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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION**

CHRISTINE K., individually and on behalf of G.R.K., and G.R.K., Plaintiffs, v. BLUE CROSS & BLUE SHIELD OF RHODE ISLAND, an independent licensee of the BLUE CROSS AND BLUE SHIELD ASSOCIATION; EMBRACE HOME LOANS, INC.; and the BLUE CROSS & BLUE SHIELD OF RHODE ISLAND HEALTHMATE COAST-TO-COAST BE WELL MEDICAL PPO PLAN, Defendants.	COMPLAINT Civil No.
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Plaintiffs Christine K. and G.R.K., through their undersigned counsel, hereby complain against Defendants, alleging in the totality and alternatively as follows:

INTRODUCTION

G.R.K. received three months of medical treatment at Aspiro Adventure Therapy (“Aspiro”). The Defendants denied payment for any of the treatment, requiring Plaintiffs to pay nearly \$50,000 out of pocket. The Defendants did not contest medical necessity or any other

aspect of the treatment; rather, the sole ground for denial was that wilderness therapy is “excluded” under the Plan. This litigation thus centers around that narrow issue.

PARTIES, JURISDICTION, AND VENUE

1. Christine K. and G.R.K. are, and were at all times relevant hereto, residents of Hillsborough County, New Hampshire. Christine K. is G.R.K.’s mother.
2. According to documentation provided to Plaintiffs during the claims process, Defendant Blue Cross Blue Shield of Rhode Island (“BCBSRI”) is an independent licensee of the Blue Cross and Blue Shield Association.
3. Embrace Home Loans, Inc. is, and was at all times relevant hereto, Christine K.’s employer.
4. Defendant Blue Cross & Blue Shield of Rhode Island Healthmate Coast-to-Coast Be Well Medical PPO Plan (“the Plan”) is the name of the health plan sponsored by Defendant Embrace Home Loans, Inc.
5. Through her employment, Christine K. was and is a participant in the Plan. G.R.K. was and is Christine K.’s dependent and a beneficiary under the Plan.
6. According to BCBSRI, the Plan is HealthMate Coast-to-Coast PPO, Member ID #ERV200800221, Group #01002757 – Intermediate Behavioral Health.
7. The Plan is a welfare benefits plan under 29 U.S.C. § 1001 *et. seq.*, the Employee Retirement Income Security Act of 1974 (“ERISA”).
8. Upon information and belief, BCBSRI was the Claims Administrator for the Plan.
9. This lawsuit arises out of the treatment that G.R.K. received at Aspiro in Sandy, Utah.

10. This lawsuit is brought to obtain an order requiring BCBSRI to pay or reimburse expenses incurred during G.R.K.'s treatment at Aspiro. The remedies Plaintiffs seek under ERISA and the Plan are for benefits due under the terms of the Plan and pursuant to 29 U.S.C. § 1132(a)(1)(B); for appropriate equitable relief under 29 U.S.C. § 1132(a)(3) based on Defendants' violations of the Mental Health Parity and Addiction Equity Act of 2008 ("MHPAEA"); an award of pre-judgment interest; and an award of fees and costs pursuant to 29 U.S.C. § 1132(g).
11. This Court has jurisdiction under 29 U.S.C. § 1132(e)(1) and 28 U.S.C. § 1331.
12. Venue is appropriate pursuant to 29 U.S.C. § 1132(e)(2) and 28 U.S.C. § 1391(c) based on ERISA's provisions regarding nationwide service of process and venue and the location where the treatment at issue was provided.

FACTUAL ALLEGATIONS

13. G.R.K. received medical care and treatment at Aspiro from May 26, 2021 through August 18, 2021.
14. Aspiro was located in Sandy, Utah. It was licensed by the State of Utah as an outdoor youth treatment facility and was accredited by the Association for Experiential Education. Aspiro was a therapy program that used outdoor adventure to help heal struggling teens and young adults. It offered short-term, intermediate treatment options.
15. G.R.K. was referred to Aspiro because of two suicide attempts, cutting, anxiety, depression, social anxiety, identity issues, isolating, extreme anger toward parents, and all or nothing thinking.

16. G.R.K. was diagnosed with generalized anxiety disorder; autism spectrum disorder; major depressive disorder, recurrent episode; Tourette's disorder; gender dysphoria in children; and parent-child relational problem under the criteria established in the Diagnostic and Statistical Manual of Mental Disorders, fifth edition.
17. G.R.K. received treatment for each of these disorders at Aspiro, and experienced improvements in these conditions as a result of the treatment received at Aspiro.
18. According to its Subscriber Agreement, the Plan provides coverage for behavioral health services as follows:

Behavioral health services include the evaluation, management, and treatment for a mental health or *substance use disorder* condition. . . .

