

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

-----X
IN RE: CLOZAPINE)
ANTITRUST LITIGATION) MDL 874
)
)
_____)
)
THIS DOCUMENT RELATES)
TO: ALL ACTIONS) Hon. Harry D. Leinenweber
)
-----X

PLAINTIFF STATES' MEMORANDUM OF LAW
RESPONDING TO THE PAPERS OF
BLUE CROSS BLUE SHIELD OF MASSACHUSETTS
AND BLUE CROSS BLUE SHIELD OF MICHIGAN

Blue Cross Blue Shield of Massachusetts ("BCBS-Mass") and Blue Cross Blue Shield of Michigan ("BCBS-Mich") (collectively the "Blues"), have separately moved for permission to file a petition for approval of their claims for a share in the monetary settlement. The return date for these motions is scheduled for April 27, 1993, at 9:30 a.m. This memorandum is submitted by the Plaintiff States¹ to present to the Court the States' position on the issues raised by the BCBS-Mass and BCBS-Mich's claims.

If the Blues only seek permission to submit their claims, the States believe that the Blues may do so under the terms of the Settlement Agreement approved by the Court. (The Settlement is attached as Exhibit A to the Order of Preliminary Approval of Settlement Agreement dated September 3, 1993. Final approval of the Settlement was granted on November 20, 1992.) Both fully complied with the procedure outlined in ¶ VII.E. of the Settlement Agreement for submitting their claims. The parties consistently rejected the claims. Thus, under ¶ VII.E.5. of the Settlement

¹ All 50 States and the District of Columbia.

Agreement, which provides that "any Person whose claim remains rejected may petition the Court for a final determination of the validity of the request," the Blues may submit their claims for a final and non-appealable review by the Court.

The merit of the Blues' claims depends on whether the Blues or the patients were the direct purchasers. Under the Settlement only direct purchasers are entitled to recover \$38.92 for each week of CPMS that they purchased. Settlement Agreement ¶¶ I.G., VI.B. (Only Eligible Clozaril Purchasers are entitled to receive this cash payment and Eligible Clozaril Purchasers are defined as whoever "purchased Clozaril from Defendants under CPMS.^R"). The question therefore is whether the Blues did, in fact, purchase Clozaril under the CPMS program from the defendants.

Generally the patient, not the insurer, is the direct purchaser. See, e.g., Medical Arts Pharmacy, Inc. v. Blue Cross & Blue Shield of Connecticut, Inc., 675 F.2d 502, 506 (2d Cir. 1982) (medical insurance contracts are not precisely between seller and purchaser, but rather between seller and indemnitor); Kartell v. Blue Shield of Massachusetts, 749 F.2d 922, 925 (1st Cir. 1984) (Blue Shield "insurer activity . . . amounts to purchasing . . . for the account of others [its subscribers].") Thus, as between an insurer and a patient, payment under the Settlement Agreement generally should go to the patient.

Even a direct payment from the Blues to Caremark is not necessarily dispositive. The question then becomes whether the Blues were acting as an agent for their subscribers (in which case

the subscriber is the purchaser), or as a purchaser with the legal obligation to the provider to pay for the services rendered (in which case the Blues would be the purchaser).

In reviewing both BCBS-Mass's and BCBS-Mich's claims prior to the filing of the present motions, the States were unaware of any showing by either company that they, not their subscribers, directly purchased Clozaril under CPMS pursuant to a contract with defendant Caremark or otherwise. BCBS-Mass has not yet established that it was a direct purchaser. The papers refer to the relationship with Caremark as "for the benefit of [BCBS-Mass]'s indemnity subscribers." Affidavit of Geraldine Smolka dated December 22, 1992, at ¶ 3 (attached as Exhibit 2 to BCBS-Mass's motion). If BCBS-Mass acted as an indemnitor, the subscriber was the direct purchaser. Nonetheless, the unexecuted contract attached to its papers is ambiguous on the issue of whether BCBS-Mass (and not its subscribers) had the legal obligation to Caremark to pay for Clozaril provided under CPMS or whether BCBS-Mass was merely the contract indemnitor for its subscribers under some circumstances. Participating Special Pharmaceutical Agreement ¶ 2.7 ("The Provider shall accept payment from [BCBS-Mass] as full payment for [CPMS] except that the Provider may bill the Member for deductibles and copayment amounts.") and ¶ 2.3 ("The Provider may not bill a Member for services if [BCBS-Mass] has denied the claim because it determined [CPMS was] not medically necessary." (emphasis added)). The agreement on its face does not limit Caremark's right to sue and collect from BCBS-Mass's subscribers

