



## BMT: Denial and Punishment

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## BMT: Denial and Punishment

by John Hoff

The year 1993 ended with news that a jury in California had entered a judgment of almost \$90 million against HealthNet for refusing to provide bone marrow transplant treatment for a breast cancer patient.<sup>1</sup> There is no opinion available that describes the facts of this case. But the Bureau of National Affairs (BNA) reported the case in its "Health Law Reporter." Although there are, no doubt, still other facts not reported by BNA, here is what we are told.

HealthNet's policy specifically included bone marrow transplants as a covered service. An internal study found that the treatment was

provided at three out of four HMOs. HealthNet nevertheless denied coverage on the ground that the treatment was experimental. It took the position that because the cancer was Stage 4, the treatment would not have been effective. In other words, it was experimental for advanced cancer. The patient, moreover, had been turned down by several hospitals on the ground that the care would not be effective.

HealthNet's oncologist, recommended the bone marrow transplant, and two other physicians recommended treatment. Apparently, an executive of HealthNet phoned the patient's doctor, who changed his recommendation. The patient apparently presented evidence intended to show that the executive who made this phone call was eligible for a bonus based on denial of

costly procedures. This was denied by HealthNet, which said the bonus was based on overall experience, not particular types of coverage.

After HealthNet's refusal to provide the treatment, the patient raised money on her own, and received the care six months later, paying with the funds she had raised. Still, she died, and her estate claimed that the six-month delay may have cost her her life.

The jury awarded \$212,000 for breach of contract; \$12.1 million in compensatory damages; and \$77 million in punitive damages.

This case will have an impact for some time, even if it is reversed on appeal or the damages are reduced. ■

<sup>1</sup> Fox v. HealthNet of California, Calif. Super. Ct. (Riverside), No. 219692.

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