

## Appellate Court Addresses Autism Plan Limitations

As many plan sponsors may know, plan limitations on autism spectrum disorder (ASD) therapy and treatments have resulted in significant litigation, many of which have found in favor of the plaintiff and against the health plan. A recent case actually found in favor of the plan.

In *Midthun-Hensen v. Grp. Health Coop. of S. Cent. Wis., Inc.*, 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 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.

The parents alleged that by imposing an age-based limitation for ASD treatments while providing coverage for pediatric chiropractic treatment, the plan had applied its "evidence based treatment" requirement 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 plan prevailed. The appellate 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 non-quantitative treatment limitations (NQTs) 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.

This decision has lessons for both participants and plan administrators when it comes to NQTs 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 NQTs 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. While the plan prevailed in this case, given recent guidance and litigation in this area, plan sponsors are well-advised to consult with TPAs and their legal counsel if the plan limits ASD benefits.

# Accommodating Employees' Family Needs During the School Year

As the summer break comes to an end and school is back in session, many employees find themselves juggling new challenges. From school drop-offs and pick-ups to managing after-school activities, the return to school can create significant demands on employees' time and energy. Employers have a critical role to play in easing this transition and supporting their staff through this busy period. Here are some strategies to consider:

## Flexible Work Hours

Allowing staff to start and end their workday at different times can help them manage school-related responsibilities. For example, employees might appreciate starting work later to accommodate morning drop-offs or adjusting their schedules to be available for school events.

## Remote Work Options

Many parents struggle with the logistics of school drop-offs and pick-ups, and working from home can provide the flexibility needed to manage these responsibilities more effectively. Even partial remote work options, such as a hybrid model, can offer employees the balance they need.

## Supportive Leave Policies

Comprehensive leave policies that address family needs can also be beneficial. This includes ensuring that employees are aware of and can easily access parental leave, sick leave, and other relevant benefits. Clear communication about these policies helps employees plan and manage their responsibilities better. Employees often need time off for school meetings, events, or emergencies. Offering paid time off for these purposes can alleviate stress and demonstrate that the company values and supports their family commitments. This could be in the form of additional personal days or a more flexible leave policy.

## Employee Assistance Programs

Employee Assistance Programs (EAPs) can offer valuable resources and support. These programs often provide access to counseling services, legal assistance, and other resources that can help employees manage the pressures associated with balancing work and family life.

As school returns, the demands on employees' time and energy shift significantly. By implementing flexible policies, providing support programs, and fostering a supportive culture, employers can play a crucial role in helping their staff navigate this busy season. Accommodating family needs not only enhances employee satisfaction and productivity but also contributes to a positive and inclusive workplace environment.

## Childcare Support Programs

Employers can offer childcare support through childcare subsidies, stipends, or discounts at local childcare facilities. Such programs can help ease the financial burden associated with childcare and provide peace of mind. For companies with the resources, providing on-site childcare or partnering with local childcare centers can be a game-changer. This can significantly reduce stress for working parents, knowing their children are nearby and well cared for during work hours.

## Communication and Understanding

Creating an open dialogue about the challenges employees face can foster a supportive work environment. Managers should encourage employees to communicate their needs and work together to find solutions. Understanding and empathy from leadership can make a significant difference in how employees experience work-life balance.

## Family-Friendly Culture

Promoting a culture that values work-life balance and family needs is essential. Recognize and celebrate the diverse needs of your employees and make it clear that the company supports their well-being both inside and outside of work. A family-friendly culture can enhance employee satisfaction and retention.

## Regular Check-Ins

Regular check-ins with employees can help identify any issues they might be facing as the school year progresses. Managers should be proactive in offering support and adjusting workloads or schedules as needed. This ongoing dialogue ensures that employees feel supported and valued.