2 ¶¶ 1–2.

admitted to Evoke Wilderness Program ("Evoke") on February 9, 2017.[2] Noah remained at Evoke until April 27, 2017.[3] Then, on April 28, 2017, Noah was admitted to Catalyst Residential Treatment ("Catalyst") and remained there until July 31, 2018.[4]

On August 18, 2017, UBH denied coverage of Noah's treatment at Evoke because it determined that wilderness therapy programs are "experimental or unproven treatment."[5] Patrick appealed, and on March 28, 2018, UBH maintained the denial of coverage for the treatment at Evoke because Noah was not at risk for harm to himself or others, was medically stable, was not experiencing withdrawal symptoms, was not under the care of a psychiatrist, and did not require 24-hour medical or psychiatric care, and because outdoor behavioral healthcare programs are experimental and unproven.[6] Patrick submitted a second appeal, but UBH denied coverage of Noah's treatment at Evoke again on July 12, 2018, relying on the same justifications.[7]

UBH covered Noah's treatment at Catalyst from April 28, 2017 through May 26, 2017, but denied coverage from May 27, 2017 and beyond.[8] According to UBH, Noah's conditions did not meet the Level of Care Guidelines because he was medically stable and his behavior was better.[9] But UBH authorized ongoing partial hospitalization treatment for Noah.[10] Patrick appealed the denial of coverage with letters from Noah's psychologists recommending

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[2] *Id.* ¶¶ 5, 18–19.

[3] *Id.* ¶ 19.

[4] *Id.* ¶ 5.

[5] *Id.* ¶ 27.

[6] *Id.* ¶ 37.

[7] *Id.* ¶¶ 39, 43.

[8] *Id.* ¶¶ 44–45.

[9] *Id.* ¶ 45.

[10] *Id.*

residential treatment as medically necessary and Noah's medical records that indicated an ongoing need to remain in a residential treatment setting.[11] Patrick also argued that Noah's conditions met UBH's residential treatment medical necessity criteria.[12] On June 21, 2018, UBH maintained its denial of coverage for the same reasons it originally denied coverage.[13] Patrick submitted a second appeal, but UBH denied coverage for a third time with no new reasoning.[14]

After their unsuccessful appeals, Plaintiffs submitted their Complaint against Defendants, claiming violations of the Employment Retirement Income Security Act of 1974 and the Parity Act. In response, Defendants filed this motion to dismiss the Parity Act claim for failure to state a claim.

## II. STANDARD OF REVIEW

Under Rule 12(b)(6), a court may dismiss a claim when the complaint fails to state a claim upon which relief can be granted.[15] "'[L]abels and legal conclusions' or 'a formulaic recitation of the elements of a cause of action'" alone are not sufficient to survive a motion to dismiss.[16] Rather, "a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face."[17] "A claim has facial plausibility when the pleaded factual content allows the court to draw the reasonable inference that the defendant is liable for

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[11] *Id.* ¶¶ 46–47.

[12] *Id.* ¶ 48.

[13] *Id.* ¶ 49.

[14] *Id.* ¶¶ 51–55.

[15] Fed. R. Civ. P. 12(b)(6); *Hall v. Bellmon*, 935 F.2d 1106, 1109 (10th Cir. 1991).

[16] *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)).

[17] *Id.* (internal citation and quotation marks omitted).

the misconduct alleged."[18] Put simply, at this stage the factual allegations are assumed to be true, and "relief must follow from the facts alleged."[19]

## III. ANALYSIS

With their Motion, Defendants challenge Plaintiffs' Parity Act claim. "Congress enacted the [Parity Act] to end discrimination in the provision of insurance coverage for mental health and substance use disorders as compared to coverage for medical and surgical conditions in employer-sponsored group health plans."[20] In relevant part, the Parity Act states,

> In the case of a group health plan . . . that provides both medical and surgical benefits and mental health or substance use disorder benefits, such plan or coverage shall ensure that . . . the treatment limitations applicable to such mental health or substance use disorder benefits are no more restrictive than the predominant treatment limitations applied to substantially all medical and surgical benefits covered by the plan (or coverage) and there are no separate treatment limitations that are applicable only with respect to mental health or substance use disorder benefits.[21]

"[T]here is no clear law on how to state a claim for a Parity Act violation," so "district courts have continued to apply their own pleading standards."[22] Notably, "[c]ourts in this jurisdiction favor permitting Parity Act claims to proceed to discovery to obtain evidence regarding a properly pleaded coverage disparity."[23]

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[18] *Id.*

[19] *Bryson v. Gonzales*, 534 F.3d 1282, 1286 (10th Cir. 2008).

[20] *Michael D. v. Anthem Health Plans of Ky., Inc.*, 369 F. Supp. 3d 1159, 1174 (D. Utah 2019) (quoting *Am. Psychiatric Ass'n v. Anthem Health Plans, Inc.*, 821 F.3d 352, 356 (2d Cir. 2016)).

[21] 29 U.S.C. § 1185a(a)(3)(A)(ii).

[22] *Michael W. v. United Behavioral Health*, 420 F. Supp. 3d 1207, 1234 (D. Utah 2019).

[23] *Id.* at 1235.

Citing *Welp v. Cigna Health and Life Insurance Company*[24] and a handful of other cases, Defendants suggest the Court should require Plaintiffs to "(1) identify a specific treatment limitation in [the] plan applicable to behavioral health treatment; (2) identify services in the medical or surgical arena that are both covered under the plan and analogous to the specific behavioral health services at issue; and (3) plausibly allege a disparity in the limitation criteria applicable to this analogous medical or surgical service on the one hand and the mental health or substance use treatment on the other."[25] Defendants further argue that Plaintiffs do not sufficiently plead any of these elements in their Complaint.[26] Plaintiffs generally agree with these three elements but argue that the third element should not include the word "plausibly" out of concern that the Court will improperly analyze the plausibility of the facts alleged in the Complaint, exceeding the standard that is set forth in *Twombly* and *Iqbal*.[27] However, this Court has previously stated that plaintiffs must "plausibly allege" a disparity to state a Parity Act claim, and there is no indication that this language improperly affected the motion to dismiss analysis.[28]

This Court has previously articulated other concerns about the pleading standard described in *Welp* because it only applies to a facial Parity Act claim where the limitations on mental health/substance abuse benefits are found in the plan.[29] This Court has repeatedly

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[24] No. 17-80237-CIV, 2017 WL 3263138 (S.D. Fla. July 20, 2017) (unpublished).

[25] Docket No. 14, at 9–10.

[26] *See id.* at 2.

[27] Docket No. 18, at 6–7.

[28] *See David P. v. United Healthcare Ins. Co.*, No. 2:19-cv-00225-JNP-PMW, 2020 WL 607620, at *15 (D. Utah Feb. 7, 2020) (unpublished); *Johnathan Z. v. Oxford Health Plans*, No. 2:18-cv-383-JNP-PMW, 2020 WL 607896, at *13 (D. Utah Feb. 7, 2020) (unpublished); *Charles W. v. United Behavioral Health*, No. 2:18-cv-829-TC, 2019 WL 6895331, at *4 (D. Utah Dec. 18, 2019) (unpublished).

[29] *See Kurt W. v. United Healthcare Ins. Co.*, No. 2:19-cv-223-CW, 2019 WL 6790823, at *4 (D. Utah Dec. 12, 2019) (unpublished) ("Plaintiffs are not required to plead a

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