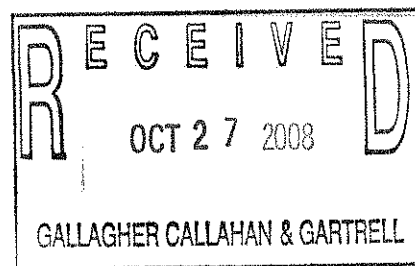


**THE STATE OF NEW HAMPSHIRE
Merrimack County Superior Court**

163 N. Main Street
P. O. Box 2880
Concord, NH 03301 2880
603 225-5501



NOTICE OF DECISION

CHARLES P BAUER ESQ
GALLAGHER CALLAHAN & GARTRELL P C
214 NORTH MAIN STREET PO BOX 1415
CONCORD NH 03302-1415

06-E-0089 Sean Provencher v. Anthem Health Plans of New Hampshire, Inc
07-E-0396 Sean Provencher v. Energy Transfer Partners GP, L.P.

Enclosed please find a copy of the Court's Order dated 10/23/2008
relative to:

Court Order

10/24/2008

William McGraw
Clerk of Court

cc: Frank E. Kenison, Esq.
Scott H. Harris, Esq.
Adam M. Hamel, Esq.

THE STATE OF NEW HAMPSHIRE
SUPERIOR COURT

MERRIMACK, SS.

06-E-089

SEAN PROVENCHER

v.

ANTHEM HEALTH PLANS OF NEW HAMPSHIRE, INC.

07-E-396

SEAN PROVENCHER

v.

ENERGY TRANSFER PARTNERS GP, LLP.

FINDINGS, RULINGS AND DECREE

Sean Provencher ("Sean"), the petitioner, has brought this declaratory judgment petition against respondents Anthem Health Plans of New Hampshire, Inc. ("Anthem"), and Energy Transfer Partners, GP, LLP. ("Energy"), for the purpose of determining which respondent was responsible for providing his primary insurance coverage in 2003. As a threshold matter, the court notes that the respondents have agreed that the petitioner is entitled to full insurance coverage for his cystic fibrosis medical bills. Per this stipulation, under no circumstances is petitioner to be found liable for the medical bills, and the only remaining question is which respondent is responsible for medical bills as the primary insurer.

A final hearing was held in the above captioned consolidated matters on October 6, 2008. Upon consideration of the parties' oral and written arguments and the applicable law, the court finds and rules as follows.

Background

Sean was born on August 25, 1981, to Joseph Provencher and Erica Hallstrom, who divorced in 1990. In his early childhood, Sean was diagnosed with cystic fibrosis, a chronic condition requiring ongoing medical care. On April 20, 1990, the Merrimack County Superior Court issued an Order on Permanent Custody and Support ("the decree"), which discussed both custody and insurance coverage for Sean. According to the decree, both parents were provided with joint legal custody, but Erica Hallstrom was provided with primary physical custody. The decree also stated that Erica Hallstrom was responsible for providing medical insurance to Sean, as long as it was available to her at no cost, through her employer. If medical insurance was not available to Erica Hallstrom at no cost, Joseph Provencher would be responsible for providing medical insurance, if it was available to him at no cost, through his employer.

During the beginning of the time period at issue, April 2003, Sean was 21 years old. Although not a minor, Sean was covered as a dependent by both of his parents insurance plans because he was a full-time student. At this time, Erica Hallstrom was employed by the State of New Hampshire, and insured by Anthem Health Plans of New Hampshire ("the Anthem policy"). Also during this time, Joseph Provencher was employed by Energy Transfer Partners, GP, LLP, who provided him with an insurance policy ("the Energy policy").

When Erica Hallstrom applied for the Anthem policy, she indicated that she was divorced, although she never provided, and was never asked to provide Anthem with a copy of the divorce decree. Further, on two occasions Erica Hallstrom indicated in writing to Anthem that Sean was also covered by the Energy policy. Erica Hallstrom's intent was to indicate to Anthem that Energy would be primarily responsible for Sean's prescription coverage. At all times after July 1, 2002, Erica Hallstrom believed that Anthem was Sean's primary medical insurer and submitted claims to Anthem for all medical and hospital bills. Between July 1, 2002, and April 2003, Anthem paid for Sean's medical expenses, which involved visiting a cystic fibrosis specialist every three months, and visits to his primary care physician in-between specialist visits, without asking to see the actual divorce decree.