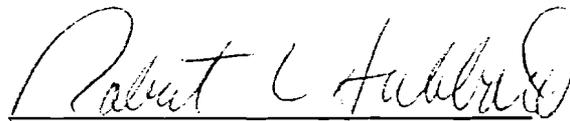
when BCBS-Mass refuses to pay a timely claim for a reason other than that the treatment was not "medically necessary."

By comparison, BCBS-Mich has submitted nothing in support of its claim other than its naked assertions that it was a direct purchaser. In fact, BCBS-Mich even claimed for payments it made to parties other than Caremark. See Affidavit of Thomas A. Needham at 2. The States conclude that BCBS-Mich cannot be the direct purchaser when it in fact did not even pay Caremark.

Finally, this Court should be aware that plaintiffs requested that the patients from whom the money would be taken be advised of the Blues' claims. The Blues provided the Settlement Administrator with the names of the patients and the Settlement Administrator sent a letter to those patients, a copy of the form of which is attached as Exhibit A to this memorandum. Attached as Exhibit B are the letters that the Settlement Administrator received in response to that notice. (The identification of patients has been redacted from the responses as a precaution in light of state patient confidentiality laws.)

In conclusion, the States suggest that the claims of the Blues be rejected, absent a satisfactory showing that they were the direct purchasers of Clozaril under CPMS.

Respectfully submitted,



Robert L. Hubbard
Assistant Attorney General
States' Administrative Liaison
120 Broadway, Suite 2601
New York, New York 10271

Of counsel:
James Spencer

On behalf of:
State of Alabama
91 Civ. 1813

Marc Givhan
Assistant Attorney General
11 South Union Street
Montgomery, AL 36130

State of Alaska
92 C. 5923

Ronald Zobel
James Forbes
Assistant Attorneys General
1031 W. Fourth Ave
Anchorage, AK 99801

State of Arizona
91 Civ. 921

Suzanne Dallimore
Chief, Antitrust Section
Office of Attorney General
1275 West Washington
Phoenix, Arizona 85007

State of Arkansas
92 C. 5923

Kay DeWitt
Deputy Attorney General
Litigation Division
200 Tower Building
323 Centre Street
Little Rock, Arkansas 72201

State of California
90 Civ. 8060

Thomas Greene
Acting Assistant
Attorney General
1515 K Street, Suite 511
P.O. Box 944255
Sacramento, CA 94244-2550

Barbara Motz
Deputy Attorney General
Office of the Attorney General
North Tower
300 South Spring Street
Los Angeles, CA 90012

State of Colorado
90 Civ. 8079

Jan Michael Zavislan
Assistant Attorney General
Business Regulation Unit
Enforcement Section
1525 Sherman Street, 5th Floor
Denver, Colorado 80202

State of Connecticut
90 Civ. 8062

Steven Rutstein
Assistant Attorney General
110 Sherman Street
Hartford, CT 06105

State of Delaware
91 Civ. 1219

John J. Polk
Deputy Attorney General
Department of Justice
820 N. French Street
Wilmington, Delaware 19801

District of Columbia
91 Civ. 1220

Stuart Cameron
Assistant Corporation Counsel
Judiciary Plaza
450 5th Street, N.W., Rm. 8I52
Washington, D.C. 20001

State of Florida
90 Civ. 8063

Jerome Hoffman
Assistant Attorney General
Chief, Antitrust Bureau
20 Capital Circle, S.E.
Alexander Building, Suite 306
Tallahassee, FL 32301

State of Georgia
92 C. 5923

George Shingler
Sr. Attorney
Department of Law
132 State Judicial Building
Atlanta, Georgia 30334

State of Hawaii
92 C. 5923

Robert A. Marks
Assistant Attorney General
Commerce & Econ. Dev. Div.
Antitrust Section
425 Queens St.
Hale Auhau, 3rd Fl.
Honolulu, Hawaii 96813

