

The Pentagon Says No to Disabled Daughter of Navy Captain

ANDREW COHEN NOV 29 2012, 12:32 PM ET

A creative therapy was working on a severely disabled young woman. Yet the Pentagon decided it would no longer be covered by military insurance.



Jennifer Samuels

This story was updated on 12/21 (see bottom of page).

The story of Kaitlyn N. Samuels is an infuriating one. It blends together the senselessness of our military bureaucracy with the powerlessness of individual veterans and their families. It mocks the professed patriotism of our politicians, who pledge endlessly that they will do all they can to make life easier for our military families. It favors insurance policy at the expense of medicine. It's an instance where the Obama Administration turned a smart solution into a problem. And it is a case where the Pentagon has said no to a severely disabled teenage girl.

I'll leave it to the *Dallas Observer*, which has been [covering this story](#) well, to [introduce to you](#) Samuels, age 16, and her parents, Jennifer and Mark, the latter a longtime Navy captain:

When Kaitlyn Samuels was 4 months old, her parents, Mark and Jennifer, worried that she couldn't reach for her toys. Doctors initially assured them that it was probably normal, but after two months brought

little improvement they ordered a battery of neurological tests that revealed Kaitlyn had a very rare and very serious brain malfunction.

The years since then have been a struggle, as Kaitlyn has suffered the effects of epilepsy, cerebral palsy and all sorts of related complications. She can't speak or walk by herself. Her food has to be blended into liquid form because she can't chew. Her brain is frozen in perpetual toddlerhood.

Kaitlyn also suffers from severe scoliosis. Left unchecked, the condition would get progressively worse, with the increasing curvature of the spine diminishing lung capacity, popping joints out of socket and eventually killing her by crushing her internal organs. It can be treated with physical therapy, but traditional methods didn't work for Kaitlyn; she would grow bored and shut down, rendering the session worthless.

By 2009, the family and its doctors had come up with an excellent solution. Twice a week, for 30 minutes at a time, Kaitlyn would ride atop a horse, around and around in a circle, in an exercise that stretched her muscles, worked her back and legs, and kept her focused on sitting upright. To the family, the sound exercise is a creative and successful form of physical therapy. To the government, the exercise is called "hippotherapy"-- a controversial designation that has allowed the feds to malign its usefulness.

At first, Kaitlyn's therapy was paid by her father's military health insurance, [TRICARE](#), which calls itself "the health care program for Uniformed Service members, retirees and their families worldwide." But then, in 2010, TRICARE suddenly refused to pay for the girl's therapy -- and unconscionably demanded as well that the Samuels, with Mark on active duty, reimburse the Pentagon for therapy payments made -- totaling \$1,327.44 -- from September 2009 until the end of March 2010. Why? Here's how the feds explain it in the "[Final Decision](#)" in the case:

The original TMA denial of cost-sharing is based on findings that: 1) the Beneficiary received hippotherapy; (2) hippotherapy is not medically necessary and appropriate for treatment of the Beneficiary's medical condition; (3) hippotherapy for the treatment of the Beneficiary's medical condition has not been proven safe and effective by reliable evidence; and (4) hippotherapy for treatment of the Beneficiary's medical condition is an unproven treatment.

The government declared, in other words, that Kaitlyn's physical therapy was "unproven" even though it had long been proven to be working on her. That it was not yet "proven safe and effective by reliable evidence" even though it was safe and reliable enough for Kaitlyn and her family. That it was "not medically necessary and appropriate" for Kaitlyn even though her doctor and therapist had deemed it to be entirely "necessary and appropriate." Anyone who has ever had to fight with an insurance company over health coverage knows this awful drill.



And so did the Samuels. With their doctors at their side, and with the

therapy's success visibly evident to them, they appealed the denial of Kaitlyn's medical benefits through the briar patch of federal statutes and Pentagon regulations. What follows is the way Congress and the Department of Defense have designed these sorts of cases to be resolved-- every government functionary playing his own little role in justifying the deprivation of benefits to people like Kaitlyn. It took the Samuels nearly two years to have their case and their cause heard.

The first "hearing officer" who heard the case agreed with the family. Claude R. Heiny, a longtime administrative law judge, was a voice of sanity and reason. "It is more beneficial to use the horse as a tool," Heiny wrote, "because [Kaitlyn] engages in her physical therapy on the horse and fails to cooperate with her treatment in a clinical setting." Judge Heiny added: "It would be a waste of the Government's money to pay for therapy in a traditional setting for it would provide no benefit." He told TRICARE to pay for the horse therapy.

But then the case went up the ladder until TRICARE got the result it wanted. Functioning as the final arbiter of Kaitlyn's fate was a man named Michael W. O'Bar, whose official title is "Deputy Chief, TRICARE Policy and Operations." TRICARE itself, an arm of the Defense Department, was represented in the case by a lawyer named Michael Bibbo, who during the course of the hearing in February actually said aloud the following words: "Could Sea World hire a physical therapist" and then charge the federal government?

What was that hearing like? It was surreal, of course, an anthem to the government's ability to suck all reason and logic out of a previously functioning situation. Again, the *Dallas Observer* picks up the story:

Kaitlyn's physical therapist testified that the horse is merely a therapy tool that proves more effective in many cases because of the dynamic movement and warmth of the animal. "I am a physical therapist, not a hippotherapist," Suzanne Sessums said, adding that she is also not a ball or bench therapist.

