

SUMMARY OF TESTIMONY

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3601 S. Pennsylvania Street
Denver, Colorado 80113
303-761-1400

- I. Insurance companies are not providing coverage without a mandate.
 - a. For example, Kaiser professes to cover autism, but not ABA autism therapy – the only therapy proven to be effective for the treatment of autism. This coverage mandate is needed not to give preferential treatment, but to require insurers who profess to cover autism to cover this proven, effective treatment.
 - b. Only after costly, time consuming appeals will insurers cover ABA.

Excerpts from independent reviewers following appeals for ABA:

Findings: Three physician reviewers found that ABA therapy has been well-established as the most effective therapy for developing interpersonal and communicative skills in autistic children.

Findings: The physician reviewer found that the present treatment of choice and the only well-documented successful therapy for autism is ABA therapy. This treatment has been shown to result both in gains in IQ scores as well as improvements in functioning across language, social and behavioral adaptive domains. The studies by Sallows et al and Howard demonstrated improvements in IQ scores following ABA treatment as compared with age and IQ matched controls.

Findings: Three physician reviewers found that ABA is an extensive one on one behavioral altering program that requires a skilled therapist working with the child 20-40 hour per week. Significant controlled studies have documented ABA's long-term effects on improving language, learning skills and socialization in autistic children. ABA is considered the gold standard of treatment of autistic children. No other therapy is likely to be more efficacious for this patient than ABA therapy.

Findings: . . . Applied behavioral analysis is not an experimental program, and the peer reviewed literature has documented its effectiveness. The various therapies have been proposed as part of a comprehensive treatment plan for this patient and are medically appropriate for the treatment of autism. The requested therapy is medically indicated for treatment of this patient.

Findings: Three physician reviewers found that ABA is more beneficial than standard autistic treatments and is now considered a non-investigational mainstream therapy. ABA focuses on the reliable measurement and objective evaluation of observable behavior within relevant settings, including the home, school and community. ABA-based interventions have been very well-documented. More recently, a review of the state of the science of pediatric primary health care clinicians on autism (Asch. Pediat. Adolesc. Med/Vol 160, Nov 2001) claims ABA is "superior to other intervention strategies."

Findings: The physician reviewer found that ABA therapy has been shown to be efficacious in the treatment of autism and autism spectrum disorders. Improvements as a result of intensive early intervention with ABA therapy have been demonstrated in terms of measured IQ as well as in adaptive, social and communicative skills in comparison to control patients who did not have ABA treatment. These gains have been shown to be sustained over time, with documented follow-up of as long as 6 years in one follow-up study.

Findings: Three physician reviewers found that according to a well-respected general pediatrics textbook, "there is compelling evidence that intensive behavioral therapy, beginning before three years of age and targeted toward speech and language development, is successful in improving both language capacity and later social function." The authors also note that controlled studies of early intensive 1:1 behavioral triaging (ABA) have resulted in significant cognitive and behavioral gains. Multiple studies comparing children who received intensive behavioral treatment to those who received a more eclectic treatment modality have shown that the behavioral treatment groups exhibited greater increases in IQ and adaptive functioning, and fewer aberrant behaviors and social problems, than did the eclectic groups. Behavioral therapy is considered to be the first-line treatment for autistic spectrum disorders, along with speech and language therapy. Many consider the advances made in the treatment of children with autism spectrum disorders to be attributable to early intervention with ABA techniques. ABA therapies have been utilized and studied for decades, and the data indicates positive results with consistent implementation of his method. ABA is considered standard of care, particularly in early intervention programs by many experts in the field.

Review of the relevant published literature on autism and its treatment reveals that the most effective treatments consists of applied behavioral analysis. It is a well-researched, evidence-based technique of intervention for children with autism spectrum disorders.

The Review Organization's Physician Consultant examined the medical records submitted and determined that ABA has been recommended as the preferred early intervention strategy by state health departments for children with Autism Spectrum Disorders. Floor-time (also known as DIR therapy) and TEACCH are also intensive intervention strategies widely used in intervention for children with Autism.

II. Colorado has many insurance coverage mandates.

CRS § 10-16-104 mandates coverage for:

- Newborn children
- Inherited enzymatic disorders
- Early intervention services
- Child immunizations
- Therapies for congenital defects and birth abnormalities
- Complications of pregnancy and childbirth
- Maternity coverage
- Low-dose mammography
- Mental illness
- Biologically based mental illness and mental disorders
- Dependent children
- Adopted children – dependent coverage
- Opportunity to purchase coverage for treatment of alcoholism
- Prostate cancer screening
- Diabetes

Thank you for considering this important bill that will help so many of Colorado's children.



April 22, 2009

R. Craig Ewing, esq.
Ewing & Ewing, PC
3601 S. Pennsylvania Street
Englewood, CO 80113

NOTICE OF LEVEL I APPEAL DECISION

RE: [REDACTED]
Health Record Number: [REDACTED]
Issue in Dispute: Authorization of coverage for Applied Behavioral Analysis (ABA) Therapy

Dear Mr. Ewing:

This notice is in response to your appeal request that Kaiser Permanente reconsider its denial of coverage for Applied Behavioral Analysis (ABA) Therapy with [REDACTED] for her patient, [REDACTED]. I am a board-certified specialist in family medicine and I was asked to review your appeal. I was not involved in the initial denial, nor do I directly report to anyone who made the initial denial determination. I have considered all of the available information related to your request. Based on review of that information, and the terms of [REDACTED] Health Plan contract, I determined the initial denial must be upheld. Information relevant to that decision is discussed below.