State of Idaho
91 Civ. 1043

Brett T. DeLange
Deputy Attorney General
Consumer Protection Unit
Statehouse Mail, Room 113A
Boise, Idaho 83720

State of Illinois
91 C. 3959

Christine H. Rosso
Sr. Assistant Attorney General
Chief, Antitrust Division
Denise Rosenston
Assistant Attorney General
100 W. Randolph St., 13th floor
Chicago, IL 60601

State of Indiana
92 C. 5923

Donna Nichols
Deputy Attorney General
Office of the Attorney General
219 State House
Indianapolis, Indiana 46204

State of Iowa
90 Civ. 8064

John R. Perkins
Deputy Attorney General
Hoover State Office Building
Des Moines, Iowa 50319

State of Kansas
91 Civ. 1165

John W. Campbell
Deputy Attorney General
Kansas Jud'l Center, 2d floor
Topeka, Kansas 66612

State of Kentucky
92 C. 5923

David R. Vandevender
Assistant Attorney General
Consumer Protection Division
State Capitol Bldg., Rm. 120
Frankfort, Kentucky 40601

State of Louisiana
92 C. 5923

Dale Wilks
Assistant Attorney General
Department of Justice
Chief, Antitrust Division
2-3-4 Loyola Bldg., 7th Fl.
New Orleans, Louisiana 70112

State of Maine
90 Civ. 8065

Francis E. Ackerman
Assistant Attorney General
Consumer & Antitrust Division
State House Station 6
Augusta, Maine 04333

State of Maryland
90 Civ. 8067

Ellen S. Cooper
Assistant Attorney General
Deputy Chief Antitrust Division
200 St. Paul Place, 19th Floor
Baltimore, Maryland 21202

Commonwealth of Massachusetts
90 Civ. 8069

George K. Weber
Chief, Antitrust Division
Pasqua Scibelli
Assistant Attorney General
Commonwealth of Massachusetts
One Ashburton Place
Boston, MA 02108

State of Michigan
92 C. 5923

Robert C. Ward, Jr.
Assistant Attorney General
525 West Ottawa
Law Building, 6th Floor
P.O. Box 30215
Lansing, Michigan 48909

State of Minnesota
90 Civ. 8055

Thomas Pursell
James Spencer
Assistant Attorneys General
NCL Tower, Suite 1400
445 Minnesota Street
St. Paul, Minnesota 55101

State of Mississippi
92 C. 5923

James Steele
Special Assistant Attorney
General
P.O. Box 220
Jackson, Mississippi 39205

State of Missouri
91 Civ. 1392

Arthur R. Weiss
Assistant Attorney General
Penntower Office Building
3100 Broadway, Suite 609
Kansas City, MO 64111

State of Montana
92 C. 5923

Judy Browning
Chief Asst. Attorney General
Office of the Attorney General
Justice Building
215 N. Sanders
Helena, Montana 59620

State of Nebraska
92 C. 5923

Dale A. Comer
Assistant Attorney General
Chief Counsel, Antitrust Div.
2115 State Capitol
Lincoln, Nebraska 68509

State of Nevada
92 C. 5923

Cynthia Pyzel
Assistant Attorney General
505 East King Street, Ste. 607
Carson City, Nevada 89710

State of New Hampshire
90 Civ. 8071

Walter L. Maroney
Assistant Attorney General
Consumer Protection and
Antitrust Bureau
25 Capitol Street
Concord, New Hampshire 03301

State of New Jersey
90 Civ. 8073

Laurel A. Price
Deputy Attorney General
Division of Criminal Justice
25 Market Street -- CN 085
Trenton, New Jersey 08625

State of New Mexico
92 C. 5923

Susan G. White
Assistant Attorney General
Office of the Attorney General
P.O. Drawer 1508
Santa Fe, N.M. 87504-1508

State of New York
90 Civ. 8074

Robert L. Hubbard
Assistant Attorney General
Antitrust Bureau
120 Broadway, Suite 2601
New York, New York 10271

State of North Carolina
90 Civ. 8092

James C. Gulick
Special Deputy Attorney General
Kip Sturgis
Deputy Attorney General
N.C. Department of Justice
P.O. Box 629
104 Fayetteville Mall
Raleigh, North Carolina 27602

