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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION**

**JOHN POTTER,
Plaintiff,**

Case No.: SACV 14-0837-DOC (KESx)

vs.

**FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

**BLUE SHIELD OF CALIFORNIA LIFE
AND HEALTH INSURANCE COMPANY,
Defendant.**

1 **I. INTRODUCTION**

2 Following a bench trial in this matter, the Court issues the following findings of fact and
3 conclusions of law pursuant to Federal Rule of Civil Procedure 52. To the extent that any
4 findings of fact are included in the Conclusions of Law section, they shall be deemed findings
5 of fact, and to the extent that any conclusions of law are included in the Findings of Fact
6 section, they shall be deemed conclusions of law.

7 **II. FINDINGS OF FACT**

8 **Background**

- 9 1. Plaintiff John Potter (“Plaintiff”) enrolled in Defendant Blue Shield of California Life
10 and Health Insurance Company’s (“Blue Shield” or “Defendant”) PPO 25 health plan
11 (the “Plan”) through his employer, Hughes Investments. Plaintiff’s Opening Brief (“Pl.
12 Op. Br.”) (Dkt. 129) at 1.
- 13 2. The Plan is an employee welfare benefit plan regulated by the Employee Retirement
14 Income Security Act of 1974 (“ERISA”).
- 15 3. Plaintiff’s dependent son, Nicholas Potter (“Potter”), is also a covered beneficiary under
16 the plan. *Id.*

17 **Period Covered by Blue Shield**

- 18 4. Potter was admitted to Innercept, LLC Residential Treatment for Adolescents and
19 Young Adults (“Innercept”) on January 17, 2012. Motion to Determine the
20 Administrative Record (“Pl. Admin. Rec.”) (Dkt. 121) Ex. 9 at Potter0516.
- 21 5. Potter was a resident at Innercept between January 17, 2012 and December 13, 2012. *Id.*
22 Ex. 10 at Potter0523.
- 23 6. When he was admitted, Potter was taking Abilify (an antipsychotic medication used to
24 treat depression and bipolar disorder), Zoloft (used to treat depression and stress
25 disorders), and Protonix (used to treat gastroesophageal disease). *Id.* Ex. 9 at
26 Potter0519.

- 1 7. While at Innercept, Potter was treated by psychiatrists Dr. Michael Ullrich and Dr. Tim
2 Stoddard, and received therapy from social worker Rosa Mettler. Blue Shield’s Opening
3 Brief (“BS Op. Br.”) (Dkt. 117) at 5.
- 4 8. In January 2012, Potter ran away from Innercept at least twice. Pl. Op. Br. at 4.
- 5 9. A January 26, 2012 drug screen tested positive for alcohol and marijuana. *Id.* at 10; *see*
6 Pl. Admin. Rec. Ex. 8 at Potter0492.
- 7 10. On February 1, 2012, Potter ran away from Innercept again. Pl. Op. Br. at 5.
- 8 11. A few days later, Potter was hospitalized at Kootenai Behavioral Health. He was
9 released by February 8, 2012. *Id.*; BS Op. Br. at 7.
- 10 12. Later in February, Potter and another resident had a physical altercation, which resulted
11 in a call to the police. Pl. Admin. Rec. Ex. 9 at Potter0052
- 12 13. In early March 2012, Potter “eloped”—or ran away from—from Innercept again. BS
13 Op. Br. at 8.
- 14 14. On March 6, 2012, Dr. Ullrich prescribed lithium (used to treat bipolar disorder and
15 depression) and Klonopin (used to treat panic disorder and anxiety) for Potter. *Id.* at 9.
- 16 15. Altogether, Potter ran away from Innercept seven times during the first two months of
17 treatment (*i.e.* in January through March of 2012). *Id.* at 19.
- 18 16. In early May 2012, Drs. Ullrich and Stoddard decreased Potter’s Zyprexa prescription
19 and increased his lithium prescription. BS Op. Br. at 11.
- 20 17. On May 17, 2012, Potter drank alcohol while away from the Innercept facility on a
21 “pass.” Pl. Op. Br. at 6; BS Op. Br. at 12; Pl. Admin. Rec. Ex. 6 at Potter0321.
- 22 18. On May 29, 2012, Dr. Stoddard decreased Potter’s Klonopin prescription. Pl. Admin.
23 Rec. Ex. 8 at Potter0469.
- 24 19. Therapist logs from May 30, 2012 state that Potter relapsed two weeks before the log
25 entry (*i.e.* sometime around May 16, 2012), specifically indicating that Potter smoked
26 cigarettes. *Id.* Ex. 6 at Potter0314.
- 27 20. On June 5, 2012, Dr. Stoddard decreased Potter’s Klonopin prescription again. *Id.* Ex. 8
28 at Potter0467.

