

United States District Court
Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

KRYSTEN C.,
Plaintiff,
v.
BLUE SHIELD OF CALIFORNIA,
Defendant.

Case No. [15-cv-02421-RS](#)

**ORDER RE CROSS-MOTIONS FOR
SUMMARY JUDGMENT**

I. INTRODUCTION

In this action brought under ERISA, 29 U.S.C. § 1132(a)(1)(B), plaintiff Krysten C. challenges defendant’s determination that residential treatment for her anorexia nervosa and related physical conditions was no longer “medically necessary” after she had received sixty days of such treatment at the Monte Nido center in southern California. Upon consideration of the parties’ cross-motions for summary judgment, the record supports a conclusion that defendant did not abuse the discretion it undisputedly held under Kyrsten’s benefit plan to determine that continued treatment in a residential program was not medically necessary, and therefore it was not required to continue paying for such treatment. Judgment will therefore be entered in defendant’s favor.

1 II. BACKGROUND

2 Krysten is a 29-year old woman who alleges she has suffered from anorexia nervosa, major
3 depressive disorder, and anxiety disorder since age 14. There is no dispute that as of April of
4 2014, her weight dropped to 60 lbs. and she was unable to walk. She was hospitalized in Colorado
5 for inpatient treatment of severe malnutrition and life-threatening electrolyte abnormalities
6 resulting from her eating disorder.

7 On June 30, 2014, Krysten was admitted to Monte Nido for residential treatment. At
8 admission, she presented with medical complications including osteopenia, amenorrhea,
9 hypokalemia (low potassium), shortness of breath, chest tightness, and gastroparesis. Krysten is a
10 covered beneficiary under an employee welfare benefit plan regulated by ERISA issued and
11 administered by defendant Blue Shield of California. Blue Shield initially approved benefits for
12 Plaintiff’s residential treatment.¹

13 After approximately six weeks, Blue Shield reevaluated the circumstances. Blue Shield
14 physician, Dr. Jorge Zapatel, a board-certified psychiatrist, consulted with Krysten’s treating
15 physician on August 22, 2014 and reviewed her medical records. Krysten’s weight had
16 increased to 110.2 lbs., which was 83% of her ideal body weight.² Given her progress during the
17 previous six weeks of treatment, Dr. Zapatel found Krysten no longer required the residential level
18 of care for her anorexia. Dr. Zapatel, however, approved coverage through August 29, 2014 so that
19 she could transition to a lower level of care.

20 On the day he had determined coverage should end, Dr. Zapatel reviewed additional
21 medical records and again concluded Krysten no longer required 24/7 residential care.
22 Zapatel wrote “[t]he reason for the request of continued ED RTC is that ‘it’s a long weekend’ and
23 because the member’s ex-boyfriend is coming to visit. The provider could have planned the

24 ¹ Blue Shield contracts with Magellan Health Services to underwrite and coordinate coverage for
25 mental health services. There is no indication, however, that any technical distinction that might
26 be drawn between Magellan and Blue Shield impacts the analysis in this order. For convenience,
27 the name “Blue Shield” will be used to include Magellan acting on Blue Shield’s behalf.

28 ² There is some dispute as to Krysten’s height, and therefore as to the precise percentages. There
is no indication, however, that Blue Shield intentionally or negligently misstated Krysten’s height.

1 discharge in a timely manner to coincide with medical necessity. The member has access to a
2 lower level of care and has a place to live.”

3 Krysten then appealed Blue Shield’s coverage decision. Dr. Thomas Carlton, another
4 board-certified psychiatrist, reviewed her medical records. Dr. Carlton found there was no
5 evidence that Krysten required the 24/7 supervision of residential treatment. He wrote: “The
6 member is at normal weight. Anorexic thoughts and impulses have been reported, but no severe
7 eating disordered behavior has been reported for some time. There are some minor physiologic
8 changes, including some pulse increase on standing, but none of this appears to currently threaten
9 the health of the member. There is no clarity regarding the treatment plan, and there is no evidence
10 of serious discharge planning for the past 2 months.”

11 Dr. Carlton also noted that he was missing certain clinical records from Monte Nido.
12 Accordingly, Blue Shield denied the appeal based on the lack of records but notified Krysten it
13 would reconsider her claims if additional records were submitted: “[I]f your provider submits your
14 clinical medical records, which include your admission history and physical exam as well as all
15 daily clinical notes from June 30, 2014 through September 3, 2014, to Blue Shield; then your
16 request for coverage of treatment at a residential level of care will be reconsidered.”

17 Monte Nido then submitted additional medical records. Dr. Carlton reviewed the claim
18 again in light of the new records and wrote: “After reviewing the documents submitted by the
19 facility, my recommendation remains unchanged from my original recommendation.” He
20 concluded Krysten did not require the 24/7 supervision of residential treatment for her anorexia
and could step down to a lower level of care.

