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Superior Court Of California

SEP 14 2018

Sherri H. Carter, Executive Officer/Clerk  
By: Cristina Grijalva, Deputy

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
13 FOR THE COUNTY OF LOS ANGELES

14 JESSICA MANUEL,

15 Plaintiff,

16 v.

17 BLUE CROSS OF CALIFORNIA dba  
18 ANTHEM BLUE CROSS and DOES 1  
19 through 20, inclusive,

20 Defendants.  
21

) CASE NO.: **BC 7 21 8 2 8**  
)  
) **COMPLAINT FOR:**  
)  
) **BREACH OF CONTRACT**  
)  
) **BREACH OF THE IMPLIED COVENANT**  
) **OF GOOD FAITH AND FAIR DEALING**  
)  
)  
)  
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1 **INTRODUCTION**

2 1. This lawsuit arises out of Defendant Blue Cross of California’s dba Anthem Blue  
3 Cross (“Anthem”) refusal to provide coverage for treatment of Plaintiff’s serious, progressive, and  
4 debilitating disease: lipedema. When Anthem was unable to refer Plaintiff to a physician in its  
5 network that had the experience and qualifications to treat her severe lipedema, Anthem ignored  
6 Plaintiff’s repeated requests for a specialist and then, after months, simply made up a denial basis,  
7 that the proposed treatment was “cosmetic” and excluded. The proposed treatment is not cosmetic  
8 because it was recommended as treatment for an admittedly progressive and debilitating disease,  
9 not to make Plaintiff look better. The proposed treatment also is not cosmetic because it qualifies  
10 under California’s reconstructive surgery law mandating coverage for a surgery recommended to  
11 address an abnormal body structure when the surgery will either improve function or create a  
12 normal appearance to the extent possible. There is no question that Plaintiff has abnormal body  
13 structures and that the proposed treatment will both improve function and create a normal  
14 appearance for her. Anthem’s disregard of the facts relating to Plaintiff’s serious lipedema  
15 condition and failure to resolve her complaints to Anthem has subjected her to further injury and  
16 suffering. Moreover, Anthem’s actions are part of a systemic problem at Anthem where member  
17 complaints are ignored and not properly addressed.

18 **PARTIES**

19 2. Plaintiff Jessica Manuel is a resident of Los Angeles County.

20 3. Anthem is a corporation located in Woodland Hills, California.

21 4. Plaintiff is unaware of the true names and capacities of Defendants DOES 1  
22 through 20, inclusive, and therefore sue these defendants by such fictitious names. Plaintiff will  
23 amend this Complaint to allege their true names and capacities when ascertained. Plaintiff alleges  
24 on information and belief that each of the Doe Defendants is responsible or liable in some manner  
25 to Plaintiff for the conduct alleged in this Complaint and that Plaintiff’s damages as herein alleged  
26 were proximately caused by those Doe Defendants.

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1 **FACTUAL ALLEGATIONS**

2 5. Anthem is a “health care service plan” licensed by the Department of Managed  
3 Health Care and subject to the relevant provisions of the Health & Safety Code. Under this  
4 regime, the covered person is called the “subscriber” or “member,” and the entity providing the  
5 coverage is the “plan.” The contract provided to the members is called an evidence of coverage  
6 (“EOC”), Health & Safety Code section 1345. The EOCs are governed by the relevant provision  
7 of Health & Safety Code.

8 6. At all times mentioned, Plaintiff was covered under the terms of a group health  
9 plan issued to the City of Los Angeles by Anthem called the “Select HMO Plan.” This group  
10 health plan required that Plaintiff be assigned to a primary care physician who would attend to  
11 Plaintiff’s primary care needs. If Plaintiff needed treatment by a specialist, the primary care  
12 physician would make the referral. If no suitable specialists were in the narrow Select HMO  
13 network, Anthem would make a referral to an out-of-network specialist. Anthem maintained final  
14 decision-making on the covered or non-covered nature of a particular treatment.