FACTUAL BACKGROUND

According to your appeal letter received on March 13, 2009, you are appealing the denial of coverage for ABA autism therapy with [REDACTED] for her patient [REDACTED]. The Member's Appointment of Representative form was received on March 24, 2009. You state [REDACTED] was diagnosed with autism on April 1, 2008. [REDACTED], [REDACTED] Kaiser Permanente pediatrician, recommended [REDACTED] receive 25-35 hours of ABA therapy per week for a period of two to three years. You write Kaiser Permanente denied coverage for [REDACTED] ABA autism therapy on January 28, 2009, and February 17, 2009, as a benefit exclusion rather than on medical necessity or an experimental or investigational exclusion. You go on to state that Kaiser Permanente provides a broad range of coverage for services under [REDACTED] outpatient care benefits including services by other health care professionals,

specialty care visits and can be provided in a provider's office or at home. There are no specific exclusions, limitations or reductions listed for the outpatient care benefit. Additionally, [REDACTED] 2009 Evidence of Coverage (EOC) does not exclude or limit treatment for autism or ABA autism therapy in the general exclusions, limitations and reductions section of the EOC.

You write that the exclusion cited by Kaiser Permanente in denying coverage of [REDACTED] ABA autism therapy applies only to benefits for Mental Health Services, and autism and treatment of autism are covered benefits under the "broad grant" of coverage for outpatient care. You further write, "...According to Colorado law, autism is not a "mental illness" and must be covered in the same manner as any other accident or sickness...and Kaiser's application of a policy exclusion for mental health services that are for the purpose of treating a mental illness violates C.R.S. § 10-16-104.5..." You are requesting Kaiser Permanente authorize coverage of ABA autism therapy with [REDACTED] at [REDACTED], under [REDACTED] 2008 and 2009 Health Plan benefits.

ISSUE IN DISPUTE

The issue in dispute in this matter is whether coverage for Applied Behavioral Analysis (ABA) autism therapy with [REDACTED] at Emerge, PC, qualifies for authorization under the terms of [REDACTED] 2008 and 2009 Health Plan benefits.

REASONS FOR DENIAL

I am upholding the initial denial of coverage for Applied Behavioral Analysis (ABA) autism therapy with [REDACTED] for the following reasons: 1) because the prevailing expert opinion supports that further research is necessary to determine the safety, toxicity or efficacy of Applied Behavioral Analysis therapy, therefore ABA autism therapy is considered experimental in nature; 2) Applied Behavioral Analysis autism therapy is not medically indicated for [REDACTED] due to its experimental nature, and experimental or investigational services are specifically excluded from [REDACTED] Health Plan benefits; and 3) C.R.S. § 10-16-104.5, became effective May of 2008. [REDACTED] 2008 Group Evidence of Coverage became effective January 1, 2008. Therefore, coverage of Applied Behavioral Analysis autism therapy in 2008 is excluded from [REDACTED] mental health services benefits. As such, all Applied Behavioral Analysis services Andrew received in 2008 are specifically excluded from coverage.

X Kaiser Permanente does not cover autism as a mental health condition, and as such, the benefits and policies attributable to a Member's mental health benefit do not extend to coverage for autism. However, in accord with state mandate, Kaiser Permanente does cover autism as a medical condition. This means that coverage is limited to diagnostic evaluation and medication management. Further, when a qualified provider (approved by Kaiser Permanente to make such diagnosis) determines that a co-morbid mental health condition exists (e.g., significant depression, psychosis, anxiety, etc...), covered services may include prescribed medication (provided the member has RX benefit) and medication management. Kaiser Permanente has contracted with autism experts within the community to perform, upon referral by a plan physician, a one-time evaluation to determine diagnosis of autism.

As noted, Kaiser Permanente is in compliance with Colorado State law which requires treatment of autism as a medical condition. [REDACTED] Kaiser Permanente medical records document he is receiving medical evidence-based care for his autism through occupational, speech and physical therapy. In addition he receives 6 to 8 hours of ABA therapy on a weekly basis. This ABA therapy has not been approved by Kaiser Permanente and the family has privately paid for this service. It is not medically necessary for [REDACTED] to receive Applied Behavioral Analysis therapy because it is not of known therapeutic value and is considered experimental in nature. [REDACTED] 2009 Group Evidence of Coverage also specifically excludes "Special education, counseling, therapy of care for learning deficiencies or behavior problems, whether or not associated with a manifest mental disorder, retardation or other disturbance, including but not limited to attention deficit disorder and autism." While this exclusion is written under Mental Health Services Exclusions, the intent of the contract is to exclude on-going treatment and care of developmental disorders, developmental disabilities, and learning disabilities, including Applied Behavioral Analysis, sensory integration treatment, and social skills development, and will be addressed in the general exclusions section of the Evidence of Coverage beginning in 2010.

