



Judicialization of health plan contracts due to violation of the principle of comprehensive protection for children and adolescents with ASD

Judicialization of health insurance contracts for violation of the principle of full protection for children and adolescents with ASD

Bruno Mendes Figueiredo¹

Maycon Raulino Coelho²

SUMMARY

The judicialization of health insurance contracts in Brazil has become common practice, especially when it comes to ensuring the rights of children and adolescents with Autism Spectrum Disorder (ASD). The principle of comprehensive protection, enshrined in the Child and Adolescent Statute (ECA), demands that all the basic needs of these individuals be met as a priority and comprehensively. However, the denial or limitation of coverage by health insurance companies has led to a significant increase in lawsuits. The need for judicialization to guarantee access to appropriate treatments for children and adolescents with ASD highlights a disconnect between legislation and the practices of health insurance companies. This situation not only burdens the judicial system but also causes suffering and delays in the treatment of individuals requiring urgent and continuous care. Therefore, it is imperative to analyze this issue to propose solutions that align the actions of health insurance companies with the rights guaranteed by law. The objective of this study is to analyze the judicialization of health insurance contracts in the context of comprehensive protection for children and adolescents with ASD.

children and adolescents with ASD, highlighting the main challenges they face and proposing solutions that can reduce the need for judicial intervention. This study uses a qualitative approach, based on a literature review and case law analysis. The literature review includes an examination of academic articles and legal documents addressing the protection of children and adolescents' rights, ASD, and the regulation of health insurance plans. The case law analysis focuses on relevant court decisions that illustrate the main arguments and outcomes of lawsuits filed against health insurance companies. The analysis is expected to reveal a clear overview of the main reasons leading to the judicialization of health insurance contracts in cases involving children and adolescents with ASD. Finally, the study aims to propose concrete measures to align the actions of health insurance companies with the principles established in the ECA, promoting fairer and more efficient access to necessary treatments.

Keywords: Judicialization. Autism Spectrum Disorder. Child and Adolescent Statute. Health Plans.

ABSTRACT

The judicialization of health insurance contracts in Brazil has become a common practice, especially when it comes to ensuring the rights of children and adolescents with autism spectrum disorder (ASD). The principle of integral protection, enshrined in the Statute of the Child and Adolescent (ECA), demands that all the basic needs of these individuals be met in a prioritized and comprehensive manner. However, the refusal or limitation of coverage by health

¹ Bruno Mendes Figueiredo is a Master's student in Law from Unifieo (Unifieo), specializing in Administrative Law and Tax Law, and holds degrees in Law, Philosophy, and Mathematics. He is a university professor at Florence University Center, where he has served as coordinator of undergraduate and graduate programs. (Lattes ID: 2682466483000845)

² Maycon Raulino Coelho holds a Master's degree in Law from Unifieo (Unifieo). He specializes in Tax Law and Constitutional Law. He was a university professor at the Florence University Center and is currently an advisor to the State Public Prosecutor's Office. (Lattes ID: 2575019419675344)



insurance providers have led to a significant increase in legal actions. The necessity of judicialization to guarantee access to appropriate treatments for children and adolescents with ASD highlights a discrepancy between legislation and the practices of health insurance providers. This situation not only burdens the judicial system but also causes suffering and delays in the treatment of individuals who require urgent and continuous care. Therefore, it is imperative to analyze this issue to propose solutions that align the actions of health insurance providers with the rights guaranteed by law. The objective of this study is to analyze the judicialization of health insurance contracts in the context of the integral protection of children and adolescents with ASD, highlighting the main challenges faced and proposing solutions that may reduce the need for judicial intervention. This study employs a qualitative approach, based on a bibliographic review and jurisprudential analysis. The bibliographic review includes the examination of academic articles and legal documents that address the protection of children's and adolescents' rights, ASD, and the regulation of health insurance plans. The jurisprudential analysis focuses on relevant court decisions that illustrate the main arguments and outcomes of actions brought against health insurance providers. It is expected that the analysis will reveal a clear overview of the primary reasons leading to the judicialization of health insurance contracts in cases involving children and adolescents with ASD. Finally, the study aims to propose concrete measures to align the actions of health insurance providers with the principles established in the ECA, promoting more fair and efficient access to necessary treatments.

Keywords: Judicialization. Autism Spectrum Disorder. Statute of the Child and Adolescent. Health Insurance Plans.

1 INTRODUCTION

The judicialization of health plan contracts in Brazil has become a common practice recurring, especially with regard to guaranteeing the rights of children and adolescents diagnosed with Autism Spectrum Disorder (ASD), notwithstanding the principle of comprehensive protection, enshrined in the Statute of Children and Adolescents (ECA), establishes that all the basic needs of these individuals are met as a priority and in full.

