

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

OAH No. 2014030126

CLAIMANT

vs.

WESTSIDE REGIONAL CENTER,

Service Agency.

DECISION

This matter was heard by Julie Cabos-Owen, Administrative Law Judge with the Office of Administrative Hearings, on April 24, 2014, in Los Angeles, California. Claimant was present and represented herself; her mother was also present.¹ Westside Regional Center (Service Agency or WRC) was represented by its Fair Hearing Coordinator, Lisa Basiri.

Oral and documentary evidence was received, and argument was heard. The record was left open to allow the parties to file and serve simultaneous written closing arguments. Claimant timely filed her Closing Brief, which was marked as Claimant's Exhibit C11 and lodged. Service Agency timely filed its Closing Argument, which was marked as Service Agency Exhibit SA9 and lodged. The record was closed, and the matter was submitted for decision on May 8, 2014.

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¹ Claimant's and her mother's surnames are omitted throughout this Decision to protect their privacy.

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ISSUE

Should WRC be required to reimburse Claimant \$725 for funds garnished by a third party due to Claimant's non-payment for hospitalization?²

² Claimant asserted that the issue at fair hearing should include WRC's purported denial of "all services and supports" that she needed. However, this broad issue was not the subject of the Notice of Proposed Action. Additionally, this stated issue could not be addressed without specification of the "services and supports" sought and verification that the specific services were services provided by the Service Agency and had been requested and denied. After the hearing concluded and the Administrative Law Judge reviewed the documentary evidence, it became apparent that Claimant, by letter to the Service Agency, had requested that certain services be discussed at her January 2014 Individual Program Plan. These services may have been the "services and supports" to which she alluded in her statement of the additional issue(s) for hearing. However, it was still unclear which of these requested services were the "services and supports" Claimant claimed to be the subject of this fair hearing. Although the additional services and supports sought by Claimant are not at issue in this fair

FACTUAL FINDINGS

1(a). Claimant is 31 years old (born 11/18/83). She is a client of the Service Agency pursuant to her diagnosis of Asperger's Syndrome. She also has mental health diagnoses which include Borderline Personality Disorder, and she has struggled to secure successful mental health treatment. (Service Agency Exhibits SA6 and SA7.)

1(b). In a 2011 Individual Program Plan (IPP), Claimant was described as "a bright, articulate young woman," with "excellent self-advocacy skills and . . . the ability to understand any legal matter she is involved in." She is "very sophisticated in her use of the [I]nternet to conduct research on any subject of interest," and is "a very capable writer." She is able to care for all of her activities of daily living independently. (Service Agency Exhibit SA8.)

2(a). In December 2010, Claimant was released from Patton State Hospital, where she had been committed as a special condition of parole following her conviction for stalking in April 2007. After her release from Patton, Claimant received mental health treatment from the Parole Outpatient Clinic. In 2011, she was referred to the Department of Mental Health Services, but that agency declined to serve her because she was on parole. Consequently, WRC referred Claimant to Crisis Support to assist with daily psychiatric support when needed. However, at that point, Claimant refused to see the members for the Crisis Support team, stating that they wanted to hospitalize her. (Service Agency Exhibit SA8.)

hearing, the Service Agency's responses to her requests are set forth in this Decision in order to provide a complete portrayal of Claimant's asserted needs.

2(b). In 2011, Licensed Clinical Psychologist, Rita S. Eagle, Ph.D. conducted a consultation with Claimant on WRC's request in order to determine the most appropriate treatment for Claimant. Given the lack of records, particularly those from early childhood (including earlier hospitalizations and diagnostic assessments) and those from Patton, Dr. Eagle did not have a clear understanding of Claimant's diagnoses. Dr. Eagle noted that the most appropriate treatment "is best determined when there is diagnostic clarity." (Claimant Exhibit C6.) However, she also noted that treatment should begin as soon as possible. Dr. Eagle recommended: a medication review by a psychopharmacologist, with Claimant's understanding that while she was on parole "she cannot make use of psychiatric services for medication review by anyone other than the parole psychiatrist;" Dialectical Behavior Therapy (DBT) to address her Borderline Personality Disorder; and wrap around services "of the kind that mental health agencies can provide to help her access resources and assist her in interacting into society and taking care of her affairs." (Claimant Exhibit C6.) Dr. Eagle suggested Daniel's Place, which offered "individual consultation; counseling; assistance with housing, employment and negotiating the mental health system; case management; helping with income, school, medical appointments and work; personal coaching; psychiatric services; groups, and both scheduled and drop-in services." (Claimant Exhibit C6.)

