

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of the Fair Hearing Request
of:

OAH No. 2017060480

CLAIMANT

vs.

SAN GABRIEL/POMONA REGIONAL
CENTER,
Service Agency.

DECISION

Howard W. Cohen, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on September 6, 2017, in Pomona, California.

Daniela Santana, Fair Hearing Manager, represented San Gabriel/Pomona Regional Center (SGPRC or Service Agency).

Claimant's mother represented claimant, who was not present.¹

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on September 6, 2017.

ISSUES

1. Must the Service Agency fund, and reimburse claimant's mother for, claimant's transportation expenses?
2. Must the Service Agency fund pediatric neuropsychiatry services for

¹ Names are omitted in order to protect the privacy of claimant and her family.

claimant?

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EVIDENCE RELIED UPON

Documents. Service Agency's exhibits 1-7; claimant's exhibits A-J.

Testimony. Daniela Santana; Esmeralda Rangel; claimant's mother; claimant's brother.

FACTUAL FINDINGS

PARTIES AND JURISDICTION

1. Claimant, a 15-year-old girl, is an eligible consumer of SGPRC based on her diagnoses of either moderate or severe intellectual disability² and autistic spectrum disorder. She has also has been diagnosed with an atrial septal defect, for which she had surgery and requires cardiac monitoring and care. She also has certain neurological deficits due to a genetic disorder.

2. Claimant resides at home with her parents and one of her siblings. According to her most recent IPP, claimant requires assistance with toileting; she experiences toileting accidents once or twice a week. Claimant needs prompting and physical assistance with her daily self-care tasks, including hygiene, bathing, and dressing. She can eat with a spoon and fork, although with some awkwardness. Claimant speaks in only three- or four-word sentences. Her speech is difficult to understand and she cannot fully verbalize her emotions, but she is able to make her wants known. Claimant engages in self-injurious

² Claimant's most recent Individual Program Plan (IPP), dated July 3, 2017, presents conflicting information about this diagnosis.

behaviors, hitting herself and banging herself against walls daily and throwing herself on the floor when she is upset. She has tantrums at least three times daily, during which she kicks and screams. Claimant has no safety awareness and requires close supervision to prevent her wandering away; she is entirely dependent on her family for her safety needs. She engages in hand and arm flapping. Claimant enjoys swimming and using a treadmill. She interacts with peers at school, though on occasion she hits them; she has no friends.

3. The Service Agency provides claimant funding for 30 hours per month of in-home respite services and for special therapeutic services at Rose Bowl Aquatics. Claimant's IPP provides that SGPRC will fund an aide to attend aquatics therapy with claimant, in the absence of a generic resource and if claimant's parents request it. The IPP provides that claimant's parents are to provide transportation to extended day programs. (Ex. I, pp. 13-14.) The family is responsible for arranging necessary medical exams and will provide transportation to medical appointments; "medical coverage will be provided by private insurance, Medi-Cal, or other generic resources." (Ex. I, p. 9.) To address claimant's behaviors, the IPP provides that claimant's parents will attend a behavior intervention workshop at SGPRC.

4. Claimant attends a non-public school program and receives speech therapy services and occupational therapy services from her school district.

5. In early 2017, claimant's mother requested that the Service Agency pay for Access Services coupons or fund private transportation for claimant to and from the Rose Bowl Aquatic Center, where claimant receives aquatic therapy and attends Camp Splash, a summer camp, funded by SGPRC. Claimant's mother requested, in May 2017, and again in August 2017, that the Service Agency fund pediatric neuropsychiatric services for claimant.

6. By a Notice of Proposed Action (NOPA) and letter dated May 19, 2017, the Service Agency notified claimant's mother that both of her requests were denied.

a. With respect to the transportation funding request, the letter recites that:

[T]ransportation is considered a typical responsibility of parents for minor children. . . . [Y]ou have been funding the cost of transportation since [claimant] started attending the Rose Bowl Aquatics since June 2015. In addition, you have not reported any changes in your household financial situation or the household income indicating that the cost of transportation represents a financial burden to you or your family. In addition, this service was addressed outside of the IPP planning process without SGPRC's agreement to these services.

(Ex. 1.)

- b. With respect to the psychiatric services funding request, the letter, after noting that claimant was referred to an inappropriate provider because claimant does not reside in the provider's catchment area, recites that:

[claimant] has Medi-Cal through a managed care plan which can provide you with additional referrals. Please be advised that if you are not satisfied with the referrals that you have obtained through your managed care plan you can appeal this decision through your Mental Health Network. Our managed care Medi[-C]al liaison . . . is available to assist you by providing you the process on how to appeal this decision.