The 2009 Group Evidence of Coverage is the legal document between the employer group and Kaiser Permanente. I based my denial on the following provisions from [REDACTED] 2009 Group Evidence of Coverage. The 2009 Group Evidence of Coverage states the following in section IV.. "Benefits,"

"IV. BENEFITS

The Services described in this "Benefits" section are covered only if all the following conditions are satisfied:

- A Plan Physician determines that the Services are **Medically Necessary** [bolded for emphasis] to prevent, diagnose or treat your medical condition (a Service is Medically Necessary only if a Plan Physician determines that it is medically appropriate for you and its omission would adversely affect your health); and
- The Services are provided, prescribed, authorized or directed by a Plan Physician (except where specifically noted to the contrary in the following sections of this EOC: (a) "Emergency Services Provided by non-Plan Providers (out-of-Plan Emergency Services)" and (b) "Out-of-Plan Non-Emergency, Non-Routine Care" in "Emergency Services and Non-Emergency, Non-Routine Care"); and
- You receive the Services from Plan Providers inside our Service Area (except where specifically noted to the contrary in the following sections of this EOC: (a) "Getting a Referral" and "Specialty Self-Referrals"; and (b) "Emergency Services Provided by non-Plan Providers (out-of-Plan Emergency Services)" and "Out-of-Plan Non-Emergency, Non-Routine Care" in "Emergency Services and Non-Emergency, Non-Routine Care").

Exclusions and limitations that apply only to a particular benefit are described in this "Benefits" section. Exclusions, limitations, and reductions that apply to all benefits are described in the "Exclusions, Limitations and Reductions" section.

Note: Copayments or Coinsurance may apply to the benefits and are described below. For a complete list of Copayment and Coinsurance requirements, see the "Summary Chart."

P. Mental Health Services

2. Mental Health Services Exclusions:

- a. Evaluations for any purpose other than mental health treatment, such as child custody evaluations, disability evaluations or fitness for duty/return to work evaluations, unless a Plan Physician determines such evaluation to be Medically Necessary.
- b. Special education, counseling, therapy or care for learning deficiencies or behavioral problems, whether or not associated with a manifest mental disorder, retardation or other disturbance, including but not limited to attention deficit disorder and autism. [bolded for emphasis]**
- c. Mental health Services on court order, to be used in a court proceeding, or as a condition of parole or probation, unless a Plan Physician determines such therapy to be Medically Necessary.
- d. Court-ordered testing and testing for ability, aptitude, intelligence or interest.
- e. Services which are custodial or residential in nature.”

Furthermore, under section V. Exclusions, Limitations and Reductions, the Group Evidence of Coverage states,

“V. EXCLUSIONS, LIMITATIONS AND REDUCTIONS

A. Exclusions

The Services listed below are excluded from coverage. These exclusions apply to all Services that would otherwise be covered under this EOC. Additional exclusions that apply only to a particular Service are listed in the description of that Service in the “Benefits” section.

9. Experimental or Investigational Services:

- a. A Service is experimental or investigational for a Member’s condition if any of the following statements apply to it as of the time the Service is or will be provided to the Member. The Service:
 - i. cannot be legally marketed in the United States without the approval of the Food and Drug Administration (FDA) and such approval has not been granted; or
 - ii. is the subject of a current new drug or new device application on file with the FDA;or
 - iii. is provided as part of a Phase I or Phase II clinical trial, as the experimental or research arm of a Phase III clinical trial or in any other manner that is intended to evaluate the safety, toxicity or efficacy of the Service; or
 - iv. is provided pursuant to a written protocol or other document that lists an evaluation of the Service’s safety, toxicity or efficacy as among its objectives; or
 - v. is subject to the approval or review of an Institutional Review Board (IRB) or other body that approves or reviews research concerning the safety, toxicity or efficacy of Services; or

- vi. is provided pursuant to informed consent documents that describe the Service as experimental or investigational or in other terms that indicate that the Service is being evaluated for its safety, toxicity or efficacy; or
 - vii. is part of a prevailing opinion among experts as expressed in the published authoritative medical or scientific literature that (A) use of the Service should be substantially confined to research settings or (B) further research is necessary to determine the safety, toxicity or efficacy of the Service.
- b. **In making determinations whether a Service is experimental or investigational, the following sources of information will be relied upon exclusively: [bolded for emphasis]**
- i. The Member's medical records; and
 - ii. The written protocol(s) or other document(s) pursuant to which the Service has been or will be provided; and
 - iii. Any consent document(s) the Member or the Member's representative has executed or will be asked to execute to receive the Service; and
 - iv. The files and records of the IRB or similar body that approves or reviews research at the institution where the Service has been or will be provided, and other information concerning the authority or actions of the IRB or similar body; and
 - v. **The published authoritative medical or scientific literature regarding the Service as applied to the Member's illness or injury; and [bolded for emphasis]**
 - vi. Regulations, records, applications and other documents or actions issued by, filed with, or taken by the FDA, other agencies within the U.S. Department of Health and Human Services, or any state agency performing similar functions: ment of Health and Human Services, or any state agency performing similar functions.
- c. If two (2) or more Services are part of the same plan of treatment or diagnosis, all of the Services are excluded if one of the Services is experimental or investigational.
- d. Health Plan consults Medical Group and then uses the criteria described above to decide if a particular Service is experimental or investigational."

