

1
2
3
4
5
6 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
7 AT SEATTLE

8 M.R., by and through her parents and
9 guardians, Mi.R. and C.R., individually, on
10 behalf of PUGET SOUND ENERGY, INC.
HEALTH BENEFIT PLAN, and on behalf of
similarly situated individuals and plans,

11 Plaintiff,

12 v.

13 GROUP HEALTH COOPERATIVE,
a Washington corporation,

14 Defendant.

NO. 2:15-cv-01729

COMPLAINT
(ERISA CLASS ACTION)

[REDACTED]

15
16 I. PARTIES

17 1. *Plaintiff M.R.* Plaintiff M.R. is the five-year-old daughter and dependent
18 of Mi.R. and C.R. and resides in Whatcom County, Washington. Plaintiff M.R. is a
19 beneficiary, as defined by ERISA § 3, 29 U.S.C. § 1002(8), of the Puget Sound Energy Inc.
20 Health Benefit Plan. M.R.'s coverage is through C.R.'s employment.

21 2. *The Puget Sound Energy Inc. Health Benefit Plan.* The Puget Sound
22 Energy, Inc. Health Benefit Plan ("PSE Plan") is an "employee welfare benefit plan"
23 under ERISA § 1002(1), 29 U.S.C. § 1002(1). The PSE Plan covers more than 50 employees
24 (hereinafter described as a "large group" plan). The PSE Plan is a self-funded large
25 group health plan that provides both medical/surgical and mental health/substance use
26 disorder benefits.

1 under the Parity Act as incorporated into ERISA, the PSE Plan and other large group
2 Plans administered by GHC must be administered to ensure parity.

3 8. The Parity Act has two requirements. *First*, treatment limitations on
4 mental health benefits must also be applied to substantially all medical/surgical
5 services. *Second*, health plans may not impose special treatment limitations only on
6 mental health benefits. The language is express:

7 [1. T]he treatment limitations applicable to such mental health
8 or substance use disorder benefits are no more restrictive than
9 the predominant treatment limitations applied to substantially
10 all medical and surgical benefits covered by the plan (or
11 coverage) *and* [2.] there are no separate treatment limitations
that are applicable only with respect to mental health or
substance use disorder benefits.

12 29 U.S.C. § 1185a(a)(3)(A)(ii) (emphasis added). Plans regulated by the Parity Act must
13 meet both provisions.

14 9. GHC and its subsidiaries must administer the PSE Plan and other large
15 group Plans in compliance with the Parity Act and its implementing regulations, which
16 is incorporated into ERISA. Moreover, the Parity Act and its regulations are
17 incorporated as additional “terms” into the Plans themselves, modifying and eliminating
18 any literal terms that are inconsistent with the Parity Act. When GHC administers the
19 PSE Plan and other large group Plans in a manner that violates the Parity Act, GHC
20 breaches its statutory ERISA fiduciary duties, fails to properly process claims and
21 administer benefits, and misinforms beneficiaries about their coverage rights.

22 10. GHC administers claims for speech, occupational and physical therapy
23 services to treat mental health conditions listed in the Diagnostic and Statistical Manual
24 of Mental Disorders, 5th Ed. (“DSM”), such as Autism Spectrum Disorder (“ASD”).

25 11. Speech, occupational and physical therapy services to treat mental health
26 conditions are considered “mental health services” under the terms of the PSE Plan and

1 other Plans, as well as under applicable state and federal law. *See* 29 U.S.C. § 1185a(e)(4);
2 29 C.F.R. § 2590.712(a); RCW 48.44.341(1); *O.S.T. v. Regence BlueShield*, 181 Wn.2d 691,
3 335 P.3d 416 (2014).

4 12. GHC, however, refuses to provide coverage for these neurodevelopmental
5 mental health services under the Mental Health Benefit of the large group self-funded
6 Plans it administers. If GHC did, the services would be covered without a visit
7 limitation.