2(c). Dr. Eagle emphasized that Claimant's earlier records "will ultimately be needed as part of a comprehensive psychological and diagnostic assessment." Dr. Eagle noted:

[A]t issue are the bases for [Claimant's] social impairment – is it a function of an [Autism Spectrum Disorder], or some other social disorder or mental

health issue – and the question of whether there is a psychotic process underlying her world view. These issues should be resolved . . . A thorough mental health evaluation, including a thorough history, and both autism spectrum testing and assessment of psychiatric illness (including perhaps projective tests) should be done, after [Claimant] has been supported by a renewed medication regime, DBT therapy and services providing assistance with social and adaptive functioning. (Claimant Exhibit C6.)

3(a). By 2012, Claimant was being seen on a weekly basis by the Crisis Support personnel.

3(b). Although she had been receiving Independent Living Services (ILS) with Independent Solutions, she eventually declined to participate because she felt that the services were not beneficial. (Service Agency Exhibit SA7.)

4. In February 2013, while having a weekly appointment with Crisis Support Team, the personnel believed that Claimant was becoming “escalated” and the Psychiatric Emergency Team (PET) was called. Claimant was taken to Los Angeles Metropolitan Hospital and placed on an involuntary hold from February 14 through 22, 2013, pursuant to Welfare and Institutions Code section 5150. (Service Agency Exhibits SA2 and SA3.)

5(a). At her 2013 Individual Program Plan (IPP) meeting in August 2013, Claimant’s 5150 hospitalization was not addressed.

5(b). In August 2013, Claimant was living with her mother in the family home but had indicated that she would like to gain independence and live on her own. However, she felt that she could not accomplish this until she found gainful

employment and other "support." Claimant noted that she had previously worked well with an ILS agency called New Directions in Living and had asked WRC to see if this vendor was available to provide ILS services for her again. WRC made a request to determine if New Directions in Living would consider a referral.

5(c). At the time of the 2013 IPP, Claimant was receiving Medi-care benefits but could not receive Medi-Cal benefits because her Social Security (SSA) payments were too high to qualify. Claimant was taking classes at Santa Monica College and wanted to obtain a degree in business/finance. (Service Agency Exhibit SA6.)

5(d). From December 2012 until November 2013, Claimant received \$1,175 per month in Social Security benefits (after a deduction of \$104.90 for monthly medical insurance premium). After December 2013, Claimant's monthly benefit was increased to \$1,299.20 (after the \$104.90 monthly premium deduction). (Claimant's Exhibit C5.)

6(a). At some point after her 5150 hospitalization, Claimant requested that WRC fund her portion of the payment for the hospitalization.

6(b). In September 2013, Claimant's counselor and her counselor's supervisor, Hillary Kessler, submitted a Purchase of Service (POS) Request, seeking to obtain WRC payment of \$1,225.27 for Claimant's portion of the hospitalization. The POS request stated:

While having a weekly appointment with Crisis Response Team, [Claimant] became escalated and the PET team was called. [Claimant] was taken to Los Angeles Metropolitan Hospital and held for 10 days. She states that she refused treatment but was seen by a forensic psychiatrist (against her wishes; she did

NOT cooperate); she was charged anyway. [Claimant] believes that her behavior did not warrant the call to the PET team and is asking that WRC pay her hospital bill. (Service Agency Exhibit SA3.)