Therefore, the refusal or limitation of coverage by health plan operators has led to a significant increase in lawsuits, and this phenomenon highlights a worrying discrepancy between protective legislation and the practices of health plan operators health, resulting not only in an overload on the justice system, but also in suffering and delay in treatment of individuals requiring urgent care and continuous.

The need to resort to the judiciary to ensure access to adequate treatments for children and adolescents with ASD demonstrates the ineffectiveness of health insurance providers in comply with its legal obligations, and this situation creates a series of challenges, both for the



affected families and the health system as a whole, requiring an analysis of the causes and consequences of this judicialization.

The controversy over the extent of treatment coverage by health plans and its relationship with the list of the National Supplementary Health Agency (ANS) is one of the most important issues heated in the ongoing legal proceedings in the country, thus, health insurance companies argue that are not required to provide coverage beyond the limits set out in the list, and in return, the beneficiaries argue that the list is only an example of the minimum procedures that should be offered to them.

Furthermore, it is essential to propose solutions that can align the actions of operators with the rights guaranteed by the ECA, in order to reduce the need for judicial intervention and ensure more effective and humanized care for individuals in the spectrum.

The objective of this study, through the methodology employed, will be qualitative, through of bibliographical and jurisprudential analysis, is to analyze the judicialization of health plan contracts health in the context of comprehensive protection for children and adolescents with ASD, highlighting the main challenges faced and proposing solutions that can reduce the need for judicial intervention,

The analysis is expected to reveal an overview of the main reasons that lead to judicialization of health plan contracts in cases involving children and adolescents with ASD, and furthermore, the study aims to propose concrete measures to align the actions of health plan operators with the principles established in the ECA, promoting access more inclusive and efficient in the necessary treatments.

2 CHILDREN AND ADOLESCENTS WITH ASD

Children and adolescents with Autism Spectrum Disorder represent a significant and diverse portion of the child and youth population. Childhood spectrum disorder autism (ASD) presents main symptoms in the impairment of three specific areas of the development: difficulties in social skills, difficulties in communication skills communication (both verbal and nonverbal) and the presence of behaviors, interests and/or restricted, repetitive and stereotyped activities, and the clinical signs of ASD manifest before 36 months of age and become more evident, especially when the child is

inserted in a social context, and generally, parents of children with ASD begin to suspect any change around the age of 2, when they notice that the child's speech is not develops communicatively. Another sign that catches parents' attention is when child does not respond when called by his name, which raises doubts about his hearing ability³.

The word "autism" has its origins in the Greek term "autós", which means "own" or "of oneself", and the expression was initially used by Eugene Bleuler in 1911, with the meaning of "escape from reality and inner withdrawal of patients suffering from schizophrenia".

Later, the Austrian psychiatrist Leo Kanner, in 1943, revalidated and popularized the term to describe a set of neurological conditions characterized by challenges in social interaction, communication difficulties and restricted and repetitive patterns of behavior, thus the expression "autism spectrum" was introduced by the British psychiatrist Lorna Wing in the 1980s, with the aim of highlighting the diversity of manifestations of autism, which varies significantly between people, as do the different ranges of visible wavelengths in the field of Physics, and the modern understanding of autism is relatively recently, and currently, autism is recognized as a disorder of the neurodevelopment with biological and genetic bases, but in the past, the diagnosis of "idiocy" was used to encompass various psychopathological conditions in children and adolescents⁴.

The diagnosis of ASD is usually made by a multidisciplinary team, including pediatricians, psychologists, psychiatrists and speech therapists, based on observations behavioral and developmental assessments. Given their extreme complexity and variation in the individual's behavioral aspects, the prognosis requires an approach multidisciplinary covering not only medical monitoring, but also a team multidisciplinary, thus, Autism Spectrum Disorder is a new condition listed in the DSM-5, covering autistic disorder (autism). It is characterized by deficits in two

³ MAIA, FA; ALMEIDA, MTC; OLIVEIRA, LMM; OLIVEIRA, SLN; SAEGER, VSA; OLIVEIRA, VSD; SILVEIRA, MF Importance of welcoming parents who have been diagnosed with autism spectrum disorder in a child. **Revista Cadernos Saúde Coletiva**, v. 24, n. 2, p. 228, 2016. Available at: <https://www.scielo.br/j/cadsc/a/n6ZpCNpT9cSjLWVxVvVrYMr/>. Accessed on: July 14, 2024.

⁴ MELO, HA Autism, Private Health Plans and the Role of the Public Prosecutor's Office: Protecting Consumer Rights in the Search for Specialized Assistance. **National Council of the Public Prosecutor's Office**. 2024. Available at https://www.cnmp.mpb.br/porta/images/Corregedoria/COI-2024/Biblioteca_Digital/MPAC/ArtigoMPF.pdf. Accessed on: July 15, 2024.

key domains, including deficits in social interaction and repetitive and restricted patterns of behavior, interests and activities.

