

## **ERISA-Governed Health Plan Excluding Coverage for Non-Contracted Providers Held to be Unambiguous**

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In *Dupree v. Holman Prof'l. Counseling Ctrs.*, \_\_\_ F.3d \_\_\_, 2009 WL 2245219 (9th Cir. July 29, 2009), the Ninth Circuit Court of Appeals held that an ERISA-governed health plan, which repeatedly asserted that non-contracted services were generally not covered, unambiguously excluded coverage of non-emergency treatment at a non-contracted residential treatment center. In doing so, the Ninth Circuit employed the well-established canon of contract interpretation, applicable in ERISA cases, that a contract should be read as a whole, giving effect to every part. The court rejected Plaintiff's attempt to pick out policy provisions and read them out of context to find ambiguity where none exists.

Plaintiff's employer contracted with Holman Professional Counseling Centers ("Holman") for behavioral health insurance coverage. Holman agreed to provide behavioral health services "through Providers pursuant to the Schedule of Benefits" and that if enrollees chose to use non-contracted providers, they would do so at their own expense "except as otherwise provided in this Group Plan Contract."

Plaintiff obtained treatment for his step-daughter at a non-contracted residential treatment center for substance abuse and diabetes. Plaintiff sought coverage under the Holman policy, and Holman denied on the basis that the treatment center was a non-contracted provider.

Plaintiff sued, arguing that the group contract and benefits schedule created an ambiguity which, when resolved in favor of the insured, should allow coverage. Plaintiff relied upon the policy provision that non-contracted provider services were not covered "except as otherwise provided in this Group Plan Contract." To give that phrase meaning, Plaintiff pointed to the Schedule of Benefits that did not distinguish between non-contracted and contracted providers. Plaintiff argued that because the benefits schedule did not distinguish between non-contracted and contracted providers, there was ambiguity as to whether non-contracted providers' services were covered under the "as otherwise provided" language.

The Ninth Circuit rejected Plaintiff's argument, holding that when read as a whole, the policy unambiguously excluded coverage of Plaintiff's claim. The court relied upon the following: the policy repeatedly stated non-contracted providers' services were not generally covered, creating a default presumption of no coverage that then had to be overcome by another policy provision; the policy's "Exclusions" section specifically denied coverage for any benefit "not specifically listed as a covered benefit"; and the Plan's definition of "Residential Treatment Centers" included only contracted providers. Therefore, even though the benefits schedule did not distinguish between contracted and non-contracted providers, other policy provisions unambiguously excluded coverage.