7. On October 8, 2013, Ms. Kessler wrote to Claimant stating:

[I] wanted to get back to you about the hospital bills and your request that [WRC] pay your outstanding charges. I think we're getting closer (☺) but the Summary of Services notices that you provided only add up to your share being \$550.79 and the bill in question (from Los Angeles Metropolitan Medical Center) is for a total of \$1[,]184 plus the additional \$41.37 charged by Acute Care Physicians, resulting in a final amount due of \$1[,]225.37.

Do you have any additional Summaries of Services notices for the rest of the charges? I can't follow up with the hospital or submit for the full amount without that documentation. (Service Agency Exhibit SA3.)

- 8(a). In response to Ms. Kessler's letter, Claimant sent an undated letter stating:

In response to your letter regarding the Medicare documents, I could not find any additional ones other than the ones I sent you. I just received the two

enclosed documents from a collection agency and my bank. The collection agency is collecting \$725 out of my bank account even though it says Social Security funds are exempt from collection and I don't know what to do about this as this is going to make it nearly impossible to pay my expenses for this year. (Service Agency Exhibit SA3.)

8(b). The letter from Claimant's bank, Bank of America, was sent on October 8, 2013. Bank of America noted that it had received a State of California Franchise Tax Board order to debit Claimant's account \$625, and added a \$100 processing fee. The letter stated:

If you have any questions about the legal order, believe it should not apply to your account(s), or think the order contains an error, please contact the attaching party: COURT ORDERED DEBT COLLECTION at 916- [. . .] If you believe that the funds in your account are exempt from this legal order (e.g. social security) you should contact the attaching party with proof of the exemption. We are unable to return the funds to you unless we receive a release from that attaching party or a court order before the remit date.

If you have questions concerning your account, please contact our Customer Services Center at one of the numbers listed below. Should you need to forward any additional correspondence to us regarding this

matter, please direct it to the address noted above. . . .

(Service Agency Exhibit SA3.)

9. On October 22, 2013, in an effort to assist Claimant in her dispute with her bank about the attached funds, WRC drafted a letter on its letterhead for Claimant's signature, addressed to Bank of America regarding "Demand for immediate unfreezing of bank account funds." The letter explained that Claimant had a developmental disability and depends on Social Security Disabled Adult Child's (DAC) benefits to pay for her basic living expenses. The letter informed the bank that Claimant's account contains DAC benefits and that such benefits are exempt from attachment. The letter demanded that Claimant's bank account funds be "unfrozen" because she could not be denied access to the protected funds. (Service Agency Exhibit SA3.)

10(a). Despite WRC's assistance and Claimant's efforts, \$725 was garnished from her bank account.

10(b). Based on Medicare Summary Notices sent to Claimant, the \$725 appears to be part of Claimant's inpatient deductible. (Claimant's Exhibits C1 and C2.)

11. On January 14, 2014, Claimant requested an IPP meeting to discuss the following:

1. Mental Health

I am requesting individual psychotherapy, medication support and case management services to address my mental health issues of depression, social phobia, erotomania, alcohol abuse, interpersonal difficulties,

mood swings and personality disorder, as generic resources are not available to me.

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2. **Social Security/Financial**

I am in need of services and supports to assist me in protecting my social security funds from garnishment. My funds were recently garnished in the amount of \$725 for an unnecessary hospitalization initiated by regional center. I am requesting that regional center pay this expense. Additionally, I am anticipating another bank levy for a \$3,000 judgment. I am requesting that regional center assist me in taking necessary steps to protect my money such as access legal aid services and filling out the appropriate appeal forms.

3. **Medical Needs**

I am requesting to get services from the [A]chievable [C]linic as I am not able to secure a primary care physician due to my having a disability and not having Medi[-]cal. I am not happy with my current treatment from my Nephrologist as he is not prescribing me pain medication to alleviate my symptoms which are

affecting my quality of life and leading to other health problems for which I am receiving no medical treatment.

4. **Education**

I am requesting support to help me achieve my goal of transferring to National University to earn my degree. I will need help with the orientation process, meeting with the admission advisor, receiving disabled student services and completing and understanding various forms that need to be filled out.

