2012 U.S. Dist. LEXIS 13487, *
LAURA BURTON v. BLUE SHIELD OF CALIFORNIA LIFE & HEALTH INSURANCE CO.
CV 10-09581-RGK (JEMx)
UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA
2012 U.S. Dist. LEXIS 13487

January 12, 2012, Decided
January 12, 2012, Filed
CORE TERMS: acute, inpatient, coverage, substance abuse, residential, detoxification, disorder, optional, abuse of discretion standard, provide coverage, administrator's, dependence, alcohol, health services, mental illness, medical conditions, abuse of discretion, administrative record, mental health, severe, withdrawal, qualify, Parity Act, benefit plan, conflict of interest, mental health, medically necessary, eligibility, depressive, panic

COUNSEL: [*1] Attorneys Present for Plaintiffs: Not Present.

Attorneys Present for Defendants: Not Present.

JUDGES: R. GARY KLAUSNER , UNITED STATES DISTRICT JUDGE.

OPINION BY: R. GARY KLAUSNER

OPINION

CIVIL MINUTES - GENERAL

Proceedings: (IN CHAMBERS) Order and Judgment Re Court Trial

I. INTRODUCTION

Laura Burton ("Plaintiff") has sued Blue Shield of California Life & Health Insurance Company ("BSC") for denial of benefits under a health insurance plan (the "Plan") governed by the Employee Retirement Income Security Act of 1974 ("ERISA") and for a judgment requiring payment of benefits owed. Plaintiff's claims arise out of BSC's denial of her request for payment for treatment she received at Cottonwood Tuscon between April 27, 2010 and June 27, 2010.

The parties have submitted their trial briefs to the Court for a bench trial. For the following reasons, the Court grants judgment in favor of Plaintiff.

II. JUDICIAL STANDARD

A determination that denies benefits under an ERISA plan is reviewed de novo "unless the benefit plan gives the administrator or fiduciary the discretionary authority to determine eligibility for benefits or to construe the terms of the plan." Firestone Tire & Rubber Co. v. Bruch, 489 U.S. 101, 115, 109 S. Ct. 948, 103 L. Ed. 2d 80 (1989). When the [*2] benefit plan expressly grants discretion to the administrator, a "highly deferential" abuse of discretion standard applies. Id.; see also Barnett v. Kaiser Foundation Health Plan, Inc., 32 F.3d 413, 415-17 (9th Cir. 1994). Under this deferential standard, the district court will overturn the administrator's decision only if the decision is arbitrary and capricious. Id.

When a de novo standard of review applies, the district court can review evidence extrinsic to the administrative record. Abatie v. Alta Health & Life Ins. Co., 458 F.3d 955, 970 (9th Cir. 2006). In reviewing the denial of benefits for abuse of discretion, however, the district court must consider only the administrative record. Id.

Here, the Plan expressly grants discretion to BSC to determine eligibility under the Plan. n1 Accordingly, the Court reviews BSC's determination under the abuse of discretion standard. In doing so, the Court is limited to the evidence presented to BSC at the time it reached its decision. n2

FOOTNOTES

n1 BSC's Group Agreement with Plaintiff states: Blue Shield Life shall have the power and discretionary authority to construe and interpret the provisions of this Plan, to determine the Benefits of this Plan

and [*3] determine eligibility to receive benefits under this Plan. Blue Shield Life shall exercise this authority for the benefit of all Insureds entitled to receive Benefits under this Plan.(BSC 00088.)

n2 Plaintiff objects to certain declarations filed by BSC with its trial brief on the grounds that such documents are outside the scope of the Administrative Record. The Court is confined to the scope of the Administrative Record in reviewing BSC's decision for abuse of discretion and does not consider these declarations.

