

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

R.S.,

Plaintiff,

v.

**HealthPartners Administrators, Inc., and
Group Health Plan, Inc.**

Defendants.

Case No. 22-cv-01023 (JRT/JFD)

AMENDED ERISA COMPLAINT

Plaintiff R.S., based on his knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, asserts the following:

INTRODUCTION AND NATURE OF THIS ACTION

1. This is an action brought under ERISA, 29 U.S.C. §§ 1001-1191c, that arises out of defendants' repeated, yet inconsistent, bungling of R.S.'s son's requests for coverage for mental health treatment at a residential treatment center. Defendants never found a reason to cover a penny of the services provided. The reasons they found for denying payment for these services were, at times, inconsistent; they were always wrong.

JURISDICTION AND VENUE

2. This Court has original jurisdiction under 28 U.S.C. § 1331, as this case arises under federal law.

3. Venue is appropriate in this judicial district because the Plaintiff resides in this district, and the Defendant operates within this district and its corporate headquarters are located within this judicial district, thus Defendant is a Minnesota citizen. In addition, the breaches described here occurred within this district.

PARTIES

4. Plaintiff R.S., at all material times, was an individual citizen and resident of Minnesota. R.S. is the father of K.S., whose insurance claims are at issue in this case. K.S. receives his health insurance through his father; accordingly, K.S. is a beneficiary under this father's ERISA-regulated health insurance plan. K.S. and R.S. have executed a power of attorney giving R.S. the right to make all health care-related decisions for K.S.

5. R.S. is employed by HealthPartners as an application developer. R.S., and in turn K.S., is covered under an ERISA-regulated health insurance plan that HealthPartners sponsors and administers. The plan's summary plan description, which describes the rights and obligations of both HealthPartners and participants and beneficiaries, is attached to this Complaint at **Exhibit A**.

6. Defendant HealthPartners Administrators, Inc. is the "Plan Manager" of the health insurance plan described at **Exhibit A**. Under the plan, HealthPartners Administrators, Inc., "provides administrative services to the Plan Sponsor in connection with the operation of the Plan, such as processing of claims and other functions, as may be delegated to it." (**Exhibit A at 70**). Defendant Group Health Plan, Inc. is the "Plan Sponsor" and "ultimately responsible for the management of the Plan"

as well as the named fiduciary “[f]or purposes of determining eligibility and enrollment, and for funding claims paid and for all related activities and responsibilities under the Plan.” (*Id.*) Through delegation and in practice, HealthPartners Administrators, Inc. and/or Group Health Plan, Inc. make all discretionary decisions concerning coverage rights in the plans they administer, including the plan at issue here. As such, HealthPartners Administrators, Inc. and/or Group Health Plan, Inc. have discretionary authority to interpret the health insurance plans it administers, and to award benefits.

7. In this Amended Complaint, “defendants” refers to both named defendants and to all successor, predecessor, related, subsidiary and parent entities to which these allegations pertain.

FACTS

Coverage Promises

8. “To be covered under [the HealthPartners] Plan, the medical or dental services or items ... must be medically necessary or dentally necessary.” (*Id.* at 9.) Among other things, the plan covers inpatient and outpatient mental health services, under the generic heading of Behavioral Health Services. (*Id.* at 14.) The Plan covers services for mental health diagnoses as described in the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, that lead to “significant disruption of function in the Covered Person’s life.” (*Id.*) The Plan covers inpatient, outpatient and intensive outpatient treatments. (*Id.* at 14–16.)

9. The Plan also covers room and board, daily skilled nursing and related ancillary services for post-acute treatment and rehabilitative care of illness or injury that meets the Medical Coverage Criteria. (*Id.* at 29-31.)

K.S.'s Medical History

10. K.S. has been diagnosed with the following conditions, all of which are described in the Diagnostic and Statistical Manual of Mental Disorders:

- F84.0, Autism Spectrum Disorder
- F89.1, Developmental Disorder of Scholastic Skills, Unspecified
- F81.81, Writing Disorder
- F33.1, Major Depressive Disorder
- F90.0, Attention Deficit Hyperactivity Disorder, Combined Type (F90.02).

11. K.S. struggled since early childhood socially, academically, and behaviorally. He had few friends and had “out of control” behavioral problems in school, home and the community. He received regular outpatient therapy since elementary school up until 2019 and saw a psychiatrist for treatment for ADHD (he has tried Concerta, Adderall and Vyvanse), and later for depression (he has tried Risperidone, Lexapro and before residential treatment, was up to 300 mg a day of Bupropion XL).