5. **Reinstatement of ILS services**

I am requesting that ILS services be reinstated to assist me with some of these needs as I require a high level of assistance with accessing supports in the community and managing personal affairs due to my disability. (Service Agency Exhibit SA 5.)

12. WRC and Claimant agreed to hold an IPP meeting on January 28, 2014. On January 17, 2014, WRC sent Claimant a letter to provide some information prior to the meeting. The letter addressed Claimant's specific requests as follows:

Your first request relates to mental health services. . . .

In November 2013, with your permission, I spoke with

your psychiatrist Dr. Finch who works at the Edelman Westside Mental Health Center. She informed me that she is still available to provide you with medication management, but you have not taken advantage of her services lately. Therefore, you already have a generic resource available to provide medication management.

According to Dr. Finch, you are unable to obtain other services from Edelman Westside Mental Health Center because of the behavior that you have exhibited toward other staff members there who now refuse to work with you.

We suggest that you pursue needed mental health services from generic supports. [And WRC provided a list of potential generic supports for Claimant's consideration.]

You might also contact mental health providers to see if they accept Medicare as payment.

Your second request . . . is related to protection of your social security and other funds. . . .

As part of your request, you want the regional center to pay you back because your funds were garnished in the amount of \$725 for what you claim was "an unnecessary hospitalization initiated by regional

center.” We understand that you were hospitalized after a psychiatric emergency team determined that you required involuntary hospitalization pursuant to Welfare and Institutions Code section 5150. There is no provision under the Lanterman Act that supports your demand that WRC pay your hospital bill.

You also write that you expect a \$3000 judgment against you to turn into a bank levy against you. You want regional center to assist you with taking steps to protect your money, such as accessing legal aide services and filling out the appropriate appeal forms. Again, we believe that you are quite capable of explaining to a legal aid service or other attorney what your needs are and you do not need a regional center funded support to assist you with that. WRC is unable to assist you with drafting an appeal. There is no provision in the Lanterman Act that calls for the regional center to fund for legal services for you.

[WRC then listed potential generic resources for legal assistance for Claimant’s consideration.]

[¶] . . . [¶]

Your third request is to receive services from the Achievable Clinic. Please be advised that the Achievable Clinic is a separate non-profit corporation.

You can request medical services from this resource by calling 424-[. . .]. The accept Medicare and you need no referral from WRC.

If you require other medical treatment, you should go to a doctor that accepts Medicare. Possibly, your current physician with whom you are unhappy can give you some referrals.

Your fourth request is for assistance with transferring to National University. You seem very capable of doing this without regional center funded service. However, we can discuss at our upcoming meeting what it is you believe you need help with.

Your fifth request is for reinstatement of ILS services. Your current IPP includes ILS services and in fact, ILS services were provided to you but you did not utilize the service to attain goals and the vendor refused to continue to work with you. Other vendors are unwilling to work with you as well. . . . [W]e should discuss this further at our meeting.

This letter is not a Notice of Proposed action letter. We have an upcoming IPP meeting, and if we have a disagreement about any requests for regional center-funded services after that meeting, WRC will provide

you with a written Notice of Proposed Action. (Service Agency Exhibit SA5.)

13. On January 28, 2014, WRC representative, Claimant and her mother met to discuss issues listed in Claimant's January 14, 2014 letter.³

14(a). On February 3, 2014, WRC sent Claimant a letter addressing the issues discussed at the IPP meeting. The letter stated, in part:

[Y]ou told us . . . that you need psychological counseling and psychiatric services to be funded by WRC because there are no generic resources available to you. At the meeting, you reported that [one of the three generic resources suggested by WRC] would no longer provide you with services. With your permission, prior to the IPP meeting, I spoke with Dr. Finch, your psychiatrist at Edelman Westside Mental Health Center, who confirmed that she will provide medication management services. However, she also reported that no psychologist or other clinician at that center will work with you. It is our understanding that

³ WRC is not the agency responsible for providing Claimant psychological counseling/ psychiatric services or medical services (Issues 1 and 3 from Claimant's January 14, 2014 letter). Consequently, provision of these services is not at issue in the current proceeding. Nevertheless, the issues were discussed at the January 28, 2014 IPP meeting.

you have exhibited behaviors that cause the providers to be afraid of you.

