

HMO Hit for \$89,100,000

Shawn Steel, JD

The second largest health maintenance organization (HMO), Health Net, was ordered by the Superior Court jury in Riverside, California to pay \$77 million in punitive damages to the family of a breast cancer patient who was denied coverage for a bone marrow transplant.

The punitive damage award against Health Net was in addition to the \$12.1 million in compensatory damages the HMO was ordered to pay earlier by the same jury. This is the largest award ever levied against an HMO for refusing to provide health coverage benefits.

The Wall Street Journal and numerous other publications agree that this verdict is expected to have broad implications for the health care industry. Further, it adds to the debate over managed care and to what degree HMOs can deny patients expensive or nontraditional treatments.

The facts in the case are disturbing. Nelene Fox, a mother of two young children, was found to have breast cancer in June of 1991. After traditional treatments failed, her doctor recommended a bone marrow transplant. Health Net denied coverage in June, 1992, claiming that the \$150,000 procedure was "experimental." Family and friends mounted a community wide fundraising effort to finance the procedure. The surgery was rendered two months later, but by then it was too late to save her life.

Attorney for the Fox family stated, "We're exposing the secrets of managed care -- that a man who makes the decision on whether you get a procedure gets a bonus on how well the company does financially." The attorney stated further: "This will tell insurance companies throughout the nation that they have to fulfill their obligations to their insureds."

Health Net Attorney Steven Meadville claimed the award was "outrageous, inconsistent, and rendered solely on the basis of emotion." He claimed it would ruin Health Net of its entire net worth, which he set at \$57 million.

"The purpose of this was never to get money, or else we would have settled already," said Jim Fox, husband of the deceased. He added: "The message is that an HMO can't have a financial incentive to withhold treatment in order to make money. We don't want another family to go through what we've been through."

It has been suggested that if the verdict is upheld, the decision could complicate the Clinton administration's plans to reduce health care costs by limiting availability of treatments that are very expensive or nontraditional.

Attorney Rebecca Berg, who authored "HMO Exclusion of Chiropractors,"¹ indicated that HMOs can face serious anti-trust problems by a purposeful exclusion of chiropractic care from health maintenance plans. "Clearly, consumers are no longer willing to have HMOs inflict on their subscribers the HMOs' own notions of what constitutes quality health care. It is no longer enough to satisfy the bottom line. HMOs must also satisfy the chiropractic health care needs of their patients."

It is important that patients notify their MCOs by demanding better quality service, including chiropractic care. The health care verdict may be one of many in the near future which will require health maintenance plans to re-think the withholding of chiropractic services for patients who make their demands clear and consistent.

Shawn Steel, MA, JD
Los Angeles, California
(213) 739-9000

Reference:

1. Berg R: HMO exclusion of chiropractors. *Southern California Law Review*, 66(2), January 1993. Univ. of Southern California.

MARCH 1994