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THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

D.H., and I.H., Plaintiffs, vs. ANTHEM BLUE CROSS BLUE SHIELD, Defendant.	COMPLAINT Case No. 2:21-cv-00491-JCB
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Plaintiffs D.H. and I.H., through their undersigned counsel, complain and allege against Defendant Anthem Blue Cross Blue Shield (“Anthem”) as follows:

PARTIES, JURISDICTION AND VENUE

1. D.H. and I.H. are natural persons residing in Marion County, Indiana. D.H. is I.H.’s father.
2. Anthem is the trade name of Anthem Insurance Companies, Inc. An Indiana corporation which is an independent licensee of the nationwide Blue Cross and Blue Shield network of providers. Anthem was the insurer and claims administrator, as well as the fiduciary

under ERISA for the insurance plan providing coverage for the Plaintiffs (“the Plan”) during the treatment at issue in this case.

3. The Plan is a fully-insured employee welfare benefits plan under 29 U.S.C. §1001 *et seq.*, the Employee Retirement Income Security Act of 1974 (“ERISA”). D.H. was a participant in the Plan and I.H. was a beneficiary of the Plan at all relevant times.
4. I.H. received medical care and treatment at Wingate Wilderness Therapy (“Wingate”) Vista at Dimple Dell (“Vista”) and Explorations. These are licensed treatment facilities which provide sub-acute inpatient treatment to adolescents with mental health, behavioral, and/or substance abuse problems. Wingate and Vista are located in Utah and Explorations is in Montana
5. Anthem denied claims for payment of I.H.’s medical expenses in connection with her treatment at Wingate, Vista, and Explorations.
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, because Anthem does business in Utah, and a significant portion of the treatment at issue took place in Utah. In addition, venue in Utah will save the Plaintiffs costs in litigating this case. 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 Defendant's 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

I.H.'s Developmental History and Medical Background

9. I.H. was removed from her biological mother's care in Russia around the time that she was two years old due to severe neglect which led to a hospitalization. I.H. then spent four months in an orphanage before she was adopted by D.H.
10. D.H. suffered from a variety of conditions which caused her to exhibit severe behavioral problems such as suicidal ideation and self-harm, including:
 - F94.1 Reactive Attachment Disorder
 - F33.1 Major Depressive Disorder, Recurrent Episode, Moderate
 - F90.2 Attention-deficit/hyperactivity Disorder, Combined Presentation
 - F81.81 Specific Learning Disorder, With Impairment in Written Expression
 - F81.0 Specific Learning Disorder, With Impairment in Reading
 - Z62.820 Parent-child Relational Problem
11. These problems were further compounded following incidents of sexual abuse.

Wingate 1st admission

12. I.H. was admitted to Wingate on August 14, 2017.
13. In a letter dated January 10, 2019, Anthem denied payment for I.H.'s treatment at Wingate. The letter stated in part:

A denial is being issued effective 01/10/19 for Psychiatric Residential Treatment at Wingate Wilderness Therapy. One of the coverage requirements under your health benefit plan is that the facility must be appropriately licensed and accredited to render covered services. The medical information we received indicates that the services requested were rendered by a facility that does not satisfy this requirement; Therefore, those services would not be considered covered services. This review was a benefit review. It was not about treatment.

The review looked at the benefit plan. If there are no benefits, there is no coverage for the service.

14. On April 25, 2019, D.H. submitted a level one appeal of the denial of I.H.'s treatment at Wingate. D.H. reminded Anthem of its responsibilities under ERISA and stated that it was obligated to take into account all of the information he had provided, to provide him with a full, fair, and thorough review, to give him the specific reasoning for the determination as well as the information necessary to perfect the claim, and also to utilize appropriately qualified reviewers and to divulge their identities.
15. D.H. objected to Anthem's contention that Wingate was not appropriately licensed. He pointed out that Wingate was in fact licensed by the State of Utah. He stated that in spite of Anthem's arguments that Wingate needed to be accredited, he was unable to find any such requirement in his policy. He accused Anthem of arbitrarily adding requirements to deny coverage even when these were not reflected by the insurance policy.
16. D.H. wrote that Wingate furthermore met the Plan's definition of a "provider" and should have been approved on that basis alone. He wrote that the Plan was subject to MHPAEA which compelled insurers to offer mental health benefits to their insureds "at parity" with analogous medical or surgical benefits. D.H. identified skilled nursing and inpatient rehabilitation as some of the medical or surgical analogues to the mental healthcare I.H. received. D.H. asked Anthem to provide evidence that its decision to deny care was in compliance with MHPAEA.
17. In a letter dated May 21, 2019, Anthem upheld the denial of payment for I.H.'s treatment at Wingate. The letter gave the following justification for the denial:

Wingate Wilderness Therapy is a non-accredited facility and is thus not covered by your [employer's]¹ policy for the requested services. Please note the definition of a coverable facility on page M-119 of your [employee] benefits booklet:

Facility – A facility including but not limited to, a Hospital, freestanding Ambulatory Surgical Facility, Chemical Dependency Treatment Facility, Residential Treatment Center, Skilled Nursing Facility, Home Health Care Agency or mental health facility, as defined in this Certificate. **The Facility must be licensed, accredited, registered or approved by the Joint Commission or the Commission on Accreditation of Rehabilitation Facilities (CARF),** as applicable, or meet specific rules set by us. (emphasis in original)

The letter then stated that D.H. would be provided with the documents he requested.

18. On September 12, 2019, D.H. submitted a level two appeal of the denial of I.H.'s treatment at Wingate. D.H. attached his level one appeal to the request and asked for a new reviewer to thoroughly address all of the arguments he had made.

19. In a letter dated October 10, 2019, Anthem upheld the denial of payment for I.H.'s treatment at Wingate. The decision to deny coverage was attributed to an unidentified panel of four individuals. The panel gave an identical justification for the denial as the May 21, 2019, letter and again stated care was denied due to a lack of accreditation.

Wingate 2nd admission

20. I.H. was admitted to Wingate for a second time on November 5, 2018.

21. On May 31, 2019, D.H. submitted a level one appeal of the denial of I.H.'s second admission to Wingate. D.H. stated that he had spoken to a representative at Wingate and had been informed that I.H.'s claims had been denied due to a lack of precertification. He stated that neither he nor Wingate had been provided with a written justification for the

¹ As D.H.'s employer is a small family business, he could easily be identified by the employer's name alone. As a result, any references to the employer in the complaint have been redacted for privacy reasons.

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