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THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

<p>B.C., individually and on behalf of R.C. a minor,</p> <p style="text-align: center;">Plaintiffs,</p> <p>vs.</p> <p>UNITED HEALTHCARE INSURANCE COMPANY, UNITED BEHAVIORAL HEALTH and the CNA RETIREE CONSUMER DRIVEN HEALTH PLAN.</p> <p style="text-align: center;">Defendants.</p>	<p>COMPLAINT</p> <p>Case No. 2:21-cv-00032 - JCB</p>
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Plaintiff B.C. individually and on behalf of R.C. a minor, through her undersigned counsel, complains and alleges against Defendants United Healthcare Insurance Company, United Behavioral Health (collectively “United”) and the CNA Retiree Consumer Driven Health Plan (“the Plan”) as follows:

PARTIES, JURISDICTION AND VENUE

1. B.C. and R.C. are natural persons residing in Contra Costa County, California. B.C. is R.C.’s mother.

2. United is an insurance company headquartered in Hennepin County, Minnesota and was the third party claims administrator for the Plan during the treatment at issue in this case.
3. 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 1974 (“ERISA”). B.C. was a participant in the Plan and R.C. was a beneficiary of the Plan at all relevant times. B.C. and R.C. continue to be participants and beneficiaries of the Plan.
4. R.C. received medical care and treatment at Change Academy Lake of the Ozarks (“CALO”) beginning on June 17, 2019. CALO is a licensed residential treatment facility located in Missouri, which provide sub-acute inpatient treatment to adolescents with mental health, behavioral, and/or substance abuse problems. CALO is a nationally acclaimed facility for the treatment of Reactive Attachment Disorder.
5. United denied claims for payment of R.C.’s medical expenses in connection with his treatment at CALO.
6. This Court has jurisdiction over this case under 29 U.S.C. §1132(e)(1) and 28 U.S.C. §1331.
7. 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, and because United does business in Utah and across the United States. 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.
8. 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

R.C.’s Developmental History and Medical Background

9. R.C. was born in Guatemala and was adopted a few months later by B.C. R.C. had small bumps on his body which were initially assumed to be chicken pox, but were subsequently discovered to be flea bites across his entire body from his previous neglectful living environment.
10. R.C. had an extreme fear of open spaces as well as noisy indoor places. He started seeing a psychiatrist around the time he was in the second grade and in the fourth grade he was diagnosed with ADHD and started seeing a different psychiatrist. R.C. had boundary issues and started to become aggressive and to isolate himself.
11. Following an incident where R.C. reported other boys for watching pornographic videos during a school trip, R.C. was confronted by a teacher who extracted a false confession about the pornography from R.C. and sent him home early. After this, R.C. was ostracized and bullied by his peers, he started failing his classes and became increasingly aggressive at home, even biting family members. R.C. would refuse to show remorse for these incidents and would deny they even occurred.
12. R.C. started being treated at an outpatient behavioral health program. On his first day on the way to the program, he grabbed the steering wheel while on the freeway and nearly caused a serious accident. R.C. started refusing to go to school and isolated himself in his

room playing games. When B.C. confronted him, he became physically combative and violent.

13. R.C. was discovered to be self-harming by cutting and would lie about where the cuts came from. R.C. also started expressing suicidal ideation and was subsequently hospitalized and sent to an acute inpatient unit before resuming outpatient treatment. R.C. continued to be aggressive and his younger brother started living away with his father for his protection.
14. R.C. started binge eating and gained forty pounds over a two-month period. He also was caught stealing thousands of dollars from B.C. This behavior became so frequent that B.C. had to keep all of her credit cards and other financial items in a safety deposit box at the bank. R.C expressed no remorse for any of these actions and often refused to admit they had even happened.

CALO

15. R.C. was admitted to CALO on June 17, 2019.
16. In a letter dated June 26, 2019, United denied payment for R.C.'s treatment. The letter erroneously denied payment for services rendered at "Rogers Memorial Hospital" instead of CALO. It is unclear if this is simply a typographical error or if United analyzed R.C.'s treatment as if he had been attending the wrong facility. The letter stated in part:

Benefit coverage of Mental Health Residential care is not available on 06/17/2019 and forward. The guidelines used in the decision are Optum Coverage Determination Guideline for Mental Health Residential and the Optum Common Criteria and Clinical Best Practices for All Levels of Care Guidelines. Your son has made some progress in past treatment. He has been participating more in therapy groups. He apparently needs more help with relationships. Doing this far from his home area can be a problem when he has to return home. It would likely be better for him to work on these issues near his home. The article entitled, "Principles of Care for Treatment of Children and Adolescents with Mental Illness in Residential Treatment Centers," released in June 2010, by the American

Academy of Child and Adolescent Psychiatry (AACAP), describes the industry standards (that is the generally accepted practices) for this level of care. The Introduction to the article begins with “The best place for children and adolescents is at home with their families. A child or adolescent with mental illness should be treated in the safest and least restrictive environment and needed services should be ‘wrapped-around’ to provide more intensive home or community-based services.” It seems that he can work on this in a Partial Hospital Program. This is available in his area. This would be covered. Attending a program near his home makes it easier for you to be actively involved in his care.

17. On October 11, 2019, United sent a corrected version of the June 26, 2019, letter. The corrected version substituted CALO for Rogers Memorial Hospital.
18. On April 1, 2020, B.C. submitted a level one appeal of the denial of payment for R.C.’s treatment at CALO. She reminded United of its responsibilities under ERISA including reviewing all of the information she provided, utilizing appropriately qualified reviewers, and providing her with a full, fair, and thorough review of the denial. She contended that United had not complied with its ERISA obligations thus far and had, for instance, reviewed the mental health needs of her adolescent son using a reviewer certified in adult psychiatry with no specialization in R.C.’s diagnoses.
19. B.C. objected to United’s denial based on R.C. having made “some progress in past treatment” She contended that this was not a valid justification for the denial of payment.
20. B.C. wrote that the quote United relied upon that “The best place for children and adolescents are at home with their families,” had been “cherry-picked” and taken out of context to support United’s conclusion. She pointed out that the full quote stated that individuals should be cared for in the least restrictive environment where they could be effectively treated, and oftentimes the severity of an individual’s psychiatric illness precluded them from receiving treatment in a community based setting.

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