

IN THE SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

O.S.T., by and through his parents, G.T. and E.S.; L.H., by and through his parents, M.S. and K.H.; K.B. and A.B., by and through their parents, H.B. and M.B.; and D.F. by and through his parents, An.F. and Al.F.; each on their own behalf and on behalf of all similarly situated individuals,

Plaintiffs,

v.

REGENCE BLUESHIELD, a Washington corporation,

Defendant.

NO. 11-2-34187-9 SEA

FOURTH AMENDED COMPLAINT (CLASS ACTION)

PARTIES

1. **O.S.T.** Plaintiff O.S.T., a eight-year-old son and dependent of G.T. and E.S., is a resident of King County, Washington. Until October 2010, O.S.T. was insured under a health insurance plan issued, delivered, administered and insured by Regence BlueShield of Washington (“Regence”). O.S.T.’s coverage was through an individual policy purchased by E.S. and G.T. On July 16, 2013, O.S.T. reapplied to obtain individual health coverage through Regence, and he is now covered by Regence.

2. **L.H.** Plaintiff L.H. is the four-year-old son and dependent of M.S. and K.H. and is a resident of King County, Washington, L.H. is insured under a health

1 plan issued, delivered, administered and insured by Regence. L.H.'s coverage is
2 through an individual policy purchased by M.S. and K.H.

3 3. ***K.B. and A.B.*** Plaintiffs K.B. and A.B. are the three-year-old twin
4 dependent daughters of H.B. and M.B. and are residents of Pierce County, Washington.
5 K.B. and A.B. are insured under a health plan issued, delivered, administered and
6 insured by Regence. K.B. and A.B.'s coverage is through an individual policy
7 purchased by H.B. and M.B.

8 4. ***D.F.*** Plaintiff D.F. is a four-year-old dependent of An.F. and Al.F.,
9 and is a resident of King County, Washington. D.F. is insured under a health plan
10 issued, delivered, administered and insured by Regence. D.F.'s coverage is through an
11 individual policy purchased by An.F. and Al.F.

12 5. ***Regence BlueShield of Washington.*** Defendant Regence is a
13 Washington corporation that does business in the State of Washington, including King
14 County. Regence is an authorized health carrier and is engaged in the business of
15 insurance in the State of Washington, including King County.

16 **JURISDICTION AND VENUE**

17 6. Jurisdiction of this Court arises pursuant to RCW 2.08.010.

18 7. Venue is proper under RCW 4.12.025(1) because defendant
19 Regence transacts business and has an office in King County.

20 **NATURE OF THE CASE**

21 8. On January 1, 2006, a state law known as the Mental Health Parity
22 Act became effective. *See* RCW 48.44.341; 41.05.600. The purpose of the law was to end
23 the false distinction between physical and mental health:

24 The legislature finds that the potential benefits of improved
25 access to mental health services are significant. Additionally,
26 the legislature declares that it is not cost-effective to treat

1 persons with mental disorders differently than persons with
2 medical and surgical disorders.

3 Therefore, the legislature intends to require that insurance
4 coverage be at parity for mental health services, which means
5 this coverage be delivered under the same terms and
6 conditions as medical and surgical services.

7 Final Substitute House Bill 1154 (2005 Leg.). A study by the Washington Department
8 of Health had concluded that insurers' false distinction between physical and mental
9 health had caused thousands of Washington residents to go untreated. *See* Mental
10 Health Parity Mandated Benefits Sunrise Review, Washington Department of Health,
11 November 1998. The study concluded that untreated mental disorders ultimately cost
12 our state far more than the relatively minimal cost for providing timely and medically
13 necessary treatment.

14 9. The Act generally requires Washington health plans to cover all
15 outpatient and inpatient services to treat mental disorders covered by the diagnostic
16 categories listed in the most current version of the diagnostic and statistical manual of
17 mental disorders, so long as the services are medically necessary. For all health plans
18 delivered, issued for delivery or renewed on or after July 1, 2010, the Act also requires
19 those health plans to ensure that treatment limitations on services to treat mental
20 disorders are the same as any such limitations imposed on other medical and surgical
21 services.

