

**BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA**

In the Matter of the Fair Hearing of:

CLAIMANT,

vs.

**SOUTH CENTRAL LOS ANGELES REGIONAL CENTER,
Service Agency.**

OAH No. 2020080494

DECISION

Cararea Lucier, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter by video and teleconference on October 16, 2020. The Office of Administrative Hearings will be referred to as OAH. Doneida Marroquin served as the interpreter for this hearing.

Karmell Walker, Fair Hearing Legal Compliance Officer, appeared on behalf of South Central Los Angeles Regional Center, referred to as Service Agency.

Claimant's mother appeared on behalf of claimant, who was not present. Claimant's mother was supported at hearing by consultants Armida Ochoa and Juana Gutierrez.

Oral and documentary evidence was received. The record was closed, and the matter was submitted for decision on October 16, 2020.

ISSUE

Is the Service Agency required to fund alternative supplements, follow up appointments, lab tests, and Boots Organic Vitamins and Supplements under the Self-Determination Program?

EVIDENCE RELIED UPON

Documents: Service Agency's exhibits 1 through 6; claimant's exhibits 1 through 3.

Testimony: Naomi Hagel, Program Manager 2 for Service Agency; Socorro Fernandez; claimant's mother.

FACTUAL FINDINGS

Parties and Jurisdiction

1. Claimant, a 13-year-old boy, is an eligible consumer of Service Agency based on his diagnoses of intellectual disability, cerebral palsy, and epilepsy.

2. Sometime before June of 2020, claimant's parent requested that Service Agency fund alternative supplements, follow up appointments, lab tests, and Boots Organic Vitamins and Supplements under the Self-Determination Program. (Service Agency's Ex. 5.)

3. By a notice of proposed action letter dated June 19, 2020, Dexter A. Henderson, Executive Director of Service Agency, notified claimant's mother that the

Service Agency declined to fund the alternative supplements, follow up appointments, lab tests, and Boots Organic Vitamins and Supplements under the Self-Determination Program. Mr. Henderson wrote that the supplements and treatments requested were not empirical, evidence-based treatments, or a means for ameliorating claimant's developmental disabilities. Mr. Henderson explained that Service Agency was prohibited by law from funding experimental treatments, even under the Self-Determination Program. Additionally, Service Agency believed that the purchase of vitamins was a typical parent responsibility, and that claimant could use generic funds, such as Social Security Income, to fund the requested treatments and services. (Service Agency's Ex. 3.)

4. Claimant's mother filed a Fair Hearing Request dated July 3, 2020. She wrote: "I do not agree that SCLARC denied within Self-Determination treatment can be paid for Medical Wellness Center." She requested that Service Agency fund treatment by Dr. Hirani under claimant's Self-Determination Plan. (Claimant's Ex. 1.)

Claimant's IPP

5. Claimant's most recent Individual Program Plan is dated September 25, 2020. An Individual Program Plan will be referred to as an IPP. Claimant, claimant's mother, Ms. Ochoa, and Ofelia Robles, Service Coordinator, attended the meeting. Claimant resides at home with his mother, father, and younger brother. Claimant's mother "looks after [claimant's] best interests and is involved in [claimant's] daily activities." Claimant is also close to his cousins. (Service Agency's Ex. 5.)

6. Claimant has health conditions that impact his independence and quality of life. Claimant has seizures and is seen regularly by a neurologist. Parent reported that claimant's seizure medication caused him to have seven kidney stones. Claimant

has a G-Tube, which is replaced every three months at Children's Hospital Los Angeles. He had foot surgery on June 5, 2020, and he is undergoing physical therapy. Claimant is non-verbal and is unsteady when walking. (Service Agency's Ex. 5.)

7. Claimant's most recent IPP states that claimant consumes supplements recommended by Dr. Hirani, but that Service Agency is denying the request for funding. (Service Agency's Ex. 5.)

