



Humana Fighting Multiple Behavioral Health Suits Alleging Care Denials

By Gale Scott February 7, 2020

Humana Health Plan of Texas is in federal court over litigation related to patients appealing decisions in which Humana refused to pay for inpatient care.

The insurer recently prevailed in a case called *Ariana M. vs. Humana Health Care of Texas*. That case, heard in the **U.S. Court of Appeals for the Southern District of Texas**, involves the plan's denial of extended inpatient care for a woman with an eating disorder.



But yesterday in the same court in Houston, Ariana M.'s lawyer **Amar Raval** again squared off with Humana's lawyer **Carlos Soltero** in arguing a similar case involving a Humana enrollee in Texas with an eating disorder. The newer case is *Katherine P. vs. Humana Health Care of Texas*.

Both cases are important as health plans struggle to comply with the *Mental Health Parity and Addiction Equity Act* that took effect this year. Also known as the federal mental health parity law, it requires insurers to offer the same level and frequency of care to

behavioral health patients as they do to medical/surgical patients.

Ariana M.'s case was closely followed by ParityTrack.org, a non-profit advocacy organization founded by **Patrick Kennedy**, the former Rhode Island Congressman and lead sponsor of the federal law. Humana did not respond yesterday to requests for comment.

So far, the Houston appellate court has sided with Humana. First it found Humana was justified in ruling that after 49 days of inpatient care plaintiff "Ariana M." no longer needed hospitalization. More recently the court also rejected her request for attorneys fees related to the appeal.

But the Katherine P. case shows the issue has not gone away.

In oral arguments yesterday, provided to *Health Payer Specialist* via an audio link, Raval makes repeated references to the similarities in the two cases. Judges **Carolyn Dineen King**, **Gregg Costa**, and **James Ho** heard the appeal.

The plaintiff is an Austin resident with a severe eating disorder and history of suffering from traumatic sexual abuse. Humana paid for 12 days of inpatient treatment at a facility in Miami. It then refused to pay for more.

Katherine P. wanted to stay the full 90 days, a period Raval says was allowed under her Humana contract. Instead, Humana ruled she was sufficiently cured to to be transferred to "partial hospitalization." That meant she reported to an outpatient facility for most of the day but did not sleep there.

Once again at issue is whether Humana was justified in denying a patient's evaluation of her own need for inpatient care.

"There's no question Katherine P. had a difficult time in her life," Humana's lawyer Soltero yesterday told the court. "But [inpatient treatment] was not a medical necessity—she was in a managed phase."

Soltero noted that a panel of doctors who reviewed the patient's medical records found she could safely be treated without hospitalization. Asked by the court whether the plaintiff's opinion that she needed more intensive care was a valid reason to authorize that care, Soltero responded that under the plan's contract, it was not. There had to be a formal determination of "medical necessity," he said.

Raval countered that, as in the case of Ariana M., while his client Katherine P. may have looked like she was getting better, she was not. It was only because she was in a structured setting with constant support and monitoring that she was able to finish her meals and keep her food down afterwards.

"She still had urges," Raval said. "It was not that she no longer wanted to purge, it was that the fact that they locked the bathroom door so she couldn't vomit."

That's not a cured state, he argued, and both clients knew they needed the structure of hospitalization if they were to get better.

Soltero said that relying more heavily on a patient's self-evaluation was problematic for Humana. "That could mean keeping her hospitalized in perpetuity," he told the court.

An underlying issue in the case, and one Raval says is likely to figure in more litigation involving health insurers, is that of which professional organizations should health plans use when they set the standards for behavioral health care.

At the time of Ariana M.'s treatment, Humana used behavioral health standards set by a private medical consultant, the **Mihalik Group**, based in Chicago. It has since changed to those set by **Magellan Healthcare**.

In questioning the two lawyers yesterday, the judges repeatedly focused on whether a definition of "medical necessity" should also take behavioral health patients' own evaluations into consideration.

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