1 21. On June 7, 2012, Potter ran away from Innercept again. He was not in contact with
2 Innercept or his family until the next day. Pl. Op. Br. at 7. Potter's elopement lasted
3 about five days, and he returned to Innercept on June 13, 2012. *Id.*; BS Op. Br. at 13–
4 14.

5 22. Blue Shield has covered Potter's treatment for the period described above—specifically,
6 January 17, 2012 to June 30, 2012. Defendant's Administrative Record Ex. D (Dkt.
7 132-6) (remand decision).

8 **Period in Dispute**

9 23. On July 10, 2012, Dr. Stoddard entered an order for Potter to discontinue Klonopin
10 altogether. Pl. Admin. Rec. Ex. 8 at Potter0511.

11 24. On July 25, 2012, Potter was moved from the Stabilization Program to the Transition
12 Program following a successful overnight visit with his family. Pl. Op. Br. at 7.

13 25. On August 7, 2012, Dr. Stoddard decreased Potter's Zyprexa prescription again (as
14 described above, Potter's Zyprexa prescription was decreased in early May 2012). Pl.
15 Admin. Rec. Ex. 8 at Potter0507.

16 26. On September 5, 2012, Dr. Stoddard again decreased Potter's Zyprexa prescription. *Id.*
17 at Potter0490.

18 27. On September 18, 2012, Dr. Stoddard again decreased Potter's Zyprexa prescription. *Id.*
19 at Potter0503.

20 28. Potter's September 30, 2012 drug screen was positive for alcohol. Pl. Admin. Rec. Ex. 8
21 at Potter0491.

22 29. On October 4, 2012, Potter was told that he tested positive for alcohol. When given the
23 news, he became verbally aggressive. *Id.* Ex. 6 at Potter0244.

24 30. On November 4, 2012, Potter tested positive for alcohol and illegal substances. *Id.* Ex. 8
25 at Potter0491.

26 31. Potter was discharged from Innercept on December 13, 2012. *Id.* Ex. 6 at Potter0204.

27 32. Upon discharge, Innercept recorded Potter's diagnoses as: (1) Bipolar Disorder Type II,
28 (2) Anxiety Disorder, (3) Polysubstance Dependence, and (4) Attention

1 Deficient/Hyperactivity Disorder Predominantly Inattentive Type. *Id.* Ex. 10 at
2 Potter0523.

3 33. There is no record of Potter running away from Innercept between July 1, 2012 and
4 December 13, 2012.

5 34. Blue Shield has refused to cover Potter's treatment at Innercept for the period between
6 July 1, 2012 and December 13, 2012.

7 **III. CONCLUSIONS OF LAW**

8 35. Documents filed with this Court bearing the Bates numbers Potter0683–0825 are the
9 operative plan documents. *See* Order, Oct. 14, 2016 (Dkt. 145) at 4 (sealed).

10 36. The Administrative Record in this case consists of:

11 a. BSC00001–00684, 0678–681, 0768–0770, 0771, and 0774–1195;

12 b. INNERCEPT00001–0341; and

13 c. Potter0001–0977.

