

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

vs.

SERVICE AGENCY.

OAH No. 2014030119

A Proceeding Under the Lanterman
Developmental Disabilities
Services Act

DECISION

This matter was heard by Vincent Nafarrete, Administrative Law Judge of the Office of Administrative Hearings, in Torrance on April 23, 2014. The Service Agency was represented by Gigi Thompson, Manager of Rights Assurance. Claimant was represented by Eva Casas-Sarmiento, Attorney at Law, Office of Clients' Rights Advocacy. Claimant's mother was present and provided with the services of an interpreter.

The Service Agency presented Exhibits 1– 14. Claimant presented Exhibits 1 – 21 and a Position Paper, which was marked as Exhibit 22. The Administrative Law Judge admitted certain exhibits into evidence pursuant to Welfare and Institutions Code section 4712, subdivision (i). The parties stipulated that the Administrative Law Judge could issue a Decision based solely on the documentary evidence.

Documentary evidence having been received, the Administrative Law Judge submitted this matter for decision on April 23, 2014, and, relying on the aforementioned exhibits, finds as follows:

ISSUE

The issue presented for decision is whether claimant should receive reimbursement or payment under Welfare and Institutions Code section 4659.1, subdivision (a), for the insurance co-payments for the in-home applied behavioral analysis services provided to her under the family's health insurance plan.

FACTUAL FINDINGS

1. Claimant is a ten-year-old girl who was diagnosed with autism. Based on her diagnosis and developmental delays and disabilities, claimant is eligible for regional center services. Claimant currently receives case management and support services from the Service Agency.

2. (A) Claimant lives with her parents and older sister in the family home in Long Beach. Her sister has pervasive developmental disorder. Her father works as a machine operator and her mother works full-time in the home.

(B) Claimant needs assistance and supervision with her self-help skills and has difficulty in verbalizing her thoughts and emotions and attending social outings with her family. She needs time to adapt to places and people. She prefers to play away from other children and will run off and play by herself. Her awareness of potential safety hazards at home has improved. Her parents must supervise claimant at all times because she tends to elope. Claimant puts inappropriate objects in her mouth and engages in repetitive behaviors such as jumping on the bed and rocking.

(C) Claimant's parents are also very concerned about claimant's maladaptive and aggressive behaviors. She tends to hit, bite, scream, pinch, and kick. She engages in tantrum behaviors and becomes aggressive when she does not get her way or cannot communicate her needs. Claimant hits her mother and older sister.

She engages in her aggressive and tantrum behaviors at home and at school.

3. Based on her disability of autism, claimant receives special educational services and supports from her local school district. The school district provides claimant with instruction in a special day class and the supportive services of one-to-one aides, individual and group speech and language therapy, and other accommodations.

4. In 2008, claimant was provided in-home parent training services by the Service Agency. In January 2012, the Service Agency referred claimant to Armando De Armas, Ph.D., of Long Beach, for a psychological evaluation and assessment of her levels of functioning. Claimant's behavior was found to meet the Autism Diagnostic Observation Schedule and the DSM-IV-TR criteria for autism or autistic disorder. She demonstrated qualitative impairments in social interaction and communication and exhibited restricted, repetitive, and stereotyped patterns of behavior.

5. From July 2012 through in or about August 2013, the Service Agency provided claimant and her family with in-home behavioral support and intervention services from Family Behavioral Services (FBS). FBS provided strategies to help claimant control her outbursts and aggressive behaviors and to help her family respond in ways that did not reinforce claimant's negative behaviors. In August 2013, the in-home behavior support services provided by FBS were terminated on recommendation of the vendor.

APPLIED BEHAVIOR ANALYSIS SERVICES

6. On February 7, 2013, claimant's mother informed her daughter's Service Agency counselor (hereafter also counselor) that the family had applied for Applied Behavior Analysis (ABA) services for claimant through the family's health insurance company and that claimant's most recent psychological evaluation had

been forwarded to the health insurance company. She asked the counselor whether the Service Agency would pay the \$15 insurance co-payment in the event that ABA services were approved by the health insurance company or reimburse the family for the insurance co-payments. The counselor replied that the Service Agency would consider paying the insurance co-payment if the mother submitted documentation showing the family's need for financial assistance. On March 15, 2013, claimant's mother told the counselor that she thought the provider of ABA services for her daughter would be Beautiful Minds Center, which did conduct a psychological evaluation.