8 13. Instead, GHC administers its self-funded Plans to apply the Rehabilitative
9 or Habilitative treatment limitations to coverage of speech, occupational and physical
10 therapies to treat mental health conditions. For example, under M.R.'s PSE Plan, GHC
11 determined that M.R.'s speech therapy and occupational therapy to treat her ASD was
12 limited under the Rehabilitation and/or Habilitation benefit. It refused to cover M.R.'s
13 therapy services under the unlimited Mental Health Benefit. As a result, M.R.'s parents
14 were forced to pay out-of-pocket for speech and occupational therapy services to treat
15 her ASD. M.R. was also forced to go without medically necessary speech and
16 occupational services.

17 14. In contrast, substantially all outpatient medical/surgical services in the
18 PSE Plan and other Plans administered by GHC are covered without treatment
19 limitations. For example, there is no general limitation on the number of times an
20 enrollee on M.R.'s PSE Plan can visit a doctor or obtain surgery for medical conditions.

21 15. By applying and enforcing express quantitative treatment limitations on
22 coverage for neurodevelopmental mental health services, in violation of the Parity Act
23 and its regulations, GHC is systemically and uniformly breaching its ERISA obligations,
24 including its fiduciary duties to M.R. and other individuals in large self-funded Plans in
25 which GHC is the plan or claims administrator.

1 19. M.R. has received speech and occupational therapy services to treat her
2 mental health condition since at least 2014. She exhausted the quantitative visit
3 limitations in her PSE Plan in both 2014 and 2015. As a result, M.R.'s parents have paid
4 out-of-pocket for mental health services that would have been covered but for GHC's
5 application of quantitative visit limitations on her claims for coverage. M.R. has also
6 forgone medically necessary treatment because her parents have been unable to afford
7 to pay for the full amount of the mental health services that she needs, due to GHC's
8 application of quantitative visit limitations.

9 20. In light of the established Plan documents, written statement and
10 representations by GHC to M.R. and other members of the class, any attempt by class
11 members to pursue administrative remedies is futile. Nonetheless, M.R. completed the
12 internal appeals process adjudicated by GHC to no avail. She has exhausted her
13 administrative remedies.

14 **V. CLASS ALLEGATIONS**

15 21. *Definition of class.* M.R. proposes the following class definition:

16 All individuals who:

- 17 (1) Have received, require or are expected to require speech,
18 occupational and physical therapies to treat a mental
19 health condition listed in the DSM; and
- 20 (2) Have been, are or will be
- 21 (i) enrolled in a self-funded plan governed by ERISA
22 29 U.S.C. § 1001 *et seq.*, with more than 50 employees in
23 which Group Health Cooperative and/or one of its
24 subsidiaries is the claims or plan administrator; and
- 25 (ii) in which Group Health Cooperative and/or one of its
26 subsidiaries imposes quantitative treatment limitations
on speech, occupational and physical therapies to treat
a mental health condition that are not imposed on
substantially all medical/surgical services.

1 22. *Size of the class.* The members of the class defined above are so numerous
2 that joinder of all members is impracticable. The total number of class members is
3 expected to number well into the thousands.

4 23. *Class representative.* Named plaintiff M.R. is a beneficiary in the PSE Plan
5 who has received, requires and is expected to require speech and occupational therapies
6 to treat her ASD, a mental health condition. She is enrolled in a self-funded plan
7 governed by ERISA that covers more than 50 employees. She has been denied coverage
8 of mental health services due to GHC's application of quantitative visit limitations on
9 her mental health services, causing her to incur out-of-pocket expenses and to forgo
10 treatment. Her claims are typical of the other members of the class. M.R., by and
11 through her parents and guardians, will fairly and adequately represent the interests of
12 the class.

13 24. *Common questions of law and fact.* This action requires a determination
14 of whether GHC's application of quantitative visit limitations on speech, occupational
15 and physical therapies to treat mental health conditions like ASD violates the "terms of
16 the Plans" as modified by the Parity Act. Adjudication of this issue will, in turn,
17 determine whether GHC, as a fiduciary, may be held liable for its failure to properly
18 administer the PSE Plan and other Plans in which it functions or is named as the claims
19 or plan administrator.