22 10. The legislature's chosen language is purposefully broad, so as to
23 encompass virtually all mental disorders. The legislature rejected the option to provide
24 only partial parity, which would have singled out certain mental disorders for parity
25 while leaving others still subject to discriminatory exclusions and limitations. Instead,
26 the legislature designed the Act to apply equally and evenhandedly to all mental
disorders.

1 (a) have been, are, or will be insured under a non-ERISA
2 governed "health plan," as that term is defined by RCW 48.43.005(19), that has been or
3 will be delivered, issued for delivery, or renewed on or after January 1, 2006 by:
4 (1) defendant Regence; (2) any Washington State affiliate of defendant; (3) predecessors
5 or successors in interest of any of the foregoing; and (4) all Washington state
6 subsidiaries of any of the foregoing; and

7 (b) have received, require, or are expected to require behavioral
8 and/or neurodevelopmental therapy for the treatment of a condition listed in the
9 DSM-IV-TR other than (1) substance-related disorders and (2) life transition problems,
10 currently referred to as "V" codes, and diagnostic codes 302 through 302.9 as found in
11 the diagnostic and statistical manual of mental disorders, 4th edition, published by the
12 American psychiatric association, where the service received, required, or expected to
13 be required is not properly classified as skilled nursing facility services, home health
14 care, residential treatment, custodial care or non-medically necessary court ordered
15 treatment.

16 15. *Class Representative O.S.T.* Until October 2010, named plaintiff
17 O.S.T. was insured under a health plan issued by Regence to Washington state
18 residents who purchase their own health insurance. On July 16, 2013, O.S.T. applied to
19 enroll in a Regence individual plan, and he is now covered under a Regence individual
20 plan. O.S.T. is diagnosed with autism, a diagnostic category in the DSM-IV-TR. O.S.T.
21 received ABA, feeding and speech therapy to treat his autism. Regence does not cover
22 ABA therapy and informed O.S.T.'s parents that it was not covered under his Regence
23 contract. Regence also denied coverage of O.S.T.'s speech and feeding therapies.

24 16. *Class Representative L.H.* Named plaintiff L.H. became insured
25 under a Regence health plan as of April 1, 2012, after he and his family moved to the
26 State of Washington. L.H. is diagnosed with expressive language disorder, a

1 diagnostic category in the DSM-IV-TR (315.31), among other conditions. L.H. requires
2 neurodevelopmental therapies to treat his conditions. These therapies are excluded
3 under Regence's health plan.

4 17. *Class Representatives K.B. and A.B.* Named plaintiffs K.B. and
5 A.B. have been insured under a Regence health plan since they were born in 2010. K.B.
6 and A.B. are diagnosed with expressive/receptive language disorder, a diagnostic
7 category in the DSM-IV-TR. K.B. and A.B. require neurodevelopmental therapies to
8 treat their conditions. They have paid out of pocket for medically necessary speech
9 therapy in the past and are not receiving the speech therapy they require now. Their
10 medically necessary therapies are excluded under Regence's health plan.

11 18. *Class Representative D.F.* Named plaintiff D.F. has been insured
12 under a Regence health plan since he was born in 2010. D.F. is diagnosed with autism,
13 a diagnostic category in the latest version of the DSM. D.F. requires
14 neurodevelopmental therapies and Applied Behavior Analysis therapy to treat his
15 condition. His medically necessary neurodevelopmental and Applied Behavior
16 Analysis therapy are completely excluded by Regence.

17 19. *Claims Are Typical.* O.S.T., L.H., K.B., A.B., and D.F.'s claims are
18 typical of the claims of the other members of the class, and, through their parents, they
19 will fairly and adequately represent the interests of the class.

20 20. *Size of Class.* The class of persons who have received, require, or
21 are expected to require neurodevelopmental and/or behavioral therapy (including
22 Applied Behavioral Analysis therapy) for the treatment of a condition listed in the
23 DSM-IV-TR, and who have been insured, are insured, or will be insured under health
24 plans (as that term is defined in RCW 48.43.005(19)) issued by Regence and not subject
25 to ERISA, is expected to number in the thousands and is so large that joinder of all
26 members is impracticable.