7. (A) Beginning in or about February 2013, claimant was evaluated by Gabrielle Izralson, Psy.D., B.C.B.A., a psychologist and clinical supervisor with Beautiful Minds Center of Reseda. Dr. Izralson reviewed previous treatment results and claimant's Individualized Education Plan (IEP) for the 2012-2013 school year, observed her at home, administered the Childhood Autism Rating Scale and other tests, conducted a functional behavioral assessment, obtained information about claimant from her parents, and performed a risk assessment. On April 3, 2013, based on her psychological evaluation, Dr. Izralson issued an Initial Behavioral Assessment which included transition and behavior intervention plans.

(B) As set forth in the Initial Behavioral Assessment prepared by Dr. Izralson, claimant was found to present with deficits in functional communication, compliance, and social and play skills and to engage in self-injurious and aggressive behaviors. The psychologist determined that claimant would greatly benefit from an in-home behavioral program that utilized ABA methodologies and recommended that claimant receive an intensive six-month behavior intervention program consisting of 15 hours per week of ABA therapy, six hours per month of parent training, and six hours per month of supervision. The behavior intervention

program was to address claimant's needs in reducing her tantrum, self-injurious, elopement, and aggressive behaviors and to increase her social, compliance, safety awareness, and functional communication skills.

8. On April 11, 2013, College Health I.P.A., the health insurance company for claimant's family, authorized claimant to receive 15 hours weekly of ABA therapy, 1.5 hours weekly of supervision, and 1.5 hours weekly of parent training for six months. Claimant's father was a subscriber or member of this health plan through his employment. The family was required to pay a \$15 co-payment for each session of therapy, supervision, and parent training.

9. On or about April 11, 2013, Autism Spectrum Interventions (ASI) began providing claimant with ABA services funded by the family's health insurance company. ASI was authorized to provide 390 hours of ABA therapy, 39 hours of supervision, 39 hours of parent training, and 6.5 hours of case management to claimant for six months.

10. On June 5, 2013, claimant's mother informed the Service Agency counselor that her daughter had been receiving three hours of ABA therapy three days each week. The family had received a bill for the insurance co-payments and she asked the counselor for more information about receiving the Service Agency's help in paying for the insurance co-payments. The counselor replied that she needed to submit documentation of financial hardship, including a report of the family's monthly expenses, an income tax return, a letter of explanation, and a letter from the health insurance company describing the hours of ABA therapy and the amounts of the insurance co-payment and deductible.

11. On or about July 24, 2013, the counselor went to claimant's home and obtained the documents of financial need collected by her mother. On July 29, 2013, after conducting a preliminary review of the documents, the counselor noted

that claimant seemed to have a need for ABA services. The counselor noted that claimant's need for ABA services and the family's need for financial assistance from the Service Agency could be established by her updated IEP and reports of her progress since receiving ABA services from ASI. On July 31, 2013, the counselor went to claimant's home, obtained a copy of her IEP, and discussed with her mother the process for obtaining regional center payment of the insurance co-payments.

12. (A) On August 12, 2013, the Service Agency counselor obtained and reviewed claimant's goals for her in-home ABA services program that was being provided by ASI. The counselor noted that claimant's goals for her ABA services included decreasing her tantrum, eloping, self-injurious, and aggressive behaviors.

(B) On September 27, 2013, the counselor convened an annual Individual Family Service Plan (IFSP) meeting for claimant. Both the counselor and claimant's mother attended and participated in the IFSP meeting. Following the IFSP meeting, the counselor prepared an IFSP document in which he noted that claimant's maladaptive behaviors had improved with ABA services but that she still hit, bit, screamed, pinched, kicked, and tantrumed at home and at school when she did not get her way.

(C) As further stated in the IFSP document, the counselor discussed with the mother the family's experience in participating in ABA services through ASI since April 2013. The mother reported that the ABA services had helped the family to better understand claimant's needs and that claimant was learning self-control. The mother expressed concerns about claimant's aggressive and maladaptive behaviors, communication skills, and safety awareness. The mother reported that, since starting ABA services, claimant had begun to express her needs and desires and decrease some of her aggressive behaviors. Claimant still exhibited aggressive behaviors towards her family when she did not get what she wanted or could not

express her needs. In the IFSP document, the counselor also summarized the services that claimant was receiving from her school district, including the services of two one-to-one aides or behavior therapists. However, the counselor did not note in the IFSP document that claimant may need ABA services or that the family had applied for and submitted documentation to receive financial assistance from the Service Agency to help pay for the insurance co-payments for the ABA sessions.