In ERISA cases, the abuse of discretion standard is malleable under certain circumstances. One such circumstance is when a conflict of interest exists. When the "benefit plan gives discretion to an administrator or fiduciary who is operating under a conflict of interest, that conflict must be weighed as a factor in determining whether there is an abuse of discretion." Firestone, 489 U.S. at 115 (citations omitted). A "structural" conflict of interest exists where the insurer acts as both the plan administrator and the funding source for benefits. Abatie v. Alta Health & Life Ins. Co., 458 F.3d 955, 965 (9th Cir. 2006). That is the case here, as BSC is the sole source of funding [*4] for the Plan. When BSC denies benefits to claimants it retains money in its coffers. (Def's Br. 14.) Because of this conflict, the Court must weigh all the facts and circumstances and decide how much to credit the plan administrator's reason for denying coverage. Abatie, 458 F.3d at 968. However, the weighing of facts remains within the construct of the abuse of discretion standard. Id.

III. RELEVANT PLAN PROVISIONS

The Plan covers "inpatient" mental health services "in connection with hospitalization for the treatment of mental illness." (BSC 00068.) However, "[r]esidential care is not covered." (Id.) Residential care is defined in the Plan to cover "services provided in a facility or a freestanding residential treatment center that provides overnight/extended-stay services for Insured who do not qualify for Acute Care or Skilled Nursing Services." (BSC 00098.) An inpatient is defined as one who "has been admitted to a Hospital as a registered bed patient and is receiving services under the direction of a Physician." (BSC 00096.)

Within the category of mental health services, inpatient substance abuse treatment is provided only if selected as an "optional benefit" by the Employer. (BSC [*5] 00068.) However, the Plan specifies that acute medical detoxification is covered even if the Employer has not selected optional coverage for inpatient substance abuse treatment. Acute medical detoxification is not defined in the Plan, but acute care generally is that which is "rendered in the course of treating an illness, injury or condition marked by a sudden onset or change of status requiring prompt attention[.]" (BSC 00093.)

IV. FINDINGS OF FACT

BSC issued a Shield Savings 1800/3600 Health Insurance Policy effective December 1, 2009 to cover the employees and their dependants of Coastal Realty Capital Inc. ("CRC"), the company owned by Plaintiff's husband.

On April 11, 2010, Plaintiff's husband first called BSC regarding the possibility that Plaintiff might enter an inpatient mental health treatment facility. (BSC 01525.) The BSC employee provided Plaintiff's husband with information regarding prior authorization and how to find approved treatment facilities. (Id.) However the BSC employee did not discuss specifics or pre-authorize the treatment as she did not have enough information available at the time. (Id.)

On April 27, 2010, Plaintiff was admitted to the Cottonwood Tucson facility. [*6] (BSC 00307.) Plaintiff's initial treatment plan shows that she was suffering withdrawal from alcohol and benzodiazepines. n3 (BSC 00307.) Plaintiff's History and Physical, taken by a member of the Cottonwood Tuscon staff, describes her as suffering from anxiety, depression, and a recent relapse into alcohol abuse. (BSC 00265.) In Plaintiff's Psychiatric Evaluation taken the day after her admission, she is diagnosed under the standards of the DSM-IV as suffering from "alcohol dependence; major depressive disorder; posttraumatic stress disorder; panic disorder with agoraphobia; nicotine dependence; sedative-hypnotic dependence (physiologic)." (BSC 00276.)

FOOTNOTES

n3 Benzodiazepines are a type of psychoactive drug commonly used to treat anxiety, insomnia, and alcohol withdrawal.

A BSC employee, Tina Ladwig, attempted to receive information from Cottonwood Tucson about Plaintiff's medical care and treatment, but such information was not provided to BSC. (BSC 00670.) Instead BSC only learned that Cottonwood Tucson did not qualify as an Acute Level I Facility, as required to qualify as an "inpatient" treatment facility under the terms of the Plan. (Id.)

On June 15, 2010, BSC denied Plaintiff's request [*7] for coverage for her stay at Cottonwood Tucson. (BSC 00331.) BSC determined that the Plan did not cover Plaintiff's treatment as she received mental health care at a residential facility. (Id.)