Mental health or *substance use disorders* are those that are listed in the most updated volume of either:

- the Diagnostic and Statistical Manual of Mental Disorders (DSM) published by the American Psychiatric Association; or
- the International Classification of Disease Manual (ICD) published by the World Health Organization.

This *plan* provides parity in *benefits* for behavioral healthcare services. . . . We review behavioral health *programs* to determine whether the services provided are clinically appropriate in the setting in which they are rendered. The following behavioral health services are covered when *medically necessary* and when rendered by a *provider* licensed by the State of Rhode Island or by the state in which the *provider* is located.
...

Residential Treatment Facility

This *plan* covers services at acute behavioral health *residential treatment facilities*, which provide:

- clinical treatment;
- medication evaluation management; and
- 24-hour on site availability of health professional staff, as required by licensing regulations.

Intermediate Care Services

This *plan* covers intermediate care services, which are facility-based *programs* that are:

- more intensive than traditional *outpatient* services;
 - less intensive than 24-hour *inpatient hospital* or *residential treatment facility* services; and
 - used as a step down from a higher level of care; or
 - used a step-up from standard care level of care.¹
19. The Plan contains a section describing “the services or categories of services that are not covered (excluded) under this *plan*.”²
20. The “Behavioral Health Services” that are not covered under the Plan are:
- Non-medical self-care, or self-help training (e.g. Alcoholics Anonymous (AA), Narcotics Anonymous (NA) meetings/services).
 - Behavioral training assessment, education, or exercise services unless provided for applied behavioral analysis.
 - Psychoanalysis for educational purposes, regardless of symptoms.
 - Psychotherapy services you may receive which are credited towards a degree or to further your education or training.³
21. The mental health treatment that G.R.K. received at Aspiro did not fall under any of the Policy’s exclusions for behavioral health services.
22. The Policy contains exclusions for:
- Recreation therapy services and programs, including wilderness programs.
 - Services provided in any covered program that are recreational therapy services, including wilderness programs, educational services, complimentary services, nonmedical self-care, self-help programs, or non-clinical services. Examples include, but are not limited to, Tai Chi, yoga, personal training, meditation.⁴
23. The exclusions in the preceding paragraph are for wilderness programs that are included in, and are subsets of, recreation therapy.
24. The outdoor behavioral health treatment that G.R.K. received at Aspiro was not provided by recreational therapists, was not a recreational therapy wilderness program, and was

¹ Subscriber Agreement at 18-19 (italics in original).

² Subscriber Agreement at 37.

³ Subscriber Agreement at 37.

therefore not excluded from coverage by the Policy language that excluded coverage for recreational therapy services or programs.

25. Plaintiffs submitted claims to BCBSRI for the treatment that G.R.K. received at Aspiro.
26. Through two Explanations of Benefits (EOBs) dated February 24, 2022 and March 2, 2022, BCBSRI initially denied the claims for G.R.K.'s treatment in their entirety. BCBSRI wrote "Documentation is needed to determine medical necessity. Members should refer to their benefit documents."
27. The EOBs did not specify any provision of the Plan, and the initial denial did not identify the exclusion upon which the denial was based and to which the EOBs referred.
28. The total amount of claims denied by BCBSRI was \$49,725.
29. BCBSRI later sent Christine K. a denial letter dated March 23, 2022 that contained the following rationale for the denial of G.R.K.'s treatment at Aspiro:

"It has been determined that Wilderness Programs are excluded from coverage under your HealthMate Coast to Coast contract. Behavioral Health Services not covered per subscriber agreement: Therapeutic recreation or wilderness programs. It is your responsibility to pay for any excluded services and any related expenses."

30. According to the denial letter, BCBSRI denied coverage for these services as a covered benefit under the Plan based on the claim that Aspiro is a therapeutic recreation or wilderness program.

Plaintiffs' Level 1 Appeal

31. Christine K. filed a Level One Appeal with BCBSRI on September 13, 2022.

⁴ Subscriber Agreement at 42.

