

Another Residential Mental Health Treatment Claim Based on As-Applied Disparity Allowed to Proceed

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T.E. v. Anthem Blue Cross and Blue Shield, 2023 WL 2634059 (W.D. Ky. 2023)

Available at https://www.govinfo.gov/content/pkg/USCOURTS-kywd-3_22-cv-00202/pdf/USCOURTS-kywd-3_22-cv-00202-1.pdf

A participant in a self-insured health plan sued the plan and administrator after claims related to his child's subacute residential mental health treatment were denied. Alleging that the administrator imposed a treatment limitation on the child's mental health benefits when it used acute inpatient medical necessity criteria to evaluate nonacute treatment, the participant claimed that the denial violated the Mental Health Parity and Addiction Equity Act based on an "as-applied disparity" between the treatment limitation on mental health/substance use disorder benefits and the limitations on covered medical/surgical analogues. The administrator asked the court to dismiss the claim, arguing that the participant had neither adequately identified medical/surgical care analogous to the child's treatment at the residential facility nor alleged how medical/surgical services were treated differently than mental health services.

Rejecting the administrator's request to dismiss, the court accepted as sufficient, for this stage of the litigation, the participant's allegation that the plan's coverage of subacute residential treatment at a mental health facility was analogous to the plan's coverage of medical/surgical treatment at a skilled nursing or rehabilitation facility. Although the administrator argued that the participant only alleged conceptually that mental health services were treated worse than other services, the court pointed out that other courts are trending toward permitting mental health parity claims to proceed to discovery since information about how insurers process treatment limitations is generally only in the hands of the insurer. Based on the available evidence, the court held that the participant had sufficiently alleged all that was necessary for the case to proceed.

EBIA Comment: Other courts have also concluded that a mental health parity claim can be based on either "facial" or "as applied" violations. As courts increasingly allow these claims to proceed to trial, the cases become more and more costly for plans, insurers, and administrators to defend. For more information, see EBIA's Group Health Plan Mandates manual at Section IX.E ("Mental Health Parity: Nonquantitative Treatment Limitations"). See also EBIA's Self-Insured Health Plans manual at Section XIII.C.2 ("MHPA and MHPAEA: Mental Health Parity").

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