On June 18, 2010, Plaintiff's husband called BSC to institute an appeal of the denial of her claim for coverage. (BSC 00738-39.) On June 24, 2010, BSC received Plaintiff's medical records from Cottonwood Tucson so that it could review them in order to process her appeal. (BSC 00157.)

On June 24, 2010, Plaintiff was discharged from Cottonwood Tucson. (BSC 00516.)

On July 13, 2010, BSC denied Plaintiff's appeal from the denial of her coverage request on two separate grounds. (BSC 00236.) First, BSC relied on the fact that Plaintiff's Plan does not cover residential treatment for mental health services. (Id.) Second, BSC noted that inpatient substance abuse treatment is not covered under the terms of the Plan except when the services are offered "to treat potentially life threatening symptoms of acute toxicity or acute withdrawal when [the patient is] admitted through the emergency room." (Id.) Therefore Plaintiff's treatment also could not be covered as treatment for substance abuse. (Id.)

V. CONCLUSIONS [*8] OF LAW

The Court finds that BSC did not abuse its discretion in finding that Plaintiff's treatment was not a covered benefit under the terms of the Plan, but that BSC is required to pay for Plaintiff's treatment under the same terms and conditions as it would for other medical conditions under the California Mental Health Parity Act, California Insurance Code § 10144.5.

A. BSC's Determination Was Not an Abuse of Discretion Under the Terms of the Plan

BSC denied Plaintiff's claim on two grounds. First, her claim was denied because the Plan does not provide coverage for residential mental health treatment. Second, her claim was denied because the Plan does not provide coverage for treatment of substance abuse except in instances of acute medical detoxification or where the Plan includes optional additional coverage for inpatient substance abuse treatment.

1. Residential Care Is Not Covered for Mental Health Treatment

The terms of an insurance Plan covered under ERISA are interpreted "in an ordinary and popular sense as would a [person] of average intelligence and experience." Gilliam v. Nev. Power Co., 488 F.3d 1189, 1194 (9th Cir. 2007). Courts are to first look to the actual and explicit [*9] language of the plan in light of the surrounding context. Id.

The terms of Plaintiff's Plan clearly state that mental health benefits are provided for "psychiatric Inpatient Services in connection with hospitalization for the treatment of mental illness . . . Residential care is not covered." (BSC 00068.) The Plan elsewhere defines "residential care" as "services provided in a facility or a free-standing residential treatment center that provides overnight/extended-stay services for Insureds who do not qualify for Acute Care or Skilled Nursing Services." (BSC 00098.)

BSC determined that Cottonwood Tucson was a residential care facility based on a phone call from a staff member at the facility informing BSC that Cottonwood Tucson does not have around the clock medical staffing and is not an Acute Level I facility. (See BSC 00670.)

When BSC initially denied Plaintiff's claim, it knew that her husband had called inquire about the scope of coverage for inpatient mental health services. Therefore, in the absence of any additional medical records it was not an abuse of discretion for BSC to determine that this was in fact the type of care that she received at Cottonwood Tucson. When BSC denied [*10] Plaintiff's claim on appeal, it had received her medical records from Cottonwood Tucson which clearly show that Plaintiff was receiving treatment for serious mental health problems.

It was not an abuse of discretion for BSC to deny Plaintiff's request for coverage of her stay at Cottonwood Tucson on the grounds that she received treatment for mental health services at a residential care facility and that such services are not within the scope of the Plan benefits.

2. Substance Abuse Treatment Is Not Covered Unless for Acute Medical Detoxification

Within the description of benefits provided for metal health services, the Plan separately describes the coverage provided for substance abuse treatment. First, inpatient substance abuse treatment is only covered in the event that an optional benefit is selected by the Employer. (BSC 00068.) Second, in the absence of the optional benefit, the Plan still provides coverage for "acute medical detoxification[.]" (Id.)

Plaintiff's Plan does not include the optional benefit for Inpatient substance abuse treatment, therefore the only circumstances under which her treatment for substance abuse could be covered is as "acute medical detoxification." n4 Although [*11] the Plan does not define the term "acute medical detoxification" it does define acute care to mean care provided for conditions of sudden onset, requiring prompt attention, and often including hospitalization. (BSC 00096.) Although the records indicate that Plaintiff received treatment for alcohol withdrawal symptoms, there is no indication that she entered Cottonwood Tucson as part of any sort of emergency detoxification program.