14 *See id.*

15 37. The parties have stipulated to a *de novo* standard of review in this case. Order, June 3,
16 2015 (Dkt. 53). Under *de novo* review, “[t]he court simply proceeds to evaluate whether
17 the plan administrator correctly or incorrectly denied benefits.” *Abatie v. Alta Health &*
18 *Life Ins. Co.*, 458 F.3d 955, 963 (9th Cir. 2006).

19 38. “[W]hen the court reviews a plan administrator’s decision under the *de novo* standard of
20 review, the burden of proof is placed on the claimant.” *Muniz v. Amec Const. Mgmt.,*
21 *Inc.*, 623 F.3d 1290, 1294 (9th Cir. 2010) (citing *Horton v. Reliance Standard Life Ins.*
22 *Co.*, 141 F.3d 1038, 1040 (11th Cir. 1998); *Farley v. Benefit Trust Life Ins. Co.*, 979
23 F.2d 653, 658 (8th Cir. 1992)).

24 **What the Plan Covers**

25 39. Plaintiff’s Plan includes a section entitled “Principal Limitations, Exceptions,
26 Exclusions, and Reductions.” Pl. Admin. Rec. Ex. 1 (“Plan Docs”) at Potter0765. Under
27 this section, “[u]nless exceptions to the following are specifically made elsewhere in
28 [the Plan], no benefits are provided for the following services . . . :”

1 3. for or incident to services rendered in the home or hospitalization or
2 confinement in a health facility primarily for rest, Custodial, Maintenance,
3 Domiciliary Care, or Residential Care except as provided under Hospice Program
4 Benefits (se Hospice Program Benefits for exception); . . .

5
6 6. for substance abuse treatment or rehabilitation on an Inpatient, Partial
7 Hospitalization or Outpatient basis except as specifically listed under Mental
8 Health and Substance Abuse Benefits[.]

9 *Id.* at Potter0766.

10 40. Under the “Mental Health and Substance Abuse Benefits” section, “benefits are
11 provided for the following Medically Necessary covered Mental Health and substance
12 abuse Services:”

13 1. Inpatient Mental Health Services

14 Benefits are provided for psychiatric Inpatient Services in connection with
15 hospitalization for the treatment of mental illness Residential care is not
16 covered.

17
18 (If inpatient substance abuse treatment, expect for acute medical detoxification, is
19 selected as an optional benefit by your Employer, an accompanying insert
20 provides the benefit description)

21 *Id.* at Potter0757.

22 41. “Inpatient” is defined as “an individual who has been admitted to a Hospital as a
23 registered bed patient and is receiving Services under the direction of a Physician.” *Id.*
24 at Potter0787. “Residential care” is defined as “services provided in a facility or a free-
25 standing residential treatment center that provides overnight/extended-stay services for
26 Insured who do not qualify for Acute Care or Skilled Nursing Services.” *Id.* at
27 Potter0789.

- 1 42. Plaintiff concedes that Potter was not an inpatient.¹ See Plaintiff’s Responsive Trial
2 Brief (“Pl. Resp. Br.”) (Dkt. 142) at 14.
- 3 43. The Plan expressly does not cover residential care for either mental health or substance
4 abuse treatment.
- 5 44. However, plans within the scope of the California Mental Health Parity Act (“Parity
6 Act”) must provide all “medically necessary treatment” for “severe mental illnesses,”
7 whether or not that treatment is included in the language of the plan. *Harlick v. Blue*
8 *Shield of California*, 686 F.3d 699, 710–19 (9th Cir. 2012). Defendant concedes that
9 Plaintiff’s plan comes within the scope of the Parity Act. Defendant’s Trial Exhibit (“Def.
10 Tr. Ex.”) at 2 (filed as attachment to this Order).
- 11 45. The Parity Act does not require health insurers to cover substance abuse treatment.
- 12 46. Thus, despite its terms, the Plan covers mental health treatment to the extent required by
13 the Parity Act.
- 14 47. Accordingly, Plaintiff must show that residential treatment for Potter’s bipolar disorder
15 continued to be medically necessary after June 30, 2012.

