



Rule 12(b)(6) Motions to Dismiss Mental Health Parity Act Claims: Various Approaches Within The District of Utah Provide Lessons for Plaintiffs and Defendants



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Introduction

Recent ERISA decisions out of the United States District Court for the District of Utah addressing Rule 12(b)(6) motions to dismiss claims asserted under the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 (the “Parity Act” or “MHPAEA”)¹ offer valuable lessons to plaintiff and defense attorneys when it comes to pleading Parity Act claims. This article highlights some of the more notable decisions.

Brief Overview of Mental Health Parity Legislation

The MHPAEA amended the Mental Health Parity Act of 1996 (the “MHPA”), requiring “a much greater degree of parity from plans that offer mental health or ‘substance use disorder’ benefits.”² “The MHPA provisions were added to the Employment Retirement Income Security Act (ERISA), as if they had been included in HIPAA.”³ The MHPAEA applies to group health plans covering both (1) medical and/or surgical benefits, and (2) mental health benefits and substance use disorder (“MH/SUD”) benefits, but does not apply to benefits that are excepted, such as a retiree only plan, plans sponsored by employers with fewer than 50 employees⁴, individual health insurance, and if application of the MHPAEA would increase plan costs by a certain percentage⁵. As the United States District Court for the District of Utah noted, “[i]n effect, the Parity Act prevents insurance providers from writing or enforcing group health plans in a way that treats mental and medical health claims differently.”⁶

A Series of District of Utah Cases Shows Differing Approaches in the ERISA Context

Recent ERISA cases in which plaintiffs alleged violations of the MHPAEA in the District of Utah show the court’s differing approaches regarding plaintiffs’ lack of

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relevant Plan documents necessary to sufficiently state Parity Act claims. As one court noted:

[a]lthough ‘there is no clear law on how to state a claim for a Parity Act violation,’ [citation omitted], numerous courts have adopted the helpful format set forth in *Welp v. Cigna Health & Life Ins. Co., No. 17-80237-CIV, 2017 WL 3263138, at *6* (S.D. Fla. July 20, 2017). Under that framework, a plaintiff should identify a specific limitation on behavioral health treatment coverage, identify medical or surgical services that are covered under the plan and analogous to the specific behavioral health services at issue, and plausibly allege a disparity in the limitation criteria applicable to this analogous medical or surgical service on the one hand and the mental health or substance use treatment on the other.⁷

In two recent cases, the District Court for the District of Utah focused on the plaintiffs’ failure to meet their responsibility for obtaining relevant Plan documents during the administrative appeals process in granting the defendants’ Rule 12(b)(6) motions to dismiss the MHPAEA claims. In other cases, the judges dismissed MHPAEA claims under Rule 12(b)(6), but did not engage in any analysis of the plaintiffs’ need for any underlying Plan documents. In contrast, without discussing why the plaintiff lacked the documents needed to sufficiently state an MHPAEA claim, a judge allowed the plaintiff in another case to conduct limited discovery to obtain relevant documents to support the MHPAEA claim and to amend their complaint accordingly. Finally, in another case, the judge denied the motion to dismiss, despite the fact that the plaintiffs did not have all the supporting documents necessary for their Parity Act claim.

Dismissing MHPAEA Claims Where Plaintiffs Lacked Supporting Documents

In two cases from the District of Utah, *Laurel R. v. United Healthcare Ins. Co.*⁸, and *Jarrell O. v. Blue Cross Blue Shield of Ill.*⁹, the court granted the ERISA plan defendants’ Rule 12(b)(6) motions to dismiss claims for violations of the Parity Act, because the plaintiffs lacked the Plan documents necessary to sufficiently plead violations of the Parity Act. In both cases, the court noted:

The Parity Act “requires that a plan’s treatment and financial limitations on mental health or substance abuse disorder benefits cannot be more restrictive than the limitations for medical and surgical benefits.” *Roy C. v. Aetna Life Ins. Co., No. 2:17CV1216, 2018 WL 4511972, at *3* (D. Utah Sept. 20, 2018) (citing 29 U.S.C. § 1185a(a)(3)(A)(ii)); see also 75 Fed.



