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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

JEANENE HARLICK,	)	Case No. 08-3651 SC
	)	
Plaintiff,	)	ORDER RE: CROSS MOTIONS FOR
	)	<u>SUMMARY JUDGMENT</u>
v.	)	
	)	
BLUE SHIELD OF CALIFORNIA GROUP	)	
HEALTH PLAN; PACIFIC CONSTRUCTION	)	
& MANUFACTURING, INC. GROUP HEALTH	)	
PLAN,	)	
	)	
Defendants.	)	
	)	

**I. INTRODUCTION**

This matter comes before the Court on the parties' cross-motions for summary judgment. On January 15, 2010, Defendant California Physicians' Service d/b/a Blue Shield of California ("Defendant" or "Blue Shield") filed a Motion for Summary Judgment. Docket No. 45 ("Def.'s MSJ"). On the same day, Plaintiff Jeanene Harlick ("Plaintiff" or "Harlick") filed a Motion for Summary Judgment. Docket No. 48 ("Pl.'s MSJ"). Both parties filed oppositions and replies. Docket Nos. 53 ("Pl.'s Opp'n"), 54 ("Def.'s Opp'n"), 61 ("Def.'s Reply"), 64 ("Pl.'s Reply"). Having considered the submissions from both parties, the Court GRANTS Blue Shield's Motion for Summary Judgment and DENIES Harlick's Motion for Summary Judgment.

United States District Court  
For the Northern District of California

1 **II. BACKGROUND**

2 **A. The Plan**

3 Effective June 1, 2006, Blue Shield and Pacific Construction &  
4 Manufacturing, Inc. ("Pacific Construction") entered into a Group  
5 Health Service Contract. Claim File ("CF") at BSC128-149.<sup>1</sup> Among  
6 the benefits available to participants in the Pacific Construction  
7 Plan was the Blue Shield Spectrum PPO Plan 250 Standard. Id. at  
8 BSC 150-251 (hereinafter "the Plan").<sup>2</sup> Plaintiff was an employee  
9 of Pacific Construction who enrolled as a subscriber to the Plan.  
10 Docket No. 18 ("Am. Compl.") ¶¶ 1-5. The Plan is regulated by the  
11 Employee Retirement Income Security Act of 1974 ("ERISA"), 88 Stat.  
12 829, as amended, 29 U.S.C. §§ 1001-1461. Id. ¶ 1.

13 The Plan provides that "Blue Shield of California shall have  
14 the power and discretionary authority to construe and interpret the  
15 provisions of this Plan, to determine the Benefits of this Plan and  
16 determine eligibility to receive Benefits under this Plan." CF at  
17 BSC00241. With regard to mental health benefits, the plan covers  
18 inpatient services, outpatient or office services, psychological  
19 testing, and psychosocial support. Id. at BSC00220-222. For  
20 inpatient services, "[b]enefits are provided for psychiatric  
21 Inpatient Services in connection with hospitalization or  
22 psychiatric Partial Hospitalization (day treatment) for the

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23 <sup>1</sup> Pursuant to the Stipulation of the parties, Plaintiff submitted  
24 for manual filing a CD containing the Claim File of Defendant Blue  
25 Shield. Docket No. 48-2. All citations will be to the Claim File  
("CF").

26 <sup>2</sup> Pacific Construction & Manufacturing Inc. Group Health Plan was  
27 named as a Defendant in this action, but dismissed from this action  
28 without prejudice on February 4, 2010, based on Blue Shield's  
acknowledgment that it will be liable for any judgment or  
settlement concerning payment or non-payment to Plaintiff. See  
Docket No. 60.

1 treatment of mental illness . . . . Residential Care is not  
2 covered." Id. A Hospital is defined as:

3 (1) a licensed institution primarily engaged in  
4 providing, for compensation from patients,  
5 medical, diagnostic and surgical facilities for  
6 care and treatment of sick and injured persons on  
7 an Inpatient basis, under the supervision of an  
8 organized medical staff, and which provides 24-  
9 hour a day nursing service by registered nurses.  
10 . . . (2) a psychiatric Hospital accredited by  
11 the Joint Commission on Accreditation of  
12 Healthcare Organizations; or (3) a psychiatric  
13 healthcare facility as defined in Section 1250.2  
14 of the Health and Safety Code.

15 Id. at BSC00171. The PPO Plan also provides for up to 100 days per  
16 year of treatment at a Skilled Nursing Facility ("SNF"), id. at  
17 BSC202, which is defined as "a facility with a valid license issued  
18 by the California Department of Health Services as a Skilled  
19 Nursing Facility or any similar institution licensed under the laws  
20 of any other state, territory, or foreign country." Id. at  
21 BSC00173.