State of North Dakota
92 C. 5923

David Huey
Assistant Attorney General
Consumer Fraud/Antitrust Div.
State Capitol
Bismark, North Dakota 58505

State of Ohio
90 Civ. 8075

Doreen C. Johnson
Elizabeth H. Watts
Mitchell L. Gentile
Assistant Attorneys General
Antitrust Section
65 East State Street
Suite 708
Columbus, Ohio 43266-0590

State of Oklahoma
91 Civ. 1673

Jane F. Wheeler
Assistant Attorney General
Chief, Consumer Protection
Division
Main Place, Suite 550
420 West Main Street
Oklahoma City, OK 73102

State of Oregon
90 Civ. 8076

Andrew E. Aubertine
Assistant Attorney General
Oregon Department of Justice
Financial Fraud Section
100 Justice Building
Salem, Oregon 97310

Commonwealth of Pennsylvania
90 Civ. 8077

James Donahue
Deputy Attorney General
Antitrust Section
Office of the Attorney General
Commonwealth of Pennsylvania
1435 Strawberry Square
Harrisburg, PA 17120

State of Rhode Island
92 C. 5923

Robin E. Feder
Chief, Civil Division
92 Pine Street, 4th Floor
Providence, Rhode Island 02903

State of South Carolina
91 Civ. 1814

William K. Moore
Deputy Attorney General
P.O. Box 11549
Columbia, South Carolina 29211

State of South Dakota
91 Civ. 244

Jeffrey P. Hallem
Assistant Attorney General
Office of Attorney General
500 East Capitol
Pierre, SD 57501-5070

State of Tennessee
90 Civ. 8080

Perry A. Craft
Deputy Attorney General
450 James Robertson Parkway
Nashville, TN 37243-0485

State of Texas
90 Civ. 8081

Rebecca Fisher
Assistant Attorney General
Antitrust Division
Texas Attorney General's Office
P.O. Box 12548
Austin, Texas 78711-2548

State of Utah
90 Civ. 8082

Patrice M. Arent
Assistant Attorney General
Division Chief
Fair Business Enforcement Unit
236 State Capital
Salt Lake City, UT 84114

State of Vermont
92 C. 5923

Julie Brill
Assistant Attorney General
Pavillion Office Building
109 State Street
Montpelier, Vermont 05602

Commonwealth of Virginia
90 Civ. 8084

Milton A. Marquis
Assistant Attorney General
Antitrust and Consumer
Litigation Section
101 North Eight Street
Richmond, Virginia 23219

State of Washington
90 Civ. 8086

Carol A. Smith
Assistant Attorney General
for State of Washington
900 Fourth Avenue, Suite 2000
Seattle, WA 98164

State of West Virginia
90 Civ. 8087

Robert Wm. Schulenberg III
Sr. Assistant Attorney General
Antitrust Division
812 Quarrier Street, 5th Floor
Charleston, West Virginia 25301

State of Wisconsin
90 Civ. 8089

Kevin J. O'Connor
Assistant Attorney General
State of Wisconsin
114 E. State Capital Box 7857
Madison, WI 53707

State of Wyoming
92 C. 5923

Shirley Kingston
Assistant Attorney General
Office of the Attorney General
123 Capitol Building
Cheyenne, Wyoming 82001

6:cloz\blues.nyl

215-665-8870
TELECOPIER
215-665-0613

HEFFLER & COMPANY

CERTIFIED PUBLIC ACCOUNTANTS
SUITE 800
1515 MARKET STREET
PHILADELPHIA, PA 19102

MEMBERS
AMERICAN INSTITUTE OF CPAs
PENNA INSTITUTE OF CPAs

April 8, 1993

PATIENT:

Re: In re Clozapine Antitrust Litigation

Dear Claimant:

This is to advise you that the payment of your claim has been disputed due to an appeal by the Blue Cross Plan. Only the direct purchaser of the drug is entitled to share in the settlement proceeds.

If you believe that you are the direct purchaser and not the Blue Cross Plan, please state your reasons. You will be advised as to the outcome of this appeal in the near future.

You have until April 20, 1993, to request reconsideration of this rejection.