FOOTNOTES

n4 The Court also notes that even if Plaintiff's Plan had included the optional coverage for Inpatient substance abuse treatment, Plaintiff's treatment would likely not fit within the terms of that coverage as Cottonwood Tucson is a "residential care" facility rather than an Inpatient hospital.

Therefore, it was not an abuse of discretion for BSC to deny Plaintiff's request for coverage of her stay at Cottonwood Tucson on the grounds that she received treatment for substance abuse that did not fall within the scope of "medical acute detoxification."

B. California's Mental Health Parity Act

Although BSC did not abuse its discretion in finding that Plaintiff's request for benefits was not covered within the scope of her Plan, the inquiry does not stop here. The California [*12] Mental Health Parity Act ("the Act") may require coverage of treatment that is not within the scope of an actual plan. Harlick v. Blue Shield of Cal., 656 F.3d 832, 842 (9th Cir. 2011).

The Act requires that insurance plans within its scope provide coverage for "medically necessary treatment of severe mental illnesses" on "the same terms and conditions applied to other medical conditions." Cal. Ins. Code § 10144.5. The Ninth Circuit interpreted the Act to require that insurance companies provide coverage under the same financial terms and conditions for medically necessary treatment of "severe mental illnesses" and medical conditions. Harlick, 656 F.3d at 849-850. n5

FOOTNOTES

n5 In Harlick, the Ninth Circuit interpreted California Health & Safety Code § 1374.72, whereas this case falls within California Insurance Code § 10144.5. The two code sections are identical in terms of the pertinent language. The difference is that the Health & Safety Code applies to "health care service plans" whereas the Insurance Code applies to "disability insurance that covers hospital, medical, or surgical expenses." BSC admits that this Plan is covered under the terms of California Insurance Code § 10144.5, but argues [*13] that the logic of Harlick does not apply because the Ninth Circuit relied in part on the regulations implementing the Health & Safety Code and that those regulations would not apply to the Insurance Code. The Court finds BSC's argument unpersuasive. Even in the absence of the implementing regulations, the Ninth Circuit's holding is supported by the plain language of both statutes.

Plaintiff was diagnosed with "alcohol dependence; major depressive disorder; posttraumatic stress disorder; panic disorder with agoraphobia; nicotine dependence; sedative-hypnotic dependence (physiologic)" at the time of her admission to Cottonwood Tucson. (BSC 00276.) Both major depressive disorders and panic disorders are included in the statutory definition of "severe mental illnesses." Cal. Ins. Code § 10144.5(d). Therefore, Plaintiff's treatment at Cottonwood Tucson was, at least in part, treatment for a severe mental

illness and falls within the scope of the Act. There is no evidence in the record that the charges Plaintiff incurred during her stay can be separated out according to the particular conditions she was receiving treatment for.

Furthermore, BSC has waived its ability to argue that Plaintiff's [*14] treatment was not medically necessary and therefore not covered under the Act because it did not raise such arguments during the administrative review of Plaintiff's claim. See Harlick, 656 F.3d at 851. An insurance company is required to provide "specific reasons" for denying a claim after providing "full and fair review" of the record. Id. at 850 (quoting 29 U.S.C. § 1133). Therefore, failure to address a rationale for denying a claim during the administrative review process constitutes a waiver of the ability to raise any such arguments in a subsequent lawsuit. Id. at 851.

The Court therefore concludes that BSC is required to provide coverage for Plaintiff's stay at Cottonwood Tucson under the same terms and conditions as it would have had the treatment been for a medical condition.

For the reasons stated above, the Court ENTERS JUDGMENT IN FAVOR OF PLAINTIFF. BSC is required to cover Plaintiff's bills under the same terms and conditions as it would for other medical conditions.

IT IS SO ORDERED.