

2. Aetna is an insurance company headquartered in Hartford County, Connecticut and was the claims administrator, as well as the fiduciary under ERISA 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”). K.G. was a participant in the Plan and E.G. was a beneficiary of the Plan at all relevant times. K.G. and E.G. continue to be participants and beneficiaries of the Plan.
4. E.G. received medical care and treatment at Optimum Performance Institute (“OPI”) from July 17, 2018 to August 30, 2018, and The Sanctuary at Sedona (“Sedona”) from August 31, 2018 to October 21, 2018. These are treatment facilities located in Los Angeles County, California and Yavapai County, Arizona, respectively. These facilities provide sub-acute inpatient treatment to adolescents with mental health, behavioral, and/or substance abuse problems.
5. Aetna denied claims for payment of E.G.’s medical expenses in connection with her treatment at OPI and Sedona.
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 Aetna does business in Utah. Moreover, prosecuting the case in Utah reduces the Plaintiffs’ out of pocket expenses. 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

E.G.'s Developmental History and Medical Background

9. Prior to fourth grade, E.G. had difficulty with her schoolwork and when she was eight, she was tested and found to have learning differences. At this point, E.G.'s parents decided to move her to a school that could better accommodate these differences, The Stephen Gaynor School.
10. During E.G.'s time at The Stephen Gaynor School, grades fourth through eighth, she exhibited a significant degree of anxiety, depression, anger, and a generalized mood disorder. E.G. was treated by various psychiatrists and psychologists in order to try and help her with these conditions.
11. When E.G. was young she did not respond well to talk-therapy well but tried several different medications. But over the long term, none of the medications ended up working for her.
12. When E.G. reached ninth grade, her parents moved her back into a mainstream high school. This is when E.G. started to have suicidal ideation. E.G. had a friend she met at school who was also suicidal, which strengthened her desire to take her own life.

13. As soon as E.G.'s parents found out about E.G.'s suicidal ideation they consulted with her psychiatrist and determined that E.G. needed to be withdrawn from her school and placed in inpatient care at Sweetwater Adolescent Girls Treatment program at Cottonwood Tucson ("Sweetwater")
14. E.G. stayed at Sweetwater for three months and then went back to her regular high school. She was able to finish out the school year and claimed to no longer have severe suicidal ideation thoughts.
15. E.G. was able to finish high school under the care of her psychiatrists and psychologists and with a variety of medications. She then applied to college and was accepted.
16. E.G. enrolled at Marist College, however her anxiety, depression, anger and mood disorders became so severe that she had to withdraw and with the recommendation of her doctors, she was enrolled at Pure Life in Costa Rica, a therapeutic program for young adults struggling with mental health disorders.
17. Based on the recommendation of her treatment providers, after Pure Life, E.G. was enrolled at OPI.

OPI

18. E.G. was admitted to OPI on July 17, 2018.
19. Plaintiffs received a denial letter from Aetna dated November 13, 2018 that stated:

We reviewed information received about the member's condition and circumstances and the member's benefit plan. We are denying coverage for Mental Health Residential treatment. Mental Health Residential treatment programs must have a behavioral health provider actively on duty 24 hours per day for 7 days a week. Therefore, Mental Health Residential treatment is not covered under the terms of the plan.
20. On April 2, 2019, Plaintiffs submitted their level one appeal explaining why Aetna must reverse their decision for E.G.'s treatment at OPI.

21. In Plaintiffs' level one appeal, they explained how Aetna violated the terms of ERISA and MHPAEA by requiring an intermediate mental health care facility to have a 24 hour per day, 7 days a week requirement, when they do not require that treatment limitation for analogous medical/surgical care, such as skilled nursing facilities.

22. K.G. stated that OPI was considered a behavioral health provider under the terms of his plan. The relevant plan language states:

Behavioral health provider

An individual professional that is properly licensed or certified to provide diagnostic and/or therapeutic services for mental disorders and substance abuse, under the laws of the jurisdiction where the individual practices.

23. K.G. stated that OPI "provides diagnostic and therapeutic treatment interventions for young adults struggling with chronic behavioral health issues, like my daughter.

However, OPI is not required to be licensed in the state of California, where the facility is located and operates out of."

24. K.G. also stated in his level one appeal for E.G.'s treatment at OPI that Aetna violated MHPAEA because Aetna does not require skilled nursing facilities to impose a limitation where they require facilities to have a health provider actively on duty 24 hours per day for 7 days per week.

25. In a letter dated May 7, 2019 Aetna stated:

We are responding to the appeal of our decision on the following issue:

- Billed Amount: \$30,750 and \$15,375
- Denial Code(s):
 - 447-Ask your provider to send us medical records that includes details of the services from the admission date to the discharge date. When we get them, we will consider this claim. We will make our decision within 15 days of getting the information. We' ll [sic.] deny this claim if we do not get this information within 45 days from the day you receive this form.

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