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Fifth Circuit Court of Appeals Remands Eating Disorder Case

Attorneys from Kantor & Kantor, LLP and Berg Plummer Johnson & Raval, LLP were pleased to receive the decision from the United States Court of Appeals for the Fifth Circuit in favor of their client, Katherine P.

In coming to this decision, the Court applied the de novo standard of review that was previously modified in Ariana M. v. Humana. When a court applies the de novo standard of review, it does not defer to the decision of the ERISA benefits plan administrator. It considers the issue as though it were doing so with a “blank slate.”

In 2012, Katherine was a 21-year-old who was suffering from a severe eating disorder. When she followed the advice of her doctors and sought partial hospitalization treatment, Humana initially approved this treatment as medically necessary mental health treatment. After only 12 days, however, and without examining Katherine or even speaking with her treating providers, Humana determined that this treatment was no longer medically necessary.

Humana immediately stopped paying for the treatment, leaving Katherine and her family financially responsible for her further treatment.

Katherine filed an appeal with Humana, providing declarations from Katherine, her mother, and physician explaining that prior treatment had been unsuccessful. The appeal also included Katherine’s medical records showing that her treatment was medically necessary because her condition had not improved after 12 days of partial hospitalization. Humana denied the appeal, forcing Katherine to file this lawsuit in February 2014.

Using Proprietary Guidelines to Determine Medical Necessity

The central issue in this case is whether Katherine's ongoing treatment was medically necessary. The Plan defines medically necessary as “health care services that a health care practitioner exercising prudent clinical judgment would provide” that are “[i]n accordance with nationally recognized standards of medical practice,” “clinically appropriate,” “[n]ot primarily for the convenience of the patient” or her providers, and “[n]ot more costly than an alternative” that would be just as effective. “Medically necessary” services must also have a grounding in “standards that are based on credible scientific evidence.”

Rather than rely on Plan language, Humana instead relied on Mihalik Criteria, a proprietary set of guidelines created for the insurance industry. The Criteria provide four factors for determining if partial hospitalization is medically necessary. Humana determined that Katherine did not meet two of these criteria. The district court granted Humana summary judgment, adopting the magistrate’s conclusion that Katherine P. failed ED.PM.3 and the ED.PM.4.2 sub-criteria regarding prior treatment attempts.

How the Fifth Circuit Saw It

On appeal, Katherine argued that Humana's medical record reviewers were biased, unqualified, and used improper criteria in reviewing the claim. The Fifth Circuit did not address those issues. However, the Fifth Circuit found evidence that there was a genuine dispute about whether Katherine met the ED.PM.4.2 sub-criteria.

The ED.PM.4.2 requires that a patient show that “[t]reatment at a less intense level of care has been unsuccessful in controlling” her eating disorder. The Court found evidence in the administrative record that Katherine met that requirement. The Court noted that in Katherine’s appeal to Humana, Katherine provided declarations describing her history of failed treatment at lower levels of care, including outpatient treatment. Katherine's physician provided a declaration stating that Katherine was “unable to follow a weight gain meal plan and to abstain from symptoms of purging and restricting while she was at a lower level of care.”

After six years of litigation, and eight years following her treatment at issue, Katherine finally received acknowledgement of the appeal she submitted so many years ago.

“What strikes me is that the Court is finally giving credit to the evidence that Katherine, her mother, and her treatment team submitted in her administrative appeal demonstrating lower levels of treatment were not successful to treat her eating disorder,” said Kantor & Kantor Partner Elizabeth Green.

The Court found that summary judgment for Humana was inappropriate and remanded the case back to the district court for a bench trial.

Says Attorney Amar Raval of Berg Plummer Johnson & Raval: “On behalf of Katherine, we are pleased with the Fifth Circuit’s decision, and that Katherine will have her day in court.”

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About Kantor & Kantor, LLP

Kantor & Kantor, LLP is one of the most experienced and highly respected law firms in the nation dealing with litigating insurance claims against insurance companies. Our firm also has extensive experience with the complex appeals procedure and Federal Court litigation of ERISA matters.

About Berg Plummer Johnson & Raval, LLP

Berg Plummer Johnson & Raval, LLP is a full-service business law firm offering sophisticated representation to a range of clients: individuals and commercial entities alike. The firm provides comprehensive services, as necessary, to ensure that client’s objectives are met.

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