16 **Waiver of Reason for Denial**

- 17 48. “The general rule . . . is that a court will not allow an ERISA plan administrator to assert
18 a reason for denial of benefits that it had not given during the administrative process.”
19 *Harlick*, 686 F.3d at 719–20.
- 20 49. Plaintiff argues that Defendant should not be allowed to argue that the Plan does not
21 cover substance abuse treatment, because it never raised this as a reason for denial until
22 its Opening Trial Brief in this case. Pl. Resp. Br. at 11–13.
- 23 50. Claim forms submitted by Plaintiff describe Potter’s illness as “mental illness-bipolar”
24 and “mental health treatment” and do not mention substance abuse. BSC00005, 00057,
25 00201, 00327. Plaintiff has presented no evidence that he requested coverage for
26 substance abuse treatment in addition to mental health treatment.

27
28

¹ Nevertheless, Plaintiff’s employer did not purchase the optional “Inpatient substance abuse treatment” benefit. See Declaration of Jennifer Garrison (“Garrison Decl.”) Exs. A-1, A-2 (Dkts. 132-2, 132-3).

1 51. Under these circumstances, the Court finds that there is no evidence that Defendant was
2 aware, or should have been aware, during the administrative process that Plaintiff was
3 seeking coverage for substance abuse treatment. Defendant therefore did not waive the
4 argument that the Plan does not cover substance abuse treatment.

5 **Medical Necessity**

6 52. The Plan defines “medical necessity” as “includ[ing] only those [Services] which have
7 been established as safe and effective, are furnished under generally accepted
8 professional standards to treat illness, injury or medical condition, and which, as
9 determined by the Plan, are:

- 10 a. Consistent with the Plan’s medical policy;
- 11 b. Consistent with the symptoms or diagnosis;
- 12 c. Not furnished primarily for the convenience of the patient, the attending
13 Physician or other provider; and
- 14 d. Furnished at the most appropriate level which can be provided safely and
15 effectively to the patient.”

16 Plan Docs at Potter0788.

17 53. In addition, “[i]f there are two or more Medically Necessary services that may be
18 provided . . . Blue Shield Life will provide benefits based on the most cost-effective
19 service.” *Id.* Finally, “[t]he Plan reserves the right to review all claims to determine
20 whether Services are Medically Necessary[.]” *Id.*

21 54. Plaintiff argues that the Plan’s definition is the applicable definition of “medically
22 necessary,” because “the rights and obligations of the parties to an ERISA plan derive
23 entirely from the plan documents.” Pl. Resp. Br. at 2 (citing *CIGNA Corp. v. Amara*,
24 563 U.S. 421, 436 (2011); *Aetna Health Inc. v. Davila*, 542 U.S. 200, 213 (2004)).

25 55. The Plan documents—specifically the Group Policy Shield Spectrum PPO Plan—
26 include an integration clause: “This Policy, including appendices, attachments, or other
27 documents incorporated by reference, constitutes the entire agreement between the
28

1 parties, and any statement made by the Employer or by any Insured shall, in the absence
2 of fraud, be deemed a representation and not a warranty.” Plan Docs at Potter0704.

3 56. Plaintiff’s Certificate of Insurance (“Certificate”) is expressly integrated into the Plan.
4 *Id.* at Potter0692. The Certificate does not contain a separate integration clause
5 describing which documents make up the Plan. *See id.* at Potter0711–0801.

6 57. Accordingly, the terms of the integration clause in paragraph 52, above, control.

7 58. Defendant “has adopted a medical policy regarding the medical necessity of residential
8 treatment, which is contained in the level of care guidelines.” Defendant’s Responsive
9 Trial Brief (“Def. Resp. Br.”) (Dkt. 143) at 13.

10 59. Defendant suggests that its level of care guidelines are incorporated by reference into
11 the Plan through language in the Certificate stating that in order for a service to be
12 medically necessary, it must be “consistent with the Plan’s medical policy” and
13 “furnished at the most appropriate level.” *Id.* at 13; *see* Plan Docs at Potter0788.
14 Defendant argues that Plaintiff is required to show that these guidelines—as opposed to
15 the Plan’s definition of “medical necessity”—were satisfied. Def. Resp. Br. at 14.