15 7. Plaintiff was assigned to primary care physician, Joseph Au, M.D, in the Select  
16 HMO network.

17 8. Lipedema is a rare condition that is chronic, progressive, painful, and  
18 immobilizing. It involves an abnormal buildup of adipose (fat) tissue, usually in the lower body  
19 but sometimes in the arms. Often misdiagnosed as obesity or lymphedema, lipedema primarily  
20 affects women. Symptoms of lipedema include disproportionately large, column-like legs, and  
21 disproportionate hips, stomach or buttocks. As lipedema progresses, patients become increasingly  
22 heavy in the lower body and expanding fat cells interfere with the pathways of lymphatic vessels.

23 9. There are four stages of lipedema: Stage 1 in which there is a normal skin surface  
24 with enlarged hypodermal adipose tissue; Stage 2 with indentations of the skin and underlying  
25 adipose tissue similar to a mattress containing larger mounds of adipose tissue that grow as non-  
26 encapsulated masses, lipomas and angioliomas; Stage 3 where large extrusions of tissue (skin  
27 and adipose tissue) cause gross deformations especially on the thighs and around the knees.  
28 Lymphedema, where lymph fluid develops dependently on the feet and hands increasing cranially

1 due to dysfunctional lymphatics, can develop during any stage of lipedema, and is called  
2 lipolymphedema or Stage 4 lipedema.

3 10. An effective treatment for lipedema is a form of surgery called lymphatic sparing  
4 tumescent liposection. This treatment requires multiple surgeries.

5 11. Plaintiff was diagnosed with Stage 3 lipedema.

6 12. Plaintiff requested that Anthem provide coverage for treatment of her severe  
7 lipedema through an out-of-network physician, David Amron, M.D., who is a specialist in treating  
8 lipedema with tumescent liposection. In connection with Plaintiff's request, Dr. Amron submitted  
9 a report to Anthem detailing Plaintiff's diagnosis, the progression of the disease, her need for  
10 treatment, and medical literature regarding the diagnosis and management of lipedema and the use  
11 of tumescent liposuction to treat it.

12 13. In May of 2018, Anthem refused to authorize Plaintiff's treatment with Dr. Amron  
13 because he was not in the Select HMO network. Instead, Anthem authorized treatment with Keith  
14 Hurvitz, M.D., a plastic surgeon in the Select HMO network.

15 14. Plaintiff saw Dr. Hurvitz on June 6, 2018. He performed a focused history and  
16 physical examination of Plaintiff regarding her complaints. He agreed that Plaintiff suffered from  
17 severe lipedema but conceded he did not have the experience to treat "cases of this severity."  
18 Consequently, Dr. Hurvitz advised Anthem he did not have the experience to treat Plaintiff's  
19 condition and recommended that Plaintiff be treated by Dr. Amron or another specialist with the  
20 sufficient experience and qualifications to treat advanced lipedema.

21 15. Plaintiff made requests of Anthem to respond to Dr. Hurvitz's recommendation but  
22 Anthem ignored her.

23 16. Months later, on September 5, 2018, Anthem advised Plaintiff that her request for  
24 tumescent liposuction to treat her lipedema was denied on the basis that the treatment was for  
25 "cosmetic" purposes and therefore excluded. Anthem acknowledged that "the information we have  
26 tells us that you have been diagnosed with lipedema." Anthem stated, however, that "[t]his type of  
27 surgery is not approvable under your plan clinical criteria when used to improve appearance but  
28 not improve health." Anthem did not state what those clinical criteria were.