As part of the appeals process, a board-certified pediatrician and the Chief of Pediatrics for the Colorado Permanente Medical Group, PC, reviewed [REDACTED] medical records and concluded that [REDACTED] is receiving evidence-based care for his autism, and prevailing expert opinion does not support Applied Behavioral Analysis therapy for the management of the symptoms of autism as appropriate or medically necessary, and is experimental in nature. Therefore, authorization of coverage for Applied Behavioral Analysis (ABA) Therapy is not covered under the terms of [REDACTED] Health Plan benefits.

APPEAL RIGHTS

Voluntary Second-Level Appeal

You have the right to request a Voluntary Second Level Appeal. To request a Voluntary Second Level Appeal, you must notify us in writing within thirty (30) calendar days from the postmark date of this notice.

Please send your request for a Voluntary Second Level Appeal to:

Kaiser Permanente
Appeals Analyst
P.O. Box 378066
Denver, Colorado 80237-8066

Within sixty (60) calendar days following receipt of your request, Kaiser Permanente will hold a Second Level Appeal meeting. A written decision will be issued within seven (7) calendar days following the Second Level Appeal meeting.

You may present your appeal in person before the Second Level Appeal Panel, or request a file review. You have the right to be represented by someone other than yourself, you have designated in writing. If you would like to present your appeal in person, but a face-to-face meeting is not practical, you may present your appeal over the telephone, or by videoconference at Kaiser Permanente's expense. Please indicate in your appeal request how you want to present your appeal, and if you will be represented by another individual. You may submit additional information with your appeal request, or at your Second Level Appeal meeting.

If you would like further information about the Voluntary Second Level Appeal process, to assist you in making an informed decision about pursuing a Voluntary Second Level Appeal, please call Karen Aragon at 303-344-7801 or 1-888-370-9858. Your decision to pursue a Voluntary Second Level Appeal will not affect your rights to any other Health Plan benefits.

You have the right to access and receive free of charge a copy of any materials (documents, guidelines, protocols or other similar criterion, records, or other information) relevant to your appeal that are not confidential or privileged. Relevant materials are those that:

- We relied upon when making our decision;
- We received, or that we considered or generated, when making our decision, whether or not we actually relied on them in making the final benefit determination; and
- May show we used appropriate administrative processes and safeguards in making our benefit decisions.

You may request the Authorization for Release of Appeal Information form to obtain copies of these materials by calling our Administrative Assistant at 303-344-7811.

I based the denial of your request on a medical necessity determination that required me to obtain a scientific or clinical judgment. As part of the appeals process, I consulted with a physician board-certified in pediatrics and Chief of Pediatrics for the Colorado Permanente Medical Group, PC, who was not involved in the initial denial of your request, nor was he a subordinate of any person involved in the initial denial. I will provide an explanation of that judgment free of charge, at your request. You may request an authorization form to obtain copies of the consultation by contacting our Administrative Assistant at 303-344-7811.

If your health benefits are provided through an Employee Retirement and Income Security Act (ERISA)-qualified employee welfare benefit plan, you may have the right to bring a civil action under Section 502(a) of ERISA, if your claim is not approved and all required internal reviews have been completed. If you are not sure whether your employer group is ERISA-qualified, you should contact your employer.

Independent External Review

Should you choose not to pursue a Voluntary Second Level Appeal, according to Colorado Division of Insurance Regulation 4-2-21 you may have the right to an external review of Kaiser Permanente's decision. Election of a Voluntary Second-Level Appeal does not affect your right to external review. Decisions that are eligible for review by an independent external review organization are those where Kaiser Permanente decided that the requested care or service was not medically necessary, appropriate, effective, or efficient. You will not be responsible for the cost of the external review. Requests for care or services that are beyond those included in your Health Plan benefits are not eligible for independent review.

To request external review of a "medical necessity" appeal, you or a representative you have designated in writing, must:

- Submit your request to the Kaiser Permanente Appeals Department in writing within sixty (60) calendar days from the postmark of this notice.
- Submit a completed Independent External Review of Carrier's Final Adverse Determination form (Call 303-344-7811 to request this form).
- Include any new, relevant information you would like included in your external review submission.

The external review will generally be completed within thirty (30) working days. You may request an expedited review if you have a medical condition where the timeframe for completion of a standard review would seriously jeopardize your life, health, or ability to regain maximum function, or for persons with a disability, would create an imminent and substantial limitation to your existing ability to live independently. A request for an expedited external review must be accompanied by a written statement from your physician that your condition meets the expedited criteria. **The external review process is a file review and you are not able to present your appeal in person to the independent external review organization.**

If the independent external review organization overturns Kaiser Permanente's denial of payment for care you have already received, Kaiser Permanente will issue payment within five (5) working days. If the independent review organization overturns Kaiser Permanente's decision not to authorize care, Kaiser Permanente will authorize care within one (1) working day.

Upon receipt of a written request from you, Kaiser Permanente will send a copy of this decision letter to any health care providers involved in your care. Please specify in your request which providers you would like to receive a copy of this letter.

If you have any questions regarding this notice or your further appeal rights, please call Karen L. Aragon at 303-344-7801. While I realize this is not the decision you desired, I hope you understand the reason for the denial.