12. As demands at school increased, K.S. spent increasing amounts of time video gaming, and became increasingly depressed and isolated. By sophomore year, he refused to do any schoolwork, refused to study, became more depressed, slept excessively, gained weight, and had rage episodes. As K.S.'s depression worsened, he refused to participate with private tutors, failed all his classes, and played video games for as much as 10 hours a day. As the depression spiraled out of control, K.S. started

seeing Dr. Kumra, a psychiatrist at PrairieCare. In March 2019, the Fraser Center diagnosed K.S. with severe depression.

13. In May 2019, K.S. tried the Adolescent Day Therapy Program at the University of Minnesota Masonic Children's Hospital, an intensive outpatient program ("IOP"). This was a short-term program; K.S. was enrolled for about a month.

14. On discharge, K.S. continued to need a day treatment program, and was treated at Christian Family Solutions (CFS) from mid-August 2019 to mid-February 2020.

15. Neither program was effective. At CFS, K.S. stopped participating in treatment and made minimal progress on goals. His parents ultimately decided to pull him out after approximately 6 months.

Testing and Initial Treatment at New Vision Wilderness

16. K.S. had a comprehensive assessment done at the Fraser Center on March 6, 2019. The Fraser Center administered the Child and Adolescent Service Intensity Instrument (CASII), which helps determine which level of service intensity a patient needs. In March, K.S. had a total CASII score of 19, which equates to Level 3, Intensive Outpatient Services. The administering clinician agreed that K.S. needed that level of care. K.S. started IOP services two months later, in May 2019. He started with CFS in mid-August. On admission there, he was also given a second CASII exam. At that time, he had a score of 21, which equates to Partial Hospital Level of Care. It is always appropriate to err on the side of caution and safety, and enroll in a higher level of care, as over-treating is not harmful, but undertreating is ineffective and can be harmful.

17. In late February of 2020, K.S. enrolled at New Visions Wilderness LLC, a wilderness therapy program in Medford, Wisconsin. It provided K.S. with individual, group, and family therapy in an outdoor setting.

18. At the time K.S. began treatment at New Vision, he had been severely depressed and non-functional for over two years. He had tried two different IOP programs, neither of which helped. He had tried many different types of medications. He was sleeping excessively and overeating, gaming as much as possible, isolating in his room, interacting minimally with his parents, and was failing all his classes. He constantly had his ear buds in and was online nearly all his waking hours. His in-network psychiatrist recommended electroshock therapy and told the family he was otherwise “out of options.”

19. While at New Vision, K.S. had a comprehensive assessment and was diagnosed with level one autism. He started to develop emotional regulation tools and to learn to better express and communicate his emotional challenges. K.S. started to contemplate his excessive use of technology and began to take accountability for it. He continued to struggle to develop connections with peers. Though he made some early gains in this program, he continued to require a structured environment in a therapeutic setting, started to learn to build trust with peers and started to work through past traumas around bullying. His therapist strongly recommended that he continue in a longer-term residential program.

Daniels Academy

20. K.S.'s parents eventually concluded that Daniels Academy, based in Heber City, Utah, was best positioned to treat K.S.'s many issues. Daniels Academy is a Utah-licensed residential treatment center that specializes in the treatment of Autism Spectrum Disorder ("ASD"). K.S.'s treaters at Daniels included a medical director, six therapists, a speech and language pathologist, and three teachers. The programming includes individual, group, and family therapy.

21. K.S. enrolled at Daniels on June 4, 2020, in large part to address persistent deficits attributed to ASD, which contribute to severe depression and inability to function. Areas of need were identified as developing, maintaining and understanding relationships; addressing rigidities; building social awareness on how his behaviors impact others; and developing effective coping skills. Goals include demonstrating skills in the areas of executive functioning, social learning, emotional regulation, and life skills 90% of the time when challenged. During his time at Daniels, K.S. made decent progress and eventually demonstrated this goal approximately 50% of the time.

22. In addressing depression, K.S. engaged in emotional check-ins with residential staff, and made slow improvement on naming and facing difficult emotions. His biggest struggles in this area involved reframing emotions when taking in others' perspectives. He also tended to take the victim stance and externalize problems, though he continued to work towards taking responsibility.