[Reg. 5410, 5412–13 \(Feb. 2, 2010\)](#). “Because the Parity Act ‘targets limitations that discriminate against mental health and substance abuse treatments in comparison to medical or surgical treatments,’ to survive the dismissal of a Parity Act claim, a plaintiff must allege a medical or surgical analogue that the plan treats differently than the disputed mental health or substance abuse services.” [Roy C., 2018 WL 4511972, at *3](#) (emphasis in original).¹⁰

In *Laurel R.*, a minor beneficiary of an ERISA plan was admitted for inpatient treatment after showing “troubling behavior after entering middle school, including substance abuse, selling drugs, stealing, and lying” and being “diagnosed with Attention Deficit Disorder, Oppositional Defiance Disorder, and Feature of Narcissistic Personality Disorder.”¹¹ After the defendant insurer paid for the inpatient treatment for about four months, it denied coverage because it determined the beneficiary no longer met the Plan’s guidelines for additional “coverage in a residential treatment setting.”¹² The insurer upheld the denial on both levels of the administrative appeals.¹³ The plaintiffs, the minor plan beneficiary and his parents, asserted a Parity Act claim.¹⁴ The plaintiffs alleged that the defendants violated the Parity Act because they required the beneficiary to satisfy medical necessity criteria for acute care to be covered for residential treatment, but the Plan did not have the same requirements for “individual seeking treatment at sub-acute inpatient facilities for medical/surgical conditions.”¹⁵ They alleged that:

‘the terms of the Plan and the medical necessity criteria utilized by the Plan and United ... use processes, strategies, standards or other factors to limit coverage for mental health or substance use disorder treatment in a way that is inconsistent with, and more stringently applied, than the processes, strategies, standards or other factors used to limit coverage for medical/surgical treatment in the same classification.’¹⁶

The defendants - the Plan and the insurer - moved to dismiss the Parity Act claim under Rule 12(b)(6).¹⁷ The court found the allegations were insufficient to state a Parity Act claim because they lacked well-pleaded facts in support.¹⁸ Rather, the court found that the plaintiffs merely supported the claim with “speculative statements, legal conclusions, and recitals of the statutory language of the Parity Act.”¹⁹ The plaintiffs argued that they requested, but the defendants did not supply them with, “the Plan’s governing documents,” including “the medical necessity criteria for mental health and substance abuse and the criteria for skilled nursing and rehabilitation facilities.”²⁰ The court found that the plaintiffs in fact had reasonable access to those documents because the letters denying coverage informed the



plaintiffs of online resources for obtaining them. It determined that because the plaintiffs did not obtain the documents, their Parity Act violation claim was “vague, conclusory, and speculative.”²¹ The court dismissed the Parity Act claim.²²

In another case, plaintiffs who failed to allege they requested the necessary documents to support their MHPAEA claim faced dismissal of the claim with prejudice. In *Jarrell O.*, the plaintiffs made a similar Parity Act claim with respect to a denial of coverage for inpatient treatment for a minor ERISA plan beneficiary who exhibited “manipulative, destructive, and inappropriate behavior from a young age.”²³ The defendants, the Plan and the insurer, moved to dismiss the Parity Act claim under Rule 12(b)(6).²⁴ In that case, the plaintiffs also argued they lacked the necessary information for the Parity Act claim.²⁵ The court found they failed to allege they actually requested the necessary information during the administrative appeal process.²⁶ The court determined the plaintiffs’ request for “the medical necessity criteria ‘utilized to evaluate the claim’ for benefits” was ambiguous and limited to the Section 502(a)(1)(B) claim for benefits and did not include the medical necessity criteria for skilled nursing and rehabilitation facilities.²⁷ The court dismissed the Parity Act claim with prejudice.²⁸

Dismissing MHPAEA Claims Without Considering Plaintiffs’ Access to Supporting Documents

