

**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
No. 01-1705**

SUZANNE BYNUM, *Plaintiff-Appellee*,
v.
CIGNA HEALTHCARE OF NORTH CAROLINA, INCORPORATED,
Defendant-Appellant.

Appeal from the United States District Court for the District of South Carolina, at Greenville. G. Ross Anderson, Jr., District Judge. (CA-00-3009)

Argued: January 22, 2002
Decided: April 19, 2002

Before WILLIAMS and KING, Circuit Judges, and Cynthia Holcomb HALL, Senior Circuit Judge of the United States Court of Appeals for the Ninth Circuit, sitting by designation.

Affirmed by published opinion. Judge King wrote the opinion, in which Judge Williams and Senior Judge Hall concurred.

COUNSEL

ARGUED: Mark Stanton Thomas, MAUPIN, TAYLOR & ELLIS, P.A., Raleigh, North Carolina, for Appellant.

Robert Edward Hoskins, FOSTER & FOSTER, L.L.P., Greenville, South Carolina, for Appellee.

ON BRIEF: Joanne J. Lambert, MAUPIN, TAYLOR & ELLIS, P.A., Raleigh, North Carolina, for Appellant.

OPINION

KING, Circuit Judge:

Suzanne Bynum initiated this ERISA civil action in the District of South Carolina against CIGNA Healthcare of North Carolina, Incorporated ("CIGNA"), maintaining that CIGNA had improperly denied her infant daughter's claim for health benefits for treatment of a skull deformity. The district court reversed CIGNA's decision and awarded the benefits

sought by Ms. Bynum's daughter. CIGNA has appealed the court's ruling, maintaining that its denial of benefits was appropriate. As explained below, we agree that Ms. Bynum's infant daughter, Katrina, was entitled to coverage from CIGNA for treatment of her misshapen head, and we affirm.

I.
A.

Katrina Bynum, along with her twin sister, was born to Ms. Bynum in late 1999 by spontaneous vaginal delivery after a thirty-nine week gestation period. At her birth, Katrina exhibited symptoms of congenital torticollis, i.e., a severely twisted neck,¹ which subsequently resulted in plagiocephaly, i.e., an abnormally asymmetrical head.² In May 2000, concerned about her nine-month old daughter's medical condition and desiring to obtain treatment for it, Ms. Bynum sought medical care for Katrina from a pediatrician in Matthews, North Carolina. This pediatrician, Dr. Michelle Parish, referred Katrina to a specialist in neurosurgery, and, at the direction of Dr. C. Scott McLanahan, a pediatric neurosurgeon practicing in Charlotte, North Carolina, Katrina's condition was treated with a medical procedure known as "cranial banding" or "dynamic orthotic cranioplasty" (the "DOC Procedure").

The DOC Procedure, which costs approximately \$3,000, involved creating a custom-molded orthotic device to be worn by Katrina in order to progressively mold and correct the shape of her cranium.³ The purpose of the DOC Procedure, as described by Dr. McLanahan, was to treat immediately the functional significance of Katrina's asymmetrical skull because "head shape abnormalities or asymmetry of the skull base can lead to further deformities or physical impairments of the facial region, such as malocclusion of the mandible."⁴

B.

In May 2000, Dr. McLanahan submitted to CIGNA a coverage request for the DOC Procedure utilized to treat Katrina's condition ("Katrina's Claim"). Katrina was an insured of CIGNA through insurance coverage provided to her mother, an employee of an entity called Pathways for Learning in Charlotte, North Carolina. Ms. Bynum possessed health insurance through her employer-sponsored health plan, and her family's coverage is governed by the Employee Retirement Income Security Act (ERISA), 29 U.S.C.S. § 1001 et seq. CIGNA serves the plan in two capacities: first, as its insurer, and second, as its plan administrator. The member certificate (the "Plan") provided to each of the Plan's insureds describes the insurance coverage and benefits provided by CIGNA, and it also spells out the administrative procedures under which the Plan operates. The Plan has established a two-level administrative appeal and grievance process for the resolution of claims and benefits questions, and it has granted CIGNA the "final power and discretionary authority to interpret and administer th[e] Member Certificate, including the authority to make eligibility determinations."