13. (A) On September 27, 2013, ASI issued a Behavior Service Progress Report which indicated claimant was receiving the following weekly services: 15.25 hours of direct intervention services, 1.5 hours of supervision, 1.5 hours of parent consultation, and 0.25 hours of treatment planning. In sessions that lasted three hours each day, claimant received direct intervention services to address her compliance, tantrums, coping skills, eloping, and aggressive behaviors, and other areas of need. ASI also developed a new intervention area of parent skills. Over the prior five months, claimant had consistently received nine hours per week of direct intervention services and had made noticeable gains on all of her goals, including increasing her functional communication. However, claimant still presented with challenges in target areas.

(B) ASI noted that, in August 2013, claimant's parents had asked ASI to decrease the ABA services because they could afford to pay the insurance co-payments for only two days per week and were still waiting for the Service Agency to provide them with financial assistance. Because claimant had made progress towards her goals and her parents wanted to decrease services for financial reasons, ASI recommended that claimant's direct intervention services be decreased to 10 hours per week.

14. On October 7, 2013, the counselor attended claimant's IEP meeting at her school district and discussed her progress with her one-to-one aide from ACES.

The counselor learned claimant had made “tremendous progress” in reducing her aggressive, tantrum, non-compliant, self-injurious, and eloping behaviors.

15. On December 4, 2013, claimant’s mother asked the counselor about the status of her request that the Service Agency pay for the insurance co-payments for her daughter’s ABA sessions. The counselor advised the mother that a decision on her request was being finalized. On December 12, 2013, a Service Agency behaviorist reviewed claimant’s progress report from ASI and agreed that the ABA therapy program was appropriate for claimant and that claimant had made progress at home and at school.

16. (A) In a Psycho-Educational Re-Evaluation Report dated January 22, 2014, a school psychologist reported, in part, that claimant’s general behavior had remarkably improved during the 2013-2014 school year. Claimant had not exhibited a severe tantrum at school in two months and her individual support services in class were to be reduced.

(B) In an Annual IEP report for 2013-2014 which was prepared on January 10, 2014, claimant was found to have met or partially met four of five annual goals in the school setting. During the 2013 calendar year, she had reduced the frequency of her aggressive and tantrum behaviors. The IEP recommended that claimant continue to receive six hours of one-to-one support per school day and 15 hours of supervision each month to support her behavior program.

17. On February 18, 2014, the counselor coordinator consulted with the executive director and a program manager of the Service Agency about claimant’s request for financial assistance with the payment of the insurance co-payments for her ABA therapy sessions. The Service Agency determined that claimant’s need for behavioral intervention would be better met by training the parents to work with their daughter.

18. In a denial letter dated February 28, 2014, the counselor wrote to claimant's parents and advised them that the Service Agency was denying their request for financial assistance with the insurance co-payments for their daughter's insurance-funded ABA services that were being provided by ASI. The counselor indicated that the financial information showed that claimant's family met the income requirement for payment of the insurance co-payment by the Service Agency, but that Welfare and Institutions Code section 4659.1 required that "the services for which co-payment assistance [was] requested [must be] in line with what regional centers would provide and identify as being needed in a client's IFSP." (Exh. 3.) The counselor added that, while claimant had behavioral challenges and deficits meriting attention as well as unmet areas of need, the Service Agency had determined she was already receiving a substantial amount of behavioral support from the school district and that the service that claimant needed was parent training. The Service Agency offered to provide claimant with in-home intervention services through FBS that focused on training the parents to identify functions of their daughter's behavior and to respond appropriately when her behavioral therapist was not present. The counselor stated the FBS parent training program did not require a co-payment and would be fully paid for by the regional center

19. On March 3, 2014, claimant's mother filed a Fair Hearing Request for her daughter, disagreeing with the Service Agency's denial of assistance for paying the insurance co-payments and requesting that the Service Agency pay for the past insurance co-payments incurred since her daughter started ABA therapy with ASI.

20. In this appeal, claimant's mother has requested that the Service Agency pay the insurance co-payments owed to ASI for the direct intervention, supervision, and parent consultation sessions under her daughter's ABA therapy program from April 29, 2013, through March 31, 2014. The total amount of the

insurance co-payments owed to ASI is \$1,335. Claimant's parents did not pay the insurance co-payments when their daughter received individual sessions of ABA services due to their lack of financial resources.