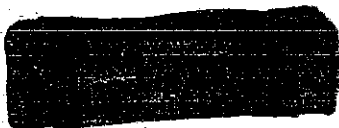
Sincerely,



William G. Houlton, MD
Chief of Appeals and Risk Management

Enclosure: Authorization for Release of Appeal Information form

cc:





Case Details

Reference ID # EI08-8797	Type Experimental/Investigational
Patient Age 5	Patient Gender Male
Diagnosis Category Mental	Diagnosis Subcategory Autism
Treatment Category Mental Health Treatment	Treatment Subcategory null

IMRO Determination
Overturned Decision of Health Plan

Reviewer's Findings

The parents of a five-year-old male enrollee have requested for 35 hours per week of behavior modification for treatment of the enrollee's autism. Findings: Three physician reviewers found that ABA therapy has been well-established as the most effective therapy for developing interpersonal and communicative skills in autistic children.

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Department of
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State of
California

Case Details

Reference ID #

MN08-8795

Type

Medical Necessity

Patient Age

3

Patient Gender

Male

Diagnosis Category

Mental

Diagnosis Subcategory

Autism

Treatment Category

Mental Health Treatment

Treatment Subcategory

null

IMRO Determination

Overtaken Decision of Health Plan

Reviewer's Findings

The parents of a three-year-old male enrollee have requested for ABA therapy for treatment of his global developmental delays. Findings: The physician reviewer found that the present treatment of choice and the only well-documented successful therapy for autism is ABA therapy. This treatment has been shown to result both in gains in IQ scores as well as improvements in functioning across language, social and behavioral adaptive domains. The studies by Sallows et al. and Howard demonstrated improvements in IQ scores following ABA treatment as compared with age and IQ matched controls. Although progress may be slower in patients with lower initial IQs, studies have shown improvements with ABA across a range of initial IQ scores, and there is no "cut off point" for pre-treatment IQ below which ABA has not been shown to be beneficial. This patient has made limited but definite progress with the intensive ABA home program.

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Department of
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Case Details

Reference ID #

EI08-8539

Type

Experimental/Investigational

Patient Age

5

Patient Gender

Male

Diagnosis Category

Mental

Diagnosis Subcategory

Autism

Treatment Category

Mental Health Treatment

Treatment Subcategory

null

IMRO Determination

Overtured Decision of Health Plan

Reviewer's Findings

The parent of a five-year-old male enrollee has requested for Applied Behavioral Analysis (ABA) therapy for treatment of the enrollee's autism. Findings: Three physician reviewers found that ABA is an extensive one on one behavioral altering program that requires a skilled therapist working with the child 20-40 hour per week. Significant controlled studies have documented ABA's long-term effects on improving language, learning skills and socialization in autistic children. ABA is considered the gold standard of treatment of autistic children. No other therapy is likely to be more efficacious for this patient than ABA therapy.

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Department of
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California

Case Details

Reference ID #

MN08-8530

Type

Medical Necessity

Patient Age

5

Patient Gender

Female

Diagnosis Category

Mental

Diagnosis Subcategory

Autism

Treatment Category

Rehabilitation Services - Outpatient

Treatment Subcategory

Other

IMRO Determination

Overtaken Decision of Health Plan

Reviewer's Findings

The parent of a five-year-old female enrollee has requested speech therapy, occupational therapy, physical therapy and applied behavioral analysis (ABA) for the treatment of the enrollee's pervasive developmental disorder/autism. Findings: The physician reviewer found that this patient has been diagnosed with autism based on evaluations by two child neurologists. The second child neurologist prescribed speech, physical and occupational therapy weekly programs. The patient was evaluated by qualified speech, physical and occupational therapists who recommended active therapeutic approaches. Applied behavioral analysis is not an experimental program, and the peer-reviewed literature has documented its effectiveness. The various therapies have been proposed as part of a comprehensive treatment plan for this patient and are medically appropriate for the treatment of autism. The requested therapy is medically indicated for treatment of this patient.

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**Department of
Managed Health Care**State of
California**Case Details****Reference ID #**

MN08-8143

Type

Medical Necessity

Patient Age

11

Patient Gender

Female

Diagnosis Category

Mental

Diagnosis Subcategory

Autism

Treatment Category

Mental Health Treatment

Treatment Subcategory

Behavioral Therapy

IMRO Determination

Overturned Decision of Health Plan

Reviewer's Findings

The parent of an eleven-year-old female enrollee has requested Applied Behavioral Analysis (ABA) for the treatment of the enrollee's autism. Findings: Three physician reviewers found that ABA is more beneficial than standard autistic treatments and is now considered a non-investigational mainstream therapy. ABA focuses on the reliable measurement and objective evaluation of observable behavior within relevant settings, including the home, school and community. ABA-based interventions have been very well-documented. More recently, a review of the state of the science for pediatric primary health care clinicians on autism (Asch. Pediat. Adolesc. Med/Vol 160, Nov 2001) claims ABA is "superior to other intervention strategies".

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Department of
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California

Case Details

Reference ID #

EI08-8037

Type

Medical Necessity

Patient Age

4

Patient Gender

Male

Diagnosis Category

Mental

Diagnosis Subcategory

Autism

Treatment Category

Mental Health Treatment

Treatment Subcategory

Behavioral Therapy

IMRO Determination

Overturned Decision of Health Plan

Reviewer's Findings

The parent of a four-year-old male enrollee has requested continued ABA therapy for the treatment of his autism. Findings: The physician reviewer found that ABA therapy has been shown to be efficacious in the treatment of autism and autism spectrum disorders. Improvements as a result of intensive early intervention with ABA therapy have been demonstrated in terms of measured IQ as well as in adaptive, social and communicative skills in comparison to control patients who did not have ABA treatment. These gains have been shown to be sustained over time, with documented follow-up of as long as 6 years in one follow-up study. Further, these findings have been replicated by other studies. In the case of the enrollee, progress with the ABA therapy has been documented with regard to his communication skills (particularly receptive language) and adaptive functional skills. There is no alternative treatment modality that would be as effective for the treatment of this patient.

