IN THE UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF WISCONSIN

Angela Midthun-Hensen and Tony Hensen, as representatives of their minor daughter, K.H., and on behalf of all others similarly situated,

Plaintiffs,

v.

Group Health Cooperative of South Central Wisconsin, Inc.,

Defendant.

Case No. ____

CLASS ACTION COMPLAINT AND JURY DEMAND

This class action lawsuit is against Defendant Group Health Cooperative of South Central Wisconsin, Inc. ("GHC") for violating the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act ("Parity Act"), 29 U.S.C. § 1185a and as prohibited under the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. §§ 1001 et. seq.

The Plaintiffs are Angela Midthun-Hensen and Tony Hensen, as the representatives of their minor daughter, K.H.[1], and on behalf of all others similarly situated. Based on the best of Plaintiffs' knowledge, information, and belief formed after a reasonable inquiry under the circumstances, by and through their undersigned counsel by way of Class Action Complaint against GHC, Plaintiffs hereby allege as follows:

[1] The name of the minor child, K.H., is abbreviated in the public version of this Complaint to comply with the Health Insurance Portability and Accountability Act of 1996 and to protect the confidentiality and privacy of the child diagnosed with autism. The name of the minor child is known to GHC and will be disclosed to the Court with a confidential sealed version of the Complaint, as necessary.

NATURE OF CASE

A. Autism Spectrum Disorder

1. Autism Spectrum Disorder ("ASD") is defined by the *Diagnostic and Statistical Manual of Mental Disorders* (5th ed.; American Psychiatric Association, 2013). The diagnosis of ASD is characterized by persistent deficits in social communication and social interaction across multiple contexts. ASD is manifested by deficits in social-emotional reciprocity, deficits in non-verbal communication behaviors used for social interaction, and deficits in developing, maintaining, and understanding relationships. The severity of ASD is based on social communication impairments and restrictive, repetitive patterns of behavior. Recent studies reveal autism prevalence among children in the United States has climbed to 1 in 40 children ages 3 to 17.

2. Plaintiffs' daughter, K.H., is thirteen years old and has the primary diagnosis of ASD. K.H.'s autism symptoms include development speech delay, inadequate social skills, and poor motor planning and function. K.H. works hard to gain skills that are easily attainable by her peers. Due to her ASD, she struggles with the daily tasks of dressing, personal hygiene, social interaction, and other common every-day activities. As K.H. has gotten older, she has become more aware that she is different from many of her peers and family members, and consequently, has become more prone to outbursts and self-harm. K.H.'s lack of social awareness and speech comprehension impede her ability to make friends. As any thirteen-year-old, K.H. wants to fit in and be accepted socially, the way she sees her classmates and peers accepted. Missing this essential social acceptance, she has started to talk negatively about herself.

3. K.H.'s health care providers have continuously recommended that she receive treatment called Applied Behavioral Analysis ("ABA") for her ASD. ABA is generally accepted in the medical community as an effective form of treatment for minors (defined as under age 22 by Wisconsin law) with ASD. ABA is a type of therapy that focuses on improving

specific maladaptive or stereotypic behaviors and targets social skills and adaptive learning skills. The American Academy of Child and Adolescent Psychiatry ("AACAP") empirical reports state that of all clinical, non-educational interventions, ABA has been the most widely shown in scientific research to improve the ability of autism patients to adapt to their environment and engage with those around them.

4. K.H. has been receiving ABA to treat her ASD symptoms. She started speech therapy in May 2017 and has continued to make progress. K.H.'s speech therapist recommended that K.H. have an Occupational Therapy ("OT") Evaluation and treatment to address the delays K.H. experiences in developing her motor and self-help skills. As a result of the assessment and K.H.'s providers' direction, K.H. requested GHC—the health-funded cooperative association and group health plan administrator for Plaintiffs' Plan, described more fully below—to approve OT treatment for K.H. in October 2018.