The U.S. District Court for the District of Utah also dismissed Parity Act claims under Rule 12(b)(6) in other cases, but did not discuss the plaintiffs’ lack of or need for underlying documents that would assist them in sufficiently pleading such claims. In *Andy B. v. Avmed, Inc.*²⁹, the plaintiffs were the parents of a minor and the minor, who showed “social and academic difficulties,” attempted suicide, and received mental health treatment from two providers, Aspiro Academy and Daniels Academy.³⁰ Citing a lack of medical necessity, the defendant denied all payments for treatment at the first facility and denied payments for treatment at the second facility after a certain date.³¹ The defendant upheld its decisions after “numerous” administrative appeals.³² An external review agency also upheld the defendant’s decisions.³³ In *Andy B.*, the plaintiffs alleged the defendant violated the Parity Act “because the Plan’s medical necessity requirements for inpatient mental health treatment benefits are more stringent or restrictive than the medical necessity criteria applied to analogous medical or surgical benefits, such as skilled nursing facilities, inpatient hospice care, and rehabilitation facilities.”³⁴ In dismissing the MHPAEA claim, the court held that the plaintiffs’ allegations were insufficient and “supported by speculative statements, legal conclusions, and recitals of the statutory language ...”³⁵ The decision, however, does not address whether the plaintiffs lacked the relevant underlying documents needed to sufficiently state such a claim.³⁶



Leave to Amend and to Conduct Limited Discovery Granted

In other decisions, where supporting documents were lacking, the court allowed limited discovery and granted leave to amend the complaint. In *Randall R. v. Regence Blue Cross Shield of Utah*,³⁷ another recent District of Utah case with facts similar to those in *Laurel R.* and *Jarrell O.*, the plaintiffs also sued for a violation of the Parity Act. The same judge who ruled in *Laurel R.* and *Jarrell O.* allowed the plaintiffs to file a second amended complaint to “state the Parity Act claims more clearly,” and referred the case to a magistrate judge, who addressed the plaintiffs’ motion to conduct discovery with respect to the Parity Act claim.³⁸ The defendant opposed the motion, arguing the Parity Act claim was merely a repackaged Section 502(a)(1)(B) claim for benefits.³⁹ The magistrate judge granted the motion, noting that although discovery in ERISA matters is generally unnecessary, “the nature of Parity Act claims is that they generally require further discovery to evaluate whether there is a disparity between the availability of treatments for mental health and substance abuse disorders and treatment for medical/surgical conditions.”⁴⁰ The magistrate judge noted that, with respect to Parity Act claims, “discovery is essential to allow Plaintiffs to learn and compare processes, strategies, evidentiary standards, and other factors Defendant used to show whether mental health and substance abuse benefits were discerningly limited.”⁴¹

Similarly, in *Kurt W. v. United Healthcare Ins. Co.*⁴², the court dismissed the plaintiffs’ Parity Act claim because the allegations were “ambiguous.” In that case, the minor plaintiff attended the same facilities as the minor plaintiff in *Andy B.*: “Aspiro Academy, an outdoor behavioral health program” and “Daniels Academy, a residential treatment facility.”⁴³ The court granted the plaintiffs leave to amend their complaint, because “it is by no fault of Plaintiffs’ that their claim is ambiguous.”⁴⁴ The court noted the plaintiffs “repeatedly requested ‘the Plan’s criteria for skilled nursing and rehabilitation facilities’” from the defendants, who failed to produce them.⁴⁵ The court noted that “Plaintiffs are entitled to that information pursuant to 29 C.F.R. § 2590.712(d) (2019). Plaintiffs may also be missing, and entitled to, other pertinent information that will help them more fully develop their claims in this action.”⁴⁶

Denying Motion to Dismiss Parity Act Claim, Despite Lack of Supporting Documents

In yet another decision, the District Court for the District of Utah acknowledged that the plaintiffs lacked certain Plan documents to support their Parity Act claim, but found the plaintiffs sufficiently pled the claim based on the documents they had at the time. The court denied the defendants’ Rule 12(b)(6) motion to dismiss. In *David P. v. United Healthcare Ins. Co.*⁴⁷, the minor plaintiff was admitted to “a mental health/



substance abuse residential treatment program ... in Maine⁴⁸ Her parents then transferred her to a “mental health/substance abuse residential treatment program” in Utah.⁴⁹ The defendant third-party administrator denied payment for the first facility and paid for one week only at the second. The plaintiffs sought to recover for the medical expenses that were not covered.⁵⁰