The fundamental characteristics of Autism Spectrum Disorder are a lack of social communication and deficits in social interaction, which are present since childhood and can affect the individual's daily functioning, and the manifestation of the disorder varies according to the severity, age and level of development of the autistic person, hence the term "spectrum", thus, the diagnosis is more reliable when based on multiple sources of information, such as clinical observations, history provided by the autistic child's caregivers and, when possible, reports from the individual himself⁵.

In the health field, most children receive care in Care Centers Psychosocial (CAPS) or Child Psychosocial Care Centers (CAPSi), or in hospitals maternal and child health, when developmental delays are identified, however, when treated in institutions linked to the Unified Health System (SUS), it is rare to find a complete multidisciplinary team, moreover, these centers deal not only with children, but also with adults and other types of mental disorders, which can result in outbreaks psychiatric, which is not beneficial for the treatment of people with autism, whether they are children, young people or adults.

Due to the sensory issues that can trigger seizures in such environments, where control and predictability are lacking, another problem identified is that often the patients with ASD are seen only by psychiatrists or neurologists, receiving only drug treatment, without the other therapies necessary for development adequate.

These therapies are usually only available after a long wait of months or up to years, as patients need to undergo an evaluation at a Basic Health Unit (UBS) of the SUS before being referred to a specialist, thus, only in cases It is extremely rare for other professionals to work as a team to complement the treatment⁶.

⁵ COSTA, NM; SANTOS, PR; BELUCO, ACR The importance of the multidisciplinary team for children diagnosed with ASD. **Autism: Advances and Challenges**, p. 38, 2021. Available at: <https://downloads.editoracientifica.com.br/articles/210705226.pdf>. Accessed on: July 15, 2024.

⁶ SOUZA, MM The recognition of autism as a disability: history, conventions, legislation and its application in Brazil. In: **Autism: legislation, jurisprudence and public policies** / coordinator: Marlla Mendes de 2021. <https://www.oabma.org.br/public/uploads/files/siteArquivos/202207045022a62c336e489e1.pdf>. Accessed on: July 15, 2024.



The education of children and adolescents with ASD must be adapted to their needs individual. In this context, school emerges as a new form of stimulus for children with autism, expanding their context of social interactions and contributing to their development. School inclusion has also been recommended by professionals from various areas, which recognize the importance of stimulating children's skills early on and promote their social interaction.

Due to the spectrum of conditions, children's behavior and cognitive profile with ASD can vary considerably, presenting specific challenges for those teachers in managing the student with ASD and the other students in the class. Therefore, the objective The aim of this study is to investigate teachers' experience regarding the inclusion of students with ASD, covering their feelings and pedagogical practices⁷.

Families of children and adolescents with ASD face challenges and conflicts when it comes to health. In this sense, Gomes⁸ points out that the child's particular situation requires that parents face the loss of their child's idealized image and develop coping strategies adaptation to the new reality, and parents' coexistence with the specific characteristics of ASD in their children can often result in distancing from family social life, and in In Brazil, the Ministry of Health launched in 2013 the Guideline for the Rehabilitation of Persons with ASD, with the aim of guiding health professionals and family members towards assist in the early detection of autism in children up to three years of age.

Furthermore, children and adolescents with ASD deserve to have all their rights protected under Brazilian juvenile legislation, the ECA, and it is essential that they receive adequate support from diagnosis to adulthood, thus, the collaboration of the family, health professionals, educators and society in general is essential to create a inclusive and supportive environment, as well as ensuring access to all rights that are available to you inherent, mainly related to health.

⁷ WEIZENMANN, LS; PEZZI, FA S; ZANON, RB School inclusion and autism: feelings and teaching practices. **Journal of School and Educational Psychology**, v. 24, p. 3, 2020. Available at: <https://www.scielo.br/j/pee/a/NwnK5kF4zM9m9XRynr53nwF>. Accessed on: July 14, 2024.

⁸ GOMES, PTM; LIMA, LHL; BUENO, MKG; ARAÚJO, LA; SOUZA, NM Autism in Brazil, family challenges and overcoming strategies: a systematic review. **Jornal de Pediatria**, v. 91, n. 2, p. 112, 2015. Available at: <https://www.scielo.br/j/jped/a/wKsNY3ngvLDcRZ5bxWCn47v/?lang=pt>. Accessed on: July 15, 2024.