5. Children with ASD have a range of occupational performance challenges that interfere with their meaningful participation in school, home, and social activities. A predominant characteristic of autism that is often the focus of intervention is the child's sensory processing of another person's gestures to communicate or relate to others with eye contact. Occupational therapists focus on enhancing a child's sensory processing, social behavioral performance, self-care, and participation in play. The role of OT in the treatment of children with ASD is structured as an intervention associated with activities of daily living. This treatment includes therapy addressing the child's ability to get dressed by themselves and engage in personal hygiene, with a particular focus on increasing the child's ability to live more independently and decrease the need for one-on-one assistance. The foundational skills of OT allow children to participate in other critical development activities, such as education and play. A child's successful completion of OT enhances a pathway for children to develop life skills, modulate behavior, and participate in social interaction.

6. Children with autism present problems in receptive, expressive, and pragmatic language. Because deficits in language and communication are acknowledged impediments to a child's progress in education and social settings, children with autism benefit from speech and language therapy.

B. GHC Denied Coverage of Speech Therapy and OT Treatment for K.H.

7. In January 2019, GHC denied Plaintiffs' request for coverage for K.H.'s Speech and Language Therapy ("speech therapy"). GHC stated its reason for denial was that speech therapy is not evidence-based treatment for the core deficits of ASD for children ages 10 and above, and, accordingly, speech therapy is not a covered benefit under the terms of the group policy.

8. The same month, on January 4, 2019, GHC issued its decision denying coverage of OT for K.H.'s autism. The reason GHC stated for denial was that OT for treating ASD is considered experimental and investigational because it is not an evidence-based treatment for autism. Accordingly, GHC excluded OT from coverage under the terms of the Plaintiffs' group health benefits package.

9. The Plaintiffs' subsequent appeals of these denials for both speech therapy and OT were denied by GHC. K.H.'s request for external review under the terms of the group policy was rejected on the grounds that speech therapy and OT for K.H. were not covered benefits under the terms of the Plaintiffs' group policy.

10. GHC stated that the criteria it used as the premise for denying speech therapy and OT coverage was its own medical policy, GHC-SCW Medical Policy CM.121. By developing, adopting, and applying GHC-SCW Medical Policy CM.121 ("Policy 121") to justify denial of medically necessary covered benefits to K.H. and to other plan and group members and beneficiaries similarly situated, GHC is administering its plans for its own financial benefit rather than the benefit of the plan members, subscribers, and beneficiaries.

11. GHC's exclusion of coverage of speech therapy and OT benefits for children with autism violates the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 ("Federal Parity Act"), codified at 29 U.S.C. §11858a. GHC Policy 121's exclusion is unenforceable as a matter of federal law, and GHC's application of it to deny coverage to Plaintiffs' daughter, K.H., breached GHC's fiduciary duties as the Plan administrator under the Employment Retirement Income Security Act of 1974 ("ERISA"). 29 U.S.C. §1001, *et. seq.* GHC's denial of benefits for K.H. and all others similarly situated also violates Wisconsin Statutes Annotated §632.895(12m), which mandates health coverage for treatment of ASD. W.S.A. §448.96(4) and (5) specifically defines occupational therapy as a covered service. Speech therapy is a recognized treatment for children with autism. W.S.A. §632.895(12m)(b). Accordingly, the GHC exclusions and Policy 121 are unenforceable as a matter of both federal and state law and are breaches of GHC's fiduciary duties as the Administrator of the Group Plan.

12. Through this action, Plaintiffs, on behalf of K.H. and all others similarly situated, seek to enforce their rights under the employee welfare benefit plan per ERISA, the Federal Parity Act, and Wisconsin's mandated autism benefits, which includes coverage for the treatment of ASD without limitations or exclusions.

PARTIES

13. Plaintiff K.H. is the thirteen-year-old daughter and dependent of Angela Midthun-Hensen and Tony Hensen. Angela Midthun-Hensen is a subscriber and beneficiary, as defined by ERISA (Section 3(8), 29 U.S.C. §1002(a)) of the GHC Welfare Benefit Plan. Angela Midthun-Hensen, Tony Hensen, and K.H. are insured as beneficiaries under the GHC Large Employer Group Health Policy ("Policy"). The Policy is a cooperative self-funded large group policy sponsored by Plaintiffs' employer, Verona Area School District. The 2018 HMO Large Employer Group Plan is governed by ERISA and is administered by GHC.

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