BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: CLAIMANT, vs. SAN ANDREAS REGIONAL CENTER, Service Agency.	OAH No. 2017120253

DECISION

Administrative Law Judge Michael A. Scarlett, State of California, Office of Administrative Hearings, heard this matter on February 21, 2018, in San Jose, California.

James F. Elliott, Special Services/Fair Hearings Manager, represented San Andreas Regional Center (SARC or Service Agency).

James Sibley, Attorney at Law, represented claimant who was present at the hearing. [1] Claimant's mother, claimant's authorized representative, was also present.

The matter was submitted on February 21, 2018.

ISSUE

Should SARC fund claimant's Auditory-Verbal Therapy (AVT) services?

[1] Claimant's identification is concealed to protect his privacy.

FACTUAL FINDINGS

1. Claimant is 20 years old and is eligible for regional center services based on Autism Spectrum Disorder (ASD). He currently lives with his mother and father. Mother became aware of claimant's profound hearing loss when he was two and one-half years old, and claimant was diagnosed with autism at three and one-half years old. In March 2001, when claimant was just over three and one-half years old, he received his first Cochlear Implant in his left ear to address his hearing impairment. Claimant received a second Cochlear Implant in his right ear in July 2012, when he was 14 years old. Claimant is otherwise in good health and is taking no medication. Claimant is currently attending community college taking architecture classes. He is not receiving any services from SARC, as parents declined respite and day care, although they requested transportation services in the last Individual Program Plan (IPP), dated August 4, 2017.

2. Claimant had been receiving AVT services funded by his school district since he was four and a half years. The services were terminated when he graduated from high school in June 2016. Thus, school district is no longer a generic resource for claimant's AVT. After June 2016, claimant's mother requested SARC to fund the AVT services. Claimant's mother stated that claimant's private health insurance would not pay for the AVT, but she has not requested funding through the family's health insurance. Claimant's mother suggested that SARC had not provided sufficient information to assist in requesting funding of the AVT through the family's private health insurance.

3. On September 21, 2016, SARC notified claimant that it would not fund AVT. The Notice of Proposed Action (NOPA) indicated that Service Agency denied funding for AVT because it was not a valid or effective treatment for autism, and as such, it is not an appropriate or cost-effective use of public resources to meet the goals of

claimant's IPP. On November 2, 2017, SARC issued a second NOPA denying funding for AVT because "it is a treatment for deaf individuals, including those with autism, who receive Cochlear or other augmentative hearing devices; as such it is not a therapy intended to treat autism and has not been scientifically validated as safe and clinically effective for the treatment of autism."

4. On November 27, 2017, claimant filed a Fair Hearing Request seeking funding for AVT services in order for claimant to meet nominal requirements for community college and to obtain meaningful future employment. This hearing ensued.

5. AVT is a rehabilitative intervention designed to promote or achieve age-appropriate spoken language and communication for children with a hearing impairment. AVT involves intensive early intervention therapy sessions with a focus on audition, technological management and involvement of the child's caregivers/parents in the therapy sessions. (Brennan-Jones C.G., White J., Rush R.W., Law J., Auditory-verbal Therapy for Promoting Spoken Language Development in Children with Permanent Hearing Impairments; *Cochrane Database of Systematic Reviews*, 2014, Issue 3.) The primary goal of AVT is to achieve age-appropriate spoken language as the primary or sole method of communication. (*Id.* at p. 2.) AVT is designed to specifically promote avoidance or exclusion of non-auditory facial communication. (*Ibid.*) It focuses on developing audition, that is, speech discrimination, through listening and speech reading (use of visual cues from the mouth and face of the speaker). (*Id.* at p. 3.)

6. Although AVT is widely used as an intervention for children with hearing impairment, there is little scientific evidence as to the effectiveness of the intervention. While the lack of evidence does not necessarily imply a lack of effectiveness, it is difficult to definitively make any conclusions regarding the effectiveness of AVT in treating children with hearing impairment. (Auditory-verbal Therapy for Promoting Spoken

Language Development in Children with Permanent Hearing Impairments; *Cochrane Database of Systematic Reviews*, 2014, Issue 3, at p. 2.)

7. Carrie Molho, PhD., Clinical Psychiatrist, consulted with Service Agency regarding the use of AVT in claimant's case. Dr. Molho opined that AVT was not an appropriate intervention for ASD and that it has not been found to be clinically effective for children with a hearing impairment. She characterized AVT as an experimental therapy that has not been scientifically proven to be an effective intervention for individuals with hearing impairments or autism. Dr. Molho stated that AVT primarily has been used with deaf or profoundly hearing impaired children ages three years and up. She maintained that AVT focused on auditory or listening therapy, which is adverse to interventions typically used with children with autism. Dr. Molho expressed concern that AVT specifically focused on listening, to the detriment of all other aspects of communication, specifically excluding facial expressions, gestures, and other non-auditory means of communication. She believed that such an intervention modality was not an effective treatment for ASD, noting that AVT is not frequently used for individuals with autism.

8. Claimant's AVT services have been exclusively provided by Victoria Deasy, MS, a special education teacher who has over 45 years teaching experience, and has been certified as an Auditory-verbal Therapist since 1996. Deasy has also worked with deaf autistic children since 1979, and is essentially self-taught in providing AVT services to hearing-impaired children. Deasy testified that typically, AVT services should start during early development, i.e., infancy, toddlers and pre-schoolers, and should begin before a child reaches 10 years of age to avoid the child's reliance on sign language as the initial mode of communication. She began providing AVT to claimant when he was four years old. Claimant received two AVT sessions per week, one hour per session,

through middle school, and then one, one-hour session per week, while claimant was in high school.