21 Blue Shield also solicited a review from a physician not associated with the company. In
22 that review, Dr. Karam Radwan, another board-certified psychiatrist, employed by third-party
23 Prest & Associates (retained by Blue Cross) concluded, “[t]he patient is currently around 84% of
24 her ideal body weight.” “[T]he patient has been compliant with her treatment. She has been eating
25 her meals She was evaluated by a cardiologist and her heart condition appeared to be stable
26 The patient currently does not have any severe comorbid acute medical conditions that cannot be
27 treated in a less restrictive setting.”

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1 Blue Shield ultimately approved treatment for only 60 days (through August 29, 2014).
2 Blue Shield and its mental health services administrator, however, both issued payments to Monte
3 Nido, with the result that total of \$79,778 was reimbursed, representing 79 days of treatment
4 (through September 17, 2014). Accordingly, the only benefits at issue relates to the 24 days of
5 treatment Krysten received between September 17th and October 13, 2014, a total of \$29,945.

6
7 III. DISCUSSION

8 A. Standing

9 On the eve of the hearing in this matter, Blue Cross submitted a brief arguing that Krysten
10 lacks constitutional and statutory standing to pursue the claims she has brought, given a lack of
11 evidence she paid Monte Nido the sums in dispute and given Monte Nido allegedly is barred by its
12 contract with Magellan (Blue Shield’s agent) from seeking recovery directly from Krysten.
13 Because jurisdictional defects are not subject to waiver, the failure of Blue Cross to raise these
14 issues in a more timely manner is not dispositive.

15 Krysten has adequately alleged Monte Nido contends she is responsible for the unpaid bill.
16 Accordingly, there is a sufficient “case or controversy” to support constitutional standing, even in
17 the event Monte Nido’s claim ultimately can be shown to lack legal merit. Furthermore, both of
18 the cases Blue Cross relies upon to argue Krysten lacks statutory standing under ERISA were
19 decided on the merits, and not on jurisdictional standing grounds. *See, LaRocca v. Borden, Inc.*,
20 276 F.3d 22, 31 (1st Cir. 2002); *Perry v. United Food & Commercial Workers Dist. Unions 405 &*
21 *442*, 64 F.3d 238, 242 (6th Cir. 1995). Accordingly, there is no basis to dismiss this action for
22 lack of standing. That said, if Monte Nido in fact is asserting a right to collect from Krysten, at
23 this juncture it likely is incumbent on Blue Cross/Magellan to intervene on her behalf to assert the
24 position it has taken in this litigation, and to protect her interests in that regard, notwithstanding
25 the other conclusions of this order.

1 *Hartford Life & Acc. Ins. Co.*, 588 F.3d 623, 629 (9th Cir. 2009). Krysten argues, however, that
2 as *Montour* teaches, “[a]pplication of the abuse of discretion standard . . . requires a more
3 complex analysis,” where “the same entity that funds an ERISA benefits plan also evaluates
4 claims,” which is the case here. *Id.*

5 Thus, the court is to take into account “the extent to which a conflict of interest appears to
6 have motivated an administrator’s decision,” but only as “one among potentially many relevant
7 factors that must be considered.” *Id.* at 630. The degree to which a conflict may have “tainted”
8 the decision-making should be evaluated in light of what all “the facts and circumstances indicate.”
9 *Id.* at 631.

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11 **D. Record objections**

12 In support of its motion, Blue Cross submitted what it contends is the complete
13 administrative record.³ Krysten does not dispute the completeness of those materials. In support
14 of her opposition, however, she offers the declaration of a Monte Nido employee asserting the
15 facility had a waiting list, and therefore lacked any economic motive to treat Krysten after Blue
16 Cross denied continued benefits. Blue Cross contends this declaration—not part of the
17 administrative record—is inadmissible. Krysten, however, offered the declaration only in
18 response to Blue Cross’s insinuation that Monte Nido’s evaluation of Krysten’s ongoing need for
19 residential treatment perhaps should be treated with suspicion. Blue Cross was free to make that
20 argument—which also goes beyond the administrative record—and Krysten was free to offer the
21 declaration in rebuttal. In both instances the advocacy will be treated as such, and ultimately does
22 not affect the analysis under the standard of review on the administrative record.

23 Blue Cross also objects to Krysten’s citation to practice guidelines that were published
24 online in 2006 by the American Psychiatric Association regarding the treatment of eating
25 disorders. Blue Cross contends the guidelines also represent inadmissible “extrinsic evidence,”

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27 ³ In light of Krysten’s privacy interests in her medical records, the motion to seal that
28 administrative record is granted.

1 outside the administrative record. Although Krysten did not present the guidelines as “evidence”
2 *per se*, Blue Cross has adequately explained why they should not be taken as governing or
3 dispositive here.

