

# New Jersey Law Journal

NJLJ.COM

STATEWIDE LEGAL AUTHORITY SINCE 1878

VOL. CXCIV, NO. 4

MONDAY, OCTOBER 27, 2008

An incisive media publication

## Judge Approves Settlement of Suit Against Aetna Over Coverage for Eating Disorders

By Henry Gottlieb

**A** federal judge gave final approval Tuesday to a class action settlement that requires Aetna Insurance Co. to provide about \$300,000 in back payments to 119 insureds whose benefits for eating disorders were limited.

The company also promised to treat future claims more liberally and make internal reforms to resolve disputes over benefits for eating disorders.

U.S. District Judge Faith Hochberg also approved a \$350,000 payment to the plaintiffs' class counsel, Nagel Rice in Roseland. All of the fee comes from Aetna, not out of a percentage of the class members' recovery.

"It makes perfect sense to me," Hochberg said after ruling that the settlement in *De Vito v. Aetna*, 07-418, was fair, reasonable and adequate.

The settlement requires the company to treat some claims for anorexia and bulimia as it does claims for biologically based mental illnesses (BBMI), such as schizophrenia. That makes a class of eating-disorder patients eligible for eight months of treatment, compared with 20 outpatient visits per calendar year and 30 days of inpatient benefits.

The 119 insureds who will receive checks were those who had at least one claim limited by Aetna's practices during the past seven years. And in the future, Aetna will treat anorexia and bulimia the same way it does BBMIs.

In addition, anyone Aetna determines to have no medical necessity for enhanced eating-disorder treatment during the next four years would have the right to elect binding review by an independent eating-disorder specialist selected with input from the plaintiffs' lawyers.

At the same time, though, the settlement affects only patients in "fully insured" plans — those funded by employers. Enrollees in self-funded plans, such as employee welfare and state worker health benefits programs, are not covered by the settlement and would not automatically benefit from the more liberal process.

Nagel estimates that about 530,000 of Aetna's 1.2 million insureds are eligible for the new claims procedures and that the process could be worth up to \$2 million in recoveries by the insureds.



PHOTO BY CARMEN NATALIA

**LAWYERS REWARDED SEPARATELY: U.S. District Judge Faith Hochberg also approved a \$350,000 payment to the class counsel, which does not come out of the plaintiffs' share.**

ascertain how this new piece of legislation will affect the claimants here, if at all," Hochberg said.

No members of the class opted out and no objections to the settlement or Nagel's firm's fee were filed with the court.

Hochberg is presiding over a similar but broader eating-disorder class action suit, *Beve v. Horizon Blue Cross*, 06-6219. In that case, the class is all ERISA insureds, not just those in fully insured plans like the ones in the Aetna settlement. ■

Left unclear after Tuesday's hearing was how the value of the settlement would be affected, if at all, by enactment this month of the U.S. Mental Health Parity and Addiction Equity Act of 2008, which seems to require all insurers to do what Aetna has promised.

The law, included by Congress in the Oct. 6 financial bailout package, requires insurers to give equal treatment to claims for mental and physical treatments after Jan. 1, 2001, to insureds in plans covered by ERISA, the federal benefits law.

That means, theoretically, that in 15 months the rights to coverage for eating disorders that Aetna insureds obtained in Tuesday's settlement will be a federal right for all Americans in ERISA plans.

The details of the law have not been promulgated and Nagel told Hochberg he didn't know how it would affect the value of the settlement. Nagel informed her that the parity law had been stuck into the bailout legislation.

But she was not inclined to wait for the details that would enable the parties to determine whether the law required a re-evaluation of the estimate that the settlement would generate \$2 million in increased recoveries.

"I am not going to hold this up to ascertain how this new piece of legislation will affect the claimants here, if at all,"