

NORTH CAROLINA Lawyers Weekly

Part of the BRIDGETOWER MEDIA network

NOVEMBER 21, 2022

VERDICTS & SETTLEMENTS

Autistic girl, family awarded \$4.9M settlement after abuse

■ Haviland Stewart

AN AUTISTIC GIRL and her family were awarded \$4.9 million after the girl was beaten by caregivers that resulted in serious injuries.

In 2016 an autistic, non-verbal 15-year-old girl with developmental and intellectual disabilities, and explosive disorder, living in an unlicensed alternative family living (AFL) home was repeatedly beaten and traumatized by the two “caregivers” in the AFL home, her attorney reported.



Jeff Monroe

According to the plaintiff's lead to council, Jeffrey R. Monroe, the beatings caused caused life-threatening bodily injuries, resulting in the child being hospitalized for eight weeks and undergoing multiple surgeries.

One of the caregivers pleaded guilty to attempted murder of the child and felony child abuse inflicting serious bodily injury and received an active sentence of 110 to 114 months. The other caregiver pleaded guilty to conspiracy to commit felony child abuse inflicting serious bodily injury and received an

active sentence of 73 to 100 months. The two caregivers were not sued in the civil cases. The civil cases were filed against the corporate entities and individuals that placed the child in the home.

The primary defendant in both the state and federal cases was Alliance Health, formerly known as Alliance Behavioral Healthcare. According to Monroe, Alliance is a local management entity (LME), authorized by state statute to manage the provision of behavioral health care services to Medicaid-eligible enrollees of the North Carolina Medical Assistance Program. LMEs do not directly provide behavioral healthcare services for their clients, rather they contract with private behavioral healthcare provider agencies to provide the services required by the client's individual support plan. LMEs then oversee the provision of those services and authorize payment to the provider agencies.

The acting chief of the Mental Health Licensure Section of the Division of Health Services Regulation testified that the AFL home license requirement for minors is mandatory and that the law is intended to ensure the safety of clients.

The plaintiff alleged that the caregivers, one male and one female, operating the AFL home had not been properly vetted by the provider agencies before they were hired. According to Monroe, the male caregiver had an old conviction for assault on a female, and more recently he had been charged with assault on a female and false imprisonment. Though the more recent charges were dismissed, the warrants indicated that the alleged victim in both instances of dismissed charges was the female caregiver. According to Monroe, the provider agencies obtained a criminal record check on the male caregiver, but they did not ask him about the conviction for assault on a female or the dismissed charges before he was hired or investigate whether there was a history of domestic violence in the home prior to the Plaintiffs placement.

According to Monroe, the provider agencies that operated the unlicensed AFL home were responsible for screening and hiring the caregivers, however, Alliance Health also vouched for the suitability of the female caregiver. Alliance's care coordinator also allegedly told Plaintiff's mother that the licensing requirement was only a technicality.

Alliance contended that there was no suitable community placement available to meet the plaintiff's needs, and that this circumstance explained the illegal placement of the plaintiff in the unlicensed AFL, Monroe reported.

The federal action was filed against Alliance and seven Alliance employees in their individual capacities. The federal action included six claims - five claims alleging violations of 42 U.S.C. 1983 and one claim alleging violations of Title VI of the Civil Rights Act, 42 U.S.C. §2000d.

The fifth 1983 claim was an equal protection claim based upon racial discrimination. A former NC Start a community crisis prevention and intervention program for individuals with disabilities clinical social worker who provided services for the plaintiff testified that Alliance Health was "dismissive" of the concerns of Plaintiff's mother. Referring to Alliance Health, the social worker testified, "When there's a black mom and when there's a non-black mom, there's a different response in how I think a lot of time their concerns are heard and received. And so that was seen multiple times in the work that we were doing in the cases that we were working on."

The federal action alleged that Defendants' custom and practice of racial discrimination was a cause of the actions and inactions of Defendants that lead to the abuse of the plaintiff and constituted a violation of the Equal Protection Clause of the United States Constitution. Defendants denied the allegations.

The defense did not respond to requests for comment.

Is this a verdict or a settlement? Settlement

Type of case: Negligence, Civil Rights

Amount: \$4,875,000.00, comprised of the following recoveries: \$2,000,000.00 from Alliance Health; \$1,850,000.00 from a provider agency (name confidential); \$1,000,000.00 from a provider agency (name confidential); \$25,000.00 from a provider agency (name confidential). The net recovery (recovery after attorney fees and costs) for the minor plaintiff was paid into a special needs trust established to preserve the minor's eligibility for Medicaid services. The minor plaintiff's mother's claim was derivative. (Unless otherwise indicated, "Plaintiff" refers to the minor plaintiff.)

Injuries alleged: Multiple contusions of Plaintiff's small intestine, colon and rectum, transverse process fractures of second and third lumbar vertebrae, transverse process fracture of right rib, contusions to pancreas, acute post hemorrhagic anemia, and emotional distress (PTSD). Surgeries: right hemicolectomy and ileostomy for colonic contusion and pancreatic injury; and subsequent takedown ileostomy 45 days later.

Inpatient Hospitalization: 56 days

Case name: Actions were filed in North Carolina Superior Court and in U.S. District Court (Eastern District of North Carolina). (State case name confidential). Federal Case: OBW, an incompetent person appearing through her GAL v. Alliance Health f/k/a Alliance Behavioral Healthcare, Local Management Entity/Managed Care Organization (LME/MCO), et al.

Case No.: 5:21-cv-336

Judge: United States District Court Judge Terrence W. Boyle

Date of verdict or settlement: January of 2022

Special damages [if applicable]: Medical Expenses for Treatment of Physical Injuries: \$173,861.32

Plaintiff's Experts: Dr. Jeffrey C. Holden, psychologist, specializing in mental retardation and child development, Dr. David S. Husted, forensic psychiatrist, Ashley H. Johnson, MS, CRC, CLCP, life care planner, J. C. Poindexter, Ph.D., economist

Insurance carrier [if applicable]: Alliance - Arch Specialty Insurance Company (identity of other insurance carriers is confidential)

Attorney(s) for plaintiff and their firm(s): All attorneys representing the Plaintiff are with the law firm of Miller Monroe & Plyler: Jeffrey R. Monroe (lead counsel), Jason A. Miller, William W. Plyler, Robert B. Rader, III

Attorney(s) for defendant and their firm(s): Erin M. Young, Hall Booth Smith, P.C., Charlotte, NC, Attorney for Alliance Health (state action). Andrew H. Erteschik, Poyner Spruill LLP, Raleigh, NC, Attorney for Alliance Health and individual defendants (federal action). Attorneys for Defendant Providers in state action not identified due to confidentiality agreement

Was the opposing represented by counsel? Yes

Were liability and/or damages contested? Yes

Has the judgment been successfully collected? Yes