

The Honorable Robert J. Bryan

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

C.P., by and through his parents, Patricia
Pritchard and Nolle Pritchard; and
PATRICIA PRITCHARD,

Plaintiffs,

v.

BLUE CROSS BLUE SHIELD OF
ILLINOIS,

Defendant.

NO. 3:20-cv-06145-RJB

DECLARATION OF ELEANOR
HAMBURGER IN SUPPORT OF
PLAINTIFFS' MOTION FOR CLASSWIDE
DECLARATORY AND PERMANENT
INJUNCTIVE RELIEF, AND AWARD OF
INDIVIDUAL NOMINAL DAMAGES TO
NAMED PLAINTIFFS

**Note on Motion Calendar:
March 3, 2023**

I, Eleanor Hamburger, declare under penalty of perjury and in accordance with the laws of the State of Washington and the United States that:

1. I am a partner at Sirianni Youtz Spoonemore Hamburger and am one of the attorneys for plaintiff class in this action.

2. I understand that plaintiffs in the *Wit v. United Behavioral Health* case intend to seek *en banc* review of recent Ninth Circuit panel decision. *Id.*, 2023 U.S. App. LEXIS 2039, at *28 (9th Cir. Jan. 26, 2023).

3. At the Rule 30(b)(6) deposition of Telisa Drake, on behalf of Blue Cross Blue Shield of Illinois, I asked Ms. Drake whether BCBSIL intended to continue to allow

1 the ERISA self-funded health plans with which it contracted to exclude gender affirming
2 care. She responded yes. Attached as *Exhibit A* to this declaration is a true and correct
3 excerpt of the Rule 30(b)(6) deposition of Telisa Drake on behalf of BCBSIL, taken on
4 May 13, 2022, reflecting her testimony at p. 165:8-18, with relevant portions highlighted
5 for the Court’s convenience.

6 4. Attached as *Exhibit B* to this declaration is a true and correct copy of a
7 communication Ms. Pritchard received from a representative of BCBSIL regarding her
8 ability to appeal a “non-covered benefit.” This document was produced in discovery
9 and used by BCBSIL in Ms. Pritchard’s deposition. Relevant portions have been
10 highlighted for the Court’s convenience.

11 5. Attached as *Exhibit C* to this declaration a true and correct copy of the
12 denial letter Ms. Pritchard received after the submission of the internal appeal regarding
13 the denial of C.P.’s pre-service determination of his second Vantas implant and chest
14 surgery. Relevant portions have been highlighted for the Court’s convenience and
15 personal identifiers have been redacted.

16
17 DATED this 9th day of February, 2023 at Seattle, Washington.

18 /s/Eleanor Hamburger

19 Eleanor Hamburger (WSBA #26478)
20 SIRIANNI YOUTZ SPOONEMORE HAMBURGER
21 3101 Western Avenue, Suite 350
22 Seattle, WA 98121
23 Tel. (206) 223-0303; Fax (206) 223-0303
24 Email: ehamburger@sylaw.com

25 *Attorneys for Plaintiffs*

Exhibit A

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF F WASHINGTON
AT TACOMA

C.P., by and through his parents,)
 Patricia Pritchard and Nolle)
 Pritchard and PATRICIA PRITCHARD,)
 Plaintiffs,)
 vs.) No. 3:20-cv-06145-RJB
 BLUE CROSS BLUE SHIELD OF)
 ILLINOIS,)
 Defendant.)

ZOOM VIDEO DEPOSITION UPON ORAL EXAMINATION
OF
TELISA DRAKE 30 (B) (6)

9:30 a.m.

May 13, 2022

REPORTED BY: Pat Lessard, CCR #2104

1 A P P E A R A N C E S

2

3 FOR THE PLAINTIFFS:

4 MS. ELEANOR HAMBURGER

5 Sirianni, Youtz, Spoonemore & Hamburger

6 3101 Western Avenue, Suite 350

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9 ele@sylaw.com

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11 MR. OMAR GONZALEZ-PAGAN, pro hac vice

12 Lamda Legal Defense and Education Fund

13 120 Wall Street, 19th Floor

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A P P E A R A N C E S

FOR THE DEFENDANT:

MS. GWENDOLYN PAYTON

MS. STEPHANIE BEDARD

Kilpatrick Townsend

1420 Fifth Avenue, Ste. 3700

Seattle, WA 98101

206.467.9600

gpayton@kilpatricktownsend.com

ALSO PRESENT:

WARREN BREY, Videographer

1 some or all gender-affirming health care, including
2 the CHI plan's exclusion, violated its fiduciary
3 duties?