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Department of
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Case Details

Reference ID # EI08-7930	Type Experimental/Investigational
Patient Age 4	Patient Gender Male
Diagnosis Category Mental	Diagnosis Subcategory Autism
Treatment Category Mental Health Treatment	Treatment Subcategory Behavioral Therapy
IMRO Determination Overturned Decision of Health Plan	

Reviewer's Findings

The parent of a four-year-old male enrollee has requested for applied behavioral analysis (ABA) therapy for treatment of the enrollee's autism. Findings: Three physician reviewers found that according to a well-respected general pediatrics textbook, "there is compelling evidence that intensive behavioral therapy, beginning before three years of age and targeted toward speech and language development, is successful in improving both language capacity and later social functioning." The authors also note that controlled studies of early intensive 1:1 behavioral training (ABA) have resulted in significant cognitive and behavioral gains. Multiple studies comparing children who received intensive behavioral treatment to those who received a more eclectic treatment modality have shown that the behavioral treatment groups exhibited greater increases in IQ and adaptive functioning, and fewer aberrant behaviors and social problems, than did the eclectic groups. Behavioral therapy is considered to be first-line treatment for autistic spectrum disorders, along with speech and language therapy. Many consider the advances made in the treatment of children with autism spectrum disorders to be attributable to early intervention with ABA techniques. ABA therapies have been utilized and studied for decades, and the data indicates positive results with consistent implementation of this method. ABA is considered standard of care, particularly in early intervention programs, by many experts in the field.

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Department of
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California

Case Details

Reference ID #	Type
MN07-6360	Medical Necessity
Patient Age	Patient Gender
3	Male
Diagnosis Category	Diagnosis Subcategory
Mental	Autism
Treatment Category	Treatment Subcategory
Home Health Care	Other
IMRO Determination	
Overtaken Decision of Health Plan	

Reviewer's Findings

The parent of a three-year-old male enrollee has requested authorization and coverage for at-home applied behavioral analysis (ABA) therapy for treatment of the enrollee's autism. Findings: The physician reviewer found that although review of the literature reveals no citations evaluating the differences between in-home ABA and clinically based ABA, most ABA programs provided today have at least some component of in-home treatment. The ultimate goal of any ABA program is to have the patient functioning independently in the community. Independent functioning must begin in the home with self-help skills and family communications. All the social/play and perspective taking skills as well as the self-help skills (especially continence) should take place in the home. The patient will have a need for future self-help skill goals as he becomes developmentally age-appropriate. It is often difficult to have these skills carry over into the home if taught in an outside environment. All behavioral programs should involve training of the parents/caregivers to allow for carry-over from the behavioral sessions.

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Department of
Managed Health Care

State of
California

Case Details

Reference ID # MN06-5805	Type Medical Necessity
Patient Age 3	Patient Gender Female
Diagnosis Category Mental	Diagnosis Subcategory Autism
Treatment Category Mental Health Treatment	Treatment Subcategory Behavioral Therapy
IMRO Determination Overturned Decision of Health Plan	

Reviewer's Findings

The patient is a three-year-old female with significant autism. She has been treated with applied behavioral analysis, with reported benefit. The patient's parent has requested reimbursement for the past therapy as well as authorization and coverage for continued therapy. The Health Plan has denied this request on the basis that applied behavioral analysis was/is not medically necessary. Review of the relevant published literature on autism and its treatment reveals that the most effective treatment consists of applied behavioral analysis. It is a well-researched, evidence-based technique of intervention for children with autism spectrum disorders. Applied behavioral analysis uses an intensive, behaviorally based approach to intervention often referred to as discrete trials instruction, among other strategies. In the case of this patient, the submitted clinical information demonstrates she has shown some improvement with applied behavioral analysis. As such, the therapy was medically indicated and should be continued for one year with re-evaluation by the patient's provider at the end of the one-year period. Accordingly, I have determined the therapy at issue was/is medically necessary for treatment of the patient's medical condition. The Health Plan's denial should be overturned.

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Department of
Managed Health Care

State of
California

Case Details

Reference ID # EI03-3199	Type Experimental/Investigational
Patient Age 6	Patient Gender Male
Diagnosis Category Mental	Diagnosis Subcategory Autism
Treatment Category Mental Health Treatment	Treatment Subcategory Behavioral Therapy
IMRO Determination Overturned Decision of Health Plan	

Reviewer's Findings

The mother of a six-year-old male enrollee requested authorization and coverage of applied behavioral analysis therapy for treatment of the enrollee's medical condition. The Health Plan denied the request indicating that the requested therapy is considered experimental for the treatment of the enrollee's autism. Three physician reviewers performed an experimental/investigational Independent Medical Review. Two of the three physician reviewers concluded that the requested therapy is likely to be more beneficial for treatment of the enrollee's medical condition than any available standard therapy. One physician reviewer concluded that the requested therapy is not likely to be more beneficial for treatment of the enrollee's medical condition than any available standard therapy. Because two of the three physician reviewers concluded that the requested therapy is likely to be more beneficial for treatment of the enrollee's medical condition than any available standard therapy, the Health Plan's denial has been overturned.

