

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; S.L. by and through her parents, S.R. and R.L.; EMMETT JONES, each individually and on behalf of similarly situated others; and PATRICIA PRITCHARD, individually,

Plaintiffs,

v.

BLUE CROSS BLUE SHIELD OF ILLINOIS,
Defendant.

NO. 3:20-cv-06145-RJB

DECLARATION OF ELEANOR HAMBURGER IN SUPPORT OF PLAINTIFF CLASS'S REPLY TO DEFENDANT'S SUPPLEMENTAL BRIEFING REGARDING DEFENDANT'S MOTION TO DECERTIFY (DKT. NO. 156)

**Note on Motion Calendar:
November 20, 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 Plaintiffs in this action.

2. Attached as *Exh. 1* is a true and correct copy of the email string between BCBSIL's counsel and myself regarding the information contained in the recent declaration of Telisa Drake. BCBSIL apparently has nothing in writing regarding any change in the CHI Plan removing the exclusion of certain gender affirming care. Moreover, BCBSIL did not produce any written documentation detailing the directions to its staff regarding the alleged removal of the gender affirming care exclusion. No notice to enrollees of the CHI Plan was disclosed. If indeed,

Exhibit 1

From: [Payton, Gwendolyn](#)
To: [Ele Hamburger](#); [Bedard, Stephanie](#)
Cc: [Omar Gonzalez-Pagan](#); [Daniel Gross](#); [Stendara, Zoe](#)
Subject: RE: [External] CP v. BCBSIL
Date: Thursday, November 16, 2023 9:55:08 AM

We let you know very shortly after the legal team was notified. I am happy to get on a call to discuss further.

Gwendolyn Payton

gpayton@ktslaw.com

1420 Fifth Avenue | Suite 3700 | Seattle, WA 98101
T 206 626 7714 | F 206 299 0414

Kilpatrick Townsend & Stockton LLP
[My Profile](#) | [vCard](#)

Please note that my email address is changing. Please consider adding this new email to your safe senders list, downloading my vCard or sending me an email by using the address in my signature line. To learn more about our new visual identity, please visit us online at www.ktslaw.com

From: Ele Hamburger <ele@sylaw.com>
Sent: Tuesday, November 14, 2023 4:48 PM
To: Payton, Gwendolyn <GPayton@kilpatricktownsend.com>; Bedard, Stephanie <Sbedard@kilpatricktownsend.com>
Cc: Omar Gonzalez-Pagan <ogonzalez-pagan@lambdalegal.org>; Daniel Gross <Daniel@sylaw.com>; Stendara, Zoe <ZStendara@kilpatricktownsend.com>
Subject: RE: [External] CP v. BCBSIL

Why did you not disclose this sooner?

From: Payton, Gwendolyn <GPayton@kilpatricktownsend.com>
Sent: Tuesday, November 14, 2023 4:38 PM
To: Ele Hamburger <ele@sylaw.com>; Bedard, Stephanie <Sbedard@kilpatricktownsend.com>
Cc: Omar Gonzalez-Pagan <ogonzalez-pagan@lambdalegal.org>; Daniel Gross <Daniel@sylaw.com>; Stendara, Zoe <ZStendara@kilpatricktownsend.com>
Subject: RE: [External] CP v. BCBSIL

Our understanding is it was on 7/10.

Gwendolyn Payton

gpayton@ktslaw.com

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From: Ele Hamburger <ele@sylaw.com>
Sent: Tuesday, November 14, 2023 2:20 PM
To: Payton, Gwendolyn <GPayton@kilpatricktownsend.com>; Bedard, Stephanie <Sbedard@kilpatricktownsend.com>
Cc: Omar Gonzalez-Pagan <ogonzalez-pagan@lambdalegal.org>; Daniel Gross <Daniel@sylaw.com>; Stendara, Zoe <ZStendara@kilpatricktownsend.com>
Subject: RE: [External] CP v. BCBSIL

When was that request made to BCBSIL?

From: Payton, Gwendolyn <GPayton@kilpatricktownsend.com>
Sent: Tuesday, November 14, 2023 1:26 PM
To: Ele Hamburger <ele@sylaw.com>; Bedard, Stephanie <Sbedard@kilpatricktownsend.com>
Cc: Omar Gonzalez-Pagan <ogonzalez-pagan@lambdalegal.org>; Daniel Gross <Daniel@sylaw.com>; Stendara, Zoe <ZStendara@kilpatricktownsend.com>
Subject: RE: [External] CP v. BCBSIL

Elle,

The request to not enforce the exclusion was made orally to BCBSIL by CcmmonSpirit, and we are unaware of any documentation yet. CommonSpirit said they likely will not have an updated SPD until Q1 of 2024.

Gwendolyn

Gwendolyn Payton

gpayton@ktslaw.com

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From: Ele Hamburger <ele@sylaw.com>
Sent: Monday, November 13, 2023 11:54 AM
To: Payton, Gwendolyn <GPayton@kilpatricktownsend.com>; Bedard, Stephanie <Sbedard@kilpatricktownsend.com>
Cc: Omar Gonzalez-Pagan <ogonzalez-pagan@lambdalegal.org>; Daniel Gross <Daniel@sylaw.com>
Subject: RE: CP v. BCBSIL

****CAUTION: External Email****

Additionally, can you provide all responsive discovery related to this new change in the CHI plan? As

you know, defendant has an ongoing obligation to supplement its discovery responses.