23. K.S. was treated at Daniels until August 2021, for a total of approximately 15 months.

Coverage Requests And Denials

24. The exchanges between defendants and R.S. concerning coverage of K.S.'s medical services at Daniels are complicated and inconsistent.

25. Below is a table that summarizes the exchanges that are at issue in this case. Each will be discussed in detail below the table.

Date of Correspondence	Dates of Service	Reason(s) for Denial	Reason Denial Is Wrong
February 19, 2021 (Ex. B)	June 4– October 1, 2020	“[N]o clinical information that supports this level of care.”	
	October 2, 2020–June 3, 2021	Applied residential care adult exclusion	18-year-old limitation violates Parity Act
June 22, 2021 (Ex. C)	Jan. 1, 2021 – Dec. 31, 2021	“HealthPartners will not cover the requested services because of a contractual exclusion or limitation of coverage under the member’s plan.”	Assuming this refers to 18-year-old age limitation, violates Parity Act
June 24, 2021 (Ex. D)	June 4, 2020 – October 1, 2020	“[C]linical review has confirmed services . . . are not eligible per the coverage policy”	
	October 2– December 31, 2020	Services on these dates “specifically excluded according to the terms of the 2020 plan”	Assuming this refers to age limitation, violates Parity Act
	All of 2021	SPD had been amended to allow for mental health treatment for adults, but coverage denied because Daniels Academy isn’t licensed to treat adults	Daniels had a waiver to treat patient

26. On **February 19, 2021**, defendants responded to K.S.’s appeal of the denial of R.S.’s treatment. For services for the first four months of his treatment, from June 4

through October 1, 2020, defendants denied coverage because “there is no clinical information that supports this level of care, or that you would not be able to participate in a lower level of care” (Ex. B).

27. A different reason is provided for the denial of services from October 2, 2020 “through present” (the letter is dated February 19, 2021, but according to its subject line, relates to services through four months in the future, June 3, 2021): “[Y]ou are over the age of 18 and these services are not treating an eating disorder. Therefore, we are unable to approve the request” (*Id.*). K.S. turned eighteen on October 2, 2020.

28. This denial covering services October 2, 2020 “through present” is a *prima facie* violation of the federal Parity Act. There is no corresponding age limitation that restricts coverage for services rendered at skilled nursing facilities. Defendants’ restriction based on age violates the Parity Act. *See, e.g., L.P. v. BCBSM, Inc.*, No. 18-cv-1241 (MJD/DTS), 2020 WL 981186 (D. Minn. Jan. 17, 2020).

29. On **June 22, 2021**, defendants denied coverage of K.S.’s services at Daniels for January 1 through December, 2021, “because of a contractual exclusion or limitation of coverage under the member’s plan” (Ex. C). This “explanation” – which reveals nothing – itself violates ERISA.

30. Assuming that the “contractual exclusion or limitation of coverage” in the June 22, 2021, letter refers to the purported age limitation from October 2, 2020 forward identified in the February 19, 2021, letter, it fails for exactly the same reason. This is a *prima facie* violation of the federal Parity Act. There is no corresponding age limitation that restricts coverage for services rendered at skilled nursing facilities. Defendants’

restriction based on age violates the Parity Act. *See, e.g., L.P. v. BCBSM, Inc.*, No. 18-cv-1241 (MJD/DTS), 2020 WL 981186 (D. Minn. Jan. 17, 2020).

31. On **June 24, 2021**, HealthPartners responded to K.S.'s second-level appeal. *See Ex. D.* HealthPartners denied services for the first four months of K.S.'s treatment, June 4, 2020, through October 1, 2020, because K.S. "did not meet the criteria in our coverage policy for *Residential-children's treatment services*" (**Ex. D at 2**).

32. Defendants denied coverage for the next three months, October 2, 2020 through December 31, 2020, because "[t]here is no coverage for . . . residential mental health treatment for adults for any diagnosis other than eating disorders" (**Ex. D at 3**). Defendants relied on the fact that in the period in question, R.S. had turned 18 on October 2, 2020, and thus was not a child and could not fit within the exception to the exclusion.

33. This is a *prima facie* violation of the federal Parity Act. There is no corresponding age limitation that restricts coverage for services rendered at skilled nursing facilities. Defendants' restriction based on age violates the Parity Act. *See, e.g., L.P. v. BCBSM, Inc.*, No. 18-cv-1241 (MJD/DTS), 2020 WL 981186 (D. Minn. Jan. 17, 2020).