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Case Details

Reference ID #

MN01-202

Type

Medical Necessity

Patient Age

Not Available

Patient Gender

Not Available

Diagnosis Category

Mental

Diagnosis Subcategory

Autism

Treatment Category

Mental Health Treatment

Treatment Subcategory

Behavioral Therapy

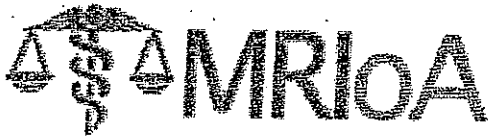
IMRO Determination

Overtured Decision of Health Plan

Reviewer's Findings

The mother of a 2-year-old male diagnosed with autism/pervasive developmental disorder requested Applied Behavioral Analysis therapy. The health plan denied the request indicating that the services are not medically necessary. The Review Organization's Physician Consultant examined the medical records submitted and determined that ABA has been recommended as the preferred early intervention strategy by state health departments for children with Autism Spectrum Disorders. Floor-time (also known as DIR therapy) and TEACCH are also intensive intervention strategies widely used in intervention for children with Autism. Therefore, the health plan's denial should be overturned.

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Medical Review Institute of America, Inc.
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REDACTED

CLIENT TRACKING NUMBER: NA

Records Received:

Summary of Treatment/Case History:

The patient is a 4-year-old child with a diagnosis of Autistic Spectrum disorder. On 6/8/06 he was seen by [REDACTED] at the [REDACTED] for a comprehensive consultation. At the time of the evaluation the patient was 2 years and 10 months old. He was also receiving early intervention services 4 hours monthly. The notes indicate his parents requested this consultation to learn the following: how to achieve more service hours, how many hours he should receive overall, information on how to create a teaching program to include ABA (Applied Behavioral Analysis), speech and occupational therapies, information on the range of services offered by the [REDACTED] what to do about the patient's lack of conversational skills, poor eye contact, narrow play interests, lack of empathy and poor social skills. Diagnostically [REDACTED] notes the patient to be very happy with several strengths to include attention span and focus on specific interests. It was noted he transitioned easily from place to place and activity to activity. He struggled when required to maintain facial referencing and eye contact. Social relatedness testing required a high degree of structuring or stalling on the adult's parts. Communication testing indicated the patient made infrequent verbal initiations and mostly spoke in one-word utterances. Cognitive and academically the patient was noted to have a significant appreciation for letters, numbers and colors. He was

able to recite the alphabet and displayed a special interest in orderly play systems/games. Motor and sensory evaluation was noted to not be a significant area of interest or need. Fine motor skills were good while gross motor skills were delayed. It is noted the patient did not walk until 17 months of age and still could not dress himself. He was also noted to be a picky eater with a very poor appetite.

At this time he was recommended for increased hours of weekly intervention to 25 hours a week to include preschool, community activities and specialized programming for autistic children. Treatment goals were to address communication and language - getting the patient to non-verbally communicate excitement and anticipation, use of facial referencing and eye contact, respond to facial signals, follow adult pointing, answer yes/no to questions rather than restating the question and implementing using 2 and 3 word utterances for a variety of purposes and use of non-verbal communication signals. Also noted was to create pre-academic goals after the patient has mastered communications and social relating skills. Self help and toileting goals were also set. Motor skills were also recommended as a treatment goal pending occupational and physical therapy recommendations. In addition to the aforementioned goals; recommendations were made for the patient to being an intensive therapeutic program to include preschool, home teaching, and supplemental community activities, followed but enrolling in a formal preschool that specializes or has a professional to assist with autistic children in development of social and emotional communication and play.

From 11/06 to 4/07 the patient was admitted into the program and participated in communication, socialization, cognitive play, and motor and self help skills training. As of 4/07 progress notes indicate the patient continued with communication deficits regarding eye contact, verbally however he was at 100%. He was noted to still be repeating the question when asked and when given the answer he continues to repeat the question. In socialization he was noted to still not be making eye contact during singing and reading and was still maintaining 100% eye contact with an adult when distressed, anxious or crying. This particular goal was also noted to be put on hold. The patient was noted to be initiating games and will more often than not approach an adult within 3 feet proximity. He was also indicated to be playing independently with different children. He continued however staying near them. Independent behaviors indicate the patient was continuing to have difficulty completing tasks and following a routine without prompt. Toileting was also noted to be improving as the patient was able to initiate the bathroom to adults but still had some accidents.

On 10/5/07 the patients mother wrote a letter requesting all documentation to include written letter of explanation of denial of services. She also explained she was appealing the denial for payment of services. Of note a copy of the denial of services is not included. There is also not a detailed list of the services, procedures and/or devices/drugs utilized while treatment was being rendered. The only information regarding treatment is the progress notes that just address each topic/goal and progress or lack of. The plan language included is also not specific regarding the

diagnosis.

Questions for Review:

Question 1. Does the patient meet medical necessity according to the definition in the plan for all services that were provided by the [REDACTED]?

Question 2. Is this treatment provided only as a convenience to the patient or provider?

Question 3. Is this an appropriate treatment plan for the patient's diagnosis or symptoms?

