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Attorneys for Plaintiffs

THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH, CENTRAL DIVISION

SCOTT M., individually and on behalf of J. M. a minor,  Plaintiffs,  vs.  CIGNA HEALTH and LIFE INSURANCE COMPANY, and the VERMONT ELECTRIC POWER COMPANY HEALTHCARE BENEFIT PLAN  Defendants.	COMPLAINT  Case No. 4:21-cv-00007 - DN
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Plaintiff Scott M (“Scott”), individually and on behalf of J. M. (“J.”) a minor, through his undersigned counsel, complains and alleges against Defendants Cigna Health and Life Insurance Company (“Cigna”) and the Vermont Electric Power Company Healthcare Benefit Plan (“the Plan”) as follows:

**PARTIES, JURISDICTION AND VENUE**

1. Scott and J. are natural persons residing in Addison County, Vermont. Scott is J.’s father.

2. Cigna is an insurance company headquartered in Bloomfield, Connecticut 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”). Scott was a participant in the Plan and J. was a beneficiary of the Plan at all relevant times. Scott and J. continue to be participants and beneficiaries of the Plan.
4. J. received medical care and treatment at Red Cliff Ascent (“RCA”) beginning on January 20, 2018, and Telos beginning on April 18, 2018. These are treatment facilities located in Utah, which provide sub-acute inpatient treatment to adolescents with mental health, behavioral, and/or substance abuse problems.
5. Cigna, acting in its own capacity or through its subsidiary and affiliate Cigna Behavioral Health, denied claims for payment of J.’s medical expenses in connection with his treatment at RCA and Telos. This lawsuit is brought to obtain the Court’s order requiring the Plan to reimburse Scott for the medical expenses he has incurred and paid for J.’s treatment and to obtain appropriate equitable relief for the Defendant’s violation of the Mental Health Parity and Addiction Equity Act of 2008 (“MHPAEA”)
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 Cigna does business in Utah, and the treatment at issue took place 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.

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 MHPAEA, an award of prejudgment interest, and an award of attorney fees and costs pursuant to 29 U.S.C. §1132(g).

### **BACKGROUND FACTS**

#### **RCA**

9. On December 7, 2018, the Plaintiffs enlisted the services of the law office of Brian King ("the Firm").
10. In a letter dated December 10, 2018, the Firm requested that Cigna provide it with "[a] complete copy of [J.]'s claim file" including copies of the criteria used to evaluate J.'s claim, emails, reports, other documents, and information to evaluate Cigna's MHPAEA compliance, as well as internal records connected with the claim. Cigna partially complied with this request but failed to produce several relevant documents. For instance, Cigna produced a copy of J.'s summary plan description ("SPD") for 2017 and 2019 but did not produce a 2018 copy which was in effect when J. received treatment at RCA.
11. J. was admitted to RCA on January 20, 2018, due to a significant history of substance use issues coupled with multiple mental health diagnoses. J. exhibited a significant decline in multiple areas of functioning, he was expelled from school, was stealing to support his drug habits, was self-harming by cutting, had frequent panic attacks, frequently isolated himself, expressed suicidal ideation, and had multiple suicide attempts.
12. In a letter which was incorrectly dated as June 18, 2016, Cigna denied payment for J.'s treatment at RCA. The letter stated in part:

After a review of the information submitted by your provider and the terms of your benefit plan, Cigna's Peer Reviewer, Robert Cirelli, MD, (LIC # 042-0011084), a board certified psychiatrist, has determined that the requested services are not covered. This decision was based on the following:

RedCliff Ascent is licensed in the State of Utah as an Outdoor Youth Program a/k/a Wilderness Program (See enclosed UT DHS Licensing Description). Outdoor Youth Programs a/k/a Wilderness Programs are not a covered service under the terms of your Plan.

Your plan SPD describes the Mental Health and Substance Use Disorder Services covered under the Plan. While the plan covers Mental Health (Psychiatric) Residential Treatment for Children and Adolescents, Outdoor Youth Programs do not qualify as Mental Health (Psychiatric) Residential Treatment Programs.<sup>1</sup>

13. On December 14, 2018, the Firm appealed the denial of payment for J.'s treatment at RCA. The Firm contended that MHPAEA required that insurers provide the same level of coverage for mental health benefits as was provided for medical and surgical benefits. The Firm contended that Cigna's categorical exclusion of medically necessary mental health services in a wilderness setting while not similarly excluding coverage of medically necessary medical or surgical care from state licensed healthcare programs and providers was a violation of MHPAEA.
14. The Firm contended that RCA was "a licensed sub-acute inpatient facility in the state of Utah." The Firm then quoted the Plan's criteria for Inpatient Services at Other Health Care Facilities as well as the Plan's criteria for Mental Health facilities and argued that the treatment at RCA should have been covered.
15. The Firm noted that RCA met the Plan's requirements for an "Other Health Care Facility" as it was a licensed mental healthcare facility and met the requirements laid out in the terms of the Plan to qualify as such a facility. The Firm contended that in spite of

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<sup>1</sup> The SPD does not appear to actually state this in the 2017 or 2019 versions of the SPD. Again, the Firm was not provided with the relevant 2018 SPD, but as the reviewer does not cite to any language from the SPD itself, it is likely that the 2018 version similarly does not explicitly exclude wilderness programs.

their request for a completed claim file, they had yet to receive all of the information they requested. The Firm again asked to be provided with a complete copy of J.'s claim file.

16. In a letter dated January 16, 2019, Cigna upheld the denial of payment for J.'s treatment at RCA. The denial, attributed to James M. Appeals Coordinator, stated in part:

- Based upon my review, the requested services are not covered. Your covered benefits do not include coverage for wilderness programs.
- Your Omnicrom Group, Inc – DAS Group Certificate, under 'Exclusions, Expense Not Covered and General Limitations', states the following:
- Non medical counseling or ancillary services except as specified in The Schedule, including but not limited to Custodial Services, education, training, vocational rehabilitation, behavioral training, biofeedback, neurofeedback, hypnosis, sleep therapy, employment counseling, back school, [sic] return to work services, work hardening programs, driving safety, and services, [sic] training, educational therapy or other nonmedical ancillary services for learning disabilities, developmental delays, autism or mental retardation.
- Claims for therapeutic services rendered by an independently licensed health care professional for the treatment of a mental health condition and/or substance use disorder while residing at the wilderness program may be submitted for benefit coverage subject to the terms and conditions of the Cigna customer's health plan<sup>2</sup>
- Services performed by individual licensed providers as part of the wilderness program may be submitted for potential reimbursement.

**Telos**

17. J. was admitted to Telos on April 18, 2018.

18. In a document dated April 20, 2018, from Bettina Kilburn, MD. Cigna denied payment for J.'s treatment at Telos, stating in part:

Based upon the available information, your symptoms do not meet the Cigna Behavioral Medical Necessity Criteria for Residential Mental Health Treatment for Children and Adolescents for admission from 4/18/18 as Insufficient [sic] information has been provided by the facility to support the medical necessity for admission. Information such as your history and admission assessment and

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<sup>2</sup> This denial letter language is not present in the 2019 version of the SPD and the 2017 version does not contain these last two paragraphs, or at least it does not include them in the location the reviewer cites. As the Firm does not possess a copy of the 2018 SPD, it is not clear whether the denial letter misrepresented or altered the terms of the Plan to include the last two paragraphs and either mistakenly or intentionally made no indication that it was supplying an altered quote, or whether these paragraphs do exist in the 2018 SPD but are not present in the versions of the SPD supplied to the Firm.

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