9. Deasy credibly testified that respondent has benefitted significantly from the AVT services, and would continue to benefit from the service if provided. Respondent's progress was slow initially because he did not began to speak or learn language when a typical, nondisabled child would begin to speak, prior to two years of age. He also had severe behaviors associated with his autism, but Deasy stated claimant made progress each year using AVT. Deasy could not definitively state the origins of claimant's communication and speech and language deficits, i.e. whether they are attributed to his hearing impairment or autism. She acknowledged that AVT has only recently began to be used in treating autistic children with a hearing impairment. She admitted that there were not many deaf individuals with autism being treated with AVT.

10. Claimant and his mother assert that claimant has significantly benefitted from AVT. Claimant became nonverbal at 18 months old, which triggered claimant's mother's concern that something was wrong. She became aware that claimant was profoundly deaf when he was two and one-half years old, and claimant was diagnosed with autism at three and one-half years. He began AVT sessions at four years old and began speaking when he was five. Both Deasy and claimant's mother recalled that maladaptive behaviors associated with claimant's ASD hindered the initial AVT interventions. Claimant's mother attributes the progress he has made achieving spoken language to AVT. Claimant's mother stated that claimant was mainstreamed into general education classes in middle school and high school and graduated from high school on time because of the AVT sessions. She believed that the AVT sessions taught claimant how to communicate and assisted him in completing his homework throughout his secondary education.

11. Claimant's mother and Deasy believe that claimant's communication skills and speech and language have suffered since the AVT sessions were discontinued in June 2016. They point to claimant's difficulty in passing English and Basic Skills English essay writing classes at community college as evidence of his regression. Claimant is passing his math and architecture classes, but is struggling in classes requiring English/language and writing skills. Claimant's mother believes that the AVT services are the only therapy that addresses both claimant's hearing impairment and his communication deficiencies caused by the ASD.

12. Claimant's mother is unable to afford the AVT services at this time. The AVT sessions typically costs about $125 per one-hour session, and mother would like claimant to receive at least one session per week, for a total cost of $500 per month.

LEGAL CONCLUSIONS

1. The party asserting a claim generally has the burden of proof in administrative proceedings. (See, e.g., *Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 789, fn. 9.) In this case, claimant bears the burden of proving, by a preponderance of the evidence, that Service Agency erred when it denied funding for AVT services. (Evid. Code, § 115.)

2. Claimant's appeal is governed by the Lanterman Developmental Disabilities Services Act (Lanterman Act). (Welf. & Inst. Code, § 4500 et seq.) [2] Under the Lanterman Act, Service Agency is required to secure services and supports that meet the needs of a person eligible for services based upon a qualifying developmental disability. (§ 4501.) Sufficient services and supports should be established to meet the needs and choices of the consumer, regardless of age or degree of disability, to support their

[2] All further statutory references are to the Welfare and Institutions Code.

integration into the community. (*Ibid.*) In providing these services, consumers and their families, when appropriate, should participate in decisions affecting their own lives, including the planning and implementation of services provided by Service Agency. (*Ibid.*)

3. Section 4646, subdivision (a), provides that services and supports in the IPP should be centered on claimant and his family, take into to account their needs and preferences, be effective in meeting the goals stated in the IPP, and reflect the cost-effective use of public resources. Section 4685, subdivision (b), provides, in relevant part, that regional centers should provide or secure family support services that respect and support the decisionmaking authority of the family, be flexible and creative in meeting the unique and individual needs of families, and promote the inclusion of children with disabilities in all aspects of school and community.

4. Section 4648, subdivision (a)(16), provides that regional centers shall not purchase experimental treatments, therapeutic services, or devices that have not been clinically determined or scientifically proven to be effective or safe or for which risks and complications are unknown.

5. Claimant failed to establish that AVT has been scientifically proven to be an effective intervention for children with ASD. Although claimant has benefitted from the use of AVT to address his hearing impairment, there is a paucity of scientific based research that establishes AVT as an effective therapy in treating autism. There is also little scientific evidence that shows AVT is an effective intervention for individuals with hearing impairments, although it has been widely used as intervention for deaf persons. Dr. Molho credibly and persuasively opined that AVT was not scientifically proven to be effective for autism. She believed AVT's primary focus on verbal/listening therapy methodology, and not facial expressions, gestures or other non-auditory means of

communications, was adverse to other proven interventions found to be effective in treating autism.

6. Claimant clearly has benefitted from the AVT services he has received over the last 15 years. Claimant's mother and Deasy attested to his ability to access spoken language as a result of the AVT therapy sessions he has received. However, the AVT was primarily funded to address claimant's hearing impairment and facilitate the use of claimant's bilateral Cochlear Implants. There is insufficient evidence to establish that the intervention was effective in treating his autism. Claimant's AVT therapist, Deasy, admitted that it was difficult to determine the origin of claimant's communication deficits, i.e., whether a result of his hearing impairment or autism, and that AVT had not been widely used in treating hearing impaired individuals with autism.

7. There is insufficient evidence to conclude that AVT is a scientifically proven effective intervention for treating ASD. Accordingly, Service Agency is not required to fund claimant's AVT services.

ORDER

Claimant's appeal of SARC's denial of funding for AVT services is denied.

DATED: March 7, 2018

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MICHAEL A. SCARLETT

Administrative Law Judge

Office of Administrative Hearings

NOTICE

This is the final administrative decision pursuant to Welfare and Institutions Code section 4712.5, subdivision (a). Both parties are bound by this decision. Either party may appeal this decision to a court of competent jurisdiction within 90 days.