

## THE LEGAL PROTECTION OF PEOPLE WITH ASD: AN ANALYSIS OF TOPIC 1082 OF THE STJ AND THE BRAZILIAN LEGAL SYSTEM



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### ABSTRACT

This article addresses the legal protection of people with Autism Spectrum Disorder (ASD) in Brazil, analyzing Theme 1082 of the Superior Court of Justice (STJ) and its relationship with the Brazilian legal system. Through a literature review and analysis of current legislation, we seek to understand the advances and challenges in the recognition and guarantee of the rights of people with ASD, especially in the context of inclusive public policies and the responsibility of the State to ensure adequate care. Topic 1082 of the STJ, which discusses the mandatory provision of therapies for people with ASD by health plans, is analyzed from the perspective of fundamental rights and the dignity of the human person. The article highlights the relevance of a legal approach that promotes the inclusion, equality, and protection of people with ASD, in accordance with constitutional principles and international regulations ratified by Brazil.

**Keywords:** Autism Spectrum Disorder (ASD), Legal protection.

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## INTRODUCTION

Brazil has one of the largest health care programs in the world, the SUS, despite this it is known that the operation of the program is far from ideal. Because of this, people have, more and more, sought private health care programs, health plans.

Operators, in turn, as companies that they are, always aiming at the highest possible profit, as a rule draw up contracts that, because they are adhesion, privilege their own interests, placing consumers in a situation of flagrant vulnerability. It is not uncommon for the operator, in view of the cost of the treatment to which the consumer needs to be submitted, to deny authorization or even terminate the contract in order to evade coverage. And this type of situation has become routine in cases of treatment of people with ASD (Autism Spectrum Disorder).

Autism Spectrum Disorder is a neurological condition that affects development completely, with more emphasis on the areas of **communication, social interaction and behavior, covering** a wide range of manifestations, which can vary from person to person, from mild cases, in which the person is able to lead a relatively independent life, to severe cases, that require specialized care throughout life.

Precisely because of the specificity of the disorder, its treatment is **multidisciplinary** and personalized, taking into account the needs of each individual, including Applied Behavior Analysis (ABA), occupational therapy, speech therapy, psychology, cognitive-behavioral therapy (CBT), educational interventions, school tutoring, hippotherapy, art therapy, music therapy, as well as medical and medication follow-up to control **anxiety, hyperactivity**, or even **aggressiveness**. **It is, therefore, an expensive and long-term treatment; This has motivated the unilateral termination of many health care contracts by operators.**

With an eye on this, the Superior Court of Justice, when judging REsps. Nos. 1,842,751/RS and 1,846,123/SP under the system of repetitive appeals, issued Topic No. 1082, bringing an important understanding for the protection of health plan users, prohibiting the interruption of collective health plan contracts where people who are hospitalized or undergoing continuous medical treatment appear, until the respective discharge.

However, health plan operators have argued that this understanding does not apply to people with Autism Spectrum Disorder (ASD), under the justification that autism is a permanent condition and, therefore, there is no possibility of medical discharge.

Regarding specific legislation aimed at people with Autism Spectrum Disorder (ASD), the National Congress had already enacted Federal Law No. 12,764/2012, which establishes the National Policy for the Protection of the Rights of Persons with Autism Spectrum Disorder and promotes an amendment to § 3 of article 98 of Law No. 8,112, of December 11, 1990. This legal provision is commonly known as the Berenice Piana Law. Subsequently, Federal Law No. 13,977/2020 modified this legislation, creating the Identification Card for Persons with Autism Spectrum Disorder (Ciptea), receiving the name Romeo Mion Law. Several other rules have been enacted and are part of the legal set intended for the protection of the rights of people with ASD, which will be discussed throughout this work.

These legal provisions emerged as fundamental mechanisms to guarantee the rights of people with ASD, while meeting not only the fundamental objectives of the nation, as described in the Federal Constitution, but also the country's own structuring principles, highlighting, in particular, the appreciation and protection of the dignity of the human person, according to article 1, item III, of the Federal Constitution.