3 THE STATUTE OF CHILDREN AND ADOLESCENTS AND THE PRINCIPLE OF COMPREHENSIVE PROTECTION

The Child and Adolescent Statute (ECA), established by Law No. 8,069 of 13 July 1990, is one of the most relevant laws in the field of human rights in Brazil, it represents a milestone in guaranteeing the rights of children and adolescents, placing them as subjects of rights and not mere objects of protection, and thus, among the various principles guiding principles of the ECA, the principle of comprehensive protection stands out, expressly:

Art. 1 This Law provides for the comprehensive protection of children and adolescents [...]
Art. 3 Children and adolescents enjoy all fundamental rights inherent to the human person, without prejudice to the full protection provided for in this Law, ensuring them, by law or other means, all opportunities and facilities, in order to enable their physical, mental, moral, spiritual and social development, in conditions of freedom and dignity [...] Art. 100. In the application of measures, pedagogical needs will be taken into account, with preference being given to those aimed at strengthening family and community ties [...] II - full and priority protection: the interpretation and application of any and all rules contained in this Law must be aimed at the full and priority protection of the rights of which children and adolescents are entitled (Brazil, 1990).

In other words, the principle of full protection, enshrined in the ECA, is also established in the Federal Constitution of 1988 as follows:

Art. 227. It is the duty of the family, society and the State to ensure to children, adolescents and young people, with absolute priority, the right to life, health, food, education, leisure, professional training, culture, dignity, respect, freedom and family and community life, in addition to protecting them from all forms of negligence, discrimination, exploitation, violence, cruelty and oppression. (As amended by Constitutional Amendment No. 65 of 2010) § 1 The State shall promote comprehensive health care programs for children, adolescents and young people, allowing the participation of non-governmental entities, through specific policies and in compliance with the following precepts (Brazil, 1988).

In the context of this principle, comprehensive protection is not limited to preventing violations of rights, but extends to the active promotion of the well-being and full development of young people, therefore, it is understood that public policies must be planned and implemented with the purpose of ensuring the necessary conditions so that children and adolescents can grow and develop in a healthy and safe way.



In this scenario, Perez and Passone⁹ state that the emergence and consolidation of policies social activities aimed at caring for children and adolescents were organized into two large periods, namely, before and after the creation of the Statute of Children and Adolescents, and the criterion The main thing that differentiates these two periods is based on the conception of childhood and adolescence, as well as in the implicit guidelines that emerged in the legal frameworks of each period.

On the one hand, we can trace a historical line that portrays the institutionalization of childhood as an object of control by the Brazilian State, encompassing policies and conceptions from the beginning of the republic until the end of the military dictatorship, and on the other hand, we highlight the period of democratic opening of the country, which culminated in 1990 with the promulgation of the ECA, and during this period, childhood and adolescence began to have the status of subjects of rights, representing a profound change in legislative, normative, cultural and conceptual guidelines, public policies and services for the care of children and adolescents in Brazil.

However, the implementation of the principle of comprehensive protection faces challenges in the current scenario. health, especially for this work, when dealing with children and adolescents with ASD, even with legislative advances in protecting these people. Oliveira¹⁰ points out that although the text of Law No. 12,764 of December 27, 2012 does not mention specific types of treatment, he suggests guidelines such as comprehensive attention to the person's health needs with ASD, early diagnosis, multidisciplinary care and access to medication and nutrients.

Furthermore, the judicialization of issues related to children's rights and teenagers has proven to be an important tool, but it also reveals the ineffectiveness of some public policies mainly in favor of health.

Thus, the need to resort to the judicial system to guarantee basic rights, such as access to health and education, highlights the obstacles to ensuring comprehensive protection ceases to exist. be just a legal prediction and become a concrete reality.

In short, it is necessary to promote a culture of respect and appreciation for the rights of children and adolescents, implying not only structural changes, but also

⁹ PEREZ, JRR; PASSONE, EF Social policies for assisting children and adolescents in Brazil.

Research Notebooks Journal, n.140, 2010. <https://www.scielo.br/j/cp/a/sP8smWgynpJJS77m60V4npj/>. Available in:

Accessed on: July 14, 2024.

¹⁰ OLIVEIRA, BDC; FELDMAN, C.; COUTO, MCV; LIMA, RC Policies for autism in Brazil: between psychosocial care and rehabilitation. **Physis: Journal of Collective Health**, v. 27, n. 3, p. 711, 2017.

Available at: <https://www.scielo.br/j/physis/a/BnZ6sVKbWM8j55qnQWskNmd>. Accessed on: July 15, 2024.



cultural and social transformations, where everyone recognizes and assumes their responsibilities, mainly, in this study, in the health area, which is essential for children and adolescents with ASD, for its broad development.

4 HEALTH PLANS X CHILD AND ADOLESCENT STATUTE IN CONTEXT OF THE TEA AND THE UNDERSTANDING OF THE SUPERIOR COURT OF JUSTICE

It is common for parents of children diagnosed with autism spectrum disorders look to private health insurers for better treatment options and medical care. However, this has led to a significant increase in lawsuits to obtain the cost of recommended treatments, due to the refusal of these insurers, who argue, among other reasons, the absence of treatments indicated in the Agency's list National Supplementary Health Agency (ANS), and as a result of frequent court requests for authorization of coverage of treatments, the country's case law is divided in relation to this problem: the 4th Panel of the Superior Court of Justice (STJ) adopts an approach exhaustive, while the 3rd Panel of the STJ considers the ANS list as exemplary, in summary, this is the scenario, and beyond this reflection, which seeks to obtain the best possible legal response to the controversy, we also consider the perspective of the well-being and dignity of the autistic patient, who is a beneficiary of a health plan¹¹.

