785/07

Den 17. december 2007 blev i sag nr. 71.329:

xxxx xxxxxxx
xxx xxxxx xxxxxx
xxxxxxxx xxxxxxx
xxxxxx
xxx xxx

mod

International Health Insurance
danmark a/s
Palægade 8
1261 København K

afsagt sålydende

k e n d e l s e :

_____

Forsikringstageren, der har tegnet en "International Health and Hospital Plan" sygeforsikring hos International Health Insurance danmark a/s, klager over, at selskabet har afvist at dække udgifter i forbindelse med hans søns behandling.

Selskabet har afvist at yde dækning under henvisning til, at forsikringen ikke yder dækning for ikke-medicinsk behandling.

Klagerens søn, der er født den 25/3 2002, har i oktober 2002 fået stillet diagnosen Autism Spectrum Disorder og er i december 2004 påbegyndt ABA/IBT terapi.

Klageren har i bilag til klageskrivelse nærmere redegjort for sagsforløbet. Af den kronologiske redegørelse fremgår, at klageren ved mail af 8/6 2005 ansøgte selskabet om dækning af udgifter til sønnes behandling. I mailen hedder det bl.a.:

> "On June 8 2005 In accordance with IHI danmarks policy of requesting treatment coverage I contacted J.S. from IHI danmark via email to ask if IHI danmark would consider paying for my son's ABA treatment.
>
> | | |
> |---|---|
> | Form | B.@n.....com [klageren] |
> | Subject: | IHI Extension |
> | Dato: | 8 juni 2005 8:35:00 PM GMT + 08:00 |
> | To: | J.S.@ihi.com |

Dear Mr. S.,

I have been a member of IHI danmark for some years now.
My son has recently been diagnosed with Autism Spectrum Disorder. His condition is mild and treatable. He began receiving treatment in December 2004 and improvement has been noted.

ABA Treatment for his disorder is very expensive. He has also been receiving Occupational and Speech Therapy through this time period.

His Occupational therapist has noted great improvement in his functions and he will be discharged. This discharge date is not yet final but should be by October of this year.

His speech therapy will be discontinued shortly and may be resumed at a later date.

I am informing you of this because I would like IHI danmark to extend some coverage for my sons ABA treatment. It is currently approx HK$ 30,000 per month. While my coverage pays for limited OT/Speech per year the large expense is the most beneficial for my son.

I am requesting that as my insurance provider IHI danmark refund a portion of the ABA treatment expenses. I am not asking for all this to be reimbursed from IHI danmark just a reasonable percentage.

I look forward to your response.

Tankyou
J.B. [klageren]"

Efter yderligere mailkorrespondance med selskabet oplyser klageren videre i redegørelsen til nævnet:

"I received an email confirming receipts of documents dated July 29 2005 that the IHI medical staff had reviewed my son's case. In order to proceed the medical consultants required a detailed letter requiring a prognosis, length of treatment and cost.

From: b.l.@ihi.com
Subject: Pol. 74… - extraordinare benefit
Date: 29 July 2005 5:31:41 PM GMT+08:00
To: B.@n.com [klageren]

Dear Mr. B.
Thanks for the informations from your doctor and from the Autism Partnership Ltd.

I have discussed the case once more with our medical consultants and my superior, however in order for us to take any further steps, we need to get an idea of the prognosis for your son's ABA treatment. For how long does he need this treatment and what will it cost for his 30 hour week program?

Thanks and regards,

B.
International Health Insurance danmark a/s
B.L.
Service Department

I believe that based on the email dated July 29 2005 from IHI danmark that the insurance company was now assessing the case on monetary value and declined my request because of the cost of C.'s .[klagerens søn] treatment. Up until this time it was about proving his need for therapy and then I believe they declined based on the cost of the therapy.

On August 17 I then forwarded more requested information regarding cost from C.s therapy supervisor. I also sent an email in which I could forward research articles to assist in the decision that ABA treatment and early intervention is critical and beneficial for Autistic children.

From: [klageren]
Subject: Pol. 74… - extraordinare benefit
Date: 17 August 2005 6:11:45 PM GMT+08:00
To: b.l.@ihi.com

Hello B.
I am forwarding the response from C.s Clinical supervisor regarding your last email. Please note that C. has been classified as high functioning and potentially can achieve the best outcome, which means he would be indistinguishable from age appropriate peers once treatment has been successful. This is described in a letter dated 18/07/ 2005 already forwarded to you.