(Ex. 1.)

- c. The NOPA cited Welfare and Institutions Code sections 4434, 4646, 4646.4, 4646.5, 4659, and 4710, relating to utilization of generic sources of funding, a

family's responsibility to provide similar services and supports as a parent of a child without disabilities, adherence to a regional center's purchase of service policies, and the IPP process as authority for the denial of claimant's two requests.

7. Claimant's mother filed a Fair Hearing Request on May 29, 2017, appealing the Service Agency's funding denial. This hearing ensued.

TRANSPORTATION TO SGPRC-FUNDED SERVICES

8. Claimant's mother seeks payment for claimant's Access Services transportation to and from aquatic therapy and Splash Camp, including reimbursement for payments she has already made. Access Services provides curb-to-curb transportation for individuals with disabilities.

9. Claimant's most recent IPP provides that claimant's parents are responsible for providing transportation to Camp Splash, aquatic therapy at Rose Bowl Aquatics, and to locations where claimant receives occupational therapy and speech therapy. Claimant's mother asked SGPRC for assistance with transportation at the IPP meeting in July 2017 and in subsequent correspondence. She testified that she and her husband both work and that she works at night as well as during the day. The Rose Bowl Aquatic Center is 22.9 miles from claimant's home; claimant's mother makes two round trips to the aquatic center each day that claimant receives services there. Claimant's mother testified that claimant has at least seven appointments each week, including occupational therapy, the hospital, and twice-weekly aquatic therapy at Rose Bowl Aquatics. Claimant's mother feels stressed by trying to balance claimant's transportation with her work obligations. When able to obtain timely Access Services transportation, claimant's mother uses Access Services and accompanies claimant to appointments. Claimant's mother, who argued that transporting claimant imposes an emotional and physical burden, though not a financial burden, was in a car accident recently and attributes the accident to lack of sleep due to her busy

schedule, which she claims has taken a toll on her health generally.

10. In a letter to the Service Agency dated May 27, 2017, claimant's mother wrote that she intended to have claimant and an aide, provided for in claimant's most recent IPP, use Access Services to travel to the Rose Bowl for aquatic therapy and Camp Splash. She seeks payment for Access Services coupons for trips of 20 miles or more, which cost \$1.75 each way, and reimbursement for payments she has already made to Access Services to transport her and claimant to aquatic therapy.

11. Danielle Santana, SGPRC's Fair Hearing Manager, testified that, under the Lanterman Developmental Disabilities Services Act (Lanterman Act) and the SGPRC Purchase of Services (POS) Policy, claimant is not entitled to regional center funding for transportation because there are generic sources of transportation available. Ms. Santana testified that Access Services is a generic source transportation services equivalent to public transit services available to the public. After an earlier fair hearing, SGPRC was ordered to fund aquatic therapy to address claimant's therapeutic needs. The Service Agency denied funding for Access Services coupons, however, because it considers transportation services to be the parents' responsibility. Ms. Santana testified that the Service Agency only funds transportation when the family demonstrates financial need or some other difficulty, such as a failure to qualify for Access Services.

12. An aide funded by SGPRC would accompany claimant on Access Services and remain with claimant at aquatic therapy. The daily cost for Access Services would be \$3.50 round trip each for claimant and her aide, two times per week, totaling approximately \$60 per month.

FUNDING FOR PEDIATRIC NEUROPSYCHIATRIC TREATMENT

13. Claimant takes Risperidone, an anti-psychotic medication, to ameliorate her behaviors. Dr. Arthur Pegosyan, a psychiatrist who used to treat claimant, initially prescribed Risperidone for claimant; Dr. Pegosyan died a few years ago. Dr. Muzma Atif,

claimant's current pediatrician, is unwilling to continue writing Risperidone prescriptions. Claimant's mother is concerned about possible danger to claimant from long-term Risperidone use, but until claimant is under the care of a pediatric neuropsychiatrist she does not want to discontinue the use of the medication.

14. Claimant's mother has not been able to find a neuropsychiatrist that claimant's insurance will cover. The carrier referred claimant to Children's Hospital Los Angeles for neuropsychiatric care, but claimant could not obtain an appointment there because she does not reside in the hospital's catchment area. Dr. Atif referred claimant to a psychiatrist in Long Beach, but claimant was denied service for the same reason. The carrier then provided claimant's mother with a list of 10 providers. Eight of those were counseling centers with no psychiatrists on staff to prescribe medications. Another provider on the list, a psychiatrist, does not treat adolescents. Another referral, Dr. Kin, prescribed Mirtazapine, an antidepressant, in addition to Risperidone. Claimant developed side effects after taking Mirtazapine and discontinued the medication; according to claimant's mother, Dr. Kin refused to continue treating claimant if she would not take the Mirtazapine.