In a recent decision in Special Appeal 2,043,003 - SP, the Superior Court of Justice – STJ - (2023) pointed out that multidisciplinary treatment of autistic people must be covered completely in favor of the plan, thus, the Third Panel rejected Amil's special appeal International Medical Assistance, which contested the coverage of multidisciplinary treatment, including music therapy, for people with autism spectrum disorder (ASD) and possibility of full reimbursement of expenses incurred by the health plan beneficiary outside of the accredited network.

¹¹ CAVALCANTI, GMAT; PERON, BT TEA and treatments not covered by the ANS list: a principled and jurisprudential analysis. In: **Autism: legislation, jurisprudence and public policies** / coordinator: Marlla Mendes de Sousa - Brasília: OAB Editora, p. 130, 2021. Available at: <https://www.oabma.org.br/public/uploads/files/siteArquivos/2022070415522062c336e489e1c.pdf>. Accessed on: July 15, 2024.



The rapporteur, Minister Nancy Andrighi, noted that, although the Second Section of the STJ have considered the list of procedures of the National Supplementary Health Agency (ANS) as definitive, the panel, in the same judgment last year (EREsp 1,889,704), maintained the decision of the Third Panel that considered the refusal to cover therapies abusive specialized medications prescribed for the treatment of ASD, and the minister highlighted that, after several ANS statements recognizing the importance of multidisciplinary therapies for carriers of global developmental disorders, the regulatory agency published the Normative Resolution (RN) 539/2022, which expanded the healthcare coverage rules to TEA.

The agency also announced the mandatory coverage of any methods or techniques indicated by the doctor for global development disorders, and in the case in which issue, the beneficiary, a minor, filed a lawsuit against Amil seeking the coverage of the prescribed multidisciplinary treatment, with no limit on sessions, and full reimbursement of expenses, in this way. The first instance court granted the request regarding the treatment without a limit on sessions, but excluded music therapy, which was reinstated by the Court of Justice of São Paulo (TJSP) in the appeal trial, and in the special appeal to the STJ, Amil claimed that the treatments were not contractually covered and were not included in RN 465/2021 of the ANS, and contested the obligation to fully reimburse expenses in non-medical clinics. accredited. The ANS waived the requirement for several coverages, and regarding music therapy, the rapporteur pointed out that it was included in the Unified Health System through the National Policy of Integrative and Complementary Practices, and the occupation of music therapist was recognized by the Ministry of Labor, becoming part of the multidisciplinary treatment of ASD to be covered mandatorily by health plans, when prescribed by a doctor¹².

In view of the STJ's jurisprudential understanding and the guidelines adopted by ANS, the minister endorsed the TJSP's decision to impose on the plan the obligation to cover the treatment multidisciplinary, including music therapy, and full reimbursement will only occur in the event of breach of contract, court order or ANS rule. This time, the minister emphasized that Amil's refusal was based on the fact that the prescribed therapies were not included in the ANS list, not there being, at the time, an express determination that obliged health insurance companies to cover them, and in the rapporteur's assessment, the refusal of coverage supported by a contractual clause that aims to based on ANS standards does not constitute non-performance of the contract, justifying reimbursement

¹² STJ. Superior Court of Justice. **Special Appeal No. 2,043,003 – SP. 2023**. Available at: https://processo.stj.jus.br/processo/revista/documento/mediado/?componente=ITA&sequencial=2275664&num_registro=202203866750&data=20230323&format=PDF. Accessed on: July 15, 2024.



in full, having decided that Amil will only have to fully reimburse expenses if it has breach of the injunction granted in the process, and otherwise, the refund will be within the limits of operator's table, and that failure to comply with the service assumed in the contract, the failure to comply with a court order determining coverage or violation of regulatory acts of the ANS by the operator may generate the obligation to compensate, through full reimbursement, before the characterization of undue denial of coverage.

Expressly, the Appeal in question:

SPECIAL APPEAL No. 2,043,003 - SP (2022/0386675-0)
SPECIAL APPEAL. ACTION FOR OBLIGATION TO DO. DENIAL OF JURISDICTIONAL PERFORMANCE. ABSENCE. HEALTH PLAN. TAXATIVE NATURE, AS A RULE, OF THE ANS LIST. MULTIDISCIPLINARY TREATMENT PRESCRIBED FOR BENEFICIARY WITH AUTISM SPECTRUM DISORDER. MUSIC THERAPY. MANDATORY COVERAGE. FULL REFUND. EXCEPTIONALITY.

