



Insurer's abuse of discretion leads to ERISA win

By: Heath Hamacher ◉ May 23, 2017

A woman fighting a rare autoimmune disorder was awarded health benefits associated with additional treatment ordered by her physician, her attorney reports. Her insurer had denied her claims, contending that while she initially met the definition for coverage, it became medically unnecessary and coverage was excluded for "maintenance."

"They approved the first couple of them but then denied about two or three months of treatments," said Nathaniel Bax of the Foster Law Firm in Greenville, who represented plaintiff Katherine Sudduth.

Sudduth filed her insurance claims under the Employee Retirement Income Security Act of 1974 after being diagnosed with acute polyneuropathy Guillain-Barre Syndrome. BlueCross BlueShield of Illinois denied the second series of intravenous immunoglobulin injections, Bax said, alleging that the insurer failed to exercise its discretion reasonably.

According to the court, the health plan does not establish specific criteria for a participant to be entitled to IVIG treatments for GBS. It was undisputed that Sudduth suffered from GBS and that she initially met the plan definition for coverage, but BCBS did dispute that Sudduth was eligible for coverage for additional treatment ordered by her physician just more than a year after her initial treatment.



Bax

The court noted that the denial of benefits stemmed from "an apparent conflation over the policy language" by BCBS. The insurer argued, for example, that the medical policy "specifically states that use of IVIG treatment is not approved for 'maintenance' purposes with respect to Myasthenia."

The problem with that is that Sudduth was being treated for GBS, not Myasthenia.

"The issue we had here is that BCBS of Illinois kept applying plan limitations and these external guidelines that they have for conditions other than Guillain-Barre to her," her attorney, Bax, said.

"The court ... said ... now if you want to apply a limitation to the plaintiff's specific medical condition, you have to specifically write those limitations or exclusions to apply. Otherwise, it's covered under the terms of the plan."

According to the court, the policy did not use similar language as to IVIG treatment for GBS, instead providing that IVIG may be medically necessary for certain conditions.

"Given that BCBS included a prohibition against maintenance coverage as to Myasthenia Gravis but did not do so as to GBS, the policy can only be read so as not to prohibit coverage for maintenance for GBS," the court wrote.

Bax said that he was pleased with the ruling on a couple of fronts.

"First of all, for folks like Ms. Sudduth who have Guillain-Barre Syndrome, it ... helps them out specifically for the treatment options," Bax said. "On a broader scale, I think it posits that insurance companies have to apply the actual plan terms that pertain to each individual."

Follow Heath Hamacher on Twitter @SCLWHamacher

VERDICT REPORT – ERISA CLAIM**Amount:** Award of benefits**Injuries alleged:** Denial of health insurance benefits**Case name:** *Katherine Sudduth v. BlueCross BlueShield of Illinois***Court:** U.S. District Court for the District of South Carolina**Judge:** Timothy Cain**Case number:** 8:14-04659-TMC**Date of verdict:** March 20**Attorney for plaintiff:** Nathaniel Bax of the Foster Law Firm in Greenville**Attorney for defendants:** Michael McColl of Foran Glennon in Chicago**Related**

ERISA ruling shows strength of law's
preemption provision
March 29, 2016
In "Top Legal News"

Those pesky ERISA reimbursement claims
May 18, 2017
In "Top Legal News"

Employment - Health Care Benefits - ERISA -
Infant's Skull Deformity
April 29, 2002
In "Employment Law"

Tagged with: [ERISA](#)

Copyright © 2017 South Carolina Lawyers Weekly

701 Gervais Street, Ste. 150-112,

Columbia, SC 29201

(800) 876-5297