16 60. In *Prichard v. Metropolitan Life Ins. Co.*, 783 F.3d 1166, 1170–71 (9th Cir. 2015), the
17 Ninth Circuit was faced with an integration clause that listed the documents included in
18 the plaintiff’s plan. *Id.* at 1170. The Court held that

19 a Plan document’s integration clause, which was plainly intended to keep insureds
20 from binding the administrator to promises made in extraneous documents like the
21 Benefit Summary[, which was not listed in the integration clause], also precluded
22 the administrator from binding insureds to the Summary’s discretion-granting
23 clause because what is sauce for the gander must be sauce for the goose.

24 *Id.* (internal quotation marks and alterations omitted) (citing *Grosz-Salomon v. Paul*
25 *Revere Life Ins. Co.*, 237 F.3d 1154, 1161 (9th Cir. 2001)). The Ninth Circuit therefore
26 limited its analysis to the documents listed in the integration clause. *Id.* at 1170–71.

27 61. Here, the Plan documents before the Court do not include level of care guidelines.
28 However, the integration clause allows for documents to be incorporated by reference.

1 Plan Docs at Potter0704. Accordingly, the Court will limit its analysis to Plan
2 documents and documents properly incorporated by reference.

- 3 62. “Under California law, which governs this dispute, parties to a contract may validly
4 incorporate by reference into their agreement the terms of another document when
5 specific factors are met.” *First Nat. Bank of N. California v. St. Paul Mercury Ins. Co.*,
6 603 F. App’x 597, 598 (9th Cir. 2015) (citing *Avery v. Integrated Healthcare Holdings,*
7 *Inc.*, 218 Cal. App. 4th 50 (2013)).

8 For the terms of one document to be incorporated into another, “the reference must
9 be clear and unequivocal, the reference must be called to the attention of the other
10 party and he must consent thereto, and the terms of the incorporated document
11 must be known or easily available to the contracting parties.”

12 *Socoloff v. LRN Corp.*, 646 F. App’x 538, 539 (9th Cir. 2016) (quoting *Shaw v. Regents*
13 *of Univ. of Calif.*, 58 Cal. App. 4th 44, 54 (1997)).

- 14 63. Seven guidelines have been brought to the Court’s attention. On remand, Potter’s case
15 was reviewed by Dr. Michael Millman, Blue Shield’s Director of Behavioral Health,
16 and Dr. Barbara Center, an independent reviewer. *See* Def. Tr. Br. at 21.

- 17 64. Dr. Center applied:

- 18 a. Magellan’s “Residential Treatment, Psychiatric, Adult and Geriatric”
19 guideline, BSC0774–0775, and
20 b. Magellan’s “Residential Treatment, Substance Use Disorders, Rehabilitation,
21 Adult” guideline, BSC0776–0777.

22 Def. Tr. Ex. at 18; *see* Garrison Declaration Ex. F-2 at 769.

- 23 65. Defendant asserts that Dr. Millman applied the same guidelines as Dr. Center, but also
24 applied the following other guidelines:

- 25 a. Blue Shield’s “Residential Acute Behavioral Health Level of Care, Adult”
26 b. Blue Shield’s “Residential Acute Behavioral Health Level of Care, Child or
27 Adolescent”
28 c. Blue Shield’s “Substance-Related Disorders: Residential Care”

1 d. Blue Shield’s “Substance-Related Disorders, Residential Behavioral Health
2 Level of Care, Child or Adolescent”

3 e. Blue Shield’s “Bipolar Disorders: Residential Care”