1. Action for obligation to do, filed on 10/23/2020, from which this special appeal was extracted, filed on 04/06/2022 and concluded at the office on 12/15/2022.

2. The purpose of the appeal is to decide on: (i) the denial of jurisdictional provision; (ii) the obligation of the health plan operator to cover multidisciplinary therapies prescribed for users with autism spectrum disorder, including music therapy; and (iii) the obligation to fully reimburse the expenses incurred by the beneficiary for the treatment carried out outside the accredited network.

3. Once the issues on the merits have been duly analyzed and discussed, and the appealed decision has been sufficiently substantiated, so as to exhaust the jurisdictional provision, there is no talk of a violation of art. 1,022, II, of the CPC/15.

4. Although establishing the thesis regarding the exhaustiveness, as a rule, of the ANS list of health procedures and events, the Second Section denied the EREsp 1.889.704/SP of the health plan operator, to maintain the ruling of the Third Panel that concluded that the refusal to cover specialized therapy sessions prescribed for the treatment of autism spectrum disorder (ASD) was abusive.

5. The judgment handed down by the Second Section was followed by several statements from the ANS, aimed at reaffirming the importance of multidisciplinary therapies for people with global developmental disorders, including autism spectrum disorder, and therefore promoting their comprehensive and unlimited treatment.

6. Music therapy was included in the National Policy for Integrative and Complementary Practices (PNPIC) in the Unified Health System, which aims to prevent illnesses and promote and restore health, with an emphasis on primary care, focused on continued, humanized and comprehensive health care (Ordinance No. 849, of March 27, 2017, of the Ministry of Health), being mandatory coverage in the multidisciplinary treatment, prescribed by the attending physician and carried out by a specialized health professional, of the beneficiary with autism spectrum disorder.

7. According to case law, reimbursement of medical and hospital expenses incurred by the beneficiary for treatment/health care outside the accredited network may only be permitted in exceptional circumstances, such as



the lack or insufficiency of an accredited establishment or professional in the location and the urgency or emergency of the procedure, and, in these circumstances, it may be limited to the prices and tables actually contracted with the health plan.

8. The hypothesis addressed in the case law guidance on reimbursement within the limits of the contract is distinguished from the situations in which the operator's non-performance of the contract is characterized, causing material damage to the beneficiary, giving rise to the right to full reimbursement of expenses incurred by the latter, namely: failure to comply with the provision assumed in the contract, failure to comply with a court order that determines coverage of the treatment or violation of ANS regulatory acts.

9. Hypothesis in which the multidisciplinary treatment prescribed by the attending physician for the treatment of a beneficiary with autism spectrum disorder must be maintained, including music therapy sessions, with full reimbursement being due only if non-compliance with the court order granting the advance of the effects of the injunction is demonstrated, observing the limits established in the sentence and in the appealed decision regarding the coverage of music therapy and psychopedagogy.

10. Special appeal known and dismissed.

JUDGMENT

Having seen, reported and discussed these proceedings, the Ministers of the Third Chamber of the Superior Court of Justice, in accordance with the votes and shorthand notes contained in the proceedings, unanimously decide to hear and deny the special appeal in accordance with the vote of the Rapporteur Minister.

The Honourable Ministers Paulo de Tarso Sanseverino, Ricardo Villas Bôas Cueva, Marco Aurélio Bellizze and Moura Ribeiro voted with the Rapporteur Minister. Brasília (DF), March 21, 2023 (Judgment Date)

MINISTER NANCY ANDRIGHI Rapporteur (STJ, 2023b).

In this context, based on Law No. 9,961/2000, the National Health Agency was created. Supplemental (ANS) which is described as the body responsible for regulation, standardization, control and supervision of activities that guarantee supplementary health care.

ANS establishes the operating parameters of health insurance companies, and based on on this premise, the List of Procedures and Events in Health was established, which is defined by the agency as the mandatory minimum list of exams, consultations, surgeries and others procedures that health plans must offer to consumers, so this list is updated every two years, and thus include new medications, tests, therapies and surgeries, but none of them are part of the set of treatments recommended for patients with ASD, and due to the nature of the autism spectrum, which affects each patient individually and many is sometimes associated with comorbidities, treatments for autism spectrum disorders do not are homogeneously recommended by professionals, however, medical literature



nationally and internationally recognizes the importance of multidisciplinary treatment, as well as the effectiveness of new techniques¹³.

Furthermore, Law No. 12,764 of December 27, 2012, which deals with the rights of Autistics, in its article 5, teaches that these individuals cannot be prevented from participating of private health insurance plans for health assistance due to the condition of being a person with deficiency.