22 **B. Plaintiff Admitted to Castlewood Treatment Center**

23 Plaintiff suffered from an eating disorder, severe depression,  
24 obsessive compulsive disorder ("OCD"), and severe anxiety. Am.  
25 Compl. ¶ 7. Plaintiff was admitted to the Castlewood Treatment  
26 Center ("Castlewood") on April 17, 2006. CF at BSC391.  
27 Castlewood, located in Missouri, specializes in eating disorders.  
28 Id. at BSC393. On May 10, 2006, Plaintiff had a feeding tube  
placed in her at St. Luke's Hospital in Missouri to help her gain  
weight. Id. at BSC396. Plaintiff remained in Castlewood for  
approximately 191 days. Pl.'s MSJ at 5. Blue Shield paid for  
Plaintiff's first eleven days at Castlewood from April 17, 2006 to  
April 27, 2006. CF at BSC321. Blue Shield initially regarded

1 Castlewood as a "Preferred Hospital." Id. When Plaintiff  
2 submitted claims for subsequent treatment at Castlewood, Blue  
3 Shield denied those claims. See id. at BSC408-09, 413, 563-64,  
4 567, 662. Plaintiff filed this action alleging that Blue Shield  
5 improperly denied her claim for benefits. See Am. Compl.

6  
7 **III. LEGAL STANDARD**

8 **A. Standard of Review**

9 "[A] denial of benefits . . . is to be reviewed under a de  
10 novo standard unless the benefit plan gives the administrator or  
11 fiduciary discretionary authority to determine eligibility for  
12 benefits or to construe the terms of the plan." Firestone Tire &  
13 Rubber Co. v. Bruch, 489 U.S. 101, 115 (1989). If the plan confers  
14 such discretion, then the denial is reviewed for an abuse of  
15 discretion. Metropolitan Life Ins. Co. v. Glenn, 128 S.Ct. 2343,  
16 2347-48 (2008) ("MetLife"). If the same entity both decides who  
17 gets benefits and pays for them, then it labors under a  
18 "structural" conflict of interest. Id. at 2349-50; Saffon v. Wells  
19 Fargo & Co. Long Term Disability Plan, 522 F.3d 863, 868 (9th Cir.  
20 2008); Abatie v. Alta Health & Life Ins. Co., 458 F.3d 955, 965  
21 (9th Cir. 2006). District courts must weigh this conflict "as a  
22 factor in determining whether there is an abuse of discretion."  
23 MetLife, 128 S.Ct. at 2348 (quoting Firestone, 489 U.S. at 115).  
24 Taking into account the conflict "necessarily entails a more  
25 complex application of the abuse of discretion standard." Montour  
26 v. Hartford Life & Acc. Ins. Co., 588 F.3d 623, 626 (9th Cir.  
27 2009). "[T]he court must consider numerous case-specific factors,  
28 including the administrator's conflict of interest, and reach a

1 decision as to whether discretion has been abused by weighing and  
2 balancing those factors together." Id.

3 The weight the court assigns to the conflict of interest  
4 depends on the fact and circumstances of the particular case.  
5 According to the Supreme Court:

6 The conflict of interest . . . should prove more  
7 important (perhaps of great importance) where  
8 circumstances suggest a higher likelihood that it  
9 affected the benefits decision, including, but  
10 not limited to, cases where an insurance company  
11 has a history of biased claims administration.  
12 It should prove less important (perhaps to the  
13 vanishing point) where the administrator has  
14 taken active steps to reduce potential bias and  
15 promote accuracy, for example, by walling off  
16 claims administrators from those interested in  
17 firm finances, or by imposing management checks  
18 that penalize inaccurate decisionmaking  
19 irrespective of whom the inaccuracy benefits.

20 MetLife, 128 S.Ct. at 2351 (internal citation omitted). In  
21 determining whether to view the decision of a conflicted  
22 administrator with skepticism, district courts may also consider  
23 "any evidence of malice, of self-dealing, or of a parsimonious  
24 claims-granting history." Abatie, 458 F.3d at 968. District  
25 courts may weigh a conflict more heavily "if, for example, the  
26 administrator provides inconsistent reasons for denial, . . .  
27 fails adequately to investigate a claim or ask the plaintiff for  
28 necessary evidence . . . ; fails to credit a claimant's reliable  
evidence . . . ; or has repeatedly denied benefits to deserving  
participants by interpreting plan terms incorrectly or by making  
decisions against the weight of evidence in the record." Id. at  
968-69.

The district court "may, in its discretion, consider evidence  
outside the administrative record to determine the nature, extent,

1 and effect on the decision-making process of the conflict of  
2 interest; the decision on the merits though, must rest on the  
3 administrative record once the conflict (if any) has been  
4 established . . . ." Id. at 970. On a motion for summary judgment  
5 in an ERISA case, the traditional rules of summary judgment apply  
6 to evidence outside of the administrative record, including the  
7 requirement that the evidence must be viewed in the light most  
8 favorable to the non-moving party. Nolan v. Heald College, 551  
9 F.3d 1148, 1150 (9th Cir. 2009).

10  
11 **IV. DISCUSSION**

12 **A. Evidentiary Objections**

13 Blue Shield filed evidentiary objections to a number of  
14 exhibits filed by Harlick in support of her motion for summary  
15 judgment. Docket No. 58 ("Def.'s Objections"). Assuming arguendo  
16 that the challenged evidence is admissible, the Court finds it is  
17 insufficient to create a genuine issue as to whether Blue Shield's  
18 denial of benefits to Harlick was improper. Therefore, the Court  
19 does not need to issue a ruling regarding Blue Shield's objections.