1           17.     Contrary to Anthem’s position, the proposed treatment is not cosmetic. The  
2 primary purpose of the proposed surgery is to treat Plaintiff’s progressive, debilitating lipedema,  
3 not to make her look better. In any event, the proposed surgery complies with both prongs of  
4 California’s reconstructive surgery law, Health & Safety Code section 1367.63, that requires  
5 health plans to cover surgery as “reconstructive” when it is “performed to correct or repair  
6 abnormal structures of the body caused by congenital defects, developmental abnormalities,  
7 trauma, infection, tumors, or disease to do *either* of the following: (A) To improve function. (B)  
8 To create a normal appearance, to the extent possible.” (Empahsis added.) Plaintiff’s proposed  
9 surgery would improve function because it will eliminate Plaintiff’s physical problems that are  
10 associated with Stage 3 lipedema such as immobilization. The surgery would also create a normal  
11 appearnce, to the extent possible, because it will dramatically reduce the size of Plaintiff’s grossly  
12 enlarged legs and arms.

13           18.     Anthem’s action in delaying and denying Plaintiff’s requested treatment was  
14 unreasonable, in bad faith, intended to cause Plaintiff injury, and constituted dispicable conduct  
15 carried out with willful and conscious disregard of Plaintiff’s rights and safety. Anthem admittedly  
16 knew that Plaintiff suffered from severe lipedema, that this was a progressive and debilitating  
17 disease, and that there were no specialists in the Select HMO network that could provide the  
18 required treatment. Despite this, Anthem directed Plaintiff to Dr. Hurvitz. After Dr. Hurvitz  
19 advised Anthem that he did not have the expericne to treat Plaintiff, and recommended she be  
20 treated by Dr. Amron, or another specialist with sufficient experience and qualifications to treat  
21 her advanced lipedema, Anthem did nothing. After months, and complaints by Plaintiff, Anthem  
22 made up a denial basis, that the proposed surgery was “cosmetic.”

23           19.     Anthem knew that the proposed treatment was not for cosmetic purposes, that it  
24 was to treat her progressive and debilitating lipedema, and that failure to authorize the treatment  
25 would subject Plaintiff to further injury and suffering. Anthem also knew that it was bound to  
26 follow the provisions of Health & Safety Code section 1367.63 and provide surgery to correct an  
27 abnormal body structure when doing so would improve function or create a normal appearance to  
28 the extent possible. Anthem settled a class action case five years earlier, *Woelk v. Blue Cross of*

1 *California*, Los Angeles Superior Court Case No. BC391522, where the evidence showed that  
2 Anthem had been systematically violating section 1367.63 in denying the excess skin surgery  
3 claims of massive weight loss patients. Anthem knew that Plaintiff's proposed surgery was  
4 reconstructive and not cosmetic under the law because the surgery satisfied both prongs of the  
5 law—it would provide an improvement in function and create a normal appearance.

6 20. Finally, Anthem's action delay and ultimate rejection of Plaintiff's "grievance"  
7 over its failure to provide treatment was part of a systemic problem at Anthem of failing to  
8 properly address and resolve grievances as required by Health & Safety Code section 1368. For  
9 years, Anthem has failed to properly investigate and resolve member grievances. Even though  
10 Anthem has been repeatedly cited by its regulator for its deficient grievance procedures, paid  
11 fines, and made promises to correct its practices, Anthem has continued to ignore the substance of  
12 member complaints as it did with Plaintiff. Indeed, within a year prior to the events described  
13 herein, Anthem's regulator, the Department of Managed Health Care, filed an Accusation against  
14 Anthem, detailing Anthem's long-standing practice of ignoring the substance of member  
15 grievances and seeks a \$5 million dollar fine against Anthem. Despite these facts, Anthem failed  
16 to fix its grievance practices and subjected Plaintiff to the same illegal acts when it ignored her  
17 complaints then improperly rejected them.

18 **FIRST CAUSE OF ACTION**  
19 **(Breach of Contract)**

20 21. Plaintiff hereby repeats and realleges the preceding paragraphs and incorporates the  
21 same as though fully set forth herein.

22 22. Plaintiff was covered under the terms of a group health plan issued by Anthem, as  
23 alleged herein.

24 23. The essential terms of the contract are that Plaintiff agreed to pay premiums and, in  
25 return, Anthem promised to provide health coverage for the treatment of illnesses and injuries  
26 suffered by Plaintiff. Among other things, Anthem agreed to provide referrals to specialists when  
27 needed.