4 Finally, after briefing was complete, Blue Cross submitted an application for leave to file a
5 “surreply” to “correct factual errors.”⁴ In response, Krysten filed another declaration offering
6 evidence outside the administrative record. While Krysten is free to argue that Blue Cross should
7 have requested other or additional materials from her or from Monte Nido, she has made no
8 showing of extraordinary circumstances that would warrant direct consideration of documents
9 outside the administrative record. The motion to file a surreply will be denied, and the subsequent
10 declaration disregarded. The parties’ respective claims of “factual errors” represent ordinary
11 disputes regarding characterizations of the record that do not warrant post-briefing submissions.

12
13 E. Analysis

14 Blue Cross’s proffered showing in support of its contention that it did not abuse its
15 discretion is simple—and ultimately compelling. Blue Cross ultimately authorized 60 days of
16 residential treatment (and inadvertently paid for 79). It gave a week’s notice prior to terminating
17 coverage, for the express purpose of allowing Krysten and her health care providers at Monte Nido
18 to prepare her to transition to a lower level of care. The three psychiatrists on which it relied,
19 including one outside consultant, all agreed that by August 29, 2014, Krysten did not require the
20 24/7 supervision of residential treatment for her eating disorder.

21 Of great significance is the fact that Blue Cross, and the physicians it consulted, never took
22 the position that Krysten was fully recovered, or did not require ongoing care. Indeed, the
23 recommendation was that Blue Cross continue providing benefits—at the next lower level of care,

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25 ⁴ Although inaccurately labeled as an “*ex parte*” application, it was e-filed and therefore served
26 through the ECF system. As such, it did not violate Civil Local Rule 7-10 (“a party may file an *ex*
27 *parte* motion, that is, a motion filed without notice to opposing party, only if a statute, Federal
28 Rule, local rule or Standing Order authorizes the filing of an *ex parte* motion in the
circumstances.”)

1 known as “partial hospital treatment.”⁵ Krysten’s challenge to Blue Cross’s decision rests
2 primarily on evidence she can point to showing that she was still suffering from eating disorder,
3 and still at risk for relapse. Indeed, the record very plainly establishes that ongoing treatment was
4 medically necessary. What Krysten has not shown, and largely has not even addressed, however,
5 is why it is an abuse of discretion for Blue Cross to conclude that *residential* treatment was no
6 longer medically necessary.

7 Krysten also argues that Blue Cross did not appropriately process her appeals after August
8 29, 2014. As noted, Blue Cross had advised her a week earlier that coverage would terminate on
9 that day. After business hours on Friday, the 29th, Krysten’s therapist at Monte Nido telephoned
10 Blue Cross to request an expedited appeal. Dr. Carlton asserts he and a claims representative then
11 made “at least eight” telephone calls back to Monte Nido that night, but when he could not get
12 through, he processed the appeal. Krysten argues the documents fail to establish quite that many
13 calls. She also faults Dr. Carlton and Blue Cross for expecting to reach anyone after hours on the
14 Labor Day weekend—even though that is when the expedited appeal was requested. In any event,
15 Blue Cross initially denied the appeal for lack of adequate records—but expressly allowed Krysten
16 and Monte Nido to submit those records thereafter.

17 Krysten appears to be arguing that Blue Cross never genuinely or fairly reexamined its
18 initial decision to cut off residential treatment as of August 29th. As set out above, however, Drs.
19 Zapatel, Carlton, and Radwan all reached the same conclusion after multiple reviews of the record.
20 Again, while Krysten points to much evidence that she remained in need of treatment at some
21 level, she has not shown why any of the doctors should have reached a different result on appeal.

22 Even in light of its conflict as the entity that both evaluates and funds claims, Blue Cross is
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24 ⁵ The record does not indicate what the daily cost differential between residential treatment and
25 partial hospital treatment would have been. Presumably the savings to Blue Cross would have
26 been more than *de minimis*. Nevertheless, the fact that Blue Cross was not attempting to avoid all
27 financial responsibility, the fact that it consulted with third-party evaluators, and the absence of
28 any other strong indicators that its coverage decision was “tainted” by the conflict of interest, all
warrant assigning little weight to that factor.

1 entitled to exercise discretion in determining eligibility for benefits. Here, it has adequately shown
2 that it exercised that discretion in a reasonable manner by relying on the opinions of the three
3 physicians that Krysten had progressed to a point that residential treatment for her condition was
4 no longer medically necessary. Krysten has shown she was still in need of treatment, but has
5 pointed to nothing in the record sufficient to establish that only residential treatment would have
6 been adequate for her medical needs.

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8 IV. CONCLUSION

9 Blue Cross's motion for summary judgment is granted, and Krysten's cross-motion is
10 denied. A separate judgment will enter.

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IT IS SO ORDERED.

Dated: October 11, 2016


RICHARD SEEBORG
United States District Judge