20 Harlick filed objections to the Declaration of Joan Russo  
21 ("Russo") filed in support of Blue Shield's Motion for Summary  
22 Judgment. Docket No. 53-1 ("Pl.'s Objections").<sup>3</sup> Harlick objects  
23 in a general manner that the statements contained in the Russo  
24 declaration are an improper attempt to supplement the claim file.  
25 Id. In this Order, the Court relies on the evidence as presented  
26 in the Claim File, rather than any particular party's

27 \_\_\_\_\_  
28 <sup>3</sup> Russo, a senior manager in the legal department at Blue Shield,  
filed a declaration in support of Blue Shield's Motion for Summary  
Judgment. Docket No. 47.

1 characterization of that evidence, and therefore, the Court does  
2 not need to rule on Harlick's generalized objection.

3 Harlick objects to various statements made by Russo in her  
4 declaration on the grounds that they either lack foundation or  
5 contain inadmissible hearsay. Pl.'s Objections at 2-3. "A  
6 supporting or opposing affidavit must be made on personal  
7 knowledge, set out facts that would be admissible in evidence, and  
8 show that the affiant is competent to testify on the matters  
9 stated." Fed. R. Civ. P. 56(e). Russo is a senior manager in the  
10 legal department at Blue Shield, and the Court sees no reason to  
11 question the admissibility of the statements made in paragraphs 3,  
12 4, 9, 12, 14, and 31 because Russo has personal knowledge of the  
13 facts stated in those paragraphs. The Court OVERRULES Harlick's  
14 objections to the statements made in those paragraphs.

15 The Court SUSTAINS Plaintiff's objections to the statements  
16 made on information and belief in paragraphs 15, 16, 17. With  
17 regard to the exhibits discussed in paragraphs 17, 18, 21, 23, 25,  
18 and 32, these documents are part of Plaintiff's Claim File and can  
19 be considered by the Court in reviewing the plan administrator's  
20 decision to deny Plaintiff's claim for benefits. The Court  
21 OVERRULES Plaintiff's objections to these exhibits. When  
22 considering the evidence, the Court will focus on the documents  
23 themselves, rather than Russo's description of the documents.

24 **B. Castlewood and the MHPA**

25 Plaintiff contends that the fundamental issue in this case is  
26 "whether the Blue Shield policy violates California Mental Health  
27 Parity Law because it does not offer the same levels of treatment  
28 for mental health conditions as for physical conditions." Pl.'s

1 Opp'n at 6. According to Plaintiff, this question of law should be  
2 decided de novo. Id. Plaintiff also suggests that the Court  
3 should apply an abuse of discretion standard tempered with  
4 skepticism based on the presence of a number of factors, including  
5 Blue Shield's reliance on a Plan that allegedly violates the  
6 California Mental Health Parity Act ("MHPA"). Pl.'s Opp'n at 9.

7 In this case, the Court does not need to rule on whether  
8 Harlick's Plan violates the MHPA. One key issue in this case is  
9 the status of Castlewood. Plaintiff contends that Castlewood is a  
10 Skilled Nursing Facility ("SNF"). Pl.'s MSJ at 11-12. According  
11 to Plaintiff, the Plan violates the MHPA because it provides  
12 coverage at a SNF for the treatment of physical conditions, but not  
13 for the treatment of mental conditions. Pl.'s MSJ at 2, 11. The  
14 MHPA provides, in pertinent part, that:

15 (a) Every policy of disability insurance that  
16 covers hospital, medical, or surgical expenses in  
17 this state . . . shall provide coverage for the  
18 diagnosis and medically necessary treatment of  
19 severe mental illnesses of a person of any age  
20 . . . under the same terms and conditions applied  
21 to other medical conditions, as specified in  
22 subdivision (c).

23 (b) These benefits shall include the following:  
24 (1) Outpatient services; (2) Inpatient hospital  
25 services; (3) Partial hospital services; (4)  
26 Prescription drugs, if the policy or contract  
includes coverage for prescription drugs.

(c) The terms and conditions applied to the  
benefits required by this section that shall be  
applied equally to all benefits under the  
disability insurance policy shall include, but  
not be limited to, the following: (1) Maximum  
lifetime benefits; (2) Copayments and  
coinsurance; (3) Individual and family  
deductibles.

27 Cal. Ins. Code § 10144.5. As explained below, the Court determines  
28 that Castlewood is not a SNF as that term is defined in Harlick's



1 Plan. Therefore, the Court does not need to reach Plaintiff's  
2 argument that the Plan violates the MHPA. Doing so would be  
3 pointless, because even if the Court agreed with Plaintiff that the  
4 MHPA requires the Plan to cover treatment at a SNF for both mental  
5 and physical conditions, Harlick would still not be entitled to  
6 relief, because there is no question that Castlewood is not a SNF.

