Eric Nielson #5327
Laura Nielson #15008
G. ERIC NIELSON & ASSOCIATES
4790 S. Holladay Blvd.
Holladay, Utah 84117
Phone: (801) 424-9088
Fax: (801) 438-0199
ericnielson@ericnielson.com
lauranielson@ericnielson.com

Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT,
DISTRICT OF UTAH, CENTRAL DIVISION

KIM B., JOHN B., and M.B., Plaintiffs, vs. EVERGREEN HEALTH, and SELECT PLUS PLAN, Defendants.	**COMPLAINT** Case No. 2:21-cv-00364-RJS Judge Robert J. Shelby

COME NOW Kim B., John B., and M.B. collectively, individually, and through their undersigned counsel, complain and allege against the above-captioned defendants as follows:

PARTIES, JURISDICTION, AND VENUE

1. Plaintiff's Kim B. ("Kim") and John B. ("John") are natural persons residing in Clyde Hill, Washington. They are covered by a self-funded plan, Select Plus Plan ("the Plan"), provided through John's employer and plan administrator, Evergreen Health.

2. Plaintiff M.B. ("M.B.") is a resident of Clyde Hill, Washington. As a beneficiary of her father's health insurance plan, she received treatment at Outback Therapeutic Expeditions ("Outback"), a licensed residential treatment facility in Lehi, Utah from May 2, 2020, through July 16, 2020.

3. The Plan is an employee benefit plan governed by the Employment Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. §1001, et. seq.

4. This Court has jurisdiction over this matter and venue is appropriate pursuant to 29 U.S.C. §1132(e)(2) and 29 U.S.C. § 1391(c) because the treatment in question was rendered in the State of Utah and the appeals were written by a company located in Salt Lake City, Utah.

5. Plaintiffs seek payment of M.B.'s denied claims from May 2, 2020, through July 16, 2020, pursuant to 29 U.S.C. §1132(a)(1)(B).

6. Plaintiffs seek injunctive relief pursuant to 29 U.S.C. §1132(a)(3) and pursuant to the Mental Health Parity and Addiction Equity Act of 2008 ("the Parity Act").

7. Plaintiffs also seek an award of prejudgment interest and attorney's fees pursuant to 29 U.S.C. §1132(g).

FACTUAL BACKGROUND

8. Claims were submitted to the Plan by the Plaintiff's for M.B.'s treatment at Outback.

9. The Plan sent an EOB denying coverage for treatment using the code, EXCLU Not a Covered Benefit.

10. On October 13, 2020, the M. Familby submitted a Level One Member Appeal.

11. In this letter, it states "I found that my plan provides coverage for the treatment of behavioral health conditions as found in my Detailed Benefit Summary under the heading Mental Health Care. My plan also provides coverage for other intermediate subacute medical care, such as skilled nursing, rehabilitation services, and hospice care. I reviewed the exclusions in my plan booklet and found that these exclusions only exist for mental health and substance abuse services, and no such similar exclusions for intermediate subacute medical or surgical care, or in the general

exclusion's sections. This seems to apply a stricter standard for receiving mental health care than for receiving analogous medical care, in violation of the Mental Health Parity and Addictions Equity Act of 2008 (MHPAEA)."

12. Outback provides services that are less intensive than acute hospitalization and more intensive than outpatient therapy. Outback qualifies as an intermediate behavioral health facility under the MHPAEA. The Plan must administer benefits for intermediate behavioral health facilities in a way comparable to the administration of benefits for intermediate medical facilities.

13. Outback meets the Plan's definition of a provider and is duly licensed by the State of Utah to provide intermediate OBH services.

14. Page 82 of the Plan gives the definition of a provider as "any person, organization, health facility or institution licensed to deliver or furnish health care services."

15. As such, coverage is available under the Plan for inpatient mental health and substance abuse treatment. The Plan covers intermediate medical and surgical care, including skilled nursing facility services, subacute rehabilitation facility services, and inpatient hospice services.