I have been told that treatment is usually four years or less of this intensity. Since he has been classified as high functioning I believe his prognosis is excellent with this intense treatment.

If you have any further questions.
S.s email address is s.c.@yahoo.com.hk

I appreciate your assistance with this request and look forward to a positive response

Thanks
J.B. [klageren]

To Whom It May Concern,
RE: C.B.'s ABA program

Length of treatment is highly variable. In some cases, services can be discontinued after two years, for others, services may continue for four years (or more). The intensity of treatment, however, may be reduced in time, depending upon the case.

The cost of a 30 hour per week program is approximately HK$ 54,675 per month.
This includes monthly treatment sessions of 6 hour per day, clinical supervision three times per month and a once monthly clinical meeting.

If you require further information, please do not hesitate to contact me.

Regards,
S.C.

I also sent an email dated August 17 2005 outlining that I could fax more documents to assist the medical consultants."

Efter fremsendelse af yderligere oplysninger, herunder en medicinsk rapport, har selskabet ved mail af 3/10 2005 afvist at yde dækning af udgifterne til sønnens ABA behandling.

Klageren er ikke enig i selskabets afgørelse, og parterne har efter afslaget ført en længere mailkorrespondance, hvilken fremgår af klagerens redegørelse til nævnet. Det bemærkes, at den samlede redegørelse er forelagt nævnet.

Til brug for sagen er indsendt Assessment raport fra The Matilda Child Development Centre dateret den 10/6 2005, hvoraf bl.a. fremgår:

"**TEST DESCRIPTION**

C. was assessed using the Early Learning Accomplishment Profile (E.L.A.P) from The Chapel Hill Project, … for children functioning in the range of birth to 36 months. The assessment provides a ceiling score, which indicates the developmental level the child achieves in each area. The staff at the M. Child Developmental Centre usually assesses beyond the ceiling score to identify higher-level skills a child has or is in the process of acquiring. Test items recorded as 'mastered', are those that the child completed independently. Test items noted as 'emerging', are those that the child has almost acquired because he/she still requires prompting in order to complete the test item successfully.
…
Background Update

C. returned to us for a reassessment to see how he was progressing one year after his initial assessment. C. separated easily from J. and began working with N.. Since his previous assessment C. has been receiving weekly speech and occupational therapy and daily A.B.A. therapy at Autism Partnership.

At 39 months of age we could have used either the ELAP or the LAP to assess C.. The ELAP is used with children form birth to 36 months of age and the LAP is the next assessment on which is used with children from 36 to 72 months of age. We knew that C.'s levels would fall in between these two assessments depending on the section being assessed. After discussion with J., we decided to use the same assessment as was used with C. a year ago, the ELAP as it would probably give us a better comparison of his skills and levels. In some areas, therefore, we were not able to get ceiling scores.
…
SUMMARY

C. was a pleasure to work with. From the assessment with C., informal observations and information provided by C.'s father, the following was observed:

1 . It has been extremely pleasing to see that C.'s skills in all areas of his development have improved significantly. His attention and ability to participate in an assessment setting have improved greatly. C. was much easier to work with this time.

2. C.'s communication skills have improved, but communication is still a challenging area for C.. This is because his language is still limited to single words and occasionally simple phrases and he is finding it difficult to attend to verbal information consistently. C. is also finding it hard to understand a variety of questions and multi-step instructions.

3. C.s cognitive skills have improved with a ceiling score of 36 months. Goals in this area are focused on developing his skills further in this area.

4. C.'s fine motor skills are functioning at 36 months or above, but he still needs to consolidate his skills at lower levels, such as developing a mature pencil grip, cutting with scissors and some pre-writing skills.

5. C.'s gross motor skills are also functioning at 36 months or above and his skills in this area are basically consolidated up to this level. Goals in this area are focused on expected skills in the 36 to 48 month age range.

6. C.'s performance on self-help tasks shows that his skills in this area are developing well, but that he needs to be allowed to develop more independence in this area so his skills can continue to progress appropriately.

7. His personal social skills have improved, but his skills in this area are scattered. This is an area that can be focused on more to develop his constructive play skills and his social skills and provide an additional avenue for furthering his language development."