Currently, it is recognized that there is a great challenge in ensuring the effectiveness of the rights of people with ASD. The difficulties associated with this challenge are not merely circumstantial. Historically, humanity has tended to move away from members who, for whatever reason, do not fit into the prevailing social patterns. Although this distancing, in many situations, has ensured collective survival, it has also resulted in the exclusion of individuals who most need acceptance to achieve a dignified life, with freedom and justice.

Therefore, this article seeks to refute this argument, defending the understanding that people with ASD are indeed benefited by Theme No. 1082 of the STJ, in the light of several legal norms and constitutional and infra-constitutional principles, notably the "Berenice Piana Law", the Statute of the Child and Adolescent, the UN Convention on the Rights of Persons with Disabilities, the Consumer Protection Code, among others.

## **TOPIC NO. 1,028 OF THE SUPERIOR COURT OF JUSTICE**

It is necessary to clarify that the issuance of Topic No. 1082 by the Superior Court of Justice (STJ) did not come "out of nowhere", but rather because of the need to establish a uniform understanding about the continuity of collective health plan contracts in specific situations, with a focus on the protection of consumer rights. This decision has become essential due to the numerous legal disputes involving health plan operators and their

beneficiaries, often motivated by the abrupt interruption of essential treatments, generating an imminent risk to the health and lives of users. Exactly for this reason, the thesis established is so direct, leaving no room for distorting interpretations:

The operator, even after the regular exercise of the right to unilateral termination of the collective plan, must ensure the continuity of the care prescribed to hospitalized users or those in full medical treatment to guarantee their survival or physical safety, until effective discharge, provided that the holder bears the full consideration due. (STJ)

The teleological interpretation of the content of the judgment leaves no doubt that the spirit of the judges was directed to guarantee the right to health as a fundamental right, enshrined in the Federal Constitution. Article 6 of the Constitution lists health as one of the primordial social rights, ensuring its protection through a series of legal provisions that aim to protect the well-being of the population. In this context, the STJ, by establishing a clear and objective thesis, sought to avoid abuses by health plan operators, ensuring that the continuity of health treatment was not compromised by merely contractual or commercial issues.

In addition, the relevance of the thesis established by Topic No. 1082 is emphasized by the socioeconomic context in which many Brazilians depend on collective health plans to access quality medical services. Group plans, unlike individual plans, are commonly signed by companies, associations or class entities and, due to this nature, are usually unilaterally terminated by operators. These terminations, in many cases, occur without proper protection for beneficiaries who are in critical health situations, which motivates the Judiciary to act in the protection of consumers.

A central point in the judgment is the emphasis on the principle of contractual good faith, which permeates all consumer relations, including health insurance contracts. Good faith, as provided for in article 422 of the Civil Code, requires that the parties act with loyalty, transparency and respect for each other's legitimate interests. In the context of health plans, this means that operators have the obligation to respect the legitimate expectations of consumers, especially in cases involving the health and life of users.

The thesis established by the STJ reinforces this obligation by establishing that the operator must ensure the continuity of the care prescribed to hospitalized users or in full medical treatment guaranteeing their survival or physical safety, even after the regular exercise of the right to unilateral termination. This decision seeks to balance the contractual relationship, preventing economic interests from overriding the fundamental rights of

consumers. However, for the processing to continue, it is necessary that the holder fully bears the consideration due, which also demonstrates an attempt to balance the interests of the parties involved.

The right to health is widely protected both by constitutional norms and by infra-constitutional legislation. Article 196 of the Federal Constitution is a clear example of this, when it establishes that "health is a right of all and a duty of the State, guaranteed through social and economic policies aimed at reducing the risk of disease and other health problems and universal and equal access to actions and services for its promotion, protection and recovery". Based on this premise, the Judiciary has a fundamental role in ensuring that the guarantees of health protection are effectively respected, both by the government and by private entities, such as health plan operators.