7 **1. Castlewood Is Not a Hospital**

8 There is no dispute in this case that Castlewood is not a  
9 Hospital as defined in Harlick's Plan. See Pl.'s Opp'n at 1 ("Blue  
10 Shield cites and discusses the Plan provisions defining a  
11 'Hospital.' Plaintiff agrees that Castlewood was not and is not a  
12 Hospital, as that term is defined in the Plan."). Castlewood is  
13 not accredited as a hospital or psychiatric hospital by the Joint  
14 Commission on Accreditation of Health Care Organizations. CF at  
15 BSC3604.

16 **2. Castlewood Is Not a SNF**

17 Plaintiff contends that Castlewood should be regarded as a SNF  
18 as defined in her Plan. Pl.'s MSJ at 11. Under California law, a  
19 SNF is "a health facility that provides skilled nursing care and  
20 supportive care to patients whose primary need is for availability  
21 of skilled nursing care on an extended basis." Cal. Health &  
22 Safety Code § 1250(c). The Plan defines a SNF as "a facility with  
23 a valid license issued by the California Department of Health  
24 Services as a Skilled Nursing Facility or any similar institution  
25 licensed under the laws of any other state, territory, or foreign  
26 country." CF at BSC173. Castlewood, located in Missouri, is  
27 obviously not a facility licensed by the California Department of  
28 Health Services. Hence, the question here is whether Castlewood is

1 a similar institution licensed under the laws of the State of  
2 Missouri.

3 In 2006, Castlewood was licensed by the Department of Mental  
4 Health in Missouri as a Psychiatric Group Home and as a Day  
5 Program. CF at BSC3602, 3603. Missouri regulations define a  
6 psychiatric group home as: "a community residential facility with  
7 less than sixteen (16) residents providing twenty-four (24)-hour  
8 accommodations, psychiatric supervision, board, storage and  
9 distribution of medications, protective oversight and psychosocial  
10 rehabilitation for residents who can benefit from an intense,  
11 highly structured treatment setting." 9 Mo. Code of State  
12 Regulations § 40-1.015(2)(JJ). A Day Program is defined, in part,  
13 as "a place providing a series of interventions, activities and  
14 instruction delivered by qualified staff for the purpose of  
15 evaluation, treatment, habilitation or rehabilitation for persons  
16 with mental disorders, mental illness, mental retardation or  
17 developmental disabilities." Id. § 40-1.015(2)(J).

18 Missouri licenses SNFs. CF at BSC 3498. In Missouri, a SNF  
19 is defined as:

20 any premises, other than a residential care  
21 facility, assisted living facility, or an  
22 intermediate care facility, which is utilized by  
23 its owner, operator, or manager to provide for  
24 twenty-four (24) hour accommodation, board and  
25 skilled nursing care and treatment services to at  
26 least three (3) residents . . . Skilled nursing  
27 care and treatment services are those services  
28 commonly performed by or under the supervision of  
a registered professional nurse for individuals  
requiring twenty-four (24) hours a day care by  
licensed nursing personnel including acts of  
observation, care, and counsel of the aged, ill,  
injured, or infirm, the administration of  
medications and treatments as prescribed by a  
licensed physician or dentist, and other nursing  
functions requiring substantial specialized

1 judgment and skill.  
2 19 Mo. Code of State Regulations 30-83.010(48). Castlewood is not  
3 licensed as a SNF. Id. at BSC 3518.

4 Plaintiff concedes that Castlewood is not licensed as a SNF,  
5 but she argues that it would be impossible for Castlewood to obtain  
6 such a license because, in Missouri, only facilities treating  
7 physical illnesses are licensed as SNFs. Pl.'s Opp'n at 2-3. This  
8 argument does not help Plaintiff's case. If it is impossible for  
9 Castlewood to be licensed as a SNF in Missouri, then the Court  
10 cannot regard Castlewood as a SNF.

11 Plaintiff contends that, while not licensed as a SNF,  
12 Castlewood is a similar institution. Pl.'s MSJ at 11. Plaintiff  
13 points out that Castlewood's website lists "[d]aily nursing care"  
14 as included in Castlewood's treatment program. CF at BSC276. As  
15 noted above, the Plan defines a SNF as "a facility with a valid  
16 license issued by the California Department of Health Services as a  
17 Skilled Nursing Facility or any similar institution licensed under  
18 the laws of any other state, territory, or foreign country." CF at  
19 BSC173.

20 The Court determines that when the Plan uses the phrase  
21 "similar institution licensed under the laws of another state," it  
22 does not mean any licensed institution, but rather institutions in  
23 other states that are licensed as SNFs. Otherwise the words  
24 "licensed under the law of any other state" would be superfluous.  
25 Use of these words means that the determinative factor is whether  
26 the out-of-state institution is licensed as a SNF. Missouri  
27 licenses SNFs, but Castlewood is not so licensed; instead, it is  
28 licensed as a Psychiatric Group Home and a Day Program. Hence,

1 Castlewood is not a "similar institution licensed under the laws of  
2 any other state." While the fact that Castlewood is not licensed  
3 as a SNF is sufficient for the Court to conclude that Castlewood is  
4 not a similar institution, the Court also notes that the  
5 professional staff listed on Castlewood's website does not include  
6 any licensed doctors or nurses, see CF at BSC3491-92, and Plaintiff  
7 has not presented any evidence to the Court showing that  
8 Castlewood's staff includes nurses.