Endvidere er i sagen fremlagt erklæring fra S.C., som er Program Supervisor hos Autism Partnership LTD. Af erklæringen dateret 18/7 2005 fremgår:

"Re. C. B. (d.o.b. 25.03.2002)
To Whom It May Concern,

I am writing with regard to C. B. C. was diagnosed with Autism Spectrum Disorder in November 2004. After an initial pre-treatment assessment, he began receiving services from our agency and continues to this date on a 15 hour a week program. As Program Supervisor of his case, I am writing to give a brief outline of the type of services we provide, as well as make recommendations for C.s future treatment.

Autism Partnership is an agency providing intensive behavioral intervention - ABA (Applied Behavioral Analysis), which is largely based upon the research conducted by Dr. I.L. and his associates at UCLA. Three decades of research have convincingly demonstrated that intensive, early ABA intervention can significantly improve the functioning of autistic children. (Please find attached copies of those research articles). Programs are designed to meet with each child's individual needs in the areas of language, play, behavior and socialization.
Since treatment began, C. has made significant, encouraging gains. Based upon our experience, C. is a child who we would classify as 'high-functioning', which means that he has the potential to achieve the 'best outcome' (of treatment). 'Best outcome' would mean

> that he would be indistinguishable from his peers, have friends, and could attend a regular mainstream school without assistance. Given what has been concluded in scientific research and our previous successful experiences of treating children like C., whether or not he is able to reach 'best outcome', would be highly dependent upon the number of ARA hours he receives. We strongly recommend a 30 hour week program, if our goal is in fact to achieve 'best outcome' for C."

Endvidere er i sagen fremlagt kopi af artiklen "Autism Spectrum Disorders - Strategy for Early Intervention" af Stephenie Liu, Senior Medical Officer, Child Assessment Service, Department of Health, optrykt i "Brainchild, The Official Publication af HKCNDP", no 2, februar 2006. I artiklen hedder det bl.a.:

> "The strategy for early intervention of children with Autism Spectrum Disorders (ASD) includes early diagnosis, early parent support, and early intervention by a suitable training program.
> …
> *The Choice of Intervention Program*
>
> The intervention programs of children with ASD usually consist of educational program, communication training, social skills training, training for sensori-motor dysfunction, biological treatment for specific metabolic problems, and pharmacological treatment for certain problem behaviors. Some of these treatment programs have good scientific evidence (numerous outcome studies. some randomized controlled trials, evidence pointing to their efficacy), others have some evidence (few studies or controlled trials, small scaled studies, evidence pointing to some effect of the treatment), but many have little or no evidence (only case studies available, no controlled trials, or controlled trials pointing to lack of efficacy of the treatment) and must be treated with great caution.
>
> Approaches with good evidence include two well-known programs: Applied Behavioral Analysis (ABA) and the TEACCH (Treatment and Education of related Autistic and Communication Handicapped Children) program.
>
> Applied Behavioral Analysis program was developed by Ivar Lovaas at the University of California Los Anggelas in 1981. It uses the principles of operant conditioning in teaching new behavior. Target behavior is broken down into small measurable units and the children are taught systematically one unit at a time - Discrete Trial Training (DTT) - during individual training. During DTT short and clear instructions are given, the child is prompted to follow the instructions by planned procedures, and correct responses are reinforced immediately. Several outcome studies showed good results of the program in which nearly half of the children with ASD attending the program for two years could return to normal class for learning, but less favorable results were found in later well designed randomized controlled trial."

I artikel "Local Services for Children with Autism Spectrum Disorders", som også er optrykt i "Brainchild, The Official Publication of HKCNDP", volume 6 no 2, februar 2006, forfattet af Rose Mak, Former Consultant, Child Assessment Service, Department of Health, og Lorinda L. Lam, Clinical Psychologist, Child Assessment Service, Department of Health, fremgår:

"**Conclusion**

From the overview of local service, we can see that services are available for the rehabilitation of children with ASD. However, resources are limited. To facilitate early intervention, parent empowerment can be enhanced to include home-based parent training programs together with appropiate support for the mental health of parents and siblings. There is need for increased awareness and early identification of children in the milder end of the spectrum who usually present in later childhood. Effective educational intervention for high functioning children with ASD in minstream school is a challenge to the educational system in view of the increasing number of affected children but limited resources provided. To support local rehabilitation services, training of professionals (and those providing care for children with ASD) in current best practices, sharing of clinical experience, and collection of reliable epidemiological information are essential so that management is effective for this heterogeneous group of children."