The STJ's decision in Topic No. 1082 is a manifestation of this protective role, ensuring that ongoing treatments are not abruptly interrupted. According to Sestelo (2017), the interruption of medical treatments, especially in cases of chronic or serious diseases, can cause irreparable damage or even lead to the death of the patient. Therefore, the continuity of treatment is a measure of justice and protection of the dignity of the human person, a fundamental principle of our Constitution.

The Health Plans Law (Law No. 9,656/1998) is an important regulatory framework in Brazil, establishing guidelines for the operation of operators and the provision of services to beneficiaries. Although the law includes several consumer protections, there are still gaps that the Judiciary needs to fill, especially when it comes to contract terminations and the continuity of essential treatments. Article 35-C of this law, for example, obliges operators to cover urgent and emergency care, but does not specify what happens when there is a unilateral termination of collective contracts, generating the need for interventions such as that of the STJ.

The judgment of Topic No. 1082 is not isolated; It adds to a series of precedents that reinforce the protection of consumers in situations of vulnerability. In previous decisions, the STJ had already expressed itself in the sense of protecting the continuity of health treatments, even in cases of default, based on the principle of human dignity and the preservation of life. Such decisions reiterate the commitment of the Judiciary to ensure that fundamental rights are not sacrificed for economic reasons.

According to Nunes (2000), the jurisprudence of the STJ has been a bulwark in the defense of the rights of health plan users, especially in situations involving the termination

of collective contracts. The author points out that the STJ's performance is crucial for the construction of a legal system that effectively protects consumers, since sectoral regulation is not always sufficient to guarantee these rights.

The establishment of the thesis by Theme No. 1082 has direct and practical impacts on the lives of thousands of Brazilians. On the one hand, it ensures that patients undergoing treatment are not left helpless, guaranteeing the right to continuity of medical care, as long as the established conditions are met. On the other hand, this decision imposes a burden on health plan operators, who must maintain the treatment even after contract termination, which may generate debates about the economic sustainability of the sector.

However, experts point out that health protection must always prevail. According to Sestelo (2017), the STJ's decision represents a significant advance in the protection of consumer rights and sets an important precedent for future legal issues. The author argues that, although operators may face difficulties, it is the duty of the State and society as a whole to ensure that the right to health is effectively respected. In addition, the decision also influences the way collective health plan contracts are drafted. With the need to ensure the continuity of treatments, operators should adopt more transparent and responsible measures in the management of these contracts, which, in the long term, can contribute to greater stability and confidence in the sector. In this way, the thesis established by Topic No. 1082 not only strengthens the existing legislation, but also serves as a basis for future legal interpretations, consolidating health as a right that must be respected and protected in all circumstances.

## **THE BERENICE PIANA LAW AND THE PROTECTION OF THE TREATMENT OF PEOPLE WITH ASD**

Law No. 12,764/2012, known as the "Berenice Piana Law", represents a historic milestone in the defense of the rights of people with Autism Spectrum Disorder (ASD) in Brazil. This legislation established the "National Policy for the Protection of the Rights of Persons with Autism Spectrum Disorder", officially recognizing autism as a disability, as expressed in article 1, paragraph 2, which ensures people with ASD the same rights attributed to other people with physical or psychological disabilities. Thus, access to appropriate health services adapted to their needs has become a guaranteed and inalienable right (BRASIL, 2012).

Among the most significant aspects of the "Berenice Piana Law" is the guarantee of comprehensive and continuous care for people with autism. According to Costa (2013), continuity in treatment is essential for the progress and quality of life of patients with ASD. The abrupt or arbitrary interruption of this care can severely impair the development already achieved, causing stagnation or even regression. Therefore, the law recognizes the importance of continuous and specific treatments, ensuring that the personal and social development of these people is not interrupted without medical justification.

In addition, the "Berenice Piana Law" is directly aligned with the principle of full protection, reinforced by Theme 1082 of the Superior Court of Justice (STJ), which determines the continuity of medical care for health plan users until medical discharge is granted. According to Rotta et al. (2006), autism, as it is a permanent condition, has no prospect of conventional medical discharge, which makes any justification for contractual termination based on this premise an affront to the rights established by current legislation. The interpretation of the rule shows that continuous and specialized treatment is indispensable, and the permanent condition of autism cannot be used as an argument to suspend essential care.