It is unclear whether you have contacted the other generic resource referrals . . . for mental health treatment and psychological counseling.

You also told us that you continue to need ILS. Your August 2013 IPP includes an agreement for WRC to fund an ILS assessment to see if you could benefit from ILS to assist you with your goal of living independently. . . . The ILS vendor retained by WRC started to provide services to you, but soon terminated the services due to your unwillingness to work on your stated IPP goals.

[Y]ou said that you would like ILS to assist you with transferring to National University, to help you to make psychological and psychiatric appointments, and to access legal aid. You explained that you need legal assistance because you have a money judgment against you. It appears that the money judgment arose out of a restraining order case where you had allegedly been stalking and harassing a regional center vendor's employee. The court ordered that you pay the employee's attorney's fees in the amount of \$3,000.

It appears to us that you are a very capable person and are able to make appointments and explain what your legal and mental health needs are to potential services providers, without the assistance of ILS support. . . . It also appears that the ILS services that were provided (before terminated by the vendor) did not assist you with attaining your goal of becoming more independent. About 7 ILS vendors that have worked with you over the years terminated services due to your mental health challenges that interfered with the provision of services and/or because you were uncooperative. It is therefore apparent that there are other barriers, concerns, or problems – other than lack of skill – that are impeding your ability to live more independently.

At this point, WRC believes that the program planning team should agree to have a thorough assessment conducted by a psychiatrist and probably also by a psychologist. Such assessments would assist the program planning team in determining what services you need to assist you in attaining your goals. . . .

Once I have identified qualified individuals to conduct your assessments, I will send you an IPP addendum to sign. . . . (Service Agency Exhibit SA5.)

14(b). Since ILS services are still part of Claimant's IPP, and WRC is in the process of attempting to schedule updated assessments to assist with program planning, ILS is not at issue in the current proceeding.

15. On February 3, 2014, the Service Agency notified Claimant that it was denying her request to reimburse the \$725 garnished from her bank account. The stated reasons for its proposed action were:

We understand that you were hospitalized after a psychiatric emergency team determined that you required involuntary hospitalization pursuant to Welfare and Institutions Code section 5150, i.e. an involuntary hospitalization for an individual, who, because of a mental disorder, is a danger to him/herself or other or gravely disabled. You stayed in the hospital for several days. Medicare paid for the majority of the costs incurred for that stay, but there was a balance due.

At your request, I wrote letters on behalf of WRC to the hospital, the bill collection agency, and the bank, urging them not to execute the levy on your account due to the fact that you receive SSA benefits as a dependent disabled adult child of your deceased father and that those benefits are protected. You subsequently told me that they took \$725 out of your account in spite of my efforts.

You want WRC to pay you the money that you were forced to pay to the hospital for a service that you say that you did not need. You blame WRC for your emergency hospitalization. As I've told you, WRC did not contact the Psychiatric Emergency Team or have anything to do with your hospitalization.

There is no provision under the Lanterman Act that supports your demand that WRC pay you the \$725. Regional Centers are permitted to fund services and supports contained in the IPP and provided by a regional center vendor. The vendor must receive prior authorization from the regional center in order to be paid for the services. There is nothing contained in your IPP that an agreement that WRC will pay you money under the present circumstance, or any other circumstances for that matter. (Service Agency Exhibit SA2.)

16. On March 3, 2014, Claimant filed a Fair Hearing Request, stating "I do not agree with WRC decision. I need all services and supports, (both funded and non-funded) that I requested at my IPP." (Service Agency Exhibit SA2.)

17. At the fair hearing and in its Closing Argument, WRC asserted that Medicare is the generic resource responsible to pay for Claimant's medical care and WRC is not responsible for reimbursing Claimant for the fees taken from her bank account as a result of legal actions by another agency.

18. At the fair hearing and in her Closing Brief, Claimant reiterated her assertion that the hospitalization was an unnecessary expense approved by WRC and that, pursuant to Welfare and Institutions Code section 4659.1, WRC was responsible for reimbursing her \$725 which was taken from her account by a third party.