Selskabet har i svarskrivelse af 11/4 2007 over for nævnet i det væsentligst tilsluttet sig klagerens udførlige redegørelse af sagsforløbet, men tilføjet:

"Efter at have modtaget information om de forventede omkostninger samt en række rapporter om C.s udvikling gav Selskabet i oktober 2005 afslag på anmodningen om ekstraordinær dækning med den begrundelse, at ABA behandlingen ikke er en medicinsk behandling (jf. P.B.J.s email af 3. oktober 2005).

På den baggrund beder J.B. om Selskabets definition af medicinsk behandling (medical treatment), hvortil der svares: 'The definition of medical treatment: Treatment undertaken or required for medical reasons.' Det foranlediger J.B. til at klage over Selskabets afvisning af dækning, idet han skriver (i sin email af 30. oktober 2005): 'In short, as the treatment given to my son is for a recognized diagnosed medical condition and is not specifically excluded from coverage under the Policy and is a recognized form of treatment for this condition I do believe that it amounts to 'medical treatment' and that it should accordingly be covered under the Policy. I ask you therefore to reconsider your position and confirm cover.'

Denne henvendelse besvares den 6. december 2005, hvor Selskabet igen afviser dækning af ABA terapien. Vores henvisning til at 'none of the available treatment methods, including the Apphed Behavourial Analysis/Intervention-treatment, are based on medically proven evidence' skal også ses i lyset af J.B.s påstand om, at der er tale om en 'recognized form of treatment'.

Helt i overensstemmelse med vores svar af 3. oktober 2005 hhv. 6. december 2005 til J.B. vil vi fastholde at afvise erstatningskravet med den begrundelse, at ABA/IBT terapi er en interventions- eller træningsform baseret på adfærdsterapeutiske principper, hvor man lægger vægt på indlæring af en lang række specifikke færdigheder, herunder målrettet træning af blikkontakt. (kilde: centerforautisme.dk) og 'ABA som metode udspringer af behavioristisk teori, og har fokus på at ændre adfærd, og på at udvikle primært førskolebørns sproglige evner. Metoden er således ikke autismespecifik i grunden, og tager som udgangspunkt ikke sit afsæt i viden om autisme.' (kilde: Videncenter for autisme, www.autisme.dk. Konkluderende er der altså ikke tale om en medicinsk behandling, ej heller i den ovf. nævnte definition af 'medical treatment'.

Det er naturligvis med stor beklagelse, at vi må konstatere at vores anmodninger om yderligere oplysninger i sagen har fået J.B. til at tro, at der dermed var sikkerhed for, at han ville opnå dækning af udgifterne i forbindelse med sønnens behandling.

Samtidig er det også med stor beklagelse, at vi noterer os, at J.B. fejlagtigt har fået den opfattelse, at dækningen blev afvist på grund af de forventede omkostninger. Vores forespørgsel om prognose og forventede omkostninger skyldes udelukkende, at vi ville tage disse oplysninger med i vores vurdering af en evt. kulancedækning.

Afslutningsvist vil vi gentage policebetingelsernes art. 6 der lyder: 'The insurance shall cover medical expenses incurred by the insured in accordance with the cover chosen and the applicable reimbursement rates. The valid reimbursement rates are listed in the List of Reimbursements.'

Som det fremgår af vedlagte brochure, der indeholder både List of Reimbursement og Policy Conditions, er der ikke dækning for ikke-medicinsk behandling som f.eks. ABA terapi."

Selskabets "List og Reimbursements" er forelagt nævnet.

Af forsikringsbetingelserne fremgår bl.a.:

"**ART. 6 WHAT IS COVERED BY THE INSURANCE?**
6.1: The insurance shall cover the medical expenses incurred by the insured in accordance with the cover chosen and the applicable reimbursement rates. The valid reimbursement rates are stated in the List of Reimbursements."

Nævnet udtaler:

Efter sin gennemgang af sagen må nævnet være enigt med selskabet i, at den beskrevne ABA terapi ikke kan sidestilles med medicinsk behandling.

Derfor

b e s t e m m e s :

Klagen kan ikke tages til følge.

J. Hermann