32. In her appeal, Christine K. argued that Aspiro meets the Plan's definition of a "provider" because it was a 24/7 outdoor behavioral health treatment facility that was duly licensed by the state of Utah to provide intermediate services to children and adolescents.
33. In addition, Aspiro was accredited by a national organization which demonstrates their commitment to excellence in healthcare and compliance with best practices.
34. In addition, the Plan's "Exclusions" section contains two provisions that Christine K. suspected may have been used by BCBSRI to deny G.R.K.'s claims:
- Recreational therapy services and programs, including wilderness programs.
 - Services provided in any covered program that are recreational therapy services, including wilderness programs, educational services, complimentary services, nonmedical self-care, self-help programs, or non-clinical services.⁵
35. Thus, the Plan's exclusions simultaneously state that "wilderness programs" that are a type of recreational therapy are excluded, and then imply that these services may be rendered by a "covered program" at which the only portion that is not a covered benefit is the recreational therapy services. Regardless, these exclusions misrepresent the nature of outdoor behavioral health programs like Aspiro, as they are not recreational therapy programs, nor do they provide recreational therapy services.
36. According to the American Therapeutic Recreation Association (ATRA), certification for recreational therapists is administered by the National Council for Therapeutic Recreation Certification (NCTRC), and licensing requirements vary by state.

⁵ Subscriber Agreement at 42.

37. In Utah, state law requires recreational therapists to be licensed as either a Therapeutic Recreational Technician (TRT), a Therapeutic Recreational Specialist (TRS), or a Master Therapeutic Recreational Specialist (MTRS).⁶
38. Therefore, for BCBSRI to justify applying this recreational therapy exclusion to Aspiro, it must show that the services performed were being rendered by an individual licensed as a TRT, TRS, or MTRS. However, Aspiro did not employ any staff with those professional designations.
39. Christine K. reminded BCBSRI that ERISA requires a review that takes into account all comments, documents, records, and other information submitted by the claimant relating to the claim, without regard to whether such information was submitted or considered in the initial benefit determination.
40. Christine K. also stated that, under ERISA, the notification is required to set forth in a manner calculated to be understood by the claimant—
- (i) The specific reason or reasons for the adverse determination;
 - (ii) Reference to the specific plan provisions on which the determination is based; and
 - (iii) A description of any additional material or information necessary for the claimant to perfect the claim and an explanation of why such information is necessary.
41. Christine K. requested copies of any and all documentation related to both the initial determination and the level one appeal determination.
42. Christine K. expressed concern that the Plan might be applying inequitable treatment limitations of the kind prohibited by the MHPAEA. Among other things, Plaintiffs noted

⁶ Utah Recreational Therapy Practice Act, Utah Code §§58-40-101 to 602.

that, because the Plan provides coverage for the treatment of behavioral health conditions and medical conditions, it was obligated to administer these benefits at parity with one another. Plaintiffs noted that skilled nursing facilities, subacute rehabilitation facilities, and inpatient hospice facilities are an analog to intermediate outdoor behavioral health programs, and thus the benefits must be at parity therewith. Plaintiffs noted that the restrictions, requirements, and standards for administering behavioral health benefits – such as restrictions based on geographic location, facility type, provider specialty, and other criteria that limit the scope or duration of benefits for services provided under the plan or coverage – cannot be more intensive than those for comparable medical or surgical services.

43. Plaintiffs asked why, if the Plan maintained its denial, the terms and conditions of the Plan and the MHPAEA did not apply to G.R.K.'s case.
44. Plaintiffs asked for copies of all documents under which the Plan is operated including all governing plan documents, the summary plan description, any insurance policies in place for the benefits sought as well as any administrative services agreements that exist.
45. Plaintiffs further requested any clinical guidelines utilized in the Plan's determination, including the Plan's mental health, substance use disorder, medical/surgical or mental health and substance use disorder criteria.
46. Plaintiffs further requested copies of any reports or opinions provided by any physician or other professional.