LEGAL CONCLUSIONS

1. Cause exists to deny Claimant's appeal of the Service Agency's denial of reimbursement of \$725 for funds garnished by a third party due to Claimant's non-payment for hospitalization. (Factual Findings 1 through 18.)

2. Where a change in services is sought, the party seeking the change has the burden of proving that a change in services is necessary. (See, Evid. Code, §§ 115 and 500.) In seeking reimbursement of \$725 for funds garnished by a third party due to Claimant's non-payment for hospitalization, Claimant bears the burden of proving by a preponderance of the evidence that the reimbursement/payment by WRC is required. Claimant has not met her burden of proof.

3. Welfare and Institutions Code section 4659.1, provides in pertinent part:

(b) If a service or support provided to a consumer 18 years of age or older, pursuant to his or her individual program plan, is paid for in whole or in part by the consumer's health care service plan or health insurance policy, the regional center may, when necessary to ensure that the consumer receives the service or support, pay any applicable copayment or coinsurance associated with the service or support for which the consumer is responsible if both of the following conditions are met:

- (1) The consumer has an annual gross income that does not exceed 400 percent of the federal poverty level.
- (2) There is no other third party having liability for the cost of the service or support, as provided in subdivision (a) of Section 4659 and Article 2.6 (commencing with Section 4659.10).
- (c) Notwithstanding paragraph (2) of subdivision (a) or paragraph (1) of subdivision (b), a regional center may pay a copayment or coinsurance associated with the health care service plan or health insurance policy for a service or support provided pursuant to a consumer's individual program plan or individualized family service plan if the family's or consumer's income exceeds 400 percent of the federal poverty level, the service or support is necessary to successfully maintain the child at home or the adult consumer in the least-restrictive setting, and the parents or consumer demonstrate one or more of the following:
 - (1) The existence of an extraordinary event that impacts the ability of the parent, guardian, or caregiver to meet the care and supervision needs of the child or impacts the ability of the parent, guardian, or caregiver, or adult consumer with a health care service plan or health insurance policy, to pay the copayment or coinsurance.
 - (2) The existence of catastrophic loss that temporarily limits the ability to pay of the parent, guardian, or caregiver, or adult consumer with a health care service plan or health insurance policy and creates a direct economic impact on the family or adult consumer. For purposes of this paragraph, catastrophic loss may include, but is not limited to, natural disasters and accidents involving major injuries to an immediate family member.

- (3) Significant unreimbursed medical costs associated with the care of the consumer or another child who is also a regional center consumer.

[¶] . . . [¶]

- (g) Regional centers shall not pay health care service plan or health insurance policy deductibles.

4. Although Claimant asserts that WRC is responsible for reimbursement of the \$725 garnished from her bank account for her unpaid portion of a hospital bill, the authority she cites (Welfare and Institutions Code section 4659.1) does not support her assertion. Section 4659.1 authorizes a regional center to pay a copayment or coinsurance under certain conditions to ensure that a consumer receives a service or support which is part of the consumer's IPP. Claimant's hospitalization was not part of her IPP, nor did she establish that it was related to her qualifying diagnosis of Asperger's Syndrome rather than one or more of her mental health diagnoses. WRC was not the agency which determined the need for Claimant's hospitalization; the PET authorized the 5150 hospitalization. Moreover, Claimant did not establish that the conditions under Section 4659.1, subdivision (b), are met or that one of the exceptions under subdivision (c) applies. Finally, Section 4659.1, subdivision (g), prohibits regional centers from paying health insurance deductibles, which is what the \$725 was in this case.

5. Given the foregoing, the Service Agency's denial of reimbursement of \$725 for funds garnished by a third party was appropriate.

ORDER

Westside Regional Center's denial of reimbursement of \$725 for funds garnished by a third party due to Claimant's non-payment for hospitalization is upheld. Claimant's appeal is denied.

DATED: May 9, 2014

JULIE CABOS-OWEN
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.