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June 24, 2010

Re: *Berge v. United States of America, U.S. Department of Defense, TRICARE Management Activity, and Robert M. Gates.*

Dear Military Family:

I am an attorney representing Kenneth Berge, a retired Master Sergeant who served his country honorably in the U.S. Air Force, Dawn Berge, and their child with autism. The Berges have filed a putative class action lawsuit on behalf of all military families, both active duty and retired, seeking TRICARE Basic health benefit payments for all medically necessary Applied Behavior Analysis therapy for children with autism. We allege that payment of these benefits is required pursuant to the Military Health Benefits statute and that the Department of Defense and TRICARE Management Activity have wrongfully denied these benefits to retired TRICARE beneficiaries and have wrongfully capped these benefits at \$36,000 for active duty TRICARE beneficiaries. The case is currently pending in the United States District Court for the District of Columbia.

We allege that benefits for ABA therapy have been wrongfully denied and/or capped for TRICARE beneficiaries because the Department of Defense has determined, in the words of former TRICARE Deputy Director, Major General Elder Granger, that "ABA therapy is an educational, as opposed to a medical benefit, and as such, is available only under" the Extended Care Health Option that has a \$36,000 cap and is only available to active duty service members. However, in response to the Complaint we filed in United States District Court, the Department of Defense claims that "TMA has not made a formal policy determination as to whether ABA services might be covered' as a Basic Program medical benefit." The Department of Defense is seeking to dismiss the Berge's case on this basis, for reconsideration by TMA.

If you have a child with autism for which you have filed a claim with TRICARE for ABA therapy benefits, we hope you will be able to assist our efforts by signing one of the attached affidavits. The purpose of the affidavits is to show the judge that TMA has already made an official policy determination that it has applied uniformly to deny and/or cap ABA therapy benefits, remand of the case is futile, and the Judge should decide the

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question of whether ABA therapy is a medically necessary benefit that TRICARE is required to cover under the TRICARE Basic program. The attached affidavits are substantially similar; however, one is for retired TRICARE beneficiaries and the other is for active duty service members. If you can truthfully attest to the facts contained in one of the affidavits, please be sure to sign the correct version and return it to me either by e-mail at bfrey@manteselaw.com, or by mail at:

Brendan Frey, Esq.

Mantese Honigman Rossman and Williamson, P.C.

1361 E. Big Beaver Road

Troy, Michigan 48083

We are shocked that the Department of Defense claims that it denied and/or capped ABA therapy benefits for countless families without actually deciding the question of whether ABA therapy is available as a TRICARE Basic health benefit, and we imagine you are too. We are pushing forward with this case and we hope that our efforts will bring relief in the near future for all military families who have children with autism. If our case is certified as a class action and we prevail on the merits, all military families who have children with autism and who have been wrongfully denied ABA therapy benefits may be entitled to payment for benefits that were previously denied.

This is an urgent matter. We would like to receive the signed affidavits by no later than **Monday July 5th, 2010**. If you can truthfully sign one of the affidavits please do so and return it to me as soon as possible.

Very truly yours,

**MANTESE HONIGMAN ROSSMAN
AND WILLIAMSON, P.C.**

Attorneys for the Berge family



Brendan H. Frey

AFFIDAVIT OF _____

1. I have personal knowledge of the following facts, and if sworn as a witness, I would be competent to testify thereto.
2. I am a retiree of a United States Armed Service.
3. I have a child with autism.
4. My dependants and I, including my child with autism, are eligible for TRICARE Basic health benefits.
5. I have previously filed a claim with TRICARE Management Activity or one of its contractors for payment toward Applied Behavior Analysis ("ABA") therapy for my child with autism.
6. I was informed that ABA therapy is only a covered benefit under the Extended Care Health Option, which is only available to active duty service members, and therefore my child with autism is ineligible for ABA therapy benefit payments.
7. Upon information and belief, any failure or delay in receiving the medically necessary number of hours of ABA therapy will probably have catastrophic developmental, emotional, and/or cognitive consequences for my child with autism.

I declare, under penalty of perjury, that the foregoing matters are true and correct, and that I have personal knowledge of such matters:

Executed pursuant to 28 U.S.C. § 1746, on this ___ day of _____, 2010.

Signature

Print Name

Mailing Address

E-mail Address

AFFIDAVIT OF _____

1. I have personal knowledge of the following facts, and if sworn as a witness, I would be competent to testify thereto.
2. I am an active duty member of a United States Armed Service.
3. I have a child with autism.
4. My dependants and I, including my child with autism, are eligible for TRICARE Basic health benefits.
5. I have previously filed a claim with TRICARE Management Activity or one of its contractors for payment toward Applied Behavior Analysis ("ABA") therapy for my child with autism.
6. I was informed that ABA therapy is only a covered benefit under the Extended Care Health Option, and is therefore subject to a \$36,000 annual cap.
7. Upon information and belief, any failure or delay in receiving the medically necessary number of hours of ABA therapy will probably have catastrophic developmental, emotional, and/or cognitive consequences for my child with autism.

I declare, under penalty of perjury, that the foregoing matters are true and correct, and that I have personal knowledge of such matters:

Executed pursuant to 28 U.S.C. § 1746, on this ____ day of _____, 2010.

Signature

Print Name

Mailing Address

E-mail Address