15. In a January 27, 2017 email, claimant's mother asked the Service Agency to schedule an appointment with a pediatric neuropsychiatrist to treat claimant. Claimant's mother wrote that claimant's "insurance company Health Net (HMO) refers me to non-pediatric doctors or a child specialist in neuro[ology] (meaning not board certified or board eligible in neurology). The neurology doctor, I would like [claimant] to see, needs to be a board certified/board eligible child neurology and who has experience with neuro-developmental disorder (which [claimant] has)." (Ex. A.) Claimant's mother informed the Service Agency that she found a pediatric neurologist and psychiatrist specializing in neuro-developmental disorders, Dr. Charles Niesen in Pasadena, who accepts Health Net (HMO) insurance but "does not take the IPA that belongs to [claimant's] health plan," so claimant cannot see him. (*Ibid.*)

16. In her May 27, 2017, letter to the Service Agency, claimant's mother explained that "[f]inding a psychiatrist through my daughter's insurance has been very difficult, nearly impossible. Even Regional Center has been unable to find an actual psychiatrist replacement since Dr. Pogosyan's passing." (Ex. A.) She acknowledged that Andrea Guzman, claimant's service coordinator at SGPRC, has helped her try to find a psychiatrist, but has referred her to providers who do not accept claimant's insurance or are not in the IPA for which claimant receives coverage.

17. In a letter to SGPRC dated August 30, 2017, claimant's mother again wrote of her continuing inability to find a pediatric neuropsychiatrist covered by claimant's insurance carrier. "I have exhausted every means [of] trying to get her approved for a proper psychiatric referral through her medical insurance. While my daughter's insurance has given me a pediatric referral, I am not able to see the specialty doctor because I do not live in their [catchment] area," and the psychiatric referral that did not require claimant to reside in the catchment area did not treat children. (Ex. A.)

18. Claimant's mother has asked Health Net to allow claimant to see Dr. Niesen even though he is not in claimant's IPA; her request was denied. Having exhausted her remedies with the carrier, she is currently seeking redress from a state oversight agency. Claimant has an upcoming appointment with Dr. Niesen.

19. Ms. Santana testified that the Service Agency does not fund medical appointments, deferring to generic sources of funding. Acknowledging that claimant's mother has had difficulty accessing psychiatric services for claimant, Ms. Santana informed claimant's mother of a SGPRC clinic, the Biobehavioral Consultation Committee. A developmental pediatrician, Dr. Maduri, is a provider with the clinic; she could continue to write Risperidone prescriptions for claimant until claimant finds a psychiatrist covered by claimant's carrier. Claimant's mother testified that she has not been satisfied with Dr. Maduri's treatment of claimant in the past.

LEGAL CONCLUSIONS

JURISDICTION AND BURDEN OF PROOF

1. The Lanterman Act governs this case. (Welf. & Inst. Code, § 4500 et seq.)³ An administrative “fair hearing” to determine the respective rights and obligations of the consumer and the regional center is available under the Lanterman Act. (§§ 4700-4716.) Claimant requested a fair hearing to appeal the Service Agency’s denial of her request for payment and reimbursement for transportation expenses and for funding pediatric neuropsychiatric services. Jurisdiction in this case was thus established. (Factual Findings 1-7.)

2. Because claimant seeks benefits or services, she bears the burden of proof. (See, e.g., *Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 789, fn. 9; *Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161.) Claimant must prove her case by a preponderance of the evidence. (Evid. Code, § 115.)

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THE LANTERMAN ACT

3. The Lanterman Act acknowledges the state’s responsibility to provide services and supports for developmentally disabled individuals and their families. (§ 4501.) The state agency charged with implementing the Lanterman Act, the Department of Developmental Services (DDS), is authorized to contract with regional centers to provide developmentally disabled individuals with access to the services and supports best suited to them throughout their lifetime. (§ 4520.)

4. Regional centers are responsible for conducting a planning process that results in an IPP. Among other things, the IPP must set forth goals and objectives for the

³ Further statutory references are to the Welfare and Institutions Code.

client, contain provisions for the acquisition of services based upon the client's developmental needs and the effectiveness of the means selected to assist the consumer in achieving the agreed-upon goals, contain a statement of time-limited objectives for improving the client's situation, and reflect the client's particular desires and preferences. (§§ 4646, subd. (a)(1), (2), and (4), 4646.5, subd. (a), 4512, subd. (b), 4648, subd. (a)(6)(E).)

