

Judge seeks reimbursement for son's therapy

Insurer maintains claims for treatment weren't valid; case settles

\$125,000

In a lawsuit filed in Wayne County Circuit Court, Hon. Cheryl A. Matthews, a judge with Oakland County Circuit Court, sought reimbursement from defendant Blue Cross Blue Shield of Michigan for costs she incurred in obtaining applied behavior analysis (ABA) therapy to treat her son's autism spectrum disorder.

Matthews asserted that Blue Cross representatives dissuaded her from filing formal, written claims in 2003 for \$38,000 in costs by misrepresenting to her that the ABA therapy was experimental and would therefore not be covered.

The suit was filed in response to the \$1 million class-action settlement obtained by plaintiff's counsel in the case of *Johns v. Blue Cross* in U.S. District Court for the Eastern District of Michigan. In that case, the court approved a settlement requiring Blue Cross to pay all costs of ABA therapy incurred by a

class of families who obtained the treatment at William Beaumont Hospital, irrespective of whether they filed a formal claim.

When Matthews learned that Blue Cross was paying for ABA therapy provided at Beaumont, she sought coverage for the cost of the therapy that her son received at a treatment facility called the Early Intervention Center (EIC).

Defendant filed several motions to dismiss the case, contending that Matthews did not exhaust her remedies and that the Wayne County Circuit Court did not have jurisdiction; that the EIC was not properly credentialed and licensed; that Matthews did not file a complete claim; and that the statute of limitations barred the action.

Plaintiff defeated all of the motions, based in part on the fact that Blue Cross incorrectly characterized ABA as "experimental."

Through discovery in this case, and in the *Johns* class action, plaintiff was able to establish that the empirical evidence and medical literature established the efficacy of ABA therapy, and further that Blue Cross' own internal files confirmed it.

In addition, plaintiff asserted entitlement to increased "life care" costs consisting of

Type of action:

Breach of insurance contract

Type of injuries:

Unpaid insurance claims

Name of case: *Matthews v. Blue Cross Blue Shield of Michigan***Court/Case no./Date:**Wayne County Circuit Court;
09-018750-CK; June 22, 2010**Name of judge:** Prentis Edwards**Settlement amount:** \$125,000**Attorneys for plaintiff:**Gerard V. Mantese, John J. Conway,
Mark C. Rossman, David Hansma**Attorney(s) for defendant:** Withheld

the future cost of care for plaintiff's son that would have been avoided if he had been able to continue with his ABA therapy at the EIC, which was cut off early because Blue Cross wrongfully refused to cover the claims.

The case settled for \$125,000.