Question 4. Does this procedure exceed (in scope, duration and intensity) that level of care that is needed to provide safe adequate and appropriate diagnosis or treatment?

Question 5. Is this procedure part of a plan of treatment that is considered to be experimental and/or investigational?

Question 6. Do the services, supplies, care and treatment constitute accepted medical practice properly within the range of appropriate medical practice under the standards of the case and by the standards of a reasonable substantial, qualified, responsible, relevant segment of the medical and dental community or government oversight agencies at the time services were rendered?

Question 7. Was the drug, device, medical treatment or procedure, or the patient informed consent document utilized with the drug, device, and treatment of procedure, reviewed and approved by the treating facility's Institutional review board or other body serving a similar function?

Question 8. Does the deferral law require such review or approval?

Question 9. Does reliable evidence show that the drug, device, medical treatment or procedure is the subject of ongoing phase I or phase II clinical trials, is the research, experimental, study or investigational arm of ongoing phase III clinical trials, or is otherwise under study to determine its maximum tolerated dose, its toxicity, its safety, its efficacy or its efficacy as compared with a standard means of treatment or diagnosis?

Question 10. Does reliable evidence show that the prevailing opinion among experts regarding the drug, device, medical treatment or procedure is that further studies or clinical trials are necessary to determine its maximum tolerated dose, its toxicity, its safety, its efficacy as compared with a standard means of treatment or diagnosis?

Explanation of Findings:

Question 1. Does the patient meet medical necessity according to the definition in the plan for all services that were provided by the [REDACTED]

Yes.

Question 2. Is this treatment provided only as a convenience to the patient or provider?

No.

Question 3. Is this an appropriate treatment plan for the patient's diagnosis or symptoms?

Yes.

Question 4. Does this procedure exceed (in scope, duration and intensity) that level of care that is needed to provide safe adequate and appropriate diagnosis or treatment?

No.

Question 5. Is this procedure part of a plan of treatment that is considered to be experimental and/or investigational?

No.

Question 6. Do the services, supplies, care and treatment constitute accepted medical practice properly within the range of appropriate medical practice under the standards of the case and by the standards of a reasonable substantial, qualified, responsible, relevant segment of the medical and dental community or government oversight agencies at the time services were rendered?

The services and care provided according to the treatment plan initiated are acceptable.

Question 7. Was the drug, device, medical treatment or procedure, or the patient informed consent document utilized with the drug, device, and treatment of procedure, reviewed and approved by the treating facility's Institutional review board or other body serving a similar function?

Not applicable.

Question 8. Does the deferral law require such review or approval?

Yes.

Question 9. Does reliable evidence show that the drug, device, medical treatment or procedure is the subject of ongoing phase I or phase II clinical trials, is the research, experimental, study or

investigational arm of ongoing phase III clinical trials, or is otherwise under study to determine its maximum tolerated dose, its toxicity, its safety, its efficacy or its efficacy as compared with a standard means of treatment or diagnosis?

Not applicable.

Question 10. Does reliable evidence show that the prevailing opinion among experts regarding the drug, device, medical treatment or procedure is that further studies or clinical trials are necessary to determine its maximum tolerated dose, its toxicity, its safety, its efficacy as compared with a standard means of treatment or diagnosis?

No.

Conclusion/Decision to Certify:

The treatment services provided to the patient were medically necessary and appropriate for his diagnosis and is not considered to be experimental.

References Used in Support of Decision:

1. Plan Language regarding medical necessity and experimental/investigational acceptance
2. American Journal on Mental Retardation: Vol. 110, No. 6, pp. 417-438., Intensive Behavioral Treatment for Children With Autism: Four-Year Outcome and Predictors Glen O. Sallows and Tamlynn D. Graupner Wisconsin Early Autism Project (Madison)
3. Journal of Autism and Developmental Disorders Frank M. Gresham¹ and Donald L. MacMillan² University of California-Riverside, Abstract A comprehensive report to the National Institute of Health on the diagnosis, etiology, epidemiology, and treatment of autism indicated that early intervention has the potential of being an effective intervention (Bristol et al., 1996).

The Psychologist who performed this review is licensed in Psychology by the state of Texas. This reviewer is a Diplomate of the American College of Forensic Examiners. They also hold a master certification in Neuro Linguistic Programming. The reviewer provides services for both adult and pediatric patients within their practice. The reviewer has been in active practice since 1976.

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1341693.1

September 30, 2008

REDACTED

R. Craig Ewing, Esq.
Ewing & Ewing PC
3601 S. Pennsylvania Street
Englewood, CO 80113

Re: Appeal for [REDACTED]
[REDACTED]

Dear Mr. Ewing:

We are in receipt of your September 2, 2008 appeal and your letter dated September 23, 2008. We are treating this appeal as a Second Level Appeal only as it relates to the denial of the following claims on the basis that the expenses were incurred for treatment which was considered to be experimental or investigational: 03/01/2007, 04/01/2007, 05/01/2007, 06/05/2007, and 06/26/2007.¹

The Plan has determined that, while there was a legitimate basis for denying the claims as being experimental and/or investigational at the time the claims which are part of this appeal were initially denied, due to the evolving nature of treatment for autism and based upon current literature, the claims should not be considered experimental and/or investigational. However, this determination does not resolve the issues of how the claims should be treated or the extent to which they will be paid.