And the 2015 Statute of Persons with Disabilities asserts in its article 8 that it is the duty of the State, society and family, to ensure numerous rights of these individuals, including health, and expressly, let's see:

Art. 8 It is the duty of the State, society and family to ensure that people with disabilities, as a priority, have the rights to life, health, sexuality, paternity and maternity, food, housing, education, professional training, work, social security, habilitation and rehabilitation, transportation, accessibility, culture, sport, tourism, leisure, information, communication, scientific and technological advances, dignity, respect, freedom, family and community life, among others arising from the Federal Constitution, the Convention on the Rights of Persons with Disabilities and its Optional Protocol and laws and other standards that guarantee their personal, social and economic well-being (Brazil, 2015).

In view of these points, comprehensive protection for children and adolescents with ASD is shows conflicting when its legal right has to be systematically debated in the sphere legal action on behalf of companies, in this case health plans, that repeatedly infringe rules involving the protection of these individuals.

Furthermore, the change in culture, towards a positive scenario in this context, should be taken into consideration by these plan managers, because those who deal with health, even if commercial form, should not monetize the lives and health of children and adolescents, even more so, being people with disabilities with ASD who depend on multidisciplinary care health for its broad development.

¹³ CAVALCANTI, GMAT; PERON, BT TEA and treatments not covered by the ANS list: a principled and jurisprudential analysis. In: **Autism: legislation, jurisprudence and public policies** / coordinator: Marlla Mendes de Sousa - Brasília: OAB Editora, p. 136, 2021. Available at: <https://www.oabma.org.br/public/uploads/files/siteArquivos/2022070415522062c336e489e1c.pdf>. Accessed on: July 15, 2024.



CONCLUSION

Analysis of the judicialization of health plan contracts, especially in the context of comprehensive protection for children and adolescents with Autism Spectrum Disorder, supported in the Statute of Children and Adolescents, reveals a complex, worrying and exhausting for these individuals and their families.

The growing need to resort to the judiciary to guarantee fundamental rights guaranteed by the Statute of Children and Adolescents shows a substantial discrepancy between the legal obligations of health plan operators and their mandatory practices and effective.

Cases of refusal or limitation of coverage by operators not only impose an additional burden on the justice system, but also cause suffering and delay in treatment of individuals who require urgent and ongoing care and depend on this mechanism for the best treatment.

This situation compromises the implementation of the principle of comprehensive protection, one of the pillars of the ECA, which aims to ensure that all basic needs of children and adolescents are met in a priority and comprehensive manner, which the plans, in part, are not fulfilling legal precept.

Judicialization, although a necessary tool for guaranteeing rights, is not should be the main route of access to appropriate treatments for children and adolescents with TEA, as the duty to comply with ethical and legal obligations in these matters lies with the operators of health plans, they must align with legal standards and principles established in the ECA, promoting more humanized and efficient care.

The Superior Court of Justice, in a recent decision, ruled that the treatment multidisciplinary approach for autistic people must be covered in its entirety, as the Normative Resolution (RN) 539/2022, which expanded the rules for healthcare coverage for ASD, which favors children and adolescents with ASD, who need, for example, as in the case of the judgment music therapy.

Therefore, concrete measures must be adopted to reduce the need for intervention judicial, including the implementation of stricter rules so that these operators are punished with higher fines, operational interventions, among other solutions capable of ensure that children and young people with ASD are no longer harmed.

Furthermore, the case law analysis shows the need for more proactive action of the State in the supervision and regulation of health plan operators, ensuring that they comply with their legal obligations and provide the necessary coverage for the treatment of children and adolescents with ASD.

In short, the judicialization of health plan contracts due to an affront to the principle of comprehensive protection for children and adolescents with ASD, thus showing that it is an indication. It is clear that there is much to be done to ensure the effectiveness of the rights guaranteed by the ECA, and it is necessary that all parties involved, including health plan operators, public authorities and society fight together for a fairer and more aligned health system with the principles of comprehensive protection and human dignity.

REFERENCES

BRAZIL. **Constitution of the Federative Republic of Brazil of 1988**. Available at: https://www.planalto.gov.br/ccivil_03/constituicao/constituicao.htm. Accessed on: July 12, 2024.

BRAZIL. **Law No. 8,069 of July 13, 1990**. Provides for the Statute of Children and Adolescents and contains other provisions. Available at: https://www.planalto.gov.br/ccivil_03/leis/L8069compilado.htm. Accessed on: July 12, 2024.

BRAZIL. **Law No. 9,961 of January 28, 2000**. Creates the National Supplementary Health Agency – ANS and contains other provisions. Available at: https://www.planalto.gov.br/ccivil_03/leis/l9961.htm. Accessed on: July 14, 2024.

BRAZIL. **Law No. 12,764 of December 27, 2012**. Institutes the National Policy for the Protection of the Rights of Persons with Autism Spectrum Disorder; and amends § 3 of art. 98 of Law No. 8,112 of December 11, 1990. Available at: https://www.planalto.gov.br/ccivil_03/_ato2011-2014/2012/lei/l12764.htm. Accessed on: July 15, 2024.