21. On or about March 31, 2014, the health insurance for claimant's family was changed to Kaiser Permanente. Claimant's ABA services with ASI were stopped pending approval from Kaiser Permanente for continued coverage or provision of the services. ASI wrote to claimant's physician at Kaiser Permanente asking for a letter of agreement to allow ASI to continue providing ABA services to claimant.

22. It was not established that the Service Agency has held an IFSP meeting with claimant's parents to discuss their daughter's need for ABA services and their request for financial assistance with health insurance co-payments. It was not established whether Kaiser Permanente would require co-payments in the event that the health maintenance organization approved ABA services for claimant.

23. The parties stipulated that claimant's family met the annual gross income requirement for regional center assistance with the insurance co-payments under Welfare and Institutions Code section 4659.1, subdivision (a)(2).

* * * * *

Pursuant to the foregoing findings of fact, the Administrative Law Judge makes the following determination of issues:

LEGAL CONCLUSIONS

1. Grounds exist under the Lanterman Developmental Disabilities Services Act (Lanterman Act) to grant claimant's request for Service Agency assistance in paying the insurance co-payments for her ABA services, based on Findings 1 – 23 above.

2. Under the Lanterman Act, the Legislature has decreed that persons

with developmental disabilities have a right to treatment and rehabilitative services and supports in the least restrictive environment and provided in the natural community settings as well as the right to choose their own program planning and implementation. (Welf. & Inst. Code, § 4502.)¹

Services and supports for persons with developmental disabilities means specialized services and supports or special adaptations of generic services and supports directed toward the alleviation of a developmental disability or toward the social, personal, physical, or economic habilitation or rehabilitation of an individual with a developmental disability or toward the achievement and maintenance of independent, productive, normal lives. (§ 4512, subd. (b).) The determination of which services or supports are necessary for each consumer must be made through the individual program planning process and the determination shall be made on the basis of the needs and preferences of the consumer or, when appropriate, the consumer's family and shall include consideration of a range of service options proposed by the individual program plan participants; the effectiveness of each option in meeting the goals stated in the individual program plan, and the cost-effectiveness of each option. Services and supports listed in the individual program plan may include, in pertinent part, treatment, speech therapy, training, behavior training and behavior modification programs, and training for parents of children with developmental disabilities. (*Ibid.*)

The Legislature has further declared regional centers are to provide or secure family supports that, in part, respect and support the decision-making authority of the family, are flexible and creative in meeting the unique and individual needs of

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

the families as they evolve over time, and build on family strengths and natural supports. (§ 4685, subd. (b).) Services by regional centers must be provided in the most cost-effective and beneficial manner. (§§ 4685, subd. (c)(3), and 4848, subd. (a)(11)) and must be individually tailored to the consumer (§ 4648, subd. (a)(2)).

Further, section 4648, subdivision (a)(8), provides that regional center funds shall not be used to supplant the budget of any agency which has a legal responsibility to serve all members of the general public and is receiving funds to provide those services. Section 4659, subdivision (a)(1), directs regional centers to identify and pursue all possible sources of funding for consumers receiving regional center services.

Section 4646.4, subdivision (a), requires regional centers, when purchasing services and supports, to ensure conformance with purchase of service policies and to utilize generic services and supports when appropriate. Regional centers are required to take into account the consumer's need for extraordinary care, services, and supports and supervision.

3. Section 4659.1, subdivision (a), provides, in pertinent part, that, if a service or support provided pursuant to a consumer's individualized program plan under the Lanterman Act, is paid for, in whole or in part, by the health care service plan or health insurance policy of the consumer's parent, the regional center may, when necessary to ensure that the consumer receives the service or support, pay any applicable co-payment or co-insurance associated with the service or support for which the parent is responsible if three additional conditions are met. The three conditions are as follows:

- a. The consumer must be covered by his or her parent's health care service plan or health insurance policy;
- b. The family must have an annual gross income that does not exceed 400

percent of the federal poverty level; and

- c. There is no other third party having liability for the cost of this service or support as provided in section 4659, subdivision (a), and commencing with section 4659.10.