9 Since Castlewood is not a SNF or similar to one, the Court  
10 does not need to reach Plaintiff's argument that Harlick's Plan  
11 violates the MHPA. Instead, the Court proceeds to determine the  
12 standard of review that applies to Blue Shield's denial of  
13 Harlick's claim for benefits.

14 **C. Abuse of Discretion Tempered with Skepticism**

15 Here, based on the unambiguous provision in the Plan granting  
16 Blue Shield discretionary authority, see CF at BSC241, the Court  
17 must review Blue Shield's denial of benefits for an abuse of  
18 discretion. However, in determining whether this abuse of  
19 discretion standard should be "tempered with skepticism," see  
20 Nolan, 551 F.3d at 1155, the Court must take into account a number  
21 of factors, including Blue's Shield's structural conflict, and the  
22 fact that a number of Blue Shield's reasons for denying Harlick's  
23 claim were erroneous.

24 Blue Shield agrees that "the Court is required to consider  
25 Blue Shield's status as the funder of the Plan" in applying the  
26 abuse of discretion standard. Def.'s Reply at 3. Blue Shield  
27 contends that the Court should apply an ordinary abuse of  
28 discretion standard because this structural conflict of interest is

1 not accompanied by any evidence of malice, self-dealing, or a  
2 parsimonious claims-granting history. Id. at 3-4. The Court  
3 disagrees. On April 6, 2007, Blue Shield provided a number of  
4 different explanations for why it denied Harlick's claim, some of  
5 which turned out to be erroneous. Compare CF at BSC413 with CF at  
6 BSC387-90, BSC497-500. For example, Blue Shield incorrectly  
7 informed Harlick she was required to receive prior authorization  
8 for her treatment at Castlewood, and that the medical necessity of  
9 being treated at Castlewood had not been established. Id. at  
10 BSC413. A letter from the Department of Managed Health Care  
11 ("DMHC") to Harlick acknowledges that she was provided with  
12 "conflicting information" regarding the basis for denial. Id. at  
13 BSC3397. Based on this conflicting information, the Court should  
14 weigh Blue Shield's structural conflict more heavily. See Abatie,  
15 458 F.3d at 968 ("A court may weigh a conflict more heavily if, for  
16 example, the administrator provides inconsistent reasons for denial  
17 . . . ."). Accordingly, the Court tempers its review of Blue  
18 Shield's denial with skepticism.

19 **D. Reviewing the Record**

20 **1. Denial and Appeal**

21 On or around September 20, 2006, Dr. Bruce Berg, on behalf of  
22 Blue Shield, denied Plaintiff's claims for treatment at Castlewood  
23 after April 27, 2006, based on a determination that Castlewood  
24 provided "residential care," and as such, was not covered by  
25 Plaintiff's Plan. CF at BSC567, BSC662. The review states that  
26 Plaintiff's treatment at Castlewood "appears to be residential care  
27 . . . No notes support that this is a state psychiatric hospital.  
28 Residential treatment is not a benefit." Id.

1 Plaintiff's mother, Robin Watson ("Watson"), sent Blue Shield  
2 an appeal letter on November 13, 2006. See CF at BSC391-92.  
3 Watson appealed on the basis that her daughter was suffering from  
4 anorexia, which is a covered mental illness under California's  
5 MHPA. Id. at BSC391. Watson stated that the Castlewood treatment  
6 should be considered a "Skilled Nursing" benefit. Id. She stated  
7 that her daughter was admitted to Castlewood in April because the  
8 only other appropriate facility had a three-to-four month waiting  
9 list with no guarantee of admission. Id. at BSC392. Watson  
10 enclosed letters from the professionals treating her daughter. Id.  
11 at BSC393-97.

12 Upon review, the Grievance Department at Blue Shield sent  
13 Harlick a letter, on December 12, 2006, upholding its denial of  
14 Plaintiff's claims for treatment at Castlewood. Id. at BSC 408-09,  
15 BSC516. Blue Shield's records show that Harlick's claim was  
16 reviewed by Mary Ann Schweppe, RN, and Dr. David Battin, MD. Id.  
17 at BSC563, 564. Since Dr. Berg's initial denial, Blue Shield  
18 received admission orders from Castlewood noting that Plaintiff's  
19 admission status was "residential." Id. at BSC563. The review  
20 notes that Plaintiff remained in the residential care program at  
21 Castlewood until August 25, 2006, when she was discharged to a  
22 "step-down house care program" where she had more autonomy. Id.  
23 In upholding the denial of Plaintiff's claim for coverage at  
24 Castlewood, Dr. Battin wrote: "The principal reason is that these  
25 services are not a covered benefit. As per your health plan's  
26 Evidence of Coverage (EOC), residential care is not covered for  
27 mental health services." Id. at BSC564.

