

PRESS RELEASE

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**JUDGE RULES MEDICAID AGE LIMIT DISCRIMINATES AGAINST
PEOPLE WITH AUTISM**

Rule Denying Benefits After Age 20 is Unlawful

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People with autism often face significant cognitive, behavioral, communication and social challenges. Many require medication to control their severe anxiety, repetitive and sometimes dangerous behaviors. Unfortunately, there aren't many non-pharmaceutical treatment options for autism. Except for applied behavior analysis (ABA) therapy.

ABA entails intensive, one-on-one therapy in which activities are broken down into discrete tasks and the person's accomplishments are rewarded with positive reinforcement. It has been scientifically researched in numerous peer-reviewed publications and is generally accepted by professionals in the field. Unlike other forms of behavior therapy, ABA therapy is proven effective in individuals who have moderate to severe intellectual and communication deficits. For many parents who were once hopeless, it has given them a ray of hope with none of the side-effects or risks of long-term harms of medication. And it works.

Unfortunately, ABA therapy is expensive. A full-time program of 30-40 hours per week can cost between \$75,000 and \$100,000 per year. However, the costs—individual and societal—of a person with autism can be greater than those if a person goes without ABA therapy, which in the long run is more humane, safer and less expensive than a lifetime of ER visits, acute hospitalizations, drug regimens and police involvement.

Parents of children with autism quickly discover that public school districts generally do not provide ABA for students, even if they are eligible for a free appropriate public education (FAPE) under the Individuals with Disabilities Education Act (IDEA). Some parents withdraw their children from public school so they can attend a private ABA program full-time if they are fortunate enough to have insurance coverage. But when parents submit claims to their private health insurance plans, the plans usually try to come up with a reason to deny them. Some insurance companies tell parents “That’s the school’s responsibility,” and schools tell parents “That’s your insurance company’s responsibility,” forcing parents to pay for ABA out of pocket or forego the therapy altogether.

After years of fighting their school systems and insurance companies, Indiana residents with autism finally got some relief. In 2016, the state’s Medicaid program made benefits for ABA therapy available to people with autism through the age of 20. This turned out to be a good news/bad news situation for people with autism: the good news was that Indiana Medicaid would now provide benefits for their ABA therapy. The bad news was that Medicaid benefits end when the individual turns 21 years old—whether the individual still needs treatment or not.

But thanks to one Indiana man, that may be about to change. Meet Whitestown resident and Zionsville High School graduate Connor Blessing. Connor was diagnosed with autism at 18 months. Connor, now 24, started receiving ABA therapy through Little Star ABA, a local nonprofit ABA provider, when he was five years old and has been getting the intense, 1:1 therapy since then to help with his behaviors, functional and communication skills. Medicaid agreed that ABA therapy was medically necessary for Connor and approved benefits, but denied his claims once he turned 21 based on the age restriction in the rule.

That would have been the end of it for some people. For Connor, it was just the beginning. His parents and legal guardians, Tom Blessing and Victoria Blessing-Wade, filed an administrative appeal with the Indiana Family and Social Services Administration, which administers the state Medicaid program. As typically happens, an administrative law judge reviewed their case and they lost.

Connor wasn't ready to give up. His father, Tom Blessing, is an education attorney who represents children and young adults with disabilities. He had spent years fighting insurance companies which had denied Connor benefits for ABA therapy as a child, and decided to appeal his adult son's case in court. As Blessing explained: "Any time you take on state government, you're in for an uphill battle. It's got an army of lawyers and the law is usually on its side. This case was different: the age restriction in the Medicaid rule is so clearly arbitrary and blatantly discriminates against people with autism that it seemed worth a shot." So the Blessings sought review of the administrative ruling in state court.

Both sides filed motions and briefs, then the court held a hearing in February. When asked how the hearing went, Blessing said “I never predict how a judge is going to rule after a hearing. It takes courage for a judge to rule against a state agency, which made me a little nervous. But our judge listened carefully and asked thoughtful questions, so I felt good about that.” On May 21, 2021, the judge issued her decision, concluding that age restriction imposed by Medicaid is unlawful.

The judge’s 13-page order notes that ABA therapy is the only therapy for which Medicaid benefits are provided under the rule that is totally excluded once a member turns 21 years old. Other therapies (PT, OT, speech) are still covered by Medicaid after a person turns 21. After reviewing the record, the judge found no evidence “which would suggest that ABA therapy is no longer beneficial to [someone] with autism after that person turns 21.” On the contrary, “autism is a life-long disability and...ABA therapy is beneficial to individuals who suffer from autism, regardless of age....There is no evidence in the record which suggests that ABA therapy became medically unnecessary for Connor once he turned 21,” leading the court to conclude that Medicaid’s denial of benefits based on Connor’s age was arbitrary and prejudicial.

Next, the court observed that the federal Medicaid Act requires states to cover medically necessary treatments. In Connor’s case, Medicaid had already determined that ABA therapy was medically necessary. As the court noted: “There is nothing in the record to suggest that ABA therapy is no longer a medically necessary treatment now that Connor is 23 years of age....[T]he agency fails to explain how age relates to medical necessity for ABA therapy, and the record is devoid of any information supporting a denial of [benefits] based solely on the age of the individual.”

Citing federal cases, the court held that the cost of ABA therapy is not a valid reason to impose an age restriction on coverage: “budgetary concerns...do not outweigh Medicaid recipients’ interests in access to medically necessary healthcare,” leading the court to conclude that the age restriction denies access to medically necessary services “in violation of federal law.”

Finally, the court pointed out that “the only individuals affected by the age restriction for ABA therapy are individuals with autism.” In other words, Medicaid’s denial of Connor’s claim was “on the basis of his disability—autism.” As such, the age restriction violates the Americans with Disabilities Act.

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