47. Plaintiffs further requested the names, qualifications, and healthcare claim denial rates of all individuals who reviewed G.R.K.'s claim or with whom BCBSRI consulted about the claim.
48. On November 7, 2022, BCBSRI sent Christine K. a letter denying her appeal for coverage for G.R.K.'s claim stating that "the requested services are contractually excluded from coverage (not covered)" by the Plan, and cited the following:
- Section 4: Exclusions* of your [child]'s subscriber agreement lists the services or categories of services that are not covered under the plan. We will not cover services listed in this section even if they are prescribed or recommended by [G.R.K.'s] provider. On page 42 of the subscriber agreement, under the heading *Therapies*, it states that "*Recreation therapy services and programs, including wilderness programs*" are not covered benefits of [G.R.K.'s] insurance plan.
49. The letter did not respond to any of the arguments that Christine K. made in her level one appeal regarding reasons why the exclusion for wilderness programs that were recreation therapy did not apply to Aspiro's outdoor behavioral health program, nor did the letter respond to the other requests for information and documentation in the level one appeal.
50. The November 7, 2022 denial letter stated: "Please note that the BCBSRI policy provides for one level of internal review for appeals; therefore, the decision above must represent our final response in this matter."
51. As set forth above, Plaintiffs exhausted their pre-litigation appeal obligations under the terms of the Plan and ERISA.
52. The denial by BCBSRI/the Plan of benefits solely and directly caused Plaintiffs to pay the full cost for G.R.K.'s treatment at Aspiro.

53. After receiving the denial, litigation was Plaintiffs' only option to enforce their right to benefits owing under the Plan and seek reimbursement of expenses under the terms of the Plan (as written or as reformed or required by MHPAEA), and/or under the MHPAEA amendments to ERISA.
54. Plaintiffs thereafter retained the undersigned to pursue their rights and remedies under ERISA.
55. The remedies Plaintiffs seek herein are for the benefits due and pursuant to 29 U.S.C. § 1132(a)(1)(B), for appropriate equitable relief under 29 U.S.C. § 1132(a)(3) based on the Defendants' violation of the Mental Health Parity and Addiction Equity Act of 2008, pre-judgment interest, recoverable fees under 29 U.S.C. § 1132(g), and an award of costs and expenses under 29 U.S.C. § 1132(g) and other applicable law.
56. Plaintiffs do not seek double recovery.

FIRST CAUSE OF ACTION
(Claim for Recovery of Benefits Under 29 U.S.C. § 1132(a)(1)(B))

57. All allegations of this Complaint are incorporated here as though fully set forth herein.
58. ERISA imposes higher-than-marketplace quality standards on insurers and plan administrators. It sets forth a special standard of care upon plan fiduciaries such as BCBSRI, acting as agent of the Plan, to "discharge [its] duties in respect to claims processing solely in the interests of the participants and beneficiaries" of the Plan. 29 U.S.C. § 1104(a)(1).
59. BCBSRI and the Plan wrongly excluded coverage for G.R.K.'s treatment in violation of the terms of the Plan, which promise benefits to employees and their dependents for

medically necessary treatment of mental health and substance use disorders. (BCBSRI and the Plan have not challenged that G.R.K.'s treatment was medically necessary.)

60. ERISA also underscores the particular importance of accurate claims processing and evaluation by requiring that administrators provide a "full and fair review" of claim denials and to engage in a meaningful dialogue with Plaintiffs in the pre-litigation appeal process.
61. The denial letters demonstrate the absence of a meaningful analysis of Plaintiffs' appeal. Among other things, BCBSRI and the Plan did not engage with or respond to the issues presented in the appeal and did not meaningfully address the arguments or concerns raised during the appeal process.
62. BCBSRI and the Plan breached their fiduciary duties to Plaintiffs when they failed to comply with their obligations under 29 U.S.C. § 1104 and 29 U.S.C. § 1133 to act solely in G.R.K.'s interest and for the exclusive purpose of providing benefits to ERISA participants and beneficiaries, to produce copies of relevant documents and information to claimants upon request, and to provide a full and fair review of G.R.K.'s claims.
63. The actions of BCBSRI and the Plan in denying payment for G.R.K.'s treatment are a violation of the terms of the Plan, as written and/or as reformed as required or permitted under ERISA.

SECOND CAUSE OF ACTION

(Violation of the Mental Health Parity and Addition Equity Act (29 U.S.C. § 1132(a)(3))