28 The letter sent to Harlick on December 12, 2006, states that

1 residential care was not covered under her plan. Id. at BSC408.  
2 Blue Shield enclosed relevant excerpts from her Plan with the  
3 appropriate language underlined, and noted that the review was  
4 based on an evaluation of medical information and records from  
5 entities including Castlewood Treatment Center. Id. The letter  
6 informed Plaintiff of her right to request an independent medical  
7 review through the DMHC. Id. at BSC408-09, BSC516-17.

8 In early January 2007, Blue Shield received additional records  
9 from Castlewood relating to Harlick. Id. at BSC2586. Dr. Carroll  
10 Cederburg, MD, reviewed the records and advised that "[s]ervices  
11 are for residential care and these services are not a benefit - see  
12 contract section 'Mental Health/Substance Abuse Treatment -  
13 Inpatient Facility.'" Id.

14 Watson responded to Blue Shield on March 6, 2007. Id. at  
15 BSC410, BSC513. She informed Blue Shield of inaccuracies in the  
16 December 12, 2006 letter regarding the identity of Harlick's  
17 primary care physician. Id. The letter reiterates that, under  
18 California law, insurance companies must provide equal coverage for  
19 mental and physical illnesses. Id. Watson enclosed a letter from  
20 Harlick's primary care physician, and requested additional review  
21 of Harlick's case. Id. at BSC410-12, BSC514-15.

22 Blue Shield's Grievance Department responded to Watson's  
23 letter on April 6, 2007. Id. at BSC413, BSC505. The letter  
24 advised that Blue Shield had reviewed additional records, and once  
25 more upheld the denial of Harlick's claims for treatment at  
26 Castlewood. Id. The letter provides a number of different reasons  
27 for denying the claim. First, it states that inpatient psychiatric  
28 hospital care requires prior authorization, except in emergency

1 situations, and since Harlick travelled to Missouri to be admitted  
2 to a particular facility, her admission to Castlewood could not be  
3 considered an emergency. Id. Second, it states that that  
4 residential care is not a covered benefit. Id. The letter also  
5 states that Harlick was eligible for coverage for professional  
6 fees. Id. The information is this letter was based on Dr. David  
7 Battin's review of Harlick's file in late March, 2007. Id. at  
8 BSC509.

9 On April 30, 2007, Carolyn Garner, a Lead Coordinator in Blue  
10 Shield Grievance Department, sent Harlick a letter correcting  
11 errors in Dr. Battin's review. Id. at BSC387-90, BSC497-500. With  
12 regard to Dr. Battin's claim that Harlick should have received pre-  
13 authorization, Garner explains that this requirement only applies  
14 to services provided in California. Id. Since Castlewood is  
15 located in Missouri, this requirement did not apply in Harlick's  
16 case. Id. The letter goes on to explain that Harlick's claims  
17 were denied because Castlewood is not licensed as an acute care  
18 hospital or a psychiatric hospital/healthcare facility. Id. at  
19 BSC388, BSC498. Garner states Castlewood is licensed as a  
20 residential treatment center. Id. Garner states that Dr. Dorsey  
21 Dysart, in a letter provided to Blue Shield, described Castlewood's  
22 care as residential. Id.; see also CF at BSC393. Garner notes  
23 that the Plan clearly states that residential care is not covered.  
24 CF at BSC388, BSC498.

25 Garner points out that the April 6, 2007 letter was also  
26 incorrect when it stated that Harlick's professional fees at  
27 Castlewood were covered by the Plan. Id. These fees were billed  
28 as part of the global fee for Harlick's admission to Castlewood.



1 Id. The bills were not sent independently by the providers. Id.  
2 Therefore no benefits are payable for these therapy services. Id.  
3 The letter also notes that the MHPA is not implicated because the  
4 Plan does not provide residential care for mental health conditions  
5 or medical conditions. Id. at BSC389, 499.

## 6 **2. Plaintiff Seeks Further Review**

7 On April 9, 2007, Watson sent a letter to California's  
8 Insurance Commissioner complaining about Blue Shield's denial of  
9 her daughter's claim. Id. at BSC2213. The letter states that  
10 Harlick is protected by California's parity law and the insurance  
11 company is not paying the claim. Id. On April 19, 2007, the  
12 Department of Insurance notified Watson that the DMHC had  
13 jurisdiction over the policy of insurance. Id. at BSC312.

14 On May 15, 2007, the DMHC sent a letter to Blue Shield  
15 requesting information as part of its review of Blue Shield's  
16 denial of Harlick's claims. Id. at BSC492-93. Joan Russo  
17 ("Russo"), a Senior Manager in the legal department at Blue Shield,  
18 responded on May 23, 2007. Id. at BSC415. Russo's letter repeats  
19 the information contained in Garner's April 30, 2007 letter, and  
20 adds additional information in response to specific requests from  
21 the DMHC. Id. at BSC415-17.