In April 2003, Sean had an acute cystic fibrosis attack, and Erica Hallstrom admitted him to Concord Hospital. Between April 16, 2003, and October 19, 2003, Sean received treatment at Concord Hospital. Erica Hallstrom indicated to Concord Hospital that the Anthem policy was responsible for Sean's medical bills. The total cost of Sean's treatment at Concord Hospital for the period at issue was \$24,550.18. The claims for these expenses were denied under both the Anthem and the Energy policies. Each respondent claimed that it provided secondary coverage, and claimed that the other carrier's policy provided primary coverage.

In early October 2004, Concord Hospital commenced a collection action against Sean in an attempt to collect the medical fees it was owed. In July 2005,

Concord Hospital agreed to hold its action while Sean filed legal action against the respondents. On March 16, 2006, Sean commenced a declaratory judgment petition against Anthem and CIGNA. On July 28, 2006, CIGNA was dismissed from the case. On September 12, 2007, Sean filed a declaratory judgment petition against Energy. On October 10, 2007, this court granted Sean's assented to motion to consolidate the declaratory judgment petitions against Anthem and Energy.

Analysis

It is agreed by the respondents that Sean is fully insured. The sole issue before the court is which respondent, Anthem or Energy, was responsible for providing primary insurance coverage to Sean from April 2003 to October 2003. Anthem argues that it was the secondary provider, because it was notified twice by Erica Hallstrom that it was secondary, and because it was never provided with the divorce decree. Further, Anthem contends that because Sean was over the age of majority at the time he was hospitalized, the divorce decree does not apply, and primary insurance coverage should be determined according to the "birthday rule". Energy argues that the divorce decree does apply, and that it places primary insurance responsibility on Anthem, making Anthem responsible for the Concord Hospital bills.

The 1990 Order on Permanent Custody and Support clearly states that Erica Hallstrom was responsible for providing primary insurance coverage for Sean, when he was a minor, as long as it was available to her at no cost. This court finds that the decree also made Erica Hallstrom responsible for providing

insurance coverage for Sean while he was enrolled in college, as long as it was available to her at no cost. The decree makes it clear that Erica Hallstrom's responsibility to provide primary insurance would only terminate when the insurance was no longer available to her at no cost through her employer. The court is not persuaded by Anthem's argument that the decree did not apply because Sean was 21, and no longer a minor in April 2003. Therefore, because the decree applied to Sean in 2003, the court declines to apply the "birthday rule", as suggested by Anthem.

The court is also not persuaded by Anthem's argument that they are not the primary insurer because they were not provided with a copy of the divorce decree. Erica Hallstrom informed Anthem of her divorce, and the existence of her ex-husband's policy when she enrolled. Anthem never asked for a copy of the divorce decree. Further, because Anthem had paid Sean's medical bills for the nine-month period between his coverage commencing in July 2002 and his admittance to Concord Hospital on April 16, 2003 without requiring a copy of the decree, Anthem waived the requirement that they be provided with a copy of the divorce decree. Anthem cannot pay the smaller bills and then raise this clause for the first time when a large bill is incurred. It is important to note that the provision regarding providing a copy of the policy is a technicality. The decree made Anthem liable for the medical and hospital bills. Not only should Anthem be estopped from raising the issue of being provided a copy of the policy after paying smaller bills without a copy, Anthem suffered no prejudice as a result of

not receiving a copy of the decree. Under the decree Anthem was responsible for the medical and hospital bills.

In conclusion, the court finds and rules that Anthem was the primary insurer between April and October of 2003, and therefore is responsible for Sean's Concord Hospital medical bills. Additionally, in accordance with RSA 491:2-b, Sean is entitled to receive court costs and reasonable attorney's fees from Anthem. Attorney Kenison is requested to file an itemized bill and a motion for attorney's fees. If Anthem objects in a timely manner, the Clerk is requested to schedule a hearing to determine the amount and allocation of attorney's fees.

**FINDINGS AND RULINGS ON RESPONDENT ANTHEM'S
PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. Granted.
2. Granted.
3. Granted.
4. Granted.
5. Granted.
6. Granted.
7. Granted.
8. Granted.
9. Granted.
10. Granted.
11. Granted.
12. Granted.

13. Granted.

14. Granted.

15. Granted.

16. Granted, but her reference to her ex-husband's policy being primary was meant by her to refer only to prescription coverage. Under the court decree, the mother was responsible for providing medical insurance for the children, but the parents chose to treat the father's policy as primary for prescriptions because his carrier provided better prescription coverage. From the time she re-enrolled on 6/19/02, all medical and hospital bills were submitted to Anthem and paid by Anthem until the large April 16, 2003 bills at issue here for Sean's cystic fibrosis emergency admission to Concord Hospital.

17. Granted, but her reference to her husband's policy being primary was meant to refer only to prescription coverage. See ruling on 18.