Very truly yours,

HEFFLER & COMPANY
Settlement Administrator

April 12, 1993

Heffler & Company
Suite 800
1515 Market Street
Philadelphia, PA 19102

Re:

Re: In re Clozapine Antitrust Litigation

Dear Settlement Administrator:

In response to the attached letter of April 8, 1993, I wish to direct you to my earlier correspondence of 4/12/93 in which I outlined my reasons for believing _____ were the direct purchasers of the drug Clozapine and are entitled to share in the settlement proceeds.

As custodian of Laurence's funds, payments made on his behalf were included in my first letter. This second notice, addressed directly to Laurence, arrived two days later and should be satisfied by my first response.

Thank you for your reconsideration.

Sincerely,

MA

MA

April 12, 1993

Heffler & Company
Suite 800
1515 Market Street
Philadelphia, PA 19102

Attention: Settlement Administrator
Re: In re Clozapine Antitrust Litigation

Patient:

Dear Administrator:

In response to your correspondence of 04/08/93 regarding the dispute from Blue Cross about our role as direct purchaser of the drug Clozapine for our son, , we submit the following:

1. When was hospitalized at McLean Hospital, Belmont, MA., from 02/08/90-03/13/90, his treatment of Clozaril was initiated. (See Appendix A)
2. Upon his discharge, we were told (as his custodians) that insurance coverage had not yet been being negotiated for Clozaril, and if he were to be maintained on it we would have to be responsible for payments. We were required to pay for one month's supply in advance, the amount being \$688.00. (See Appendix B)
3. After the first month, we were billed direct from Caremark for subsequent weeks, and paid for them personally. We were advised after 04/24/90 that it was no longer necessary to cover the bills privately, as Blue Cross had agreed at that time to make payments for this drug. It was also anticipated that Medicaid would be assuming some responsibility toward payment in the future. We were told the agreement with Blue Cross would not be retroactive for our initial payment of \$688.00; but that we should be able to submit our paid receipts for reimbursement under our Extended Benefit Contract for the weeks of 03/13/90, 03/20/90, 03/27/90, and for 04/03/90, 04/10/90, and 04/17/90.

Under the terms of our Extended Benefit Contract with Blue Cross, we submitted claims for reimbursement for the three weeks in March and three weeks in April at \$172.00 each week; Blue Cross refused to pay, however, unless "provider of services itemized bills showing dates, types and charges for each service. Drug bills must indicate drug name and quantity purchased." (See Attachments C & D)

5. At that time, we were advised by Caremark that Sandoz was unable to break apart the charges, and would only submit bills as a "bundle". Because Blue Cross would not accept these terms, we were not reimbursed for any of these charges. (See Attachments C & D)
6. We subsequently were advised by Caremark to hold off on any more payments to them, as agreements had been reached with Blue Cross. As a result, we ceased being the direct purchaser after the week of April 17-April 24, 1990.
7. Following the week of 04/17/90-04/24/90, it is our understanding that Blue Cross did become the direct purchaser on an "emergency basis"; and as of July 1, 1991 the unbundling took place and the drug was paid like any other prescription drug. (See Attachment E - letter of 07/05/91)

In view of the history documented herein, we believe we WERE the direct purchasers of the Clozaril for the months of March, 1990 and April, 1990; and are entitled to share in the settlement proceeds for that period of time.

Please reconsider your rejection. Amounts paid by us:

02/14/90	#688.00
03/13/90	172.00
03/20/90	172.00
03/27/90	172.00
04/03/90	172.00
04/10/90	172.00
04/17/90	172.00

Thank you for your reconsideration.

Sincerely,

February 21, 1993.

Chlozapine Settlement Administrator
P.O. Box 1300
Philadelphia, PA 19105-1300

Re: Patient

Dear Sir or Madam:

I am following up on a telephone conversation I had with one of your representatives a little over a week ago regarding the partial refund due to my wife for the medication she received from Caremark Inc. and which we paid for. At issue was how the reimbursement should be apportioned between ourselves and our medical insurance company, Blue Cross-Blue Shield of Massachusetts. While we find legitimate that BC-BS may want to receive directly the refund for the period in which they paid for the medication, we definitely wish to avoid that any refund pertaining to the period in which we paid for the medication might be erroneously sent to them.

