



## PARTIES

2. Plaintiff Sariah Morgan, at all material times, resided in Warsaw, Indiana. Plaintiff, her husband and their children are all covered by a health insurance contract sponsored by her employer, Whitko Community School Corporation. Because Whitko Community School Corporation is a public entity, it is not subject to ERISA. The Certificate of Coverage outlining Plaintiff's rights and duties is attached at **Exhibit A** to this Complaint.

3. Plaintiff, through her employer, has always paid her premium charges, was never late with her payments, and never cancelled the policy.

4. Plaintiff has standing and is the appropriate named party because a) she is the Subscriber and a Member as defined under the Certificate of Coverage, b) she is the parent and legal guardian of her minor daughter, S. Mo., whose charges are at issue here, and c) her minor daughter, S. Mo., is an Enrolled Dependent as defined under the Certificate of Coverage.

5. PHP is a not-for-profit employee benefits company with headquarters in Fort Wayne, Indiana. The company provides health insurance, either through plan administration or by underwriting or both, to about 65,000 subscribers. In this Complaint, "PHP" refers to the named Defendant and all successor, predecessor, parent, subsidiary and related entities to which these allegations pertain.

6. PHP provides Certificates of Coverage to its subscribers, including Plaintiff and all class members. These Certificates are, in all material respects, identical. They are imposed on subscribers unilaterally; the Certificate's terms are not subject to negotiation.

7. Within the Certificate, PHP acknowledges that it has "sole and exclusive discretion" to make claims decisions, resolve appeals of those decisions, change, modify, withdraw or add benefits, and to terminate the health insurance contract (**Ex. A, at p. iii**). PHP's Certificate

covers services “subject to the terms, conditions, limitations, and exclusions of the Contract.” (*Id.*, p. 56).

8. Those terms include an “against medical advice” exclusion, which excludes coverage for “[c]harges related to a specific condition for which you have refused to comply or have terminated the scheduled service or treatment against the advice of an attending Doctor.” (*Id.*, p. 14).

#### VENUE

9. Venue in this Court is proper under Indiana R. Trial. P. 75 because PHP’s principal office is located in Allen County.

#### BACKGROUND

10. The coverage issue in this matter concerns the treatment of Plaintiff’s minor daughter, S. Mo., born in 2005.

11. S. Mo. is covered as a beneficiary under the health insurance that Plaintiff receives through her employer.

12. Over the last two years, S. Mo. has been diagnosed by separate psychiatrists as suffering from major depressive disorder, recurrent severe generalized anxiety disorder and an eating disorder (anorexia nervosa, restricting subtype).

13. Between June 15, 2021 and July 5, 2021, S. Mo. was treated inpatient at the Toledo Center for Eating Disorders (“TCED”). PHP pre-authorized this treatment. On July 6, 2021, S. Mo. was discharged to the care of Plaintiff and her husband. TCED’s Discharge Plan reported S. Mo.’s “Condition at Discharge” as “Medically Stable.”

14. On July 8, 2021, PHP issued a revised coverage decision, denying coverage for all care received through TCED by S. Mo. retroactive to her June 15, 2021 admission date because

“You have refused to comply or have terminated the scheduled service or treatment against the advice of an attending Doctor.”

15. Plaintiff timely appealed this denial by written grievance filed with PHP on November 8, 2021. On November 12, 2021, PHP affirmed its denial.

16. In response, Plaintiff timely requested an external appeal.

17. Pursuant to PHP’s Appeal Policy and Procedure, “all appeal considerations will be conducted by Clinix or Federal Hearings and Appeal Services, a URAC accredited company, who shall assign appeal considerations to health professionals who” meet multiple criteria specified therein.

18. The external appeal was sent to Federal Hearings and Appeals Services. Plaintiff’s claims were then considered by an unnamed lawyer assigned to the appeal, who upheld PHP’s denial on May 24, 2022.

19. The PHP denial is premised on a single sentence found in the TCED’s Discharge Plan, which reads: “[S. Mo.] is leaving against medical advice prior to achieving her ideal body weight of 120 lbs.”

20. Based on that sentence and PHP’s interpretation of the single exclusion at issue, PHP denied coverage for charges in excess of \$50,000 for all of S. Mo.’s care and treatment while at TCED, comprised of the following:

- a. \$48,720 in charges incurred from June 15, 2021 to July 5, 2021 at TCED;  
and
- b. \$1,672 in charges incurred through Mercy Saint Anne Hospital for laboratory services provided at TCED’s request during S. Mo.’s admission at TCED.

21. Plaintiff has satisfied all conditions precedent required in her PHP Certificate for commencing litigation, including exhausting all the contract's mandatory internal administrative remedies. PHP has waived all coverage defenses it did not raise in the administrative appeal.

