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THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH, CENTRAL DIVISION

DAVID F., and D.F.,  Plaintiffs,  vs.  ANTHEM BLUE CROSS,  Defendant.	COMPLAINT  Case No. 2:22-cv-00339 - JCB
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Plaintiffs David F. and D.F., through their undersigned counsel, complain and allege against Defendant Anthem Blue Cross (“Anthem”) as follows:

**PARTIES, JURISDICTION AND VENUE**

1. David and D.F. are natural persons residing in Los Angeles County, California. David is D.F.’s father.
2. Anthem is the trade name of Blue Cross of California and is an independent licensee of the nationwide Blue Cross 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”). David was a participant in the Plan and D.F. was a beneficiary of the Plan at all relevant times.
4. D.F. received medical care and treatment at Elements Wilderness Program (“Elements”) from September 18, 2019, to November 13, 2019, and Catalyst Residential Treatment (“Catalyst”) from November 13, 2019, to March 30, 2020. These are licensed treatment facilities located in Emery County, Utah and Box Elder County, Utah respectively, which provide sub-acute inpatient treatment to adolescents with mental health, behavioral, and/or substance abuse problems.
5. Anthem denied claims for payment of D.F.’s medical expenses in connection with his treatment at Elements and Catalyst.
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 the treatment at issue took place in Utah.
8. In addition, David has been informed and reasonably believes that litigating the case outside Utah will likely lead to substantially increased litigation costs for which he will be responsible to pay, which would not be incurred if venue of the case remains in Utah. 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.

9. 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**

#### **D.F.'s Developmental History and Medical Background**

10. D.F. was very irritable from the time that he was a toddler. He was frequently ill and spent a significant amount of time in the doctor's office. It was eventually determined that D.F.'s tonsils and adenoids had swelled to the point that they blocked ninety percent of his airway in some areas. Fortunately, this was able to be resolved with surgery, but D.F. had been suffering from this condition for so long that it affected his personality.
11. D.F. only wore black and was often sad and angry. He was small for his age and was often bullied by other students. D.F. was in the first percentile for his height and was prescribed a growth hormone. He was frequently disruptive and played the role of "class clown."
12. Most of D.F.'s friends were older and he started abusing drugs with them around the time that he was eleven years old. D.F.'s older brother had a similar drug problem and was hospitalized for his first overdose when he was just thirteen. D.F.'s brother had more overdoses and was eventually sent to a residential treatment center. This was highly influential on D.F. and caused him to react in increasingly negative ways.

13. D.F.'s school performance suffered and while he used to be more friendly and outgoing, he became increasingly withdrawn. D.F. started meeting with therapists and was prescribed medications for his mental health conditions such as his ADHD. These medications had undesirable side effects such as causing D.F. to be unable to sleep, or on one occasion, contributing to a thirty-six-hour rage filled temper tantrum which caused David to call 911.
14. D.F. started seeing a new therapist, but after only a few sessions he overdosed on drugs and had to be rushed to the hospital. D.F. was placed on a mental health hold for 72 hours at the hospital and was then admitted to a treatment program called Visions.
15. While at Visions D.F. was cooperative and made progress but he regressed as soon as he finished the program. David learned that D.F. was dealing drugs as well as using them and had become involved with gangs.
16. D.F. started attending a private school with a small class size. On one occasion when he was supposed to go on a camping trip with his peers, he instead ran away and sent his parents a text stating that he was now sixteen years old and could live on his own. D.F. was eventually found six hours later after a frantic search involving police and a private investigator.
17. D.F. was high when he was found and expressed no remorse or concern for his actions. He was taken to Elements the next day.

#### **Elements**

18. D.F. was admitted to Elements on September 18, 2019.
19. In a letter dated May 6, 2020, Anthem denied payment for D.F.'s treatment at Elements.  
The letter gave the following justification for the denial:

As Stated in your Member Benefit Agreement in the section What Is Not Covered page 118 subsection Residential accommodations it states, Residential accommodations to treat medical or behavioral health conditions, except when provided in a Hospital, Hospice, Skilled Nursing Facility, or Residential Treatment Center. This Exclusion includes procedures, equipment, services, supplies or charges for the following: Wilderness camps. Therefore request for authorization for Mental Health Residential level of care has been excluded from coverage.

20. On October 19, 2020, David submitted a level one appeal of the denial of payment for D.F.'s treatment. David reminded Anthem of its ERISA obligations during the appeal process, including its responsibility to provide him with a full, fair, and thorough review using appropriately qualified reviewers, which took into account all of the information he provided, gave him the specific reason(s) for the adverse determination, referenced the specific plan provisions on which the decision was based, and which gave him the information necessary to perfect the claim.
21. He stated that D.F.'s treatment was a covered benefit under the terms of the insurance policy. He quoted from the Mental Health and Substance Abuse (Chemical Dependency) Services section of the insurance plan and pointed out that coverage was available for "other Providers who are licensed health care professionals acting within the scope of their license."
22. He wrote that in addition, Elements met the Plan's definition of a "provider" as it was licensed by the State of Utah and operated according to Utah state regulations.
23. He did note that there was a listed exclusion for "Wilderness camps" but disputed that this description applied to the outdoor behavioral health treatment provided at Elements. He also noted that this exclusion did not apply to individuals suffering from "Serious Emotional Disturbances of a Child (SED)" and that California state law required Anthem to provide coverage for treatment of D.F.'s conditions.

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