64. All allegations of this Complaint are incorporated here as though fully set forth herein.

65. The MHPAEA is incorporated into ERISA and is enforceable by ERISA participants and beneficiaries as a requirement of both ERISA and MHPAEA. The obligation to comply with both ERISA and MHPAEA is part of BCBSRI/the Plan's fiduciary duties.
66. Generally speaking, MHPAEA requires ERISA plans to provide no less generous coverage for treatment of mental health and substance use disorders than they provide for treatment of medical/surgical disorders.
67. MHPAEA prohibits ERISA plans from imposing treatment limitations on mental health or substance use disorder benefits that are more restrictive than the predominant treatment limitations applied to substantially all medical/surgical benefits and makes illegal separate treatment limitations that are applicable only to mental health or substance use disorder benefits. 29 U.S.C. § 1185a(a)(3)(A)(ii).
68. Impermissible nonquantitative treatment limitations (NQTLs) under MHPAEA include, but are not limited to, restrictions based on geographic location, facility type, provider specialty, or other criteria that limit the scope or duration of benefits for mental health or substance use disorder treatment. 29 C.F.R. § 2590.712(c)(4)(ii).
69. Comparable benefits offered by the Plan for medical/surgical treatment analogous to the benefits the Plan excluded for G.R.K.'s treatment include subacute inpatient treatment settings such as skilled nursing facilities, inpatient rehabilitation facilities, etc.
70. The Plan does not exclude coverage for medically necessary care of medical/surgical conditions based on geographic location, facility type, provider specialty, or other criteria in the manner BCBSRI/the Plan excluded coverage of treatment for G.R.K. at Aspiro.

71. Upon information and belief, BCBSRI/the Plan has not applied a similar exclusion in the context of skilled nursing facilities or other analogs to Aspiro. Alternatively and in addition, if BCBSRI/the Plan has never received a similar claim in a setting other than mental health treatment, then BCBSRI/the Plan is aware that it is enforcing an exclusion that is only applicable to mental health conditions/benefits.
72. Upon information and belief, BCBSRI/the Plan's denial of coverage also violated MHPAEA in application or effect. Because BCBSRI/the Plan declined to produce the requested documents and materials requested by Plaintiffs, further discovery is needed to resolve this aspect of Plaintiffs' claims.
73. BCBSRI and/or the Plan violated 29 C.F.R. § 2590.712(c)(4)(i) because the terms of the Plan, as written or in operation, use processes, strategies, standards, or other factors to limit coverage for mental health or substance use disorder treatment in a way that is inconsistent with, and more stringently applied to, the processes, strategies, standards, or other factors used to limit coverage for medical/surgical treatment in the same classification.
74. Plaintiffs expressly requested BCBSRI to perform a MHPAEA analysis of the Plan. They expressed serious concern that BCBSRI was violating the statute and asked for a response using specific and direct examples. BCBSRI failed or declined to do this and failed or declined to even address the MHPAEA in its denial letters or EOBs.
75. The violations of MHPAEA by Defendants are breaches of fiduciary duty and give Plaintiffs the right to obtain appropriate equitable remedies as provided under 29 U.S.C. § 1132(a)(3) including, but not limited to:

- (a) A declaration that the action of Defendants violated the MHPAEA;
- (b) An injunction ordering Defendants to cease violating the MHPAEA and requiring compliance with the statute;
- (c) An Order requiring the reformation of the terms of the Plan and the medical necessity criteria utilized by Defendants to interpret and apply the terms of the Plan to ensure compliance with the MHPAEA;
- (d) An Order requiring disgorgement of funds obtained or retained by Defendants as a result of their violations of the MHPAEA;
- (e) An Order requiring an accounting by Defendants of the funds wrongly withheld by each Defendant from participants and beneficiaries of the Plan as a result of Defendants' violations of the MHPAEA;
- (f) An Order based on the equitable remedy of surcharge requiring Defendants to provide payment to Plaintiffs as make-whole relief for their loss;
- (g) An Order equitably estopping Defendants from denying Plaintiffs' claims in violation of the MHPAEA; and
- (h) An Order providing restitution from Defendants to Plaintiffs for their loss arising out of Defendants' violations of the MHPAEA and unjust enrichment.

76. In addition, Plaintiffs are entitled to an award of pre-judgment interest pursuant to U.C.A. § 15-1-1, and attorney fees and costs pursuant to 29 U.S.C. § 1132(g).

WHEREFORE, Plaintiffs seek relief as follows:

1. Judgment in the total amount that is owed for G.R.K.'s treatment at Aspiro;
2. Pre- and post-judgment interest to the date of payment;

3. Appropriate equitable relief under 29 U.S.C. § 1132(a)(3) as outlined under Plaintiffs' Second Cause of Action;
4. Recoverable fees and costs incurred pursuant to 29 U.S.C. § 1132(g); and
5. For such further relief as the Court deems just and proper.

DATED this 29th day of April, 2025.

By /s/ Karra J. Porter

Karra J. Porter

Attorney for Plaintiffs

County of Plaintiffs' Residence:
Hillsborough County, New Hampshire