The defendants moved to dismiss the Parity Act claim under Rule 12(b)(6), and the parties agreed to a three-pronged analysis for determining the sufficiency of a Parity Act claim:

Parity Act plaintiffs must (1) identify a specific treatment limitation on mental health benefits; (2) identify medical/surgical care covered by the plan that is analogous to the mental health/substance abuse care for which the plaintiffs seek benefits; and (3) plausibly allege a disparity between the treatment limitation on mental health/substance abuse benefits as compared to the limitations that defendants would apply to the covered medical/surgical analog.⁵¹

The court determined that the plaintiffs satisfied the first two parts of the test.⁵² In addition, with respect to the third part of the test, the court found that the plaintiffs plausibly alleged the defendants “would not have applied acute-level criteria if L.P. sought benefits for analogous medical/surgical treatment of an inpatient hospice facility, skilled nursing facility, or inpatient rehabilitation facility, which the Plan lists as examples of ‘non-acute care.’”⁵³ At the same time, however, the court acknowledged that although plaintiffs did not “specify with precision what criteria Defendants apply to benefits determination for the identified analogous medical/surgical services, *it is impossible for them to do so*, because the defendants did not produce the requested documents.”⁵⁴ Noting the Parity Act does not require a “rigid pleading standard,” the court held that the plaintiffs sufficiently alleged a “treatment limitation disparity” based on the information they had at the time.⁵⁵ The court denied the Rule 12(b)(6) motion to dismiss the Parity Act claim.⁵⁶

Conclusion

As these cases show, attorneys representing plan participants during the administrative appeal process should decide which documents are needed from the Plan or Plan Administrator in order to properly allege a Parity Act claim and specifically request them *before* a final administrative appeal decision is issued. Likewise, Plans and Plan Administrators should promptly comply with such requests. Some courts might allow limited discovery when plaintiffs lack such documents, but that might depend on whether the plaintiffs requested the documents previously. In



addition, defendants who do not produce requested documents might face denials of their motions to dismiss, even when plaintiffs lack all the documentary support they need for their Parity Act claims. ➤

