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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

KIMBERLY SHEPARD,

No. 2:09-cv-00843-MCE-DAD

Plaintiff,

v.

MEMORANDUM AND ORDER

UNITED HEALTHCARE INSURANCE
COMPANY,

Defendant.

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Presently before the Court is Plaintiffs' Ex Parte Application for Temporary Restraining Order. Certain prerequisites must be satisfied prior to issuance of a temporary restraining order. See Granny Goose Foods, Inc. v. Brotherhood of Teamsters & Auto Truck Drivers, 415 U.S. 423, 439 (1974) (stating that the purpose of a TRO is "preserving the status quo and preventing irreparable harm just so long as is necessary to hold a hearing [on the preliminary injunction application], and no longer"). In order to warrant issuance of such relief, Plaintiffs must demonstrate either: 1) a combination of probable success on the merits and a likelihood of irreparable injury; or

1 2) that serious questions are raised and the balance of hardships
2 tips sharply in favor of granting the requested injunction.
3 Stuhlbarq Int'l Sales Co., Inc. v. John D. Brush & Co., Inc., 240
4 F.3d 832, 839-40 (9th Cir. 2001); Winter v. Natural Resources
5 Defense Council, 129 S. Ct. 365, 375 (2008) (likelihood rather
6 than possibility of success on the merits required for issuance
7 of preliminary injunctive relief). These two alternatives
8 represent two points on a sliding scale, pursuant to which the
9 required degree of irreparable harm increases or decreases in
10 inverse correlation to the probability of success on the merits.
11 Roe v. Anderson, 134 F.3d 1400, 1402 (9th Cir. 1998); United
12 States v. Nutri-cology, Inc., 982 F.2d 394, 397 (9th Cir. 1992).

13 Plaintiff recognizes that the very purpose of a TRO is to
14 preserve the status quo until a preliminary injunction hearing
15 may be had. Accordingly, Plaintiff characterizes the status quo
16 in this case as one in which her current level of care must be
17 preserved. However, while the Court understands the basis for
18 her argument and is sympathetic to her position, the status quo
19 in this case is actually one in which Plaintiff voluntarily
20 admitted herself into a residential treatment facility and is now
21 seeking a Court order compelling Defendant to provide coverage
22 for services it has at all times denied. The Court is unable to
23 do so without drastically altering, rather than preserving, the
24 status quo.

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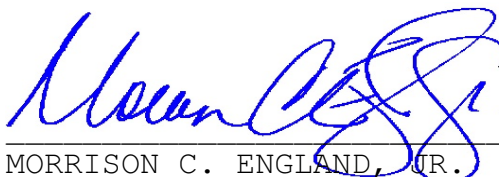
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1 Moreover, Plaintiff has submitted insufficient evidence to
2 indicate that she has exhausted available administrative
3 remedies. Indeed, there is no evidence before the Court
4 suggesting Plaintiff requested from the California Department of
5 Managed Health Care to have the matter submitted to an
6 independent agency for external medical review.

7 Consequently, for the reasons just stated, Plaintiff's
8 Application is DENIED without prejudice.

9 IT IS SO ORDERED.

10 Dated: April 3, 2009

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13 MORRISON C. ENGLAND, JR.
14 UNITED STATES DISTRICT JUDGE
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