8. Pursuant to Claimant's IPP, as of October 1, 2020, he receives the following annual budget for services under the Self-Determination Program:

- \$60,709.12 for respite via a Licensed Vocational Nurse;
- \$650.00 for mother to attend training on how to work better with claimant;
- \$25,200.00 for Floor Time therapy to increase his socialization;
- \$15,381.88 for educational advocacy services;
- \$27,713.00 for music lessons, riding lessons, and swimming lessons;
- \$6,000.00 for an Independent Facilitator;
- \$1,800.00 for a Fiscal Management Service; and
- \$6,000.00 for out of home respite/camp.

(Service Agency's Ex. 5.)

9. Claimant also receives \$828 per month in Social Security Income, MediCal benefits, 252 hours per month of In-Home Support Services, California

Children's Services, Applied Behavioral Analysis therapy in the home funded by MediCal, and special education from Los Angeles Unified School District. (Service Agency's Ex. 5.)

The Requested Services and Treatment

10. From January 2019 through November 2019, claimant's parents obtained holistic and alternative treatments for claimant through Dr. Karima Hirani. The evidence at hearing suggested that Dr. Hirani is a properly licensed medical doctor who practices an alternative form of medicine, Integrative-Functional Medicine. Dr. Hirani saw claimant approximately every two months, performed lab work on claimant, and provided low dose allergen/low dose immunotherapy treatments. Dr. Hirani prescribed numerous vitamins and supplements for claimant. Claimant's parents spent \$3,009.05 on holistic treatments and services provided or recommended by Dr. Hirani. (Claimant's Ex. 3.)

11. Claimant's mother believes that claimant benefitted from the treatments and services by Dr. Hirani. She observed that the supplements helped with claimant's body movements. Claimant became calmer while taking the supplements and was less prone to becoming agitated or biting his nails. Claimant's behaviors improved. Parent also observed that claimant's bodily reactions became faster, and that one of his eye lids was more open than previously. Parent dreamed that claimant would be able to walk and become more independent. She believed the treatments and services from Dr. Hirani helped to improve claimant's quality of life.

12. Claimant's primary doctors did not support the services and treatments provided by Dr. Hirani. Claimant's pediatrician and neurologist laughed at claimant's mother or remained silent when she described the holistic treatments. Claimant's

mother found this very difficult. She tried to give claimant's primary doctors Dr. Hirani's business card, but they were not receptive.

13. Around January of 2019, claimant's parents requested that Service Agency fund the treatments and services provided by Dr. Hirani. Service Agency denied the request. (Service Agency's Ex. 5.)

14. Claimant participated in the soft roll out of the Self-Determination Program through Service Agency. Claimant's parents retained Armida Ochoa to serve as an independent facilitator for claimant. On October 15, 2019, Ochoa and claimant's mother developed a detailed Person-Centered Plan and contract for an independent facilitator for claimant. The Person-Centered Plan will be referred to as the PCP. While the PCP includes the type of information that can also be found in an IPP, there was no evidence presented at hearing that the PCP was included within claimant's IPP or endorsed by Service Agency. (Claimant's Ex. 2.)

15. In the PCP, Ochoa and claimant's mother agreed that one of the goals between the parent and the independent facilitator was to request reimbursement for paid bills to Dr. Hirani. Claimant's mother stated that one of the best supports for claimant was using natural supplements, including capsules and liquids, in addition to the love and care from his family. (Claimant's Ex. 2.)

16. Claimant's PCP included a goal entitled "Health and Wellbeing: Alternative Supplements." This goal is that claimant's mother will help claimant "consume alternative supplements called Medicina Integrativa Funcional, Functional Integrative Medicine recommended and authorized by Dr. Karima Hirani, who is part of the Medical Wellness Center" and that claimant will participate in low dose

allergen/low dose immunotherapy treatments recommended by Dr. Hirani.
(Claimant's Ex. 2.)

17. Claimant's mother testified at the hearing. She expressed a sincere and good-faith belief that the holistic treatments from Dr. Hirani were benefitting claimant and would improve his quality of life.

LEGAL CONCLUSIONS

Jurisdiction and Burden of Proof

1. The Lanterman Act governs this case. (Welf. & Inst. Code, § 4500 et seq.)¹ 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 funding for alternative supplements, follow up appointments, lab tests, and Boots Organic Vitamins and Supplements under the Self-Determination Program. Jurisdiction in this case was thus established. (Factual Findings 1-4.)

