

Goodrich vs. Aetna: A \$120.5 Million Commentary

David Goodrich was a career Deputy District Attorney for San Bernardino County, who headed up the gang prosecution unit, who had health insurance through his employment with Aetna Health Plans of Southern California, Inc., which later became Aetna U.S. Healthcare of California, Inc.

On June 5, 1992, David collapsed while in court. After exploratory surgery and testing, David was diagnosed with a rare form of stomach cancer, leiomyosarcoma. He was informed by an Aetna in-plan surgical oncologist that he should be seen at City of Hope since, admittedly, none of the doctors in-plan had vast experience with the disease.

David's care and treatment between June 1992 and his death in March 1995 can be divided into three distinct segments. First, was a possible bone marrow transplant in conjunction with high dose chemotherapy to be performed at City of Hope in 1992. Second, a cryosurgery of the liver with follow-up chemotherapy which was performed at St. John's Medical Center in Santa Monica in 1993. And third, a debulking surgery which was performed at St. John's Medical Center as well in early 1995.

In accordance with plan procedure, David sought his primary care physician's referral for medical treatment. At the outset, his primary care physician issued an Authorization for David to be seen at City of Hope for consultation. Doctors at City of Hope had determined that David was a perfect candidate for high dose chemotherapy supported with a bone marrow transplant.

Although the in-plan oncologist's indication that David needed to go to City of Hope came on July 21, 1992, a response from Aetna was not forthcoming until November 18, 1992, four months later. The Utilization Review Department of Redlands Medical Group, in accordance with Aetna procedure under a Terminal Illness Policy, that was not disclosed to treating physicians or plan members, forwarded the request for treatment at City of Hope to Aetna's local Medical Director, who then sent the request on to Aetna's Home Office in Hartford, Connecticut. After delaying a decision, Aetna finally issued a denial letter on the basis that proposed treatment at City of Hope was experimental was not a covered benefit.

Notably, the Evidence of Coverage and Disclosure Form issued by Aetna to David in 1992 did not contain any exclusions or limitations for experimental or investigational procedures! While Aetna had contracted with Redlands Medical Group, later known as Primecare Medical Group of Redlands, for the utilization review and medical care to be provided to plan members, Aetna maintained final authority to approve or deny out-of-plan hospitalizations.

Unfortunately for David and Teresa Goodrich, by the time Aetna had made its decision to deny the high dose chemotherapy, based on a non-existing exclusion, David's cancer had metastasized to his liver, thereby disqualifying him as a candidate for the procedure. Due to the delay, David lost his window of opportunity for the treatment.

The second major treatment request was on August 26, 1993, when David's primary care physician requested authorization for David to be seen in consultation and possible cryosurgery at St. John's Medical Center. Once again, the UR Department of Primecare Medical Group of Redlands forwarded the request to

the local Medical Director of Aetna, who in turn sent the request to the Home Office in Hartford, Conn. It was not until November 3, 1993, two and one half months later, when David received a letter from an R.N. at Aetna, indicating that out-of-plan services would not be covered. Aetna later paid for a majority of the medical bills related to the cryosurgery, but not the follow-up chemotherapy. David's treating surgical oncologist testified at trial that had he seen David in February of 1993, and performed the cryosurgery at that time, he could have extended David's life by approximately 15 to 20 months, and that David would have enjoyed a better quality of life.

The third major segment of David's treatment was on January 11, 1995 when his Aetna In-Plan Primary Care Physician requested an out-of-plan hospitalization at St. John's for debulking surgery and chemotherapy. David did not have the luxury of waiting for Aetna's decision, so the surgery was performed on January 17, 1995. Aetna denied the request the next day, on January 18, 1995, via a letter from another R.N. which was delivered to Teresa at the hospital, while David was on a ventilator in I.C.U. Aetna's letter indicated that David would be financially responsible for all charges incurred. David died two months later knowing his wife, a kindergarten school teacher, would be left with roughly \$750,000 in medical bills to pay.

During trial, David's treating specialist testified that David was never stable enough following the January 17, 1995 surgery to be transferred to another facility. David Goodrich died on March 15, 1995, without ever leaving St. John's Medical Center.

Following David's death, Teresa sought the help of the primary care physician in appealing Aetna's decision that left her owing approximately \$750,000 in medical bills. The Primary Care Physician sent his letter pleading with Aetna to reconsider its position on May 16, 1995. It was not until November of 1995 that Aetna responded to the appeal, at which time Aetna upheld its previous decision to deny payment.

The Goodrich case was one of the only few HMO bad faith cases to actually reach a jury. The large majority of managed care plans covering individuals are obtained through employee benefit plans and therefore are preempted by ERISA. Under ERISA, those individuals cannot bring their case before a jury to hold the HMO accountable when treated unfairly. Indeed, the only remedy available under ERISA is that the managed care plan must pay what it owed in the first place. However, because David Goodrich was a government employee, the action was exempt from ERISA.

Ultimately, the jury found Aetna acted with malice, oppression and fraud in the handling of David Goodrich's treatment requests, and in the first phase of the trial awarded \$747,655.88 for unpaid medical bills, and \$3,790,603.52 on the wrongful death cause of action. In the second phase of the trial, the jury awarded \$116,026,104.00 in punitive damages, for a total verdict of \$120,564,363.40.

Following the jury verdict, it was discovered that the parent company, Aetna Services Inc., had filed a declaratory relief action in Federal District Court in Pennsylvania against its own insurance carrier, seeking indemnity for the Goodrich verdicts. In that separate action, Aetna Services Inc., alleged that the policy covered the punitive damage judgment up to a limit of at least \$76 million.

Thus, on March 19, 1999, plaintiff brought a motion to amend the judgment to add the parent company, Aetna Services Inc., as judgment debtors. Also at that time, Aetna U.S. Healthcare of California brought a motion for new trial and a motion for judgment notwithstanding the verdict. Following the hearing, on March 29, 1999, the Court granted plaintiff's motion to amend the judgment, thus including the parent company, Aetna Service Inc., as a judgment debtor. The Court also denied Aetna's motion for new trial and JNOV, and the verdict was left intact, in its entirety. In its decision not to reduce the punitive damage award, the Court noted, among other things, the following:

In arriving at this determination, and recognizing the purpose of punitive damages to punish and deter, this court also considers the fact that Aetna Services, Inc., and Aetna U.S. Healthcare of California, Inc., are both generally immune from civil suits arising out of the provision of managed health care, based upon the provisions of ERISA. The Goodrich claim is a rare exception. Additionally, managed health care providers have significant contact with the general public, and the general public is more dependent upon the managed health care providers than virtually any other product or service industry in the private sector. (A copy of the Court's ruling entire ruling is attached hereto).

An amended judgment, including the parent company, Aetna Service Inc., as a judgment debtor, was entered on April 13, 1999. At this juncture, Aetna has not yet filed an appeal.