16. On December 16, 2020, the Plan sent a letter to the B. Family upholding the denial, specifically stating that page 34 of the 2020 Summary Plan Description per the Plan noted above states that wilderness therapy is a Plan benefit exclusion.

FIRST CAUSES OF ACTION

(Claim for Benefits Under 29 U.S.C. §1132(a)(1)(B)) and Claim for Equitable Relief Pursuant to 29 U.S.C. §1132(a))

2. ERISA imposes higher-than-marketplace standards on the Plan and other ERISA fiduciaries. It sets forth a special standard of care upon a plan fiduciary, namely that the

administrator discharges all plan duties solely in the interest of the participants and beneficiaries of the plan and for the exclusive purpose of providing them benefits. 29 U.S.C. §1104(a)(1).

3. ERISA also underscores the particular importance of accurate claims processing and evaluation by requiring that plan administrators provide a "full and fair review" of claim denials. 29 U.S.C. §1104(a)(1)(D) and §1133(2).

17. The Plan's actions or failures to act constitute a breach of its fiduciary duties to the B. Family under 29 U.S.C. §1104 and §1133 in the following ways: 1) by failing to set forth the specific reasons for M.B.'s claim denial, written in a manner calculated to be understood by the B. Family; 2) by failing to provide a "full and fair review," as anticipated in ERISA's claims processing regulations, of the denial of the B.M.'s claim; 3) by developing and relying upon internal practices and policies that improperly restricted coverage in contravention of Plaintiffs' health insurance plans, ERISA, and the Parity Act; and 4) by failing to discharge all plan duties solely in the interest of the participants and beneficiaries of the plan and for the exclusive purpose of providing them benefits.

SECOND CAUSE OF ACTION

(Claim for Violation of the Parity Act Under 29 U.S.C. §1132(a)(3))

33. The Parity Act is incorporated into ERISA and is enforceable by ERISA participants and beneficiaries as a requirement of both ERISA and the Parity Act.

34. The Parity Act requires that if a group health plan provides both medical and surgical benefits as well as mental health or substance use disorder benefits, then it may not apply any "treatment limitation to mental health or substance use disorder benefits in any classification that is more restrictive than the predominant ... treatment limitation of that type applied to

substantially all medical/surgical benefits in the same classification." 29 C.F.R. § 2590.712(c)(2)(i) (amended Jan. 13, 2014); *see also* IFRs Under the Parity Act, 75 Fed. Reg. at 5413.

35. The Parity Act also requires that if a plan "provides mental health or substance use disorder benefits in any classification of benefits..., mental health or substance use disorder benefits must be provided in every classification in which medical/surgical benefits are provided." 29 C.F.R. § 2590.712(c)(2)(ii).

36. Impermissible nonquantitative treatment limitations under the Parity Act include, but are not limited to, medical management standards limiting or excluding benefits based on medical necessity, restrictions based on geographic location, facility type, provider specialty, and other criteria that limit the scope or duration of benefits for mental health or substance use disorder treatment. 29 C.F.R. §2590.712(c)(4)(ii)(A) and (H).

37. Comparable benefits offered by the Plan for medical/surgical treatment analogous to the benefits the Plan excluded for B.M.'s treatment include sub-acute inpatient treatment settings such as skilled nursing facilities, inpatient hospice care, and rehabilitation facilities. For none of these types of treatment does the Plan exclude or restrict coverage of medical/surgical conditions based on medical necessity, geographic location, facility type, provider specialty, or other criteria in the manner the Plan excluded coverage of treatment for B.M. at Outback.

38. Specifically, the Plan's reviewers utilized internal processes and procedures that may have placed a limitation on the scope of services available for intermediate behavioral health care, while not limiting the scope of services available for intermediate medical or surgical benefits.

39. When the Plan receives claims for intermediate-level treatment of medical and surgical conditions, they provide benefits and pay the claims as outlined in the terms of the Plan

DOCKET ALARM

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts

Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research

With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips

Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS
Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS
Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS
Sync your system to PACER to automate legal marketing.