The commitment of the Berenice Piana Law to the protection of people with ASD reflects a legislative awareness of the importance of continuous support. The legislation recognizes that the development of people with autism is gradual and depends on therapeutic interventions that meet the specific needs of each individual. Thus, interrupting these essential services violates not only the development of the patient, but also the principles of dignity and fundamental rights enshrined in Brazilian legislation (BRASIL, 2012).

The relevance of this law extends beyond the specific measures it offers, promoting a change of perspective in the treatment of people with ASD. The recognition of the importance of continuous treatments and specialized support points to the need for an inclusive and accessible health system, which values quality of life and human development. Thus, as Costa (2013) points out, the great challenge is to ensure that these legal achievements are effectively implemented, ensuring that all people with ASD receive the necessary care to live with dignity.



## **THE STATUTE OF THE CHILD AND ADOLESCENT (ECA) AND FULL PROTECTION**

In Brazil, Law No. 8,069/1990, which established the Statute of the Child and Adolescent (ECA), has consolidated itself as one of the main legal frameworks for the protection of the rights of children and adolescents. This statute not only recognizes, but also promotes the notion of absolute priority to ensure the protection and healthy development of young people. According to article 7 of the ECA, the right to life and health must be fully and uninterruptedly safeguarded, imposing on the State, the family, society and private entities the obligation to ensure the necessary conditions for the physical, mental, moral, spiritual and social development of children and adolescents.

The ECA highlights that the right to health must be guaranteed in an "integral" way. Article 11, § 2, is clear in stating that adequate care for children and adolescents with disabilities must be provided without any form of discrimination or interruption. This includes, of course, the right of children and adolescents with Autism Spectrum Disorder (ASD) to continuous and appropriate treatments, essential for their development. In this sense, the unilateral termination of a health plan contract that interrupts a necessary medical treatment constitutes a violation of the principle of full protection, which is one of the most important pillars of the ECA. The statute ensures that children and adolescents are individuals with their own rights, and as such, they deserve special care and protection.

The Federal Constitution, in its article 227, further strengthens this commitment by determining that it is the duty of the family, society and the State to ensure, with absolute priority, the rights to life, health, food, education, leisure, dignity, respect, freedom and family and community life. The ECA follows this constitutional guideline and highlights, in several of its articles, the need for full protection, which implies that the measures taken in favor of children and adolescents must always seek the best interest of these individuals.

The concept of full protection means that all children and adolescents must be treated as subjects of rights, and these rights must be ensured in a priority and comprehensive manner. For children and adolescents with ASD, this implies treatment that addresses all their specific needs, including ongoing medical care, multidisciplinary therapies, and educational support. Autism is a condition that affects multiple areas of human development, requiring a constant and specialized therapeutic approach. The ECA, by guaranteeing the right to comprehensive health, reflects the urgency of ensuring that treatments are provided permanently, without harmful interruptions.



Article 4 of the ECA reinforces the need for public policies and actions aimed at children and adolescents to be implemented with absolute priority, which means protection from any threat or violation of rights, precedence of care in public services, and privileged allocation of resources. Thus, when a health plan operator unilaterally decides to terminate a contract that covers the treatment of a young person with ASD, it not only violates contractual and consumer rules, but also undermines the absolute priority recommended by the statute.

According to the ECA, it is unacceptable that commercial decisions override the fundamental rights of children and adolescents. The vulnerability of these individuals requires a robust protection network, which ensures them the necessary conditions for their development. It is necessary to consider that autism affects social, cognitive and motor development, requiring continuous care so that these children and adolescents can develop their skills and achieve a better quality of life. The abrupt interruption of therapeutic treatments at a critical moment can cause serious damage to the patient's progress, frustrating the advances already made and compromising the possibility of future gains.