2. Because claimant seeks benefits or services, he bears the burden of proving he is entitled to the services requested. (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 his case by a preponderance of the evidence. (Evid. Code, § 115.)

¹ Further statutory references are to the Welfare and Institutions Code.

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, referred to as 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 client, contain provisions for the acquisition of services based upon the client's developmental needs and the effectiveness of the services 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 Legislature's intent in enacting the Lanterman Act was to ensure the rights of persons with developmental disabilities, including "[a] right to treatment and habilitation services and supports in the least restrictive environment. Treatment and habilitation services and supports should foster the developmental potential of the person and be directed toward the achievement of the most independent, productive, and normal lives possible." (§§ 4502, subd. (a), 4640.7.)

6. Although regional centers are mandated to provide a wide range of services to facilitate implementation of the IPP, they must do so in a cost-effective manner. (§§ 4640.7, subd. (b), 4646, subd. (a).) A regional center is not required to

provide all the services that a client may require but is required to “find innovative and economical methods of achieving the objectives” of the IPP. (§ 4651.) Regional centers are specifically directed not to fund duplicate services that are available through another publicly funded agency or “generic resource.” Regional centers are required to “. . . identify and pursue all possible sources of funding. . . .” (§ 4659, subd. (a).) The IPP process “shall ensure . . . [u]tilization of generic services and supports when appropriate.” (§ 4646.4, subd. (a)(2).)

7. Regional Centers are prohibited from funding “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.” (§ 4648, subd. (a)(16).) California law specifies that “[e]xperimental treatments or therapeutic services include experimental medical or nutritional therapy when the use of the product for that purpose is not a general physician practice.” (*Id.*)

8. “Self-determination” means a voluntary delivery system consisting of a defined and comprehensive mix of services and supports, selected and directed by a participant through person-centered planning, in order to meet the objectives in their IPP. Self-determination services and supports are designed to assist the participant to achieve personally defined outcomes in community settings that promote inclusion. The Self-Determination Program may only fund services and supports that the federal Centers for Medicare and Medicaid Services determines are eligible for federal financial participation. (§ 4685.8, subd. (c)(6).)

9. The California Department of Developmental Services has published guidance and definitions for the Self-Determination Program. (https://www.dds.ca.gov/wpcontent/uploads/2019/05/SDP_serviceDefinitions.pdf.) This guidance defines Participant-Directed Goods and Services as

“services, equipment or supplies not otherwise provided through the SDP Waiver or through the Medicaid State plan that address an identified need in the IPP (including accommodating, improving and maintaining the participant’s opportunities for full membership in the community) and meet the following requirements: the item or service would decrease the need for other Medicaid services; promote interdependence, and inclusion in the community; and increase the person’s safety in the home environment; and the participant does not have the personal funds to purchase the item or service and the item or service is not available through another funding source. The participant-directed goods and services must be documented in the participant’s Individual Program Plan and purchased from the participant’s Individual Budget. Experimental or prohibited treatments are excluded.”

Services for Claimant

10. The Lanterman Act prohibits funding of experimental treatments under both the traditional model of services and the Self-Determination program. (Factual Finding 3.)

11. The Service Agency denied funding based on the experimental nature of the services and treatments, as well as the arguments that vitamins and nutrition are a typical parent responsibility, and that claimant could use generic resources, such as SSI, to fund these expenses. (Factual Findings 3, 7, 13.)

12. Claimant failed to meet his burden of proof that alternative supplements, follow up appointments, lab tests, and Boots Organic Vitamins and Supplements may be funded by Service Agency under the Self-Determination Program. Claimant did not establish that the requested items and services are clinically determined or scientifically proven to be effective. Rather, these holistic and alternative treatments fall squarely within the legal definition of experimental treatments and services which Service Agency is prohibited from funding.

13. The evidence did not show that the use of these requested holistic treatments were a general physician practice for claimant's disabilities. To the contrary, claimant's pediatrician and neurologist did not endorse the treatments. Although Dr. Hirani appears to be a properly licensed physician, this alone does not overcome the experimental nature of the treatments for which Service Agency is prohibited from funding.

ORDER

Claimant's appeal is denied.

DATE:

CARAREA LUCIER

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.