20 25. *Separate suits would create risk of varying conduct requirements.* The
21 prosecution of separate actions by class members against GHC would create a risk of
22 inconsistent or varying adjudications with respect to individual class members that
23 would establish incompatible standards of conduct. Certification is therefore proper
24 under FRCP 23(b)(1).

25 26. *GHC has acted on grounds generally applicable to the class.* GHC, by
26 imposing uniform, standard quantitative visit limitations on speech, occupational and

1 physical therapies to treat mental health conditions, has acted on grounds generally
2 applicable to the class, rendering declaratory relief appropriate respecting the whole
3 class. Certification is therefore proper under FRCP 23(b)(2).

4 27. *Questions of law and fact common to the class predominate over*
5 *individual issues.* The claims of the individual class members are more efficiently
6 adjudicated on a class-wide basis. Any interest that individual members of the class may
7 have in individually controlling the prosecution of separate actions is outweighed by the
8 efficiency of the class-action mechanism. Upon information and belief, there has been
9 no class-action suit filed against GHC based upon the federal Parity Act for a class of
10 ERISA insureds. This action can be most efficiently prosecuted as a class action in the
11 Western District of Washington, where GHC has its principal place of business, does
12 business, and where M.R. resides. Issues as to GHC's conduct in applying standard
13 policies and practices towards all members of the class predominate over questions, if
14 any, unique to members of the class. Certification is therefore additionally proper under
15 FRCP 23(b)(3).

16 28. *Class Counsel.* M.R. has retained experienced and competent class
17 counsel.

18 VI. CLAIMS FOR RELIEF

19 FIRST CLAIM: 20 BREACH OF FIDUCIARY DUTIES ERISA § 404(a)(1), 29 U.S.C. § 1104(a)

21 29. M.R. re-alleges all preceding paragraphs.

22 30. GHC, when acting as a claims or plan administrator for the PSE Plan and
23 other self-funded Plans, is responsible for the approval, payment and/or denial of
24 benefits under the terms of the Plans. GHC, therefore, is a fiduciary under ERISA
25 § 3(21)(A), 29 U.S.C. § 1002(21)(A).

1 31. ERISA imposes strict fiduciary duties upon plan fiduciaries. ERISA
2 § 404(a)(1)(C), 29 U.S.C. § 1104(a)(1)(C), states, in relevant part, that a plan fiduciary
3 must discharge its duties with respect to a plan “solely in the interest of the participants
4 and beneficiaries and ... in accordance with the documents and instruments governing
5 the plan insofar as such documents and instruments are consistent with the provisions
6 of this title and Title IV.”

7 32. ERISA § 409(a), 29 U.S.C. § 1109(a), states, in relevant part:

8 Any person who is a fiduciary with respect to a plan who
9 breaches any of the responsibilities, obligations, or duties
10 imposed upon fiduciaries by this title shall be personally liable
11 to make good to such plan any losses to the Plan resulting from
12 each such breach, and to restore to such plan any profits of
13 such fiduciary which have been made through each such
14 breach, and to restore to such plan any profits of such fiduciary
15 which have been made through use of assets of the Plan by the
16 fiduciary, and shall be subject to such other equitable or
17 remedial relief as the court may deem appropriate, including
18 removal of such fiduciary.

19 33. The terms of an ERISA plan include non-preempted provisions of
20 substantive law, such as the requirements in the Parity Act. GHC has failed to comply
21 with the terms of the Plan, which include the requirements of the Parity Act, 29 U.S.C.
22 § 1185a, and its implementing regulations.

23 34. GHC violated its obligations under ERISA § 404(a)(1), 29 U.S.C.
24 § 1104(a)(1), by failing to act in accordance with the documents and instruments
25 governing the Plans, and it breached its fiduciary duties to M.R., the Plans and all class
26 members.

 35. As a direct and proximate result of these acts and omissions, M.R. and class
members have suffered losses and are entitled to relief under ERISA against GHC.