Katrina's Claim was filed with CIGNA on May 16, 2000, and the next day one of CIGNA's Medical Directors wrote Ms. Bynum a denial letter, advising, after "careful review," that CIGNA had "determined that coverage is not available . . . because cosmetic services are not covered." CIGNA's denial letter offered no explanation of what

constituted a cosmetic service, and the Plan contains no definition for either the terms "cosmetic" or "cosmetic services."

Thereafter, pursuant to the procedures established in the Plan, Dr. McLanahan filed with CIGNA, on behalf of Ms. Bynum and Katrina, what the Plan denominates as a first-level appeal. In this first-level appeal, CIGNA was requested to review and reconsider its earlier decision to deny Katrina's Claim for the DOC Procedure.⁵ By letter of May 26, 2000, Dr. McLanahan explained to CIGNA that children suffering from nonsynostotic cranial asymmetries (such as that affecting Katrina) benefit from DOC treatment. He also sought to directly address the "cosmetic services" issue raised in the denial letter, and he further advised CIGNA that "[c]orrection of [Katrina's] defect may in fact lead to a more pleasant appearance, however, *it is the functional significan[ce] of the defect that compels the treatment.*" (emphasis added). In so concluding, he advised CIGNA, referring to the DOC Procedure, that "*[i]t is clearly not treatment of a cosmetic deformity.*" (emphasis added).

CIGNA responded to Katrina's first-level appeal by advising Ms. Bynum that it was denying coverage for Katrina's Claim. In explaining its decision, CIGNA again maintained that use of the DOC Procedure for nonsynostotic plagiocephaly is a "cosmetic procedure," and it also asserted that "[t]he documentation fails to substantiate the medical necessity for the [DOC] service." As in its initial denial of Katrina's Claim, CIGNA offered no definition of what constituted a "cosmetic procedure" under the Plan.

Thereafter, Ms. Bynum retained counsel on Katrina's behalf, and, on July 25, 2000, she filed a second-level appeal with CIGNA. CIGNA then requested production of additional materials or statements that Ms. Bynum deemed relevant to Katrina's Claim, and it advised Ms. Bynum that her second-level appeal would be heard and considered by CIGNA's Grievance Committee (the "Committee" or "CIGNA's Committee").⁶

On August 30, 2000, Ms. Bynum provided CIGNA's Committee with additional materials in support of Katrina's Claim. First, she submitted an affidavit from Dr. McLanahan in which he reiterated that Katrina "suffers from a head shape abnormality related to intrauterine molding and postnatal position" and that, in the opinion of a number of plastic surgeons, "head shape abnormalities or asymmetry of the skull base can lead to further deformities or physical impairments of the facial region, such as malocclusion of the mandible." Dr. McLanahan explained that the "true intent" of Katrina's DOC Procedure was to "eliminate physical defects that might be associated with head shape abnormalities such as `malocclusion of the mandible,'" and he concluded that "to a reasonable degree of medical certainty, . . . the DOC band, as used upon Katrina Bynum, was medically indicated and was not cosmetic under the terms of the [P]lan."⁷

Second, Ms. Bynum provided CIGNA's Committee with a letter of May 25, 2000, from Katrina's treating pediatrician, Dr. Parish. Dr. Parish explained that Katrina suffered from congenital torticollis that had been present at birth. Dr. Parish also advised CIGNA that she had referred Katrina to a neurosurgeon who noted that Katrina had "flattening of the right side of her head, right anterior ear shift, frontal bossing right greater than left, [and] plagiocephaly." In conclusion, Dr. Parish related "I believe [Katrina's] plagiocephaly is directly related to her congenital torticollis . . . [and] therefore is a medical condition not a cosmetic condition."⁸