## **THE UN CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES**

The International Convention on the Rights of Persons with Disabilities, adopted by the United Nations (UN), is a treaty of extreme relevance for the protection of the rights of persons with disabilities, incorporated into the Brazilian legal system with the force of a constitutional amendment through Decree No. 6,949/2009. This international framework establishes a series of fundamental principles, among which "non-discrimination" and "full and effective inclusion in society" stand out, essential pillars for guaranteeing rights and equality.

Article 25 of the Convention directly addresses the right to health, determining that signatory States ensure that persons with disabilities, including persons with Autism Spectrum Disorder (ASD), as recognized by the "Berenice Piana Law" (Law No. 12,764/2012), have full access to comprehensive health services. This right includes treatments necessary not only for recovery, but also for the prevention of secondary problems, ensuring appropriate and continuous medical care.

In this context, the practice of unilaterally terminating the health plan contract of a person with autism, under the pretext that the continuity of treatment is not in the interest of the operator because it is prolonged and indefinite, constitutes a flagrant violation of Article

25 of the Convention, which has constitutional status. Such action violates the principle of non-discrimination and prevents autistic individuals from having access to essential health care appropriate to their condition, violating a fundamental right guaranteed by international law.

In addition, this attitude configures a clear form of discrimination, as it removes from this person equal opportunities in access to health services, contradicting the obligation to offer care of the "same quality" that is guaranteed to other citizens, without any form of differentiation. The Convention reinforces that persons with disabilities should be treated with the same respect and dignity as any other person, ensuring that health services are provided without distinction.

Continuity of treatment for autism is crucial precisely because it is a permanent condition. This permanence, instead of justifying the interruption of services, reinforces the need for consistent and uninterrupted care. Continuity is essential not only to avoid setbacks in the development of the person with autism, but also to promote their quality of life and social integration. Therefore, refusal or interruption of treatment under financial or contractual allegations violates both the spirit and the letter of the Convention, which calls for health policies and practices that ensure effective and equal protection and inclusion.

The understanding of the Convention, therefore, is that the permanence of the condition of autism imposes an additional responsibility on States and service providers, so that they adopt measures that ensure the continuity of adequate medical care. The dignity of the human person, a basic principle that underpins the entire treaty, demands that people with ASD be treated with the same seriousness and commitment to the protection of their rights, highlighting the importance of maintaining health treatment without arbitrary interruptions, in order to promote inclusion and equality in all aspects of social and community life.

## **THE CONSUMER PROTECTION CODE AND THE PRINCIPLE OF CONTRACTUAL GOOD FAITH**

The Consumer Protection Code (CDC) is widely recognized as one of the most complete and detailed consumer protection systems in the world. This legal diploma, of a protectionist nature, regulates all stages of consumer relations, ranging from the design of products and services to their delivery and after-sales support, guaranteeing a series of fundamental rights to consumers. Cláudia Lima Marques (2016) highlights that the CDC

promotes a new contractual regime, ensuring that relationships are guided by balance and respect for consumer rights, protecting them against abusive and harmful practices.

The Superior Court of Justice (STJ) has long since consolidated the understanding that the CDC is directly applicable to health plan contracts, with the exception of plans operated under the self-management modality, as provided for in Precedent 608. One of the most relevant provisions for the protection of consumers in these contracts is article 51, item IV, of the CDC, which determines the nullity of contractual clauses that put the consumer at an excessive disadvantage. Such clauses are considered abusive, especially because health plan contracts, for the most part, are adhesion contracts, in which the consumer does not have the opportunity to negotiate the terms. According to Rizzatto Nunes (2000), this nullity protects the consumer against situations that place him in a manifestly inferior position, reinforcing the need for fair treatment in consumer relations.

For this reason, a clause that authorizes the operator to unilaterally terminate a health plan contract, whether individual or collective, while the beneficiary is undergoing continuous medical treatment, is abusive. This practice exposes the consumer to a situation of unfair vulnerability and puts their health and physical integrity at risk. The severity of the situation intensifies even more when the treatment involves a disability condition, such as Autism Spectrum Disorder (ASD). For people with autism, continuity of treatment is crucial to develop basic skills that allow them to carry out everyday activities in a more autonomous and dignified way. Marcelo Sodré (2009) argues that the construction of consumer rights involves a broad understanding of their needs, which includes protection against the interruption of essential services, such as health treatment.