4 Def. Tr. Ex. at 18.

- 5 66. Despite the reviewers’ reliance on multiple guidelines, Defendant contends that the only
6 dispositive guidelines are the psychiatric residential treatment guidelines apparently
7 referenced in Defendant’s initial denial letter. *Id.* at 19; *see* BSC0278 (referencing the
8 “Blue Shield Life medically necessary criteria for coverage of psychiatric residential
9 treatment”). Defendant suggests that these guidelines are Blue Shield’s “Residential
10 Acute Behavioral Health Level of Care, Adult” guidelines. *Id.* at 20; *see* BSC1141–47.
- 11 67. None of the guidelines listed above have been incorporated into the Plan by reference.
12 “[A] compilation of secret, internal guidelines not disclosed to the employer or to
13 participants or beneficiaries of the Plan” cannot be dispositive. *Egert v. Connecticut*
14 *Gen. Life Ins. Co.*, 900 F.2d 1032, 1033–34 (7th Cir. 1990).
- 15 68. First, the undefined terms “medical policy” and “most appropriate level” are not “clear
16 and unequivocal references” to a document entitled “Residential Acute Behavioral
17 Health Level of Care, Adult.” *Socoloff*, 646 Fed. App’x 538. Further, these terms are not
18 clear and unequivocal references to level of care guidelines more generally, nor do they
19 indicate that such guidelines exist at all.
- 20 69. Second, there is no evidence that this reference, such as it is, was called to Plaintiff’s
21 attention.
- 22 70. Third, there is no evidence that Plaintiff consented to the incorporation of the guidelines
23 by reference.
- 24 71. Finally, the Court finds that the contents of the guidelines were not known or easily
25 available to Plaintiff. The guidelines were not included in the Plan documents. *See* Plan
26 Docs. They were not included in the various correspondence sent by Defendant. *See*
27 Defendant’s Administrative Record Ex. A-1 (Dkt. 132-2). Defendant’s reviewers
28 applied a total of seven different guidelines, only one of which Defendant now argues is

1 relevant. Def. Tr. Ex. at 18. One reviewer, Dr. Center, did not rely on the “relevant”
2 guideline at all. Defendant’s Administrative Record Ex. D (Dkt. 132-6) at BSC00768–
3 70. Finally, Plaintiff was not aware of these guidelines until this litigation. *See* Pl. Resp.
4 Br. at 4.

- 5 72. Defendant suggests that Plaintiff was aware of the guidelines because they were
6 referenced in Defendant’s initial denial letter. Def. Tr. Ex. at 19; *see* BSC0278
7 (referencing the “Blue Shield Life medically necessary criteria for coverage of
8 psychiatric residential treatment”). However, the initial denial letter is not a Plan
9 document, and in any event the Court finds this reference manifestly insufficient to
10 incorporate Blue Shield’s “Residential Acute Behavioral Health Level of Care, Adult”
11 guideline into the Plan by reference.
- 12 73. Accordingly, the Court HOLDS that the applicable definition of “medically necessary”
13 is that found in the Plan documents, specifically at Potter0788.

14 **Whether Potter’s Treatment from July 1, 2012 to December 13, 2012 Was Medically**
15 **Necessary Under the Plan Definition**

16 74. To reiterate, the Plan defines “medical necessity” as “includ[ing] only those [Services]
17 which have been established as safe and effective, are furnished under generally
18 accepted professional standards to treat illness, injury or medical condition, and which,
19 as determined by the Plan, are:

- 20 a. Consistent with the Plan’s medical policy;
- 21 b. Consistent with the symptoms or diagnosis;
- 22 c. Not furnished primarily for the convenience of the patient, the attending
23 Physician or other provider; and
- 24 d. Furnished at the most appropriate level which can be provided safely and
25 effectively to the patient.”

26 Plan Docs at Potter0788.

27 75. First, there is no document in the Plan documents or incorporated by reference that is
28 purports to be a medical policy. Thus, while the Court cannot find that Potter’s stay at

1 Innercept between July 1, 2012 and December 13, 2012 was consistent with the Plan's
2 medical policy, it also cannot find that it was inconsistent with such policy.