18. Granted. Erica Hallstrom informed Anthem of the divorce and the existence of her ex-husband's policy when she enrolled on June 19, 2002. She was never asked for a copy of the divorce decree and she never provided a copy. Anthem thereafter paid medical and hospital bills without requiring a copy of the decree until the large bills at issue here. By its conduct, Anthem waived the requirement that they be provided with a copy of the divorce decree. Anthem cannot pay the smaller bills and then raise this clause for the first time when a large bill is incurred. It is important to note that the provision regarding providing a copy of the

policy is a technicality. The decree made Anthem liable for the medical and hospital bills. Not only should Anthem be estopped from raising the issue of being provided a copy of the policy after paying smaller bills without a copy, Anthem suffered no prejudice as a result of not receiving a copy of the decree. Under the decree Anthem was responsible for the medical and hospital bills.

19. Granted. They were told of the divorce. Erica Hallstrom was never asked for a copy of the divorce decree and she never provided a copy.

20. Granted.

21. Granted.

22. Granted.

23. Granted.

24. Granted.

25. Granted. The PCP and other providers in this case were in the network of providers with whom Anthem had contracts and the court assumes from the evidence and arguments presented that all approvals were obtained. No evidence was presented that all necessary approvals were not obtained from Anthem. Anthem presented no evidence at trial regarding the reason for its denial of payment of the providers bills related to Sean's April 16, 2003 cystic fibrosis emergency admission to Concord Hospital. The evidence is that Anthem had paid bills from the providers for care of Sean prior to the April 16, 2003 admission. See ruling on 18.

26. Granted.

27. Granted.

28. Denied.

29. Denied.

30. Granted.

31. Granted as to the age of Sean, denied as the decree no longer being applicable. The decree clearly stated that the mother had to provide coverage for the minor children so long she it is available to her at no cost. The decree also provided that the parents had to pay for college. The court finds that the decree provided she had to provide coverage for the children while they attended college, so long as it was is available to her at no cost. That was the only end date. The argument that the word minor terminated coverage at 18 is unavailing. The marital judge used the phrase "minor children" in paragraph 9 regarding college, and it is absolutely clear in that clause the judge did not intend by using the phrase minor children to have the obligation to pay for college to end at age 18. Obviously the court did not intend to have the obligation to pay toward the "minor children's" college education to lapse when the children reached the age of 18, which in the case of Sean, who turned 18 the summer after he graduated from High School, would mean no obligation at all.

32. Granted. See ruling on request 32.

33. Denied. See ruling on request 32.

34. Granted.

35. Denied.

36. Denied. Granted if the rule applied, but it does not.
37. Granted if the catch all applied, but it does not.
38. Denied
39. Denied.
40. Denied. The court was not even presented with a denial letter and has no evidence on which it could find how, why or when Anthem denied the coverage.

**FINDINGS AND RULINGS ON RESPONDENT ENERGY TRANSFER
PARTNER'S
PROPOSED FINDINGS OF FACT AND RULINGS OF LAW**

1. Granted.
2. Granted.
3. Granted.
4. Granted.
5. Granted.
6. Granted.
7. Granted.
8. Granted.
9. Granted.
10. Granted.
11. Granted.
12. Granted.

13. Granted.
14. Granted.
15. Granted.
16. Granted.
17. Granted.
18. Granted as to denying coverage. The court has no evidence whatsoever why coverage was denied. Anthem was unable to produce any evidence why coverage was denied, oral or written.
19. Neither granted nor denied. Energy asserts that Anthem's policy is at variance with the State of New Hampshire Insurance Department's Administrative Regulations, without specifying how the policy varies. The court has read the regulation and does not see how the variances would change the outcome of this proceeding.
20. Granted.
21. Granted.
22. Granted.
23. Granted as to denying coverage. The court has no evidence why coverage was denied. Anthem was unable to produce any evidence why coverage was denied, oral or written.
24. Neither granted nor denied. No evidence was presented on this issue.
25. Neither granted nor denied. The court was not provided with Energy's Coordination of Benefits (COB).
26. Granted.

27. Granted.

28. Granted.

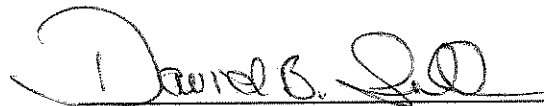
29. Granted.

30. Granted.

31. Granted, and even more critical, Anthem paid medical bills for 9 months without asking for a copy of the decree until this significantly large bill came in for Sean's April 16, 2003 cystic fibrosis emergency admission to Concord Hospital.

SO ORDERED.

10/23/08
Date



David B. Sullivan
Presiding Justice