

Health Net's 'Medical Necessity' Definition OK'd By Judge

By **Matthew Heller**

Law360, Los Angeles (July 9, 2013, 9:55 PM EDT) -- Health Net Inc. on Tuesday won a victory in a suit by Los Angeles physicians who allege the insurer illegally deprives them of control over patient care, when a California judge ruled that the definition of medical necessity it uses to deny insurance coverage is lawful.

Los Angeles Superior Court Judge John Shepard Wiley rejected the Los Angeles County Medical Association's argument that Health Net's definition of medical necessity unlawfully allows it to deny coverage for individuals with aggressive cancer, neurological disorders and other ailments even if the treating physician's health care decision was consistent with community medical standards.

"I do believe it would require a further step in California law that currently does not exist" to declare the definition unlawful, Judge Wiley said in granting Health Net's motion for summary adjudication.

But he did take the unusual step of immediately certifying the controversy for appellate review, saying an appeals court might be open to "a broader reading" of two precedents — *Sarchett v. Blue Shield of California* and *Hughes v. Blue Cross of Northern California* — on which he based his decision.

The LACMA's attorney William Shernoff had told him he would not be "overstepping" his authority if he found the Health Net definition "puts them in a position of controlling the medical treatment of the patient."

"That is the bottom line for me: Who controls the care of the patient? Is it the doctor or is it, in my vernacular, Wall Street?" Shernoff said.

The physician group's suit, which was filed in September, highlights the increasingly prominent tension between insurers' cost containment and patient well-being, accusing Health Net of ignoring recognized legal principles that say coverage can only be refused if it's obvious that a physician's recommendations are unreasonable or out of the mainstream.

The doctors sued along with policyholders Robert Mendoza, who was denied reimbursement for a \$30,000 prostate cancer procedure, and Kalana Penner, who was denied approval for a procedure that might permanently relieve her debilitating headaches.

“How can Health Net write [Mendoza] a letter saying, ‘Your surgery that saved your life ... that was unnecessary, that life-saving treatment you had was medically necessary?’” Shernoff asked at Tuesday’s hearing.

He argued there were two “giant loopholes” in Health Net’s definition of medical necessity, referring to language allowing its medical director to deny coverage on the basis of cost and if a more “appropriate” level of service is available.

“Really, in essence, they are practicing medicine,” Shernoff protested.

But Judge Wiley said Shernoff’s arguments were not supported by either Sarchett, in which the California Supreme Court said an insurer could refuse to pay for medically unnecessary treatment, or Hughes, in which an appeals court found Blue Cross illegally denied a claim on the basis of a concocted and restrictive definition of medical necessity.

The LACMA’s suit includes claims for unfair competition and breach of the covenant of good faith and fair dealing.

The plaintiffs are represented by William M. Shernoff, Michael J. Bidart and Travis M. Corby of Shernoff Bidart Echeverria Bentley LLP and by Rocky Delgadillo and Kim Zeldin of Liner Grode Stein Yankelevitz Sunshine Regenstreif & Taylor LLP.

Health Net is represented by Gregory N. Pimstone, Craig S. Bloomgarden, Joanna S. McCallum and Emil Petrossian of Manatt Phelps & Phillips LLP.

The case is Robert Mendoza et al. v. Health Net of California Inc., case number BC491954, in the Superior Court for the State of California, County of Los Angeles.

--Editing by Jeremy Barker.