#### CLASS ALLEGATIONS

22. Plaintiff brings this case on behalf of herself, S. Mo., a minor, and the following class:

*All persons (a) whose non-ERISA health insurance (b) was underwritten and/or administered by PHP (c) whose coverage claims were retroactively denied (d) by application of PHP's "against medical advice" exclusion (e) during the applications limitations period (f) through the date the class is certified.*

23. The exact number of members of the class is not known, but it is estimated there are at least 100 members in the class. Accordingly, class membership is so numerous that joinder of individual members of the class is impracticable. Individual class members are identifiable as the names and addresses of all members of the class are contained in business records maintained by Defendant and may be obtained through discovery.

24. Plaintiff's claims raise questions of law or fact common to all class members that predominate over any questions solely affecting individual class members in either class. Plaintiff's claims arise from the same practice or course of conduct and routine coverage adjudication by Defendant that gives rise to all claims. All class members are insured by contracts with materially identical coverage terms.

25. Plaintiff's claims are typical of the claims of all members of the class because Defendant applies the "against medical advice" exclusion in the same manner for each class member.

26. Plaintiff can fairly and adequately protect and represent the interests of each member of the class because she has no conflict of interest in this cause of action with the class.

Plaintiff's interests are perfectly aligned with the members of the class and she and the class members have a mutual interest in seeking damages and other relief against PHP. Plaintiff is represented by competent and experienced class action counsel.

27. This action is maintainable under Ind. R. Trial. P. 23(B)(1)(a) because the prosecution of separate actions by individual members of the class would create a risk of inconsistent or varying adjudications with respect to individual members of the class that would establish incompatible standards of conduct for Defendant.

28. Alternatively, this action is maintainable under Ind. R. Trial. P. 23(B)(3) because the questions of law or fact common to Plaintiff's claim and the claims of each member of the class predominate over any question of law or fact affecting only individual members of the class, and class representation is superior to other available methods for fair and efficient adjudication of this controversy. The common questions for Plaintiff and the class pervade and predominate the individualized claims because they are based on the common question of whether Defendant engaged in a common course of conduct and business practice that resulted in its retroactive coverage denial based on the application of its "against medical advice" exclusion. Moreover, all of the members of the class were insured under policies of insurance underwritten and/or administered by PHP with materially identical coverage terms. The superiority requirement is satisfied as well because a class action is the most manageable and efficient way to resolve the individual claims of this class.

**LEGAL CLAIMS**

**COUNT I  
BREACH OF CONTRACT**

29. Plaintiff realleges and incorporates paragraphs 1-28 as if fully set forth herein.

30. Plaintiff's claim is for breach of contract. It is brought individually and on behalf of the class.

31. The class period for this claim begins 10 years earlier from the date this lawsuit was commenced and continues until the date the class is certified.

32. Plaintiff entered into a contract, the Certificate, with PHP. PHP owed duties and obligations to Plaintiff under the Certificate.

33. PHP breached its contractual obligations to Plaintiff and the class by denying coverage, on a retroactive basis, of benefits provided for under the Certificate, based on PHP's interpretation and application of its "against medical advice" exclusion.

34. PHP erroneously construes its "against medical advice" exclusion to permit denial of payment for all health services received before an "against medical advice" discharge.

35. The "against medical advice" exclusion in the Certificate does not state, or even suggest, that the exclusion is to be applied retroactively. Applying conventional rules of construction, which include construing the insurance contract against the drafter and applying the burden of proof and persuasion for invoking exclusions against PHP, such a reading must fail.

36. Interpreting the "against medical advice" exclusion to permit retroactive denial of coverage violates public policy for reasons that include, by way of example and not limitation, the following:

- a. The exclusion, as PHP interprets it, "works a forfeiture on the insured, and such provisions have not been favored by the courts in any case." *See Arkansas Blue Cross & Blue Shield v. Long*, 303 Ark. 116, 118, 792

S.W.2d 602, 603 (Ark. 1990).

- b. The exclusion, as PHP interprets it, divests Plaintiff and the class of benefits already accrued, for which no reasonable basis exists.
- c. The exclusion, as PHP interprets it, is unfair, unjust and/or inequitable in violation of IC § 27-13-7-6.
- d. The exclusion, as PHP interprets it, undermines and otherwise conflicts with a patient's federal and state rights to refuse medical treatment.

37. As a direct and proximate result of PHP's breach of contract, Plaintiff and the class have suffered damages.

#### **JURY DEMAND**

Plaintiff, on behalf of herself, S. Mo., a minor, and all others similarly situated, demands a trial by jury on all issues so triable under the law.

**WHEREFORE**, Plaintiff requests the following:

- a. Certification of the class described above with the appointment of Plaintiff as the class representative and Plaintiff's counsel as class counsel;
- b. Judgment against Defendant, Physicians Health Plan of Northern Indiana, Inc., awarding Plaintiff and the class compensatory damages for Defendant's breach of contract in an amount to be determined at trial, together with prejudgment interest, attorney's fees (including an enhancement of fees), and costs.
- c. All other just and proper relief.

Respectfully submitted,

**FLETCHER VAN GILDER, LLP**

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