 36. M.R. and class members seek recovery of all losses including, but not
limited to, relief compelling GHC to restore to M.R. and class members all losses,

1 including interest, arising from the breaches of fiduciary duties when coverage of class
2 members' speech, occupational and physical therapies to treat mental health conditions
3 was limited in violation of the Parity Act and implementation.

4 **SECOND CLAIM:**
5 **CLAIM FOR CLARIFICATION OF RIGHTS UNDER TERMS OF THE PLANS AND**
6 **CLARIFICATION OF RIGHT TO FUTURE BENEFITS UNDER THE PLAN**
7 **ERISA § 502(a)(1)(B), 29 U.S.C. § 1132(a)(1)(B)**

8 37. M.R. re-alleges all preceding paragraphs.

9 38. ERISA § 502(a)(1)(B), 29 U.S.C. § 1132(a)(1)(B), provides that a participant
10 or beneficiary may bring an action to "recover benefits due to him under the terms of his
11 plan, to enforce his rights under the terms of the plan, or to clarify his rights to future
12 benefits under the terms of the plan."

13 39. M.R. and the class are entitled to a declaration of present and future rights
14 to coverage of speech, occupational and physical therapies to treat their mental health
15 conditions without the imposition of quantitative visit limitations.

16 **THIRD CLAIM:**
17 **CLAIM TO ENJOIN ACTS AND PRACTICES IN VIOLATION OF THE TERMS**
18 **OF THE PLANS, TO OBTAIN OTHER EQUITABLE RELIEF,**
19 **AND TO ENFORCE THE TERMS OF THE PLANS**
20 **ERISA § 503(a)(3), 29 U.S.C. § 1132(a)(3)**

21 40. M.R. re-alleges all preceding paragraphs.

22 41. ERISA § 503(a)(3), 29 U.S.C. § 1132(a)(3), provides that a participant or
23 beneficiary may "enjoin any act or practice which violates any provision of this
24 subchapter or the terms of the plan." M.R. and the class seek to enjoin GHC from
25 continuing to apply quantitative visit limitations on coverage of mental health services
26 in the Plans. M.R. and the class also seek to have GHC provide the class with corrective
notice and reformation of the relevant Plan documents.

42. ERISA § 503(a)(3), 29 U.S.C. § 1132(a)(3), further provides that a
participant or beneficiary may obtain other appropriate equitable relief to redress

1 violations of ERISA or enforce plan terms. To the extent full relief is not available under
2 ERISA § 503(a)(1)(b), 29 U.S.C. § 1132(a)(1)(B), or ERISA § 503(a)(2), 29 U.S.C.
3 § 1132(a)(2), then M.R. and the class seek equitable remedies including, without
4 limitation, unjust enrichment, disgorgement, restitution, estoppel and surcharge arising
5 out of GHC's failure to administer the terms of the Plans as modified by the Parity Act
6 and implementing regulations.

7 **VII. DEMAND FOR RELIEF**

8 WHEREFORE, M.R. requests that this Court:

9 1. Certify this case as a class action; designate the named plaintiff, M.R., as
10 class representative; and designate SIRIANNI YOUTZ SPOONEMORE HAMBURGER, Eleanor
11 Hamburger and Richard E. Spoonemore, as class counsel;

12 2. Declare that GHC may not apply contract provisions, policies or practices
13 that impose quantitative visit limitations on outpatient mental health services, including
14 speech, occupational and physical therapies to treat mental health conditions, when no
15 such quantitative visit limitations are applied to substantially all medical/surgical
16 services;

17 3. Declare that GHC's quantitative visit limitations on speech, occupational
18 and physical therapy services to treat mental health conditions are void and
19 unenforceable;

20 4. Enjoin GHC from further violations of the Parity Act and its implementing
21 regulations, as incorporated into the terms of the Plans;

22 5. Enter judgment in favor of M.R. and the class for damages in an amount to
23 be proven at trial due to GHC's failure to provide benefits due under the Plans as
24 modified by the Parity Act and implementing regulations;

25 6. Award M.R. and the class their attorney fees and costs under ERISA
26 § 502(g), 29 U.S.C. § 1132(g); and