Questioned by Bibbo, Sessums questioned him back, "You're telling me if I put Kaitlyn on a bench in a center you will pay for it?" To which Bibbo said, "It's not the exact same thing if you're getting more" efficacy from a horse than a bench. "It's still recognized as a therapy tool, and that's what this is. ... I'm not understanding why I have to prove my use of a horse, but not my use of a ball," Sessums said.

And so on. TRICARE made it clear that it would pay for Kaitlyn's physical therapy if it was the type that wasn't working on Kaitlyn -- traditional physical therapy -- but wouldn't pay for the type of physical therapy that *did* work on Kaitlyn. During the course of the case, the Samuels had presented TRICARE's "judges" with all sorts of published evidence and testimony about the benefits and virtues of "horse therapy." Yet in the end here is the tautological way in which O'Bar described the process by which Kaitlyn's therapy was rejected:

The TMA Appeals, Hearings and Claims Collection Division, reviewed each of the articles submitted by Representatives in their appeal. The Formal Review Decision noted that some of the articles did indeed meet the TMA definition of reliable evidence. However, several of the other articles did not meet the TMA definition of reliable evidence. Those articles that did meet the definition of reliable evidence were carefully reviewed by either the TMA Medical Benefits and Reimbursement Systems Office (MB&RB) or the TMA Appeals, Hearings and Claims Collection Division.

Based on that review, it has been determined that hippotherapy is currently considered unproven within the meaning of TRICARE regulation and policy. As noted by TMA MB&RB, there is a lack of reliable evidence establishing that hippotherapy is a proven treatment for the Beneficiary's medical condition.... Moreover, MB&RB found that hippotherapy is a stand-alone modality, and it is inconsequential whether it is referred to as an otherwise covered service such as physical therapy.

Got that? The "horse therapy" that works on Kaitlyn is real enough to warrant its own "modality" but not real enough to be covered by TRICARE. The successful therapy that the young woman's doctor and therapist swear by is supported by "some" reliable evidence but apparently not enough "reliable evidence" to satisfy the federal government, which has not yet disclosed to the Samuels or the rest of the world how much "reliable evidence" is necessary to warrant coverage.

I contacted TRICARE Tuesday to ask O'Bar some questions about his ruling, which was handed down late last month. At first, TRICARE responded by telling me via email that "HIPPA regulations and the provisions of the privacy act prevent us from commenting on the specifics of any beneficiary's health or health care." When I reminded the folks there that I wasn't asking about Kaitlyn or her condition but rather about the "final decision" O'Bar had issued I was told that "Mr O'Bar is just not available to talk to you."

When I contacted Jennifer Samuels she wanted me to know that throughout the entire process TRICARE officials had consistently refused to consider Kaitlyn's work with horses as a viable form of physical therapy. It didn't matter that her doctors swore under oath that it was viable and working. What mattered instead were the conclusions of TRICARE's own experts, who had never treated Kaitlyn nor seen her in action with the therapeutic horses. "It was like we were talking to a brick wall," Samuels told me.

She's understandably angry, and not just because the feds have denied her disabled daughter future coverage. She's also angry that TRICARE went after her family for the money it had spent from September 2009 to March 2010 when it was regularly approving Kaitlyn's successful treatment. "Blue Cross couldn't have done what they did here," Samuels told me, because private insurance companies are generally blocked from recouping money in this fashion, while TRICARE is not.

On Wednesday, the Senate takes up the last National Defense Authorization Act, the latest federal funding legislation for all things military. Senator John Cornyn, the Republican from Texas, has been supportive so far of the Samuels' plight, pushing and prodding the Pentagon to timely process their benefits claim. Now that TRICARE has rejected the family, it will be interesting to see how far Senator Cornyn is willing to push his colleagues in Congress to put to right Kaitlyn's treatment at the hands of her father's employer.

It wouldn't take much more than five minutes for Congress or the Pentagon to rectify this matter -- to authorize TRICARE to cover physical therapy even when it happens to involve the use of a horse in addition to the use of a ball. We ask patriots like Mark Samuels to give their lives to our country. The least we can do in return is ensure that their children are given the medical treatment their doctors and therapists say that they need. Michael O'Bar doesn't have to be made available to me. But he still has to answer for Kaitlyn.

UPDATE, 12/21: A lot has happened to the Samuels in the month since this story first appeared, much of it very good. First, upon hearing that Pentagon bureaucrats were turning their backs on Kaitlyn Samuels, a kind and generous man named Jeff Gural, an owner, breeder and racetrack owner, agreed to fund her horse therapy for one year. Upon learning of Gural's offered generosity, the Samuels again demonstrated the meaning of personal sacrifice (and honor and compassion) by asking the donor to contribute the money not solely for Kaitlyn's sake but for the sake of two other military families whose children benefit from horse therapy at the [Rocky Top Therapy Center](#) in Keller, Texas. The folks at Rocky Top were delighted, as you can imagine, and so are those other families.

The Samuels' family also got some good news on the legal front. The enormous (and enormously powerful) law firm [Akin Gump Strauss Hauer & Feld](#) contacted the Samuels and agreed to represent them *pro bono* as they continue their efforts to convince the Pentagon, and the courts if necessary, that Kaitlyn's therapy is warranted and necessary and consistent with other forms of physical therapy covered under the Pentagon's health plan. The law firm's involvement doesn't guarantee that the Samuels ultimately will prevail, of course, but it guarantees them at least a few more days in court--and perhaps a more successful political push toward a reasonable resolution to this problem.

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