3 Accordingly, the factor is met.

- 4 76. Second, the Court finds that the residential treatment was consistent with Potter's
5 symptoms and diagnosis. Upon admission to Innercept, Potter was provisionally
6 diagnosed with (1) R/O Bi-Polar Disorder Type II, (2) Anxiety Disorder NOS, (3)
7 Polysubstance Dependence, and (4) Attention-Deficient/Hyperactivity Disorder
8 Predominantly Inattentive Type. Pl. Admin. Rec. Ex. 9 at Potter0521. This diagnosis
9 had not changed at the time Potter was discharged. *Id.* Ex. 10 at Potter0523.

10 As to his substance abuse problem, Potter relapsed at least twice in the relevant
11 period, testing positive for alcohol on October 4, 2012; for marijuana and "spice" on
12 November 3, 2012; and for alcohol and marijuana on November 4, 2012. *Id.* Ex. 8 at
13 Potter0491.

14 As to Potter's general symptoms, a review of Potter's Patient Medication Sheets
15 between July 10, 2012 and December 11, 2012 shows that Potter was overall doing
16 well. *See id.* at Potter0493–0512. As Plaintiff points out, Potter's treating physician, Dr.
17 George Ullrich, noted in April that Potter was "at significant risk of relapse into
18 substance abuse, impulsive behavior and unpredictable response to stressors." Pl. Op.
19 Br. at 11 (quoting *id.* at Potter0477). By contrast, the June through December
20 Medication Sheets do not include any similar language. Rather, Potter is described as
21 cooperative, alert, applying for jobs, and generally comfortable with the repeated
22 decreases in his medication. *See* Pl. Admin. Rec. Ex. 8 at Potter0493–0512. In October,
23 staff expressed concern that Potter was reactive and "edgy emotionally." *Id.* at
24 Potter0499. Later that month, Potter was described as having "limited investment in the
25 program . . . not meeting expectations, resistant to redirection, and reactive mood." *Id.*
26 at Potter0497. However, by November 27, 2012, the Medication Sheet was wholly
27 positive, noting that Potter was aware of his risk for future drug use. *Id.* at Potter 0495.
28 Finally, on December 11, 2012, the Medication Sheet included no negative comments.

1 Potter was “in a stable and positive place emotionally,” and discharge was planned for
2 that week. *Id.* at Potter0493.

3 Based on the above, the Court finds that Potter’s treatment at Innercept was
4 consistent with his symptoms and diagnosis. Potter was receiving individual therapy,
5 group therapy, and family therapy. Pl. Op. Br. at 20. He was under the treatment of a
6 psychiatrist who made adjustments to his medication through mid-September 2012. *See*
7 Pl. Admin. Rec. Ex. 8 at Potter0490. Between June 20, 2012 and July 25, 2012, Potter
8 was in Innercept’s Intensive program. Pl. Op. Br. at 7. The Intensive program is for
9 young adults who have not developed “the usual coping skills” for making age-
10 appropriate choices. *Id.* at 4 n.7. It includes “comprehensive medical management,
11 individual therapy, group therapy, and twenty-four hour supervision.” *Id.* at 4. After
12 July 25, 2012 and until discharge, Potter was in Innercept’s Transition program. *Id.*; Pl.
13 Admin. Rec. Ex. 6 at Potter0284. The Transition program includes “medication
14 management, individual and family therapy, as well as twenty-four hour staff
15 availability.” Pl. Op. Br. at 7 n.9. These treatments can hardly be said to inconsistent
16 with diagnoses of bipolar disorder, anxiety disorder, attention deficit disorder, and
17 polysubstance abuse. Thus, the Court finds Plaintiff has met his burden on this
18 requirement.

19 77. Third, the Court finds that Potter’s stay at Innercept was not primarily for his or his
20 treating physician’s convenience. As Plaintiff points out, Potter did not want to be there.
21 Pl. Resp. Br. at 20. There is no evidence that Potter’s stay at Innercept was for anyone’s
22 “convenience” at all.

23 78. However, the Court finds that Plaintiff has not met his burden to prove that Potter’s
24 treatment was the most appropriate level which could have been provided safely and
25 effectively to Potter. *See* Plan Docs at Potter0788. “Appropriate” is not defined in the
26 Plan documents. In common parlance, the word means “especially suitable or
27 compatible,” or “fitting.” *Appropriate*, MERRIAM-WEBSTER DICTIONARY (11th ed.
28 2009). Thus, the Court must determine whether the residential treatment between July 1,

1 2012 and December 13, 2012 was the most fitting treatment for Potter during that
2 period.