Endnotes

- 1 29 U.S.C. § 1185a.
- 2 Employer's Guide to the Health Insurance Portability and Accountability Act, ¶920 Mental Health 'Parity' (Mar. 2017 Supp.).
- 3 Employer's Guide to the Health Insurance Portability and Accountability Act, ¶920 Mental Health 'Parity' (Mar. 2017 Supp.).
- 4 29 C.F.R. § 2590.712(e).
- 5 29 C.F.R. § 2590.712(f)(1), (2)(iv); see also Stacey A. Tovino, *Will Neuroscience Redefine Mental Injury? Disability Benefit Law, Mental Health Parity Law, and Disability Discrimination Law*, 12 *Ind. Health L. Rev.* 695, 711 n.81 (2015) ("self-insured non-federal government employee plans can opt out," MPHEA does not apply to church-sponsored plans or retiree-only plans) (quoting Substance Abuse and Mental Health Services Administration, *Implementation of the Mental Health Parity and Addiction Equity Act*, (MPHEA), U.S. Dep't Health & Human Serv., <http://www.samhsa.gov/health-financing/implementation-mental-health-parity-addiction-equity-act>).
- 6 *Id.* (quoting *David S. v. United Healthcare Ins. Co.*, No. 2:18-cv-803, 2019 WL 4393341, at *3 (D. Utah Sept. 13, 2019)).
- 7 *Charles W. v. United Behavioral Health*, No. 2:18-cv-829-TC, 2020 WL 6895331, at *1 (D. Utah Dec. 18, 2019).
- 8 No. 2:19-cv-00473-DB, 2020 WL 570257, at *1 (D. Utah Feb. 5, 2020).
- 9 No. 2:19-cv-00470-DB-CMR, 2020 WL 291437, at *1 (D. Utah Jan. 21, 2020).
- 10 *Laurel R.*, No. 2:19-cv-00473-DB, 2020 WL 570257, at *2; *Jarrell O.*, No. 2:19-cv-00470-DB-CMR, 2020 WL 291437, at *2.
- 11 *Laurel R.*, No. 2:19-cv-00473-DB, 2020 WL 570257, at *1.
- 12 *Id.*
- 13 *Id.*
- 14 *Id.*
- 15 *Id.* at *2.
- 16 *Id.*
- 17 *Id.* at *1.
- 18 *Id.* at *2.
- 19 *Id.*
- 20 *Laurel R.*, No. 2:19-cv-00473-DB, 2020 WL 570257, at *2 ("Under the Parity Act's Final Rules, claimants have the right, upon request, to be provided with 'reasonable access to and copies of all documents, records, and other information relevant to the claimant's claim for benefits'" (quoting Final Rules Under the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 ('Final Rules'), 2013 WL 5981462, 78 Fed. Reg. 68247-68248).
- 21 *Laurel R.*, No. 2:19-cv-00473-DB, 2020 WL 570257, at *3.
- 22 *Id.*
- 23 *Jarrell O.*, No. 2:19-cv-00470-DB-CMR, 2020 WL 291437, at *1.
- 24 *Id.*
- 25 *Id.* at *2.
- 26 *Id.*
- 27 *Id.*
- 28 *Id.* at *3.
- 29 No. 2:19-cv-00396-DB-PMW, 2020 WL 838041, at *1 (D. Utah Feb. 20, 2020).
- 30 *Id.*
- 31 *Id.*
- 32 *Id.*
- 33 *Id.*
- 34 *Id.* at *3.
- 35 *Id.*
- 36 *Id.* at *3-4; see also *Charles W.*, No. 2:18-cv-829-TC, 2019 WL 6895331, at *1, 4-5 (the court dismissed the plaintiffs' Parity Act claim with respect to a denial of payments for residential treatment of a minor because the allegations were "vague, conclusory, and generic," and did not address the plaintiffs' access or lack of access to any relevant underlying documents).
- 37 No. 2:18-cv-00381-DB-PMW, 2020 WL 109512, at *1 (D. Utah Jan. 9, 2020).
- 38 *Id.* at *1-2.
- 39 *Id.* at *1.
- 40 *Id.* at *2 (quoting *Robert L. v. Cigna Health & Life Ins. Co.*, No. 2:18-CV-976 RJS DBP, 2019 WL 6220062, at *2 (D. Utah Nov. 21, 2019)).
- 41 *Id.*
- 42 No. 2:19-cv-223, 2019 WL 6790823, at *1 (D. Utah Dec. 12, 2019).
- 43 *Id.*
- 44 *Id.* at *6.
- 45 *Id.*
- 46 *Id.*
- 47 No. 2:19-cv-00225-JNP-PMW, 2020 WL 607620, at *1 (D. Utah Feb. 7, 2020).
- 48 *Id.*
- 49 *Id.* at *1.
- 50 *Id.*
- 51 *Id.*
- 52 *Id.* at *14-16.
- 53 *Id.* at *1.
- 54 *Id.* at *1. (Emphasis added.)
- 55 *Id.* at *1; see also *D.K., K.K., and A.K. v. United Behavioral Health*, No. 2:17-cv-01328-DAK, 2020 WL 262980, at *5 (Jan. 17, 2020) ("the nature of Parity Act claims is that they generally require further discovery to evaluate whether there is a disparity between the availability of treatments for mental health and substance abuse disorders and treatment for medical/surgical conditions.") (quoting *Timothy D. v. Aetna Health & Life Ins. Co.*, No. 2:18CV753DAK, 2019 WL 2493449, at 4 (D. Utah June 14, 2019)).
- 56 *David P. v. United Healthcare Ins. Co.*, No. 2:19-cv-00225-JNP-PMW, 2020 WL 607620, at *1 (D. Utah Feb. 7, 2020); see also *Johnathan Z. v. Oxford Health Plans*, No. 2:18-cv-383-JNP-PMW, 2020 WL 607896, at *1 (D. Utah Feb. 7, 2020) (denying motion to dismiss Parity Act claim).