

# Seventh Circuit Addresses Plan Limitations on Treatment for Autism Spectrum Disorder

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*Midthun-Hensen v. Grp. Health Coop. of S. Cent. Wis., Inc.*, 2024 WL 3646149 (7th Cir. 2024)

A minor child's parents filed a proposed class action lawsuit against the administrator of their employer-sponsored group health plan after the plan refused to cover speech therapy and sensory-integration therapy for treatment of the child's autism spectrum disorder (ASD). At the time, based on its assessment of the medical evidence, the plan did not cover sensory-integration therapy as a treatment for autism at any age, and it did not cover speech therapy as a treatment for autism for children over age nine. (Developments in medical literature led the plan to begin covering these treatments about a year later.) The plan did, however, cover chiropractic treatment for certain musculoskeletal conditions in children, even though, from the parents' point of view, such treatment lacked scientific support. This led the parents to allege that, by imposing an age-based limitation for ASD treatments while providing coverage for pediatric chiropractic treatment, the plan had applied its requirement that treatments be "evidence based" more stringently to speech and occupational therapy for ASD than it did for pediatric chiropractic care, in violation of the Mental Health Parity and Addiction Equity Act (MHPAEA). The trial court found no parity violation, concluding that the differences in coverage did not arise from the plan applying "a more restrictive strategy or process to mental health benefits" but instead reflected differences in "the acceptance of those treatments by the medical community at large."

On appeal, the appellate court agreed with the trial court. The court noted that, due to the nature of the conditions (ASD is typically diagnosed in childhood, while musculoskeletal conditions tend to develop in older adults) the medical community literature on autism focuses more on efficacy by age. Observing that plans must make sense of the available medical literature "as they find it," the court concluded that the plan's policies reflecting the differing focus in the medical literature did not "pose a problem" under the MHPAEA. The court further concluded that the parents' claim failed for a more fundamental reason: While the MHPAEA requires that treatment limitations applicable to mental health benefits be no more restrictive than treatment limitations applied to "substantially all" medical/surgical benefits covered by the plan, the parents identified only one medical benefit that was handled differently than the mental health benefits they sought. The court acknowledged that the statute and regulations do not define "substantially all" for purposes of nonquantitative treatment limitations (NQTLs) such as age-based limitations on ASD treatment but concluded that it did not need to determine exactly what substantially all means because it does not mean "one." Opining that the parents had not seriously tried to show that the plan "as a general matter" imposed age-based treatment limitations less stringently on medical/surgical benefits than on mental health benefits, the court affirmed the trial court's decision.

**EBIA Comment:** This decision has lessons for both participants and plan administrators when it comes to NQTLs and MHPAEA compliance. First, it emphasizes that participants challenging the application of an NQTL that is based on determinations in the available medical literature regarding appropriateness or effectiveness of that treatment cannot establish a parity violation by choosing a single medical/surgical benefit to compare to a mental health benefit. Rather, they must show that the process the plan followed in applying an NQTL to a mental health benefit was more stringent than the process it follows for applying NQTLs to substantially all the medical/surgical benefits covered by the plan. Second, the decision addresses—perhaps for the first time—an NQTL that limits coverage based on the covered individual's age, concluding that such a limitation is permissible under the MHPAEA if it is reasonably based on medical research and clinical efficacy. For more information, see EBIA's Group Health Plan Mandates manual at Section IX.E ("Mental Health Parity: Nonquantitative Treatment Limitations"). See also EBIA's Self-Insured Health Plans manual at Section XIII.C.2 ("MHPA and MHPAEA: Mental Health Parity").

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