BRAZIL. **Law No. 13,146 of July 6, 2015**. Institutes the Brazilian Law on the Inclusion of Persons with Disabilities (Statute of Persons with Disabilities). Available at: https://www.planalto.gov.br/ccivil_03/_ato2015-2018/2015/lei/l13146.htm. Accessed on: July 15, 2024.

CAVALCANTI, GMAT; PERON, BT TEA and treatments not covered by the ANS list: a principled and jurisprudential analysis. In: **Autism: legislation, jurisprudence and public policies /** coordinator: Marlla Mendes de Sousa - Brasília: OAB Editora, p. 129-150, 2021. Available at: <https://www.oabma.org.br/public/uploads/files/siteArquivos/2022070415522062c336e489e1c.pdf>. Accessed on: July 15, 2024.



COSTA, NM; SANTOS, PR; BELUCO, ACR The importance of the multidisciplinary team for children diagnosed with ASD. **Autism: Advances and Challenges**, p. 37-44, 2021. Available at: <https://downloads.editoracientifica.com.br/articles/210705226.pdf>. Accessed on: July 15, 2024.

GOMES, PTM; LIMA, LHL; BUENO, MKG; ARAÚJO, LA; SOUZA, N.M. Autism in Brazil, family challenges and coping strategies: a systematic review. **Jornal de Pediatria**, v. 91, n. 2, p. 111-121, 2015. Available at: <https://www.scielo.br/j/jped/a/wKsNY3ngvLDcRZ5bxWCn47v/?lang=pt>. Accessed on: July 15, 2024.

MAIA, FA; ALMEIDA, MTC; OLIVEIRA, LMM; OLIVEIRA, SLN; SAEGER, VSA; OLIVEIRA, VSD; SILVEIRA, MF Importance of welcoming parents who have been diagnosed with autism spectrum disorder in a child. **Revista Cadernos Saúde Coletiva**, v. 24, n. 2, p. 228-234, 2016. Available at: <https://www.scielo.br/j/cadsc/a/n6ZpCNpT9cSjLWVxVvVrYMr/>. Accessed on: July 14, 2024.

MELO, HA Autism, Private Health Plans and the Role of the Public Prosecutor's Office: Protecting Consumer Rights in the Search for Specialized Assistance. **National Council of the Public Prosecutor's Office**. 2024. Available at: https://www.cnmp.mp.br/portal/images/Corregedoria/COI-2024/Biblioteca_Digital/MPAC/ArtigoMPF.pdf. Accessed on: July 15, 2024.

OLIVEIRA, BDC; FELDMAN, C.; COUTO, MCV; LIMA, RC Policies for autism in Brazil: between psychosocial care and rehabilitation. **Physis: Journal of Collective Health**, v. 27, n. 3, p. 707-726, 2017. Available at: <https://www.scielo.br/j/physis/a/BnZ6sVKbWM8j55qnQWskNmd>. Accessed on: July 15, 2024.

PEREZ, JRR; PASSONE, EF Social policies for assisting children and adolescents in Brazil. **Revista Cadernos de Pesquisa**, v.40, n.140, p. 649-673, 2010. Available at: <https://www.scielo.br/j/cp/a/sP8smWgyn5fJS77m6Cv4npj/>. Accessed on: July 14, 2024.

SOUZA, MM The recognition of autism as a disability: history, conventions, legislation and its application in Brazil. In: **Autism: legislation, jurisprudence and public policies** / coordinator: Marlla Mendes de Sousa - Brasília: OAB Editora, p. 187-205, 2021. Available at: <https://www.oabma.org.br/public/uploads/files/siteArquivos/2022070415522062c336e489e1c.pdf>. Accessed on: July 15, 2024.

STJ. Superior Court of Justice. **Multidisciplinary autism treatment should be comprehensively covered by health insurance**. 2023. Available at: <https://www.stj.jus.br/sites/portalg/Paginas/Comunicacao/Noticias/2023/12042023-Multidisciplinary-treatment-of-autism-should-be-broadly-covered-by-health-insurance.aspx>. Accessed on: July 15, 2024.

STJ. Superior Court of Justice. **Special Appeal No. 2,043,003 – SP. 2023**. Available in: <https://processo.stj.jus.br/processo/revista/documento/mediado/?componente=ITA&sequencia>

l=2275664&num_registro=202203866750&data=20230323&formato=PDF. Accessed on: July 15, 2024.

WEIZENMANN, LS; PEZZI, FA S; ZANON, RB School inclusion and autism: feelings and teaching practices. **Journal of School and Educational Psychology**, v. 24, p. 1-8, 2020. Available at: <https://www.scielo.br/j/pee/a/NwnK5kF4zM9m9XRynr53nwF>. Accessed on: July 14, 2024.