5. The IPP process "shall ensure . . . [u]tilization of generic services and supports when appropriate." (§ 4646.4, subd. (a)(2).) Regional centers may not fund any service for which funding is available from Medi-Cal or private insurance if the consumer is covered by Medi-Cal or private insurance. (§ 4659, subd. (d).) Regional centers must consider a family's responsibility for providing similar services to a minor child without disabilities in making decisions regarding funding for service and supports to minor consumers. (§ 4646.4, subd. (a).)

6. Regional centers are required to ". . . identify and pursue all possible sources of funding. . . ." (§ 4659, subd. (a).) Services and supports available to persons with developmental disabilities generally include advocacy assistance. (§ 4512, subd. (b).) Regional centers must conduct "[a]dvocacy for, and protection of, the civil, legal, and service rights of persons with developmental disabilities as established in this division." (§ 4648, subd. (b)(1).)

7. The regional center, however, must fund services and supports determined to be necessary for their consumers when generic sources of funding are not available. (§ 4648, subd. (a)(1); see also, e.g., § 4659.)

TRANSPORTATION EXPENSES

8. Cause does not exist to require SGPRC to fund Access Services or similar transportation services for claimant and an aide to attend aquatic therapy and, in the summer, Camp Splash.

9. The Lanterman Act mandates that regional centers fund transportation for

minor consumers if there is sufficient documentation of the family's inability to provide transportation. (§§ 4512, subd. (b), 4648.35, subd. (d).) If it is established that a family is unable to provide transportation, "[a] regional center shall fund the least expensive transportation modality that meets the consumer's needs, as set forth in the consumer's IPP" (§ 4648.35, subd. (b).) "A regional center shall fund transportation, when required, from the consumer's residence to the lowest-cost vendor that provides the service that meets the consumer's needs, as set forth in the consumer's IPP" (§ 4648.35, subd. (c).)

10. The Service Agency's POS Policy is consistent with the terms of the Lanterman Act, providing, among other things, that SGPRC may fund transportation for minors living at home "if the family provides sufficient documentation to demonstrate that they cannot provide or arrange transportation." (Ex. 4.)

11. Claimant's mother acknowledged that the family can afford to pay for claimant's transportation to aquatic therapy using Access Services. In addition, any emotional and physical burden of taking claimant to Rose Bowl Aquatics will be eliminated by the use of an aide to accompany claimant to and from, and remain with claimant at, aquatic therapy, which SGPRC has offered to fund. (Factual Findings 3, 8-12.)

12. Cause does not exist to require SGPRC to reimburse claimant's mother for transportation expenses incurred prior to the effective date of this decision. Claimant's mother did not request transportation funding in the IPP process. The Lanterman Act does not provide for reimbursement for the cost of services incurred by a consumer outside the IPP process. An order is warranted that is carefully tailored to ensure that the Service Agency is held responsible only for those services and supports contemplated by the Lanterman Act. Regional centers may authorize payment for services only before the services are provided, unless the services were provided in an emergency by a provider vendored with the regional center and certain specified conditions are met. (Cal. Code Regs., tit. 17, § 50612.) Those conditions are not met here.

NEUROPSYCHIATRIC TREATMENT

13. Funding for appropriate neuropsychiatric treatment for claimant is necessary to ensure that the consumer receives the service or support. (Factual Findings 13-19, Legal Conclusions 3-7.)

14. From the evidence introduced at hearing, it appears claimant's mother has exhausted the insurance carrier appeal process. Requiring claimant to use the Service Agency's biobehavioral clinic to obtain prescriptions, rather than use the services of a neuropsychiatrist for complete neuropsychiatric care, is unwarranted and will not meet claimant's current needs as set forth in the IPP. In light of the carrier's inability to refer claimant to a covered provider, even after the advocacy assistance of an SGPRC service coordinator, it must be concluded that no generic source of funding is available at this time.

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ORDER

Claimant's appeal is denied in part and granted in part.

SGPRC is not required to fund claimant's transportation to and from aquatic therapy and Camp Splash. SGPRC has no obligation to reimburse claimant's mother for transportation expenses incurred prior to the effective date of this decision.

Unless and until claimant's insurance carrier or another generic source of funding provides pediatric or adolescent neuropsychiatric services for claimant, or circumstances change as reflected in a subsequent IPP, SGPRC shall fund those services.

DATE:

HOWARD W. COHEN

Administrative Law Judge

Office of Administrative Hearings

NOTICE

This is the final administrative decision; both parties are bound by this decision.
Either party may appeal this decision to a court of competent jurisdiction within 90 days.