4. Discussion—In April 2013, claimant began receiving ABA services from the vendor ASI. The ABA services were authorized and funded by her family's health insurance company. There was a \$15 insurance co-payment for each session of ABA service. Due to the family's financial situation, the parents were not able to pay the insurance co-payments and they owe \$1,335 to ASI in unpaid insurance co-payments. For over one year, claimant's parents asked the Service Agency for help in paying the insurance co-payments.

Claimant meets the three conditions under section 4659.1, subdivision (a), to receive regional center financial assistance with the insurance co-payments for her ABA services. First, claimant is covered by her parents' health insurance policy; her father is or was a subscriber or member of the health insurance policy through his employment. Second, the parties stipulated that claimant's family has an annual gross income that does not exceed 400 percent of the federal poverty level. Third, no evidence was presented that another third party has liability for the cost of the ABA services.

Here, claimant's ABA services were not specifically provided pursuant to her IFSP as also required by section 4659.1, subdivision (a). ABA services and claimant's progress since starting ABA services were discussed in the IFSP meeting but the provision of ABA services or the family's request for assistance with the insurance co-payments was not described or agreed to by the Service Agency and the parents during the IFSP meeting as documented in the IFSP document. However, the Consumer Transaction or I.D. Notes (Exh. 11) clearly demonstrated that the issue of

ABA services and the family's request for financial assistance with the insurance co-payments were discussed with the counselor over the course of several months in 2013 and that the ABA services were deemed necessary and appropriate for claimant by the counselor and behaviorist.

The Service Agency has known since February 2013 that the family's health insurance company was going to provide ABA services and that the parents were requesting financial assistance with the insurance co-payments for the ABA services. ASI began providing the ABA services to claimant in April 2013. On more than one occasion, claimant's mother asked the counselor about the procedure for receiving financial assistance. The counselor explained the procedure and what documentation was needed for the family to receive financial assistance from the regional center. Claimant's mother provided the counselor with the necessary documentation and the counselor obtained claimant's progress report, goals for her ABA services, and her IEP. The counselor made a preliminary determination that claimant needed the ABA services and noted that claimant had made significant progress towards her behavioral goals. Following the IFSP meeting, on December 12, 2013, a behaviorist with the Service Agency agreed that the ABA services were appropriate for claimant and that she had made progress at school and at home. In other words, the Consumer Transaction notes supported the conclusion that claimant needs the ABA services. Moreover, the evidence showed that regional center support or help with the insurance co-payments was necessary to ensure that claimant receives the ABA services, for the services had to be reduced after the family told ASI that they could not afford to pay the insurance co-payments for more than two ABA sessions per week.

Based on the Consumer Transaction notes and other evidence in this matter, the family's request for financial assistance with the insurance co-payments should

have been documented from the September 27, 2013 IFSP meeting. The resultant IFSP document should have further indicated that ABA services were provided by the family's health insurance company, were necessary for claimant based on her progress, and that the family met the financial requirements for the Service Agency's assistance with the insurance co-payments. The IFSP document should have reflected that the plan for claimant was that she receive ABA services as funded by the family's health insurance company, and the plan for the Service Agency supports for claimant and her family was that the regional center pay the insurance co-payments due to the family's financial need.

Under the circumstances of this appeal, claimant met her burden of proof of showing that she should receive financial assistance from the Service Agency with the insurance co-payments for her ABA services under section 4659.1, subdivision (a).

* * * * *

Wherefore, the Administrative Law Judge makes the following Order:

ORDER

1. The Fair Hearing Request and appeal of claimant for regional center assistance with the insurance co-payments for claimant's ABA services are granted, based on Conclusions of Law 1 – 4 above.

2. The Service Agency shall forthwith pay the insurance co-payments owed to ASI for claimant's ABA intervention or therapy services, supervision, and parent consultation sessions since the start of the services, which amount is \$1,335. The Service Agency shall pay said amount directly to ASI.

3. No later than 30 days from the date of this Decision and Order, the Service Agency shall convene an IFSP meeting with claimant's parents and representative to discuss claimant's need for continued ABA services and the

family's need for continued assistance with the payment of the insurance co-payments, if any, for said service as funded by the family's health insurance company or health maintenance organization. The Service Agency shall memorialize the discussion and any decisions from the IFSP meeting in claimant's IFSP document.

Dated: April 30, 2014

Vincent Nafarrete
Administrative Law Judge
Office of Administrative Hearings

NOTICE

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