

## **Class-Action Suits in N.J. Challenge Health Coverage Limits for Eating Disorders**

NEWARK November 10 (BestWire) — Proposed class-action lawsuits filed in New Jersey federal court allege Horizon Blue Cross Blue Shield of New Jersey and Aetna Inc. breach their contracts with insureds by denying or reducing coverage for the treatment of eating disorders such as anorexia nervosa and bulimia.

Both suits were filed this week in U.S. District Court in New Jersey.

Dawn Beye of Wayne, N.J., a subscriber to a Horizon health insurance plan, sued the health insurer on behalf of her minor daughter, who suffers from anorexia nervosa, as well on behalf of others similarly situated. Anorexia is an eating disorder characterized by low body weight. Individuals with anorexia often control body weight by voluntary starvation, excessive exercise or other weight-control measures. Beye's daughter's illness requires that she be treated in an inpatient setting "considerably more" than 30 days a year, the suit says.

However, Horizon denied coverage for further inpatient treatment once its 30-day maximum coverage was reached by wrongfully determining that eating disorders, such as anorexia and bulimia, aren't "biologically-based mental illnesses," the suit charges.

The class comprises potentially thousands of subscribers of Horizon health plans throughout New Jersey, New York and Pennsylvania who were denied coverage or had coverage reduced for these eating disorders.

The plaintiffs want compensation for past medical expenses and injunctive relief requiring Horizon to pay for unlimited inpatient treatment in the future, said Eric. D. Katz, one of the attorneys who is representing Beye and the proposed class.

Inpatient treatment for eating disorders can cost upwards of \$750 to \$1,000 a day, said Katz of Nagel, Rice & Mazie in Roseland, N.J. So far, Beye is out of pocket almost \$200,000, he said, adding that many other families he's spoken to are out "in the six figures."

According to Katz, a 1999 New Jersey law, NJSA 26:2J-4.20, requires health insurers provide the same coverage for "biologically based mental illness" as they do for physical illnesses. It applies to mental or nervous conditions caused by a "biological disorder of the brain" that results in a "clinically significant or psychological syndrome or pattern that substantially limits the function of the person with the illness, including but not limited to, schizophrenia, schizoaffective disorder, major depressive disorder, bipolar disorder, paranoia and other psychotic disorders, obsessive-compulsive disorder, panic disorder or pervasive

developmental disorder or autism."

Because eating disorders aren't specifically mentioned in the parity law, Horizon contends the Legislature didn't intend to include them, Katz said, noting Horizon treats the list as "fully inclusive when clearly it is not." The suit alleges violations of the state law.

In a statement, Horizon said it provides coverage for treatment of anorexia, which is considered a non-biologically based mental illness under New Jersey law. As such, benefits for anorexia typically are limited to 30 days of inpatient care and 60 outpatient care visits per year under most policies, Horizon said. "Any argument that anorexia is a biologically based mental illness is contrary to its historic medical classification and New Jersey law," the company said.

Any member may appeal the company's decision through a formal process, Horizon said. If they exhaust Horizon's appeals process, they may take their appeal to the New Jersey Department of Banking and Insurance, which empanels an Independent Utilization Review Organization (IURO) to review cases. The IURO, which is made up of independent medical experts, recently ruled that Horizon properly applies the law and its contracted benefits, the company said.

However, Katz said the "consensus opinion" from eating disorder experts from around the United States and the world is that eating disorders are caused by a gene and "without a doubt" are biologically based. "In fact, often you find girls in the same family — sisters — suffering from these disorders because it is genetically based," he said. The experts are trying to identify the gene that causes eating disorders, he added.

Another attorney who specializes in health-care issues at a Washington, D.C.-based law firm has a much different perspective on the dispute.

"These actions, which seek far-reaching remedies, including punitive damages, are part of a disturbing trend in which the plaintiffs' bar seeks to punish health insurers simply for exercising their contractual and statutory responsibility to make coverage decisions based on the best medical science," said Brian Boyle, co-chairman of the health-care practice at O'Melveny & Myers LLP.

No one can deny the suffering that patients with eating disorders, and their families, endure because of their illnesses, he said. "But, regardless of where one comes out on whether anorexia is a 'biologically based mental illness,' it is undeniable that the question is actively being debated in the medical and psychiatric communities, and it's my sense that reasonable people are on both sides of the debate," Boyle said.

"The notion that health insurers should face punitive damages for taking one side of that reasonable debate is really quite extraordinary," he said.

Meanwhile, Cliff and Maria Deanna of Mountainside, N.J., whose daughter has anorexia, filed a similar proposed class-action suit against Aetna Inc. in the New Jersey federal court. They claim Aetna refused to pay for the full costs of treating their daughter's illness on grounds that the illness is not "biologically based." The family has health insurance coverage with Aetna through Maria Deanna's employment.

The plaintiffs, represented by Bruce Nagel of Nagel, Rice & Mazie, seek injunctive relief, compensatory and punitive damages.

Cynthia Michener, a spokeswoman for Hartford, Conn.-based Aetna, said the company needs to review the suit and look into the specifics of the case. However, Aetna covers treatments related to eating disorders, notably anorexia and bulimia, including hospitalization, outpatient treatment, psychotherapy and nutritional counseling, subject to any limits in the member's plan, she said.

"No matter how strongly we may wish to act on our personal desire to provide unlimited benefits for any one member, we cannot do so in fairness to all of our members who access benefits in accordance with their medical plan guidelines," Michener said.

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