The principle of objective good faith, enshrined in article 422 of the Civil Code, requires that the parties involved in a contract act with honesty, loyalty, and cooperation from the formation until the end of the contractual relationship. In the specific case of health plan contracts, the operator assumes the responsibility of providing essential services to the health and well-being of the consumer. Such a commitment implies an implicit duty of collaboration and respect, so that the contract is executed in a way that protects the life and integrity of the contracting party. Cláudia Lima Marques (2016) reinforces that objective good faith requires not only that the contracting parties act with transparency, but also that they be loyal in the execution of the contract, especially in situations of consumer vulnerability.

Therefore, claiming that the condition of autism is permanent as a justification for the termination of the contract is a clear example of contractual bad faith. By offering its services, the operator creates a legitimate expectation in the consumer, who trusts in the commitment made to have access to continuous and necessary health treatments. This unfair conduct subverts the purpose of the contract and aggravates the vulnerability of the consumer, who needs the service precisely to treat a condition that requires constant monitoring.

The "business risk theory" is an economic and legal principle that establishes that the entrepreneur, when deciding to carry out a certain commercial activity, must assume the risks inherent to that activity. In the context of health plans, the operator, when entering into a contract with a consumer (whether individual or business), also assumes the risks associated with the treatment of the beneficiaries' health conditions, even if these conditions are permanent.

In the case of people with Autism Spectrum Disorder (ASD), the permanent condition cannot be treated as an exception to the business risk. It is common knowledge that, when signing a health plan contract, the operator requests that beneficiaries fill out forms with information about their health status, history of diseases, previous surgeries, and family history, among others. In addition, the operator has the right to require prior examinations before formalizing the contract.

Therefore, it is not acceptable for the operator to later claim ignorance of the contractor's permanent condition, especially if it chose not to require prior examinations that could have revealed this condition at the time of signing the contract. By acting in this way, the operator ignores that it has assumed the "business risk" and unduly tries to transfer to the consumer a burden that is intrinsic to its business activity.

Furthermore, autism is not an unknown condition in the health sector. Companies operating in the field of supplementary health care must be fully aware of chronic or permanent conditions that require ongoing treatment and, therefore, must be prepared to bear these risks. Any attempt to argue otherwise represents a clear disrespect for the theory of business risk, compromising the integrity and balance of the contractual relationship.

In summary, the CDC, by protecting consumer rights, establishes clear guidelines to prevent abuses by companies, especially in adhesion contracts, where the contractual balance must be strictly observed. The invocation of the principle of objective good faith

reinforces the obligation of health plan operators to respect the fundamental needs of consumers, ensuring that the contracted service is provided ethically and responsibly, especially when it involves the health of people with permanent conditions such as autism.

## **THE SOCIAL FUNCTION OF THE CONTRACT, THE RIGHT TO HEALTH AND THE PROTECTION OF PEOPLE WITH DISABILITIES IN HEALTH PLANS**

The social function of the contract is a fundamental principle of contemporary civil law, expressly provided for in article 421 of the Civil Code, which establishes that the freedom to contract must be exercised with respect to its social function. This principle ensures that contracts are not seen only as instruments of commercial exchange, but as mechanisms that directly impact the lives of the parties involved and society in general. In health plan contracts, this social function is even more relevant, as they not only involve economic interests, but also the right to health and, consequently, the right to life, both guaranteed by the Federal Constitution.

By operating in the supplementary health sector, health plan operators assume an expanded duty of care. They cannot consider permanent health conditions, such as Autism Spectrum Disorder (ASD), as a simple economic burden. Continuity of treatment for people with ASD is essential, not only for the maintenance, but for the progress of the cognitive, motor and social development of these people. Thus, the unilateral termination of contracts, alleging the permanence of the beneficiary's condition, disrespects the social function of the contract and compromises the right to dignity and health.