4 This is topic 2.o.

5 MS. PAYTON: Object to the form.

6 You can answer.

7 A. No.

8 Q. (By Ms. Hamburger) Does Blue Cross
9 Blue Shield continue to allow its ASO plans the choice
10 of covering or excluding gender-affirming care?

11 MS. PAYTON: Object to the form.

12 A. Yes.

13 Q. (By Ms. Hamburger) Does Blue Cross
14 Blue Shield of Illinois intend to stop allowing the
15 ASO plans the choice of covering or excluding
16 gender-affirming care?

17 MS. PAYTON: Object to the form.

18 A. No.

19 MS. HAMBURGER: Can we take five minutes and
20 see where we are?

21 Take a little break.

22 THE VIDEOGRAPHER: We're now off the record
23 at 1:50 p.m.

24 (Recess.)

25 THE VIDEOGRAPHER: I'm sorry, Ms. Hamburger.

Exhibit B

Home My Benefits My Pay My Information My Policies

Open Case

Live Chat

Find an answer

Closed Requests

Number : 20552540

Question date : 4/26/2017 1:48 PM

Initial Case Question

Hi, I'm wondering if there's a way to make an appeal to CHI regarding a non covered benefit in our medical insurance.

Case History:

Date	Author	Response
4/26/2017 2:15 PM	LITTLE Monique	<p>Hi, I'm Monique and I'm the representative who assisted you today.</p> <p>Per our conversation, you can appeal with Blue Cross Blue Shield for how they process your claim (if you believe it was processed wrong), but there is no way to appeal a non-covered benefit with CHI (and likely not with BCBS).</p> <p>Thank you for calling HR/Payroll Connection. If you have any questions, please don't hesitate to give us a call at 1-844-450-9450. We are available Monday through Friday from 8:00AM to 8:00PM ET. Have a great day!</p>

NELSON COURT REPORTERS
 3/11/22
 PRITCHARD EXHIBIT
 9

Exhibit C



December 23, 2019

Patricia Pritchard
 [Redacted]
 Bremerton WA 98310 [Redacted]

Subscriber: Patricia Pritchard
Group/Sub. No.: [Redacted] 8820
Claim No.: Pre-Service Benefit Determination
Appeal ID No.: [Redacted] 0472
Appeal Type: Member's Authorized Representative

Phone: (866)776-4244
Fax: (918)551-2011
Email: SDOAppeals@bcbsil.com

Subject: Your appeal request

Dear Patricia Pritchard,

We have your appeal request for the service(s) below.

Based on your plan, our prior response dated April 26, 2018 completed the internal appeal process that is available to you. Please refer to our final decision letter for any additional rights that you may have.

Appeals Request	Reconsideration of Surgical Procedure		
Member	C [Redacted] P [Redacted]	Provider	Kevin Hatfield, M.D.
Service Date(s)	Pre-Service Benefit Determination	Facility	The Polyclinic
Initial Decision	This service is not a benefit of the contract (provision is not covered).	Initial Decision Code	299
Initial Decision Date	April 21, 2017	Claim Amount	\$0.00

If you have questions or to request copies, please contact Customer Service at the number above.

Sincerely,

Shannon H
 Appeals Specialist II

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 3/11/22
 PRITCHARD EXHIBIT
43



**BlueCross BlueShield
of Illinois**

December 23, 2019

Patricia Pritchard
[Redacted]
Bremerton WA 98310 [Redacted]

Subscriber:	Patricia Pritchard
Group/Sub. No.:	[Redacted] 8820
Claim No.:	Pre-Service Benefit Determination
Appeal ID No.:	[Redacted] 0472
Appeal Type:	Member's Authorized Representative
Phone:	(866)776-4244
Fax:	(918)551-2011
Email:	SDOAppeals@bcbsil.com

Appeals Department

Cc: The Polyclinic
Kevin Hatfield MD

Attachment:
IL02.G.UGF.F