

CHRISTINE STENGER vs. CARELINK HEALTH PLANS, INC.

Hearing Before: Jack DeBolt, Hearing Examiner

August 10, 2006

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01 THE COURT: Mr. Shuman.
02 MR. SHUMAN: I'm Grant Shuman with
03 Spilman, Thomas & Battle here on behalf of Carelink.
04 MS. AARONBERG: I'm Robyn Aaronberg with
05 Carelink also, and I will be also a witness.
06 MR. WEINBERG: Jonathan Weinberg for
07 Carelink.
08 THE COURT: Let me touch on a couple of
09 preliminary matters, if I may. On the 7th, Mr. Hartman
10 had sent to me and other interested parties a Motion to
11 Compel Discovery and I think there was a relayed telephone
12 message to continue the hearing today. But as I
13 understand from a conference call that I did between Mr.
14 Hartman and Mr. Weinberg, after having gotten this
15 document, I understand that those issues have been
16 resolved and that all that is withdrawn as being moot.
17 MR. HARTMAN: Yes, sir, Your Honor, that's
18 correct. And we can do that formally here on the record
19 today and if the Court would like me to follow up with a
20 written motion, I withdraw the Motion to Compel.
21 THE COURT: I don't need anything in
22 writing. I just thought it ought to be spread on the
23 record --
24 MR. HARTMAN: Yes, sir.

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01 and that's why we're here, whether or not Carelink may
02 have conducted itself in some fashion in which it ought
03 not to have. So with that, Mr. Hartman, unless somebody
04 else has something that needs to be raised preliminarily.
05 Is there?
06 MR. WEINBERG: We have one preliminary
07 matter, which is a Motion for pro hac vice.
08 THE COURT: Yeah, I think I got those
09 materials. Mr. Hartman, is there any objection to that?
10 MR. HARTMAN: No, sir.
11 THE COURT: Well, I'm going to grant
12 that, and I think dotting I's and T's, I think that's
13 generally -- there's generally something that comes back
14 from the State Bar office with respect to that, if I'm not
15 mistaken and maybe I am mistaken. But in any event, the
16 motion will be granted.
17 MR. WEINBERG: Thank you.
18 THE COURT: Anything else preliminarily?
19 MR. WEINBERG: No, sir.
20 THE COURT: Okay. Mr. Hartman, let me
21 call upon you to present what you may wish.
22 MR. HARTMAN: I'd like to, if I could,
23 just open with a very brief opening statement and then
24 what I anticipate the evidence will show the Court today

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01 THE COURT: -- so that should somebody
02 else look at the record in this matter, they have a clue
03 as to what will have become of that.
04 MR. HARTMAN: Yes, sir.
05 THE COURT: The other thing, let me
06 mention, in reviewing this matter fairly thoroughly this
07 morning in preparation for the hearing to get a better
08 idea of what we're doing, I noticed that there was some
09 byplay with respect, some assertions that somebody may or
10 may not have misrepresented themselves on the telephone
11 and that a response in response to that assertion has
12 caused some consternation and difficulty.
13 And let me say that, while I know that
14 these issues may be important personally to people, the
15 insurance commissioner has no authority at all to act as a
16 decider of those issues as to what may have occurred.
17 Whether or not those events occurred, doesn't make a bit
18 of difference to me, but because the insurance
19 commissioner has no authority to give any redress to
20 anybody who feels aggrieved by that sequence of events, I
21 just don't think it's relevant for us to get into it,
22 because I think the relevant part of what we're doing here
23 today is determine whether or not Ms. Stenger has a claim,
24 a covered item under her insurance contract with Carelink,

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01 and then call my first witness.
02 As the Court indicated, I think there's two
03 central issues in this case: first, an issue of coverage;
04 and secondly, an issue of the conduct of Carelink. First
05 as it relates to coverage, the coverage issue you will
06 hear today from Carelink. I anticipate the evidence will
07 show that once determination for a non-covered benefit had
08 been made, that they therefore have no further duty to the
09 consumer. And not only is that illogical and poor
10 business practice, it's also a violation of West Virginia
11 law. And that is not the case.
12 What we'll show you here today is that that
13 logic violates national accreditation standards, it
14 violates their own internal policies, it violates
15 insurance commission regulatory rules and the West
16 Virginia code. Once the procedure has been characterized
17 as non-covered, their duty does not end.
18 First of all, this has been
19 mischaracterized as a non-covered procedure. Denied once
20 for one reason as an orthodontic procedure. Declined on
21 the second appeal of that under a completely different
22 standard. The reasons for denial have switched.
23 Carelink will agree to cover sleep studies,
24 they will allow Ms. Stenger to find out what the matter is

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