According to Paim (2013), the 1988 Citizen Constitution reinforces the idea that health is a right of all and a duty of the State, articulating the creation of the Unified Health System (SUS) to guarantee universal and equal access. This constitutional view also implies that the private sector, including health plan operators, has joint responsibility for health promotion, and its actions must be aligned with the principles of protection and equity. Vieira (2016) also points out that, in times of economic crisis, it is even more crucial that health policies are guided by values of social justice and inclusion, which also applies to the practices of health operators.

Health is a fundamental right guaranteed by the Federal Constitution of 1988, as provided for in articles 6 and 196, which impose on the State and the private sector the duty to guarantee universal and equal access to health services. In the case of people with ASD, this right translates into the need for continuous and multidisciplinary care. Alleging that the

permanent condition justifies the termination of the contract goes against the fundamental right to health, which requires continuity of treatment as an expression of this essential right. As Melo (2017) states, public-private relations in the Brazilian health system must be guided by principles of equity and respect for the fundamental rights of users, especially the most vulnerable.

Stopping ongoing treatments can have devastating effects for people with ASD, resulting in stagnation or even regression of previously acquired skills. The operators' argument that the permanent condition makes it impossible to continue coverage is untenable. Medicine is constantly evolving, and advancements in the treatment of complex conditions, including the use of new technologies and artificial intelligence, could transform the therapeutic options available in the near future. Thus, nothing justifies the interruption of care that is fundamental today.

The prohibition of social regression is another essential principle in this debate. This principle, developed in constitutional jurisprudence, prevents the State or private entities from reducing social rights already acquired, especially those related to health and human dignity. Brazil has already won important protections for people with disabilities, and any attempt to limit these rights, such as the unilateral termination of health plans, is an unacceptable setback. Sestelo (2017) addresses how financial dominance and mercantilist practices in the supplementary health sector can compromise equitable access and the protection of beneficiaries' fundamental rights.

The Superior Court of Justice, with Topic 1082, established clear guidelines to protect health plan users in continuous treatment, preventing operators from breaking contracts for economic or administrative reasons without considering the vital needs of beneficiaries. The National Supplementary Health Agency (ANS), as a regulatory body, also has a decisive role in regulating and supervising the performance of operators. Normative Resolution No. 465/2021, amended by Resolution 541/2022, obliges operators to cover multidisciplinary treatments and therapies for people with ASD, highlighting that continuity of treatment is essential for the health and well-being of patients.

Thus, any decision that interrupts health care under the justification that autism is a permanent condition not only violates constitutional and civil principles, but also disrespects the specific regulations of the ANS. Operators must take responsibility for these risks, as required by the social function of the contract, ensuring that the contracted service is provided ethically and in line with fundamental rights.



## **CASE-LAW PRECEDENTS**

The issue of continuity of health treatments, especially in the case of people with Autism Spectrum Disorder (ASD), has been the subject of special attention by the Brazilian Judiciary. The teleological interpretation of Topic 1,082 of the Superior Court of Justice (STJ) reflects a commitment to ensuring the right to health as a fundamental right, in line with the constitutional principles of human dignity and full protection. The STJ, when issuing decisions that prioritize the well-being of health plan beneficiaries, reinforces the need for contracts to be executed in a way that does not endanger the life and development of people with permanent disabilities, such as autism.

Topic 1,082 establishes that, even after the regular exercise of the right to unilateral termination of a collective plan contract, the continuity of treatment must be guaranteed for hospitalized users or those in full medical treatment that guarantees their survival or physical integrity. In the case of people with ASD, the application of this theme is even more pertinent, as continuous treatment is crucial for the development of their skills and for maintaining quality of life.

Before the consolidation of Topic 1,082, the STJ had already expressed itself in the sense of protecting patients with serious health conditions, including autism. A notable example is the judgment of the Internal Appeal in AREsp 1537299 - SP, reported by Justice Maria Isabel Gallotti, published on 12/19/2019. In this case, the STJ decided that, although the unilateral termination of collective contracts is allowed in some situations, this practice cannot be applied when the beneficiary of the health plan is diagnosed with a serious illness or is undergoing essential medical treatment. The court emphasized that stopping the treatment of a child with ASD, who undergoes cognitive and behavioral therapies, would be unacceptable and harmful.

