

Final OK Sought For Settlement In Eating Disorder Suit

By Julie Zeveloff

Law360, New York (April 08, 2009) -- The lead plaintiffs in a class action against Horizon Blue Cross Blue Shield of New Jersey Inc. over the way the insurer handles coverage for eating disorders have asked a federal judge to grant final approval to a settlement valued at more than \$19 million, including over \$1.2 million in reimbursements for denied claims.

Lead plaintiffs Ronald Drazin and Ronald Sedlak filed a motion for final approval of the class action settlement Tuesday in the U.S. District Court for the District of New Jersey, writing that none of the 566 class members, all insureds in New Jersey during the class period, had objected to the proposed settlement.

"In this action, the settlement achieves the core goals of the litigation, provides both monetary and injunctive relief for thousands of families, and is fair, reasonable and adequate," the motion said.

Horizon and Magellan Health Services Inc., which administrates mental health benefits provided by Horizon plans and was also named as a defendant in the suit, likewise asked the court Tuesday to grant final approval to the settlement.

Under the agreement, Horizon and Magellan will pay around \$1.2 million to

class members whose benefits for eating disorder treatment were denied or limited because of limitations applicable to nonbiologically based mental illnesses.

In addition to providing monetary relief, the settlement substantially alters the way Horizon covers the treatment of eating disorders.

Within 15 days of the final approval date, Horizon will waive future coverage limitations for nonbiologically based mental illnesses, including eating disorders, and offer an enhanced appeals procedure for medical necessity coverage denials, said Bruce Nagel of Nagel Rice LLP, class counsel in the case.

The projected value of the waiver of coverage limitations is \$17.88 million, and the settlement will affect more than 1.5 million Horizon insureds in New Jersey, according to Nagel.

The motion for final approval also asked the court to grant up to \$2.45 million in attorneys' fees and costs.

"We are extremely pleased that the case has settled and I am hopeful that the court will grant final approval," Nagel said.

"We feel that the settlement was in the best interest of everybody involved and we hope that it will be approved finally, so that we can move forward," a spokesman for Horizon said.

Magellan did not immediately respond to a request for comment on the settlement on Wednesday.

The case dates back to 2006, when the lead plaintiffs accused Horizon and Magellan of violating New Jersey's Parity Law and Consumer Fraud Act, breaching their fiduciary duty under the Employee Retirement Income Security Act and common law, tortious interference with contract rights, and third-party beneficiary breach of contract.

"Horizon and Magellan have wrongfully concluded that the eating disorders are not biologically based and have imposed uniform coverage limitations for these eating disorders based upon the arbitrary decision that they are not biologically based," the complaint said.

The complaint also claims that the defendants' determinations that treatment for eating disorders is not medically necessary are "pretextual and arbitrary."

Some state claims were dismissed in August, according to court documents.

Attorneys from Nagel Rice also recently struck a substantially similar deal with insurance carrier Aetna Inc., which paid \$300,000 to 119 families in New Jersey whose coverage for eating disorders, including anorexia and bulimia, was limited by the insurance company during the seven years preceding the suit.

Aetna also made similar changes to its insurance policies regarding the coverage of eating disorders, Nagel said.

That deal, the first of its kind in New Jersey, won final approval in November, he said.

Between the Horizon and Aetna agreements, about half of the marketplace in New Jersey now has access to unlimited coverage for eating disorders, according to Nagel.

Another putative class action making the same allegations is currently pending against AmeriHealth, he said.

The plaintiffs in the current suit are represented by Nagel Rice LLP.

Horizon is represented by Greenberg Traurig LLP.

Magellan and its subsidiaries are represented by Wilson Elser Moskowitz Edelman & Dicker LLP and Crowell & Moring LLP.

The case is Drazin et al. v. Horizon Blue Cross Blue Shield of New Jersey et al., case number 06-cv-06219, in the U.S. District Court for the District of New Jersey.

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