Thank you,

Ele

From: Ele Hamburger

Sent: Monday, November 13, 2023 11:33 AM

To: Payton, Gwendolyn <GPayton@kilpatricktownsend.com>; Bedard, Stephanie <Sbedard@kilpatricktownsend.com>

Cc: Omar Gonzalez-Pagan <ogonzalez-pagan@lambdalegal.org>; Daniel Gross <Daniel@sylaw.com>

Subject: CP v. BCBSIL

Hi Gwendolyn and Stephanie,

Can you send us the amendment or revised SPD that reflects the removal of the gender affirming care exclusion from the CHI Plan, as described in Ms. Drake's declaration?

Thank you,

Ele

Ele Hamburger

SIRIANNI YOUTZ

SPOONEMORE HAMBURGER PLLC

3101 WESTERN AVENUE, SUITE 350

SEATTLE, WASHINGTON 98121

DIRECT LINE: (206) 838-1809

GENERAL OFFICE: (206) 223-0303

FACSIMILE: (206) 223-0246

E-MAIL: ehamburger@sylaw.com

WEBSITE: www.sylaw.com

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Exhibit 2

Therapeutic, prophylactic, or diagnostic injection (specify substance or drug); subcutaneous or intramuscular

Type	From Date	Through Date	Status	Status Reason Description	Units
Initial Request	2/17/2022	5/24/2022	Approve	Criteria Met	2

UR Contact Info



Contact Name

Telephone

Fax

[View Follow-up](#) | [View Member Outcome](#) | [View Interaction Activity](#)

[Add New Note](#)

Request Notes (Sort by Date Entered ↓)

<p>4/12/2022 11:01 AM CDT • Request Note • Stephanie Blea • Sup Pharmacy Programs</p> <p>Provider is going to start the Supprelin on 05/24/2022 U22048CDGF</p>	
<p>2/22/2022 3:38 PM CST • Request Note • Chris Sandoval • Pharmacy Operations Rep Updated approval note</p> <p>Request approved for J1950 - Lupron 11.25 mg every 3 months for 6 months (total of 2 doses). Per current clinic notes (dated 12/14/2021) the member; 1. has the following diagnosis: F64.2 - Gender identity disorder of childhood. This appears to meet criteria per Blue Cross Blue Shield Illinois Medical Policy RX501.041 (Gonadotropin-Releasing Hormone (GnRH) Agonists and Antagonists) or SUR717.001 (Gender Assignment Surgery and Gender Reassignment Surgery with Related Services) or RX502.061 Oncology Medications. Approve per SRU pharmacist Lori Zamarrípa, Pharm D. Auth# U22048CCON DOS 02/17/2022 - 08/17/2022</p> <p>Letter sent</p> <p>Phone call notes Inbound Person: Bret Title: n/a Location: Providers office Phone number: 503-418-2764 Regarding: Lupron or Supprelin La Response: Need to continue on Lupron until they can get member set up for Supprelin LA. They won't start the Supprelin process until they have an approval on file and once they do it can take up to 6 months for the member to be seen due to scheduling and consult.</p> <p>***Confirmed with Starla P. - Ok to put the Lupron approval in for 6 months and the start the Supprelin approval 6 months out so the approval don't overlap.</p>	
<p>2/21/2022 3:46 PM CST • Follow up • Chris Sandoval • Pharmacy Operations Rep</p> <p>Follow-up Date/Time: 2/20/2022 10:00 AM CST Follow-up Details: Regarding: Lupron or Supprelin La 48 hour hold</p>	
<p>2/21/2022 3:45 PM CST • Request Note • Chris Sandoval • Pharmacy Operations Rep</p> <p>Request approved for J1950 - Lupron 11.25 mg every 3 months for 12 months (total of 4 doses). Per current clinic notes (dated 12/14/2021) the member; 1. has the following diagnosis: F64.2 - Gender identity disorder of childhood. This appears to meet criteria per Blue Cross Blue Shield Illinois Medical Policy RX501.041 (Gonadotropin-Releasing Hormone (GnRH) Agonists and Antagonists) or SUR717.001 (Gender Assignment Surgery and Gender Reassignment Surgery with Related Services) or RX502.061 Oncology Medications. Approve per SRU pharmacist Lori Zamarrípa, Pharm D. Auth# U22048CCON DOS 02/17/2022 - 02/17/2023</p> <p>Letter sent</p> <p>***Per convo with Eliot Cho - Provider wants to continue with Lupron for now until they are able to get Supprelin which will take months.</p>	
<p>2/21/2022 11:22 AM CST • Request Note • Chris Sandoval • Pharmacy Operations Rep</p> <p>Phone call notes Outbound Person: Bret Title: n/a Location: Providers office Phone number: 503-418-2764 Regarding: Lupron or Supprelin La Response: LVM</p>	
<p>2/18/2022 10:09 AM CST • Follow up • Chris Sandoval • Pharmacy Operations Rep</p> <p>Follow-up Date/Time: 2/20/2022 10:00 AM CST Follow-up Details: Regarding: Lupron or Supprelin La 48 hour hold</p>	
<p>2/18/2022 10:08 AM CST • Request Note • Chris Sandoval • Pharmacy Operations Rep</p> <p>Procedure Code-Drug: J1950 - Lupron</p>	