The decision emphasizes that autism, recognized as a disability by Law No. 12,764/2012 (Berenice Piana Law), requires the provision of comprehensive care, including multiprofessional support. Article 3, item III, of the law guarantees access to health services adapted to the specific needs of people with ASD, a protection reinforced by jurisprudence that prioritizes the continuity of these services.

The Courts of Justice throughout Brazil have followed this protective line, contributing to the formation of a solid jurisprudence in defense of the rights of people with ASD. The Court of Appeals of São Paulo (TJSP), for example, has issued significant decisions, as in the case of AC 1091577-67.2022.8.26.0100, published on 04/28/2023, and



in AC 1001020-58.2023.8.26.0404, with publication on 02/19/2024. In these decisions, the TJSP reaffirmed that the unilateral termination of a health plan contract that covers essential treatment for a person with autism is unacceptable, highlighting the right to health and continuity of treatment.

Similarly, the Court of Justice of Maranhão (TJMA) ruled in Interlocutory Appeal 0824482-57.2022.8.10.0000, published on 05/31/2023, in favor of the continuity of medical care for beneficiaries with chronic conditions. These decisions reinforce the understanding that the right to health and life cannot be compromised by contractual issues that aim only at the economic interest of health operators.

Brazilian jurisprudence, in protecting the rights of people with ASD, has been sensitive to the particularities of these conditions. Continuity of treatment is essential, as interruptions can cause significant setbacks in the development of patients, in addition to impairing their social integration and quality of life. This concern is in line with the principle of the dignity of the human person, which is central to the Brazilian legal system.

The social function of the contract, as previously discussed, is also relevant in these cases. When a health operator signs a contract, it assumes responsibilities that go beyond financial profit, especially when it comes to an asset as essential as health. The practice of unilaterally terminating contracts involving essential treatment is seen as a violation of fundamental rights and contractual balance.

In addition, the understanding consolidated by the STJ and other courts strengthens legal certainty, ensuring that the rights of the most vulnerable people are respected. By applying Theme 1,082 and recognizing the importance of continuity of treatment, the Brazilian Judiciary reaffirms its role as a defender of social rights and human dignity.

## **CONCLUSION**

The condition of autism, due to its unique and complex nature, requires differentiated legal protection that ensures a continuous regime of treatment and specialized monitoring, aiming at the full development of the individual's potential. The right to health, in this context, is intrinsically linked to the continuity of treatment, and any interruption can cause irreversible damage to people with ASD.

Although health plan operators, supported by the principle of contractual freedom, cannot be forced to maintain indefinitely a business relationship that no longer interests them, it is essential that the needs of beneficiaries undergoing treatment are respected.

Thus, in situations where termination becomes inevitable, it is essential to offer viable alternatives, such as the provision of a plan with the same coverage and similar financial conditions, without imposing new grace periods, ensuring continuity of care.

The attempt by some operators to exclude people with autism from the protection conferred by Theme 1082 of the STJ must be firmly contested, considering the entire legal and principled framework that supports the rights of these people. Continuity of treatment for individuals with ASD not only guarantees the right to health, but also protects their dignity and promotes their full inclusion in society. To deny them adequate treatment is, in practice, to deny them the opportunity to live to the fullest extent and to develop the potential that their condition allows.

The Brazilian legal system, through instruments such as the Berenice Piana Law, the Statute of the Child and Adolescent (ECA), the Convention on the Rights of Persons with Disabilities, the Consumer Protection Code (CDC) and the regulations of the National Supplementary Health Agency (ANS), establishes a robust basis of protection for people with autism. Thus, it is up to the Judiciary to reinforce and apply these rights in a broad and unrestricted manner, ensuring that all beneficiaries of health plans have continuous and uninterrupted access to treatment, free from any form of discrimination or violation of their fundamental rights.

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