1 21. ***Common Questions of Law and Fact.*** This action requires a
2 determination of whether Regence’s application of policies and practices that deny,
3 exclude and/or limit coverage of services to treat conditions identified in the
4 DSM-IV-TR in health plans issued, delivered, or renewed by Regence, violates the
5 requirements of RCW 48.44.341 and 41.05.600. The law requires health plans to cover
6 “mental health services,” which is defined as any medically necessary outpatient and
7 inpatient service provided to treat a mental disorder covered by the diagnostic
8 categories in the DSM-IV-TR. *See* RCW 48.44.341 (1); (2). The law renders void and
9 unenforceable all policies or practices that wholly exclude or establish treatment
10 limitations greater than that for medical and surgical services for services to treat
11 developmental disabilities listed in the DSM-IV-TR. A determination of this issue will
12 in turn determine whether plaintiffs and the class are entitled to a declaratory
13 judgment pursuant to RCW 7.24, *et seq.*, an injunction pursuant to RCW 19.86.090, an
14 injunction under common law, damages for breach of contract and damages and treble
15 damages due to violations of the Washington Consumer Protection Act, RCW 19.86, *et.*
16 *seq.*

17 22. ***Regence Has Acted On Grounds Generally Applicable to the Class.***
18 Regence, by applying policies and practices that result in the exclusion and improper
19 limitation of certain services to treat certain conditions listed in the DSM-IV-TR, has
20 acted on grounds generally applicable to the class. Certification is therefore proper
21 under CR 23(b)(2).

22 23. ***Questions of Law and Fact Common to the Class Predominate***
23 ***Over Individual Issues.*** The claims of the individual class members are too small to
24 justify filing and prosecuting the claims separately. Thus, any interest that individual
25 members of the class may have in individually controlling the prosecution of separate
26 actions is outweighed by the efficiency of the class action mechanism. Upon

1 therapy), neurodevelopmental therapies, and/or other services to treat their conditions
2 through the application of certain uniform exclusions, limitations, internal policies
3 and/or practices.

4 28. Because the application of these uniform exclusions, limitations,
5 internal policies and/or practices has resulted, and continues to result, in the exclusion
6 or limitation of coverage for services to treat conditions listed in the DSM-IV-TR, and
7 because Regence has failed, and continues to fail, to provide and/or authorize such
8 coverage, O.S.T., L.H., A.B., K.B., D.F. and members of the class have paid for
9 treatment rendered by these providers out of their own pocket or face the imminent
10 threat that they will have to do so in the near future. Other class members have been
11 forced to forgo necessary treatment due to Regence's conduct.

12 29. In light of the established public and published internal policies of
13 Regence and the representations by Regence to the parents of O.S.T., L.H., A.B., K.B.,
14 D.F. and other class members, any attempt by O.S.T., L.H., A.B., K.B., D.F. or other
15 class members to pursue administrative remedies would have been futile.

16 CLAIMS FOR RELIEF

17 A. First Claim: Breach Of Contract

18 30. Plaintiffs re-allege paragraphs 1 through 29, above.

19 31. As an insured under health insurance plans issued, delivered, and
20 insured by Regence, plaintiffs O.S.T., L.H., A.B., K.B., D.F. and the plaintiff class are
21 entitled to the full benefit of coverage mandated by RCW 48.44.341. Regence breached
22 its contracts by denying, excluding or limiting coverage for services to treat
23 developmental disabilities listed in the DSM-IV-TR, as required by RCW 48.44.341.
24 Plaintiffs O.S.T., L.H., A.B., K.B., D.F. and the plaintiff class are entitled to damages for
25 breach of contract including, without limitation, out-of-pocket losses, consequential
26 damages and restitution/disgorgement.

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B. Second Claim: Declaratory Relief

32. Plaintiffs re-allege paragraphs 1 through 31, above.

33. Under RCW 7.24, *et seq.*, plaintiffs O.S.T., L.H., A.B., K.B., D.F. and the plaintiff class are entitled to a declaratory judgment determining their legal rights under their contracts. Plaintiffs O.S.T., L.H., A.B., K.B., D.F. and the plaintiff class are entitled to a declaration that Regence may not exclude coverage for behavioral and/or neurodevelopmental therapies or otherwise apply policies or procedures that result in the denial, exclusion or limitation to a greater extent than other medical or surgical services of services to treat conditions listed in the DSM-IV-TR, so long as the treatment sought is medically necessary.