3 Potter's medication was decreased or eliminated several times in the period at
4 issue. Potter decreased his use of Zydys in July 2012. Pl. Admin. Rec. Ex. 8 at
5 Potter0511. Also in July 2012, he stopped taking Klonopin for several days, and his
6 physician ordered Klonopin discontinued. *Id.* On August 7, 2012, Potter's physician
7 discontinued his morning does of Zyprexa. *Id.* at Potter0507. Potter's evening Zyprexa
8 was decreased twice, on September 5 and 18, 2012. *Id.* at Potter0490, 0501. No other
9 changes appear to have been made. Upon discharge, Innercept noted that Potter was
10 anticipated to be entering a program "for ongoing support in developing independent
11 skills." *Id.* Ex. 10 at Potter0524. Potter had experienced "long periods of integrity," but
12 was "susceptible to substance use [when] he was experiencing frustration,
13 disappointment, or need for social acceptance." *Id.* at Potter0524. In addition, as
14 opposed to his running away from the program seven times in the first two months at
15 Innercept, there is no evidence that Potter ran away from the program in the period at
16 issue.

17 In light of these facts, the Court cannot find that twenty-four/seven care in a
18 residential facility was *the most appropriate level* at which care could have been
19 provided to Potter. There seems to be no question that Potter benefitted from the
20 Innercept programs. However, in the five and a half month period between July 1, 2012
21 and December 13, 2012, Potter's medications were tweaked just four times—and all of
22 the changes were decreases. There is no evidence in the record that suggests that
23 medicine management and therapy could not have been safely and effectively
24 accomplished, for example, on an outpatient basis. Indeed, Potter was enrolled in
25 college courses and occasionally working, indicating that he did not need twenty-four-
26 hour care. *See id.* at Potter0524 ("Nicholas has completed . . . two successful semesters
27 at North Idaho College."); *id.* Ex. 6 at Potter0263 (Potter made "decision to take [a] job
28 . . . and work[ed] 3 times per week[.]").

1 79. If more than one “medically necessary” service is available, the Plan states that
2 Defendant will cover “the most cost-effective service.” Here, no alternative medically
3 necessary treatment has been presented, and the Court therefore need not determine
4 whether Potter’s treatment at Innercept was more cost-effective than some other
5 treatment for the same diagnoses.²

6 80. Because Plaintiff has not met his burden to prove that Potter’s residential treatment
7 from July 1, 2012 to December 13, 2012 was the most appropriate level of care that
8 could have been safely and effectively provided to Potter, Plaintiff has failed to show
9 that the treatment was “medically necessary” as defined in the Plan.

10 81. Accordingly, Potter’s residential stay at Innercept between July 1, 2012 and December
11 13, 2012 was not covered by the Plan.

12 **IV. CONCLUSION**

13 For the reasons explained above, the Court HOLDS that the plan administrator correctly
14 denied benefits in this case. *See Abatie*, 458 F.3d at 963.

15 Defendant Blue Shield shall submit a proposed judgment **on or before April 24, 2017**.

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17 DATED: April 7, 2017

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DAVID O. CARTER
21 UNITED STATES DISTRICT JUDGE

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27 ² Plaintiff moved to supplement the administrative record with invoices from Shoreline Treatment Center, in an effort to
28 show that more expensive treatment options have been covered by Defendant. *See* Motion to Supplement the Administrative
Record (Dkt. 122). The Court denied the motion as to these invoices. Order, Oct. 14, 2016 (Dkt. 144). The Court notes that
even if these invoices had been allowed into the record, they are irrelevant. Per the terms of the Plan, Blue Shield only
chooses the most cost effective service “[i]f there are two or more Medically Necessary services that may be provided.” Plan
Docs at Potter0788 (emphasis added). That is not the case here.