22 In light of Dr. Solomon's concerns that prior to her admission  
23 to Castlewood, Harlick was in need of intensive psychiatric and  
24 nutritional in-patient treatment, the DMHC sought information about  
25 Plaintiff's in-plan treatment options. Id. at BSC416. Russo  
26 responded that under Harlick's Plan, the U.S. Behavioral Health  
27 Plan, California ("USBHPC") was responsible for administering  
28 claims for services provided in California. Id. Russo attached

1 notes from USBHPC showing that Harlick was authorized for Intensive  
2 Outpatient treatment at Ohloff Recovery. Id. at BSC454-470. A  
3 March 7, 2006 note states that Harlick's therapist thought she  
4 might need a higher level of care, but that the patient "has no RTC  
5 [residential treatment center] benefits." Id. at BSC463. The DMHC  
6 also asked whether Plaintiff's physician, Dr. Solomon, had  
7 requested treatment at Castlewood. Id. at BSC417. Russo responded  
8 that Blue Shield had no record of any contact by Dr. Solomon. Id.

9 On May 25, 2007, the DMHC concluded that Blue Shield was not  
10 obligated to provide coverage for the services Harlick received at  
11 Castlewood from April 29, 2006 to August 25, 2006. Id. at BSC3397.  
12 The DMHC letter states:

13 Although you have been provided with conflicting  
14 information from the Plan regarding its basis for  
15 denial, Blue Shield has now confirmed that it  
16 denied coverage because you do not have a benefit  
17 for residential care. [¶] After reviewing all of  
18 the information submitted, we are unable to  
19 direct Blue Shield to cover these services.  
20 According to the terms of your health plan  
21 contract, as described in your Evidence of  
22 Coverage, residential care is excluded from  
23 coverage. As Castlewood is licensed as a  
24 residential treatment center, rather than an  
25 acute in-patient facility, Blue Shield is not  
26 obligated to provide coverage for this treatment.

21 Id.

22 On May 23, 2007, Watson sent Garner a nine-page letter on  
23 behalf of her daughter concerning the denial of her daughter's  
24 claims. Id. at BSC371-79. The letter included additional  
25 information concerning Harlick's treatment at Castlewood from April  
26 17, 2006 until January 31, 2007. Id. at BSC380-386.

27 Russo responded in a detailed letter on August 3, 2007. Id.  
28 at BSC260-267. The letter reiterates that Castlewood offers a

1 residential treatment program, and Harlick's plan does not cover  
2 residential care. Id. at BSC260. The Initial Assessment completed  
3 at the time of Harlick's admission to Castlewood states under  
4 Recommendations: "RTC for stabilization, normalization of eating .  
5 . . ." Id. at BSC280. Russo's letter points out that "RTC" is  
6 shorthand for residential treatment. Id. at BSC 261.

7 In response to Watson's questions, Russo explains that Blue  
8 Shield paid for Harlick's first eleven days at Castlewood due to a  
9 coding error. Id. at BSC262. The claim was coded and paid as an  
10 in-patient hospital claim. Id. Russo points out that Castlewood  
11 is not a hospital, and Blue Shield paid all of Harlick's claims for  
12 treatment at the St. Luke's Medical Center, since hospital  
13 treatment is covered by the Plan. Id. at BSC264. In response to a  
14 question concerning why Harlick's treatment is not covered as a SNF  
15 benefit, Russo explains that Castlewood is not licensed in Missouri  
16 as a SNF. Id.

17 **3. No Abuse of Discretion**

18 Reviewing this record with skepticism, the Court cannot  
19 conclude that Blue Shield abused its discretionary authority to  
20 interpret the terms of Harlick's Plan and determine her eligibility  
21 for benefits. Even though Blue's Shield's April 6, 2007 letter  
22 contains a number of erroneous explanations for the denial, see CF  
23 at BSC413, Blue Shield quickly corrected the mistakes on April 30,  
24 2007, see CF at BSC387-90, BSC497-500. Furthermore, from the  
25 beginning of Blue Shield's correspondence with Harlick and her  
26 mother, Blue Shield consistently stated that the denial was based  
27 on the fact that the Plan does not cover residential care.

28 The first doctor to consider Plaintiff's claim stated: "This

1 appears to be residential care. . . . Residential treatment is not  
2 a benefit." Id. at BSC567, 662. When Plaintiff's mother appealed  
3 the decision, another doctor, Dr. Battin, confirmed in late 2006  
4 that residential care is not covered under her Plan. Id. at  
5 BSC564. After receiving additional records from Castlewood, a  
6 third doctor, Dr. Cederburg, determined that "[s]ervices are for  
7 residential care and these services are not a benefit." Id. at  
8 BSC2586. While some of the information contained in the April 6,  
9 2007 letter was erroneous, the letter also states that residential  
10 care was not a covered benefit. Id. at BSC413, 505. In the  
11 follow-up letter correcting the errors, Blue Shield emphasized that  
12 treatment at Castlewood was denied because it is a residential  
13 treatment center. Id. at BSC388, 498. The DMHC agreed that  
14 "residential care is excluded from coverage." Id. at BSC3397. On  
15 August 3, 2007, Russo of Blue Shield again emphasized that the  
16 claim was denied because Castlewood is a residential treatment  
17 program and the Plan does not cover residential care. Id. at  
18 BSC260.