C. Third Claim: Violation of the Washington Consumer Protection Act, RCW 19.86, et seq.

34. Plaintiffs re-allege paragraphs 1 through 33, above.

35. Regence's repeated breaches of its insurance contracts with plaintiffs O.S.T., L.H., A.B., K.B., D.F. and the plaintiff class, and its failure to comply with RCW 48.44.341 violates the Washington Consumer Protection Act, RCW 19.86, *et seq.* Specifically, Regence has engaged in, and continues to engage in, unfair or deceptive acts or practices in trade or commerce in violation of the Washington State Consumer Protection Act. Such conduct affects the public interest, and has caused injury to the named plaintiffs and the plaintiff class.

36. Plaintiffs and the proposed class are entitled to an injunction under RCW 19.86.090 to enjoin further violations of RCW 48.44.341.

37. Plaintiffs and plaintiffs' class are entitled to compensatory damages, and treble damages under RCW 19.86.090, along with costs of suit and attorney fees due to Regence's violations of RCW 48.44.341.

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D. Fourth Claim: Injunctive Relief

38. Plaintiffs re-alleges paragraphs 1 through 37, above.

39. Plaintiffs and the plaintiff class are entitled to an injunction under RCW 19.86.090, under the common law, and under any other applicable laws, to enjoin further violations of RCW 48.44.341 and enjoin Regence's further breaches of its health insurance contracts and/or its unfair or deceptive acts and practices.

40. Plaintiffs and the plaintiff class are also entitled to a corrective notice by Regence affirming its obligation to provide its insureds with access to neurodevelopmental and ABA therapies necessary to treat their mental disorders.

DEMAND FOR RELIEF

WHEREFORE, plaintiffs request that this Court:

(a) Certify this case as a class action; designate the named plaintiffs as class representatives and designate SIRIANNI YOUTZ SPOONEMORE HAMBURGER, Eleanor Hamburger and Richard E. Spoonemore, as class counsel;

(b) Declare that Regence may not apply policies or practices that wholly exclude or impermissibly limit services to treat conditions listed in the DSM-IV-TR, including neurodevelopmental and behavioral therapies, including ABA;

(c) Enjoin Regence from further violations of RCW 48.44.341, enjoin Regence from continuing to breach its contracts with its insureds, and enjoin Regence from committing further unfair and deceptive acts and practices;

(d) Enter judgment in favor of plaintiffs and the plaintiff class for damages in an amount to be proven at trial due to Regence's failure to provide benefits due under health plans pursuant to RCW 48.44.341;

(e) Enter judgment for damages in favor of plaintiffs and the plaintiff class in an amount to be proven at trial on plaintiffs' Consumer Protection Act claim

1 against Regence and award treble damages up to \$25,000 to each class member for each
2 violation;

3 (f) Award plaintiffs and the plaintiff class damages for Regence's
4 breach of contract;

5 (g) Award plaintiffs and the plaintiff class their attorney fees and costs
6 under *Olympic Steamship* and its progeny, and under the CPA; and

7 (h) Award such other relief as is just and proper.

8 DATED: January 14, 2014.

9 SIRIANNI YOUTZ
10 SPOONEMORE HAMBURGER

11 _____
12 Eleanor Hamburger (WSBA # 26478)
13 Richard E. Spoonemore (WSBA #21833)
14 Attorneys for Plaintiffs

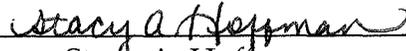
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CERTIFICATE OF SERVICE

I certify, under penalty of perjury and in accordance with the laws of the State of Washington, that on January 14, 2014, I caused a copy of the foregoing document to be served on all counsel of record as indicated below:

Timothy J. Parker	<input checked="" type="checkbox"/>	By First-Class Mail
Jason W. Anderson	<input checked="" type="checkbox"/>	By Email
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DATED: January 14, 2014, at Seattle, Washington.



Stacy A. Hoffman
Legal Secretary