Your representative suggested that, although your Company should have detailed records of all payments made as well as of their source, it might still be helpful if I could send you copy of the cancelled checks we sent to Caremark Inc.. I was able to locate four cancelled checks in my own records, of which I enclose copy, for a total amount of \$ 2,923.76. This would seem to account for 16 direct payments for weekly deliveries during the months of April, May, June and July 1990 (16 weeks @ \$ 172/week = \$ 2,752) plus 43 copayments of which 19 were charged at \$ 4.00 and 24, strangely, at \$ 3.99). In case you found a minor variance in your own records with respect to the above information (for instance, I might have lost a cancelled check), please follow your own records as more accurate. In case you found a major variance, I would appreciate if you could call me at my Boston University office number 617-3539058 in its regard.

I would be grateful if the reimbursement which is due directly to us could be processed and sent with solicitude.

With best regards.

Sincerely,

MA

april 15/93

[MA]

Dear Sir

My Son

has Major Blue Cross plan.

This pays only 80%, the 20%
I had to pay.

I believe that a certain
percentage should be shared
in the settlement with my
son.

I have sent copies to prove
my reason to question why
Blue Cross should get 100%
of the settlement.

Thank you. (mother)

Mrs.

For

12.00

0.00

URIDGE AND McNALLY
ATTORNEYS AT LAW
4613 WEST MAIN STREET
KALAMAZOO, MICHIGAN 49006

(616) 385-3811
FAX (616) 385-3177

BRUCE G. URIDGE
DENNIS F. McNALLY

April 19, 1993

SCHOOLCRAFT OFFICE
P.O. BOX 356
128 GRAND STREET
SCHOOLCRAFT, MICHIGAN 49087

Heffler & Company
1515 Market St., Suite 800
Philadelphia, PA 19102

Re: Clozapine Antitrust Litigation

Dear Sir:

This office represents the Estate of James A. Condit, Deceased, the above referenced patient. The Independent Personal Representative, _____, has requested that we immediately respond to your April 8, 1993, letter.

_____, in her capacity as Independent Personal Representative, objects to any dispute that the Estate should not receive the payment. She accepted the settlement amount, based upon her belief that he purchased the drug and was administered to, and the language in the proposed settlement, namely:

"All persons, firms, or other entities in the United States who purchased or could have purchased Clozaril or to whom Clozaril was administered or could have been administered under the Clozaril Patient Management System between February 1, 1990 and May 31, 1991, and all other person who may have a cause of action based upon the claims set forth or that could have been set forth in the complaints in these actions".

Please note the change of address submitted to you in my February 11, 1993. The correct address is:

Michigar.,

Very truly yours,

URIDGE AND McNALLY

Dennis F. McNally
Dennis F. McNally

STATE OF MICHIGAN



JOHN ENGLER, Governor

DEPARTMENT OF MENTAL HEALTH

LEWIS CASS BUILDING
LANSING, MICHIGAN 48913
JAMES K. HAVEMAN, JR.
Director

April 15, 1993

Heffler & Company
Suite 800
1515 Market Street
Philadelphia, PA 19102

Re: Clozapine Antitrust Litigation

Patients:

Dear Settlement Administrator:

We have received your letters dated April 8, 1993 regarding the above mentioned subject. These letters indicate that only the primary purchaser can receive payments through this settlement. The Michigan Department of Mental Health, through its psychiatric hospitals, purchased Clozapine on behalf of the patients involved. Blue Cross/Blue Shield of Michigan (BC/BSM) served as the payer of covered costs that were billed for these patients. It would appear, therefore, that payments should not be made directly to the insurer, but rather to the Michigan Department of Mental Health.

Please contact me at (517)335-0171 if you need additional information.

Sincerely,

A handwritten signature in black ink, appearing to read "Madan Lalwani".