28 24. As alleged herein, Plaintiff requested that Anthem authorize treatment of her severe

1 lipedema by an out-of-network specialist. Anthem refused that request and referred Plaintiff a  
2 physician it represented was a specialist in the Select HMO network who did not have sufficient  
3 experience treat Plaintiff's advanced condition. That physician advised Anthem that Plaintiff  
4 should be treated by the out-of-network she had requested or another specialist with similar  
5 experience. Anthem ignored this request and, after delay, denied Plaintiff's claim as cosmetic.

6 25. As alleged herein, the proposed treatment is not cosmetic for various reasons.

7 26. Anthem breached the terms of the group health plan, and the statutory obligations  
8 superimposed on it, by failing to authorize treatment for Plaintiff's condition with a specialist and  
9 denying her claim as "cosmetic."

10 27. As a proximate result of said acts, Plaintiff has suffered loss of benefits and loss of  
11 treatment, suffered further injury and disability, great physical and mental stress, pain, and shock  
12 to her nervous system, great emotional distress, humiliation and anxiety, loss of income and  
13 earning capacity, and economic loss, all to her damage in a sum to be proven at the time of trial.

14 **SECOND CAUSE OF ACTION**  
15 **(Breach of the Implied Covenant of Good Faith and Fair Dealing)**

16 28. Plaintiff hereby repeats and realleges the preceding paragraphs and incorporates the  
17 same as though fully set forth herein.

18 29. Plaintiff was covered under the terms of a group health plan with Anthem, as  
19 alleged herein.

20 30. The relationship of health plan and covered member as between Anthem and  
21 Plaintiff has caused there to be an implied-in-law duty extending from Anthem to the Plaintiff to  
22 deal fairly with the Plaintiff and in good faith in fulfilling the promises made under the contract.

23 31. Anthem has breached the duty of good faith and fair dealing owed Plaintiff by the  
24 committing the following acts:

- 25 a) Failing to properly and thoroughly investigate Plaintiff's claim;  
26 b) Ignoring medical and other information when failing to authorize treatment by an  
27 out-of-network specialist and then denying Plaintiff's claim as cosmetic;  
28 c) Misrepresenting facts and contract provisions when failing to authorize treatment

1 by an out-of-network specialist and then denying Plaintiff's claim as cosmetic;

2 d) Unreasonably delaying responsive action to Plaintiff's requests for treatment and  
3 coverage;

4 e) Disregarding its obligations under Health & Safety Code section 1367.63;

5 f) Failing to properly investigate and resolve Plaintiff's complaints as required by  
6 Health & Safety Code section 1368;

7 g) Other acts of which Plaintiff is currently unaware.

8 32. As a proximate result of said acts, Plaintiff has suffered loss of benefits and loss of  
9 treatment, suffered further injury and disability, great physical and mental stress, pain, and shock  
10 to her nervous system, great emotional distress, humiliation and anxiety, loss of income and  
11 earning capacity, and economic loss, all to her damage in a sum to be proven at the time of trial.

12 33. As a further proximate result of said acts, Plaintiff will incur attorney fees in  
13 proving the amounts due her under the group health plan.


14 34. The aforementioned acts were done maliciously, fraudulently and oppressively  
15 within the meaning of Civil Code section 3294, as alleged herein. Said acts were authorized,  
16 ratified and performed by officers and managing agents of Anthem.

17 WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

- 18 1. Special and consequential damages in an amount to be proven at the time of trial,  
19 including interest;
- 20 2. General damages in an amount to be proven at the time of trial;
- 21 3. Attorney fees in proving amounts due Plaintiff under the group health plan;
- 22 4. Punitive damages in an amount appropriate to punish or set an example of Defendants;
- 23 5. Costs of suit incurred herein; and
- 24 6. For such other and further relief as the Court deems just and proper.

25 DATED: September 14, 2018

GIANELLI & MORRIS

26 By:   
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