34. As for the appeal of the denial of coverage for the last seven months of K.S.'s treatment, January 1 through August 2021, defendants stated that "care for services in 2021 is being reviewed against the updated 2021 plan," which it acknowledged it had amended to remove the coverage limitation based on an age restriction." Defendants stated that Daniels is "not licensed for adult residential mental

health,” and “[t]his determination will be issued separately and will include the applicable further appeal options” (**Ex. D at 2**). This decision was an abuse of discretion, because defendants had been informed that Daniels Academy had received a waiver from its state regulatory agency that permitted it to treat adults.

35. Defendants never issued any additional determinations concerning services covering these dates and thus the coverage is deemed denied.

36. K.S. has fully exhausted all of defendants’ required internal appeals applicable to this coverage.

COUNT I

**CLAIM FOR VIOLATION OF MENTAL HEALTH PARITY
AND ADDICTION EQUITY ACT UNDER 29 U.S.C. § 1185a
FOR AGE-BASED EXCLUSION WITHOUT CORRESPONDING COVERAGE LIMITATION**

37. K.S. realleges paragraphs 1 through 36 as if fully set forth.

38. This claim is brought under 29 U.S.C. § 1132(a)(1)(B). All the required preconditions have been met.

39. Under the Parity Act, which is made part of ERISA at 29 U.S.C. § 1185a, health insurers must ensure that both the financial requirements and treatment limitations applied to mental health or substance use disorder benefits are “no more restrictive” than those applied to medical/surgical benefits. 29 U.S.C. § 1185a(a)(3)(A). Plans must “treat sicknesses of the mind in the same way that they would a broken

bone.” *New York State Psychiatric Ass’n, Inc. v. United Health Grp.*, 980 F. Supp. 2d 527, 542 (S.D.N.Y.), *aff’d in part, vacated in part*, 798 F.3d 125 (2d Cir. 2015).

40. The Act defines a “treatment limitation” as a limit on either “the scope or duration of treatment.” 29 U.S.C. § 1185a(a)(3)(B)(iii).

41. Regulations promulgated under this statute focus the Court’s analysis in two respects. First, both “quantitative” and “nonquantitative” treatment limitations may run afoul of the Parity Act. 45 C.F.R § 146.136(a). While a quantitative limitation is reducible to a number, a nonquantitative treatment limitation is any other limitation on the scope or duration of treatment. *See id.* § 146.136(c)(4)(i).

42. Second, any limitation applied to mental health treatment must be scrutinized by comparing it to the limitations placed on an analogous medical or surgical treatment in the same classification. *Id.* § 146.136(c)(2).

43. Here, defendants restrict coverage for residential care to children for mental health diagnoses other than eating disorders. There is no such corresponding age-based limitation for services rendered at skilled nursing facilities and rehabilitation hospitals, which are the most analogous medical services to wilderness therapy. This nonquantitative treatment limitation violates the Parity Act.

44. Because of this violation, K.S was required to pay for medical services that were lawfully covered. K.S. paid a total of \$178,830 for services rendered at Daniels.

COUNT II

**CLAIM FOR PLAN BENEFITS FOR COVERAGE DENIED
BECAUSE OF FAILURE TO CONSIDER STATE WAIVER
BROUGHT UNDER 29 U.S.C. § 1132(a)(1)(B)**

45. K.S. realleges paragraphs 1 through 36 as if fully set forth.

46. This claim is brought under 29 U.S.C. § 1132(a)(1)(B). All the required preconditions have been met.

47. This claim covers services denied at Daniels Academy from R.S's 18th birthday on October 2, 2020, to his date of discharge in August 2021.

48. Defendants denied coverage of the services rendered in this period because R.S. had turned 18, and – according to defendants – Daniels Academy was not licensed to treat adults. In making that decision, defendants ignored a waiver that Daniels received that allowed it to treat adults under its state licensure.

49. This coverage decision was an abuse of defendants' discretion.

50. K.S. paid a total of \$178,830 for services rendered at Daniels from June 2020 to his discharge in August 2021.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for relief and judgment against HealthPartners as follows:

A. An Order requiring defendants to pay all individual claims as described in this Complaint.

B. All other relief, including pre- and post-judgment interest, reimbursement of costs and attorneys' fees as recoverable under law.

JURY TRIAL DEMANDED

Plaintiff demands a trial by jury on all counts so triable.

Dated: July 14, 2022.

Respectfully submitted,

/s/Jordan M. Lewis

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