19       Reviewing Blue Shield's decision with skepticism, the Court  
20 finds no abuse of discretion in its determination that Castlewood  
21 was a residential treatment program. Castlewood is licensed under  
22 the laws of Missouri as a Psychiatric Group Home and a Day Program.  
23 CF at BSC3602, 3603. Missouri regulations define a psychiatric  
24 group home as: "a community residential facility." 9 Mo. Code of  
25 State Regulations § 40-1.015(2)(JJ) (emphasis added). Under the  
26 "frequently asked questions" of Castlewood's website, and in  
27 response to a question concerning whether insurance will pay for  
28 the treatment, it states that "Castlewood is licensed as a

1 Residential Facility, so it is important to obtain the residential  
2 benefit and not simply the 'inpatient' benefit as they might be  
3 different." CF at BSC274, 442, 3482. Harlick's Initial Assessment  
4 Form indicates that she was being admitted to Castlewood for  
5 residential care. Id. at BSC280, 739. Harlick signed forms  
6 acknowledging that Castlewood was not a medical facility, id. at  
7 BSC726, and acknowledging that she would be responsible for  
8 administering her own medications, id. at BSC3375.

9 Plaintiff contends that the Plan statement that "[r]esidential  
10 care is not covered" is ambiguous. Pl.'s MSJ at 12. Plaintiff  
11 contends that the placement of the sentence in the section of the  
12 Plan describing "inpatient mental health services" means that the  
13 intent was to preclude only some kinds of residential care. Id. at  
14 13-14. Plaintiff faults the Plan for failing to define residential  
15 care, and for failing to include residential care in the Plan's  
16 List of Limitations, Exceptions, Exclusions and Reductions. Id. at  
17 14.

18 "Although an ERISA plan is a contract, ERISA does not contain  
19 a body of contract law to govern the interpretation and enforcement  
20 of employee benefit plans." Gilliam v. Nevada Power Co., 488 F.3d  
21 1189, 1194 (9th Cir. 2007) (internal citations and quotations  
22 omitted). Courts therefore normally "apply contract principles  
23 derived from state law . . . guided by the policies expressed in  
24 ERISA and other federal labor laws." Id. These principles  
25 comprise a "nationally uniform federal common law" applied in the  
26 ERISA context. See Saltarelli v. Bob Baker Group Med. Trust, 35  
27 F.3d 382, 386 (9th Cir. 1994). Under the uniform federal common  
28 law, courts should interpret plan terms "in an ordinary and popular

1 sense as would a person of average intelligence and experience."  
2 Babikian v. Paul Revere Life Ins. Co., 63 F.3d 837, 840 (9th Cir.  
3 1995) (quoting Evans v. Safeco Life Ins. Co., 916 F.2d 1437, 1441  
4 (9th Cir. 1990)).

5 Here, the Court finds no ambiguity in the Plan's exclusion of  
6 residential care from coverage. In the section of Plaintiff's Plan  
7 dealing with mental health benefits, the Plan clearly and  
8 conspicuously states that "[r]esidential care is not covered." See  
9 CF at BSC220, 222, 225. This statement occurs three times in the  
10 Plan. The statement is made in the section describing benefits for  
11 "inpatient mental health services," id. at BSC220, in the section  
12 describing covered benefits for "Professional (Physician)  
13 Services," id. at BSC222, and in the section describing "Partial  
14 Hospitalization Services." Id. at BSC225. Interpreting the phrase  
15 "[r]esidential care is not covered" in its ordinary and popular  
16 sense, the phrase is not ambiguous. The Court fails to understand  
17 how a person of average intelligence and experience could read the  
18 six pages of the Plan that focus on mental health benefits, see  
19 BSC220-26, and not realize that mental health benefits under the  
20 Plan do not extend to residential care.

21  
22 **V. CONCLUSION**

23 In summary, the Court determines that Castlewood is not a SNF,  
24 or a "similar institution licensed under the laws of any other  
25 state," and therefore the Court does not reach Plaintiff's  
26 contention that the Plan violates California's MPHA. Reviewing  
27 Blue Shield's denial of benefits with skepticism, the Court  
28 determines there was no abuse of discretion. Although Blue Shield

1 provided a number of conflicting reasons for denial, it  
2 consistently informed Harlick that Castlewood was a residential  
3 treatment facility, and residential care was not covered under her  
4 Plan. The record supports Blue Shield's determination that  
5 Castlewood provided residential care to Harlick. The Court finds  
6 no ambiguity in the Plan concerning the question of whether  
7 benefits extended to residential care.

8 For the foregoing reasons, the Court GRANTS the Motion for  
9 Summary Judgment filed by Defendant California Physicians' Service  
10 d/b/a Blue Shield of California, and DENIES the Motion for Summary  
11 Judgment filed by Plaintiff Jeanene Harlick.

12  
13 IT IS SO ORDERED.

14  
15 Dated: March 4, 2010

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18 UNITED STATES DISTRICT JUDGE  
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