Madan Lalwani, Director
Office of Accounting and Collections



April 16, 1993

Heffler & Company
Suite 800
1515 Market Street
Philadelphia, PA 19102

Patient:
Re: Clozapine Antitrust Litigation

Dear Sirs:

In response to your letter dated April 8, 1993, I am requesting reconsideration based on the following information:

1. My wife is a State of Michigan employee enrolled under the State Health Plan. Stated in the Benefit Booklet, "this is a self-insured benefit plan administered by Blue Cross/Blue Shield of Michigan under the direction of the Michigan Department of Civil Service. These benefits are not insured with Blue Cross/Blue Shield of Michigan but are payable from funds administered by the Michigan Department of Civil Service."
2. The Michigan Department of Civil Service is responsible for implementing State Health Plan benefits. Blue Cross/Blue Shield of Michigan provides certain services on behalf of the Michigan Department of Civil Service through an administrative services only contract.
3. Under the State Health Plan, a share of the premium is paid by the employee plus any co-pays that are required such as for drugs and community mental health services (i.e., the Clozaril Patient Management System). Therefore I believe that Blue Cross/Blue Shield of Michigan is not the direct purchaser of the drug.

I would appreciate any updated information regarding the appeal.

Sincerely,

MI

Case #

MI

Heffler & Company

Re: In re Clozapine Antitrust Litigation

I am writing to request reconsideration of the claim disputed by Blue Cross.

I believe that I am the purchaser of the Clozaril drug because I have the prescription for it and the Caremark Co. dispenses the drug to me, and they also charge me a co-pay for this drug.

The Blue Cross Co. is strictly an insurance Co. and they pay for a portion of this drug, -- just like they do for all other ^{drugs} insurance claims. They are acting as an insurer not as a purchaser.

Heffler & Co.

Cent. Pub. Acct.

Suite 800

MI

1515 Market St.

Phila, Pa 19102

Patient:

Re: In re Clozapine Anti Trust Litigation

In regard to the litigation about the Clozapine drug. I am writing to state that I am the purchaser of this drug. It is I who have the prescription from my doctor. The prescription is given to Caremark who distributes the drug to patients with prescriptions. Caremark then charges me a \$2.00 Co-pay and then I receive the drug. This service by Caremark is the same as a drugstore issuing drugs & charging the patient a Co-pay. Blue Cross is acting strictly as an insurance Co., paying their Co-pay, as they do for people who have Blue Cross Ins. Blue Cross is an insurer here But not a purchaser.

215-665-8870
TELECOPIER
215-665-0613

HEFFLER & COMPANY

CERTIFIED PUBLIC ACCOUNTANTS
SUITE 800
1515 MARKET STREET
PHILADELPHIA, PA 19102

MEMBERS
AMERICAN INSTITUTE OF CPAs
PENNA INSTITUTE OF CPAs

April 8, 1993

MI

PATIENT:

Re: In re Clozapine Antitrust Litigation

Dear Claimant:

This is to advise you that the payment of your claim has been disputed due to an appeal by the Blue Cross Plan. Only the direct purchaser of the drug is entitled to share in the settlement proceeds.

If you believe that you are the direct purchaser and not the Blue Cross Plan, please state your reasons. You will be advised as to the outcome of this appeal in the near future.

You have until April 20, 1993, to request reconsideration of this rejection.

Very truly yours,

HEFFLER & COMPANY
Settlement Administrator

Could you please explain to me more about this? I believe I am the direct purchaser of this ^{drug} but would like it explained more to me.

I send a check every month to Caremark for the drug, the blood work, and delivery. I'm sending a copy maybe this will help.

Blue cross pays for the four pills that are sent to me every week. After \$5.00 co-payment which is \$1.25 for pills every week.

April 15, 1993

Heffler & Company
Suite 800
1515 Market Street
Philadelphia, P.A. 19102

Patient:

Re: In re Clozapine Antitrust Litigation.

To Whom It May Concern:

In regard to the letter I received from your firm, I believe the statement that the Blue Cross Plan was the only direct purchaser of the drug Clozapine was an overstatement.

Please find enclosed several copies of receipts I paid to Caremark, for the medication I received. However I am unable to account for the exact amount.

Community Mental Health distributed my medication for quite some time, not Blue Cross.

I was refused coverage from Blue Cross because I was told, "it was not included in our group plan coverage."

I was also told in order to stay on this medication, "I should probably mortgage my home or take out a loan or a charge card."

Which I might add I would not agree to any of these measures, simply because I could not afford to, and I found these unreasonable.

Considering the confusion, harassment, intimidation telephone calls, and money pay, I personally find the settlement fair and within reason.

Very Truly Yours,

[MI]