

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of Claimant's Request for
Reimbursement of Dental Services:

OAH Case No: 2016040470

CLAIMANT,

and

SAN DIEGO REGIONAL CENTER,

Service Agency.

DECISION

Mary Agnes Matyszewski, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in San Diego, California, on June 7, and July 25, 2016.

Claimant's parents represented claimant, who did not attend either day of hearing.

Neil Kramer, Fair Hearings Coordinator, represented San Diego Regional Center (SDRC).

The matter was submitted on July 25, 2016.

ISSUE

Should SDRC fund claimant's request for reimbursement of dental services provided to him on February 5, 2015, and October 5, 2015, totaling \$1,935.80?¹

FACTUAL FINDINGS

JURISDICTIONAL MATTERS

1. On March 23, 2016, claimant requested a fair hearing and was thereafter given notice of this hearing. During the first day of hearing, SDRC asserted that it had never issued a Notice of Proposed Action as it was still obtaining information to assess claimant's request for reimbursement of dental services. Claimant agreed to execute authorizations allowing SDRC to obtain his dental records. SDRC obtained those records and denied claimant's request for reimbursement, and a second day of hearing ensued.

EVIDENCE PRESENTED AT HEARING

2. Claimant is currently a 15-year-old male, with autism, behavior and seizure disorders. He is not verbal according to his mother's testimony, although his Individual Program Plan (IPP) documented some limited communication skills. Claimant's IPP documented his many needs, behaviors, goals and the services provided to him, including those funded by SDRC. Claimant previously wore braces and now has a permanent retainer.

¹ At hearing claimant narrowed his claim to these two dates and this amount because he received \$239 reimbursement from his dental insurance provider.

3. Billing records from claimant's dentist documented the February 5, 2015, and October 5, 2015, anesthesia costs totaling \$2,175. Claimant's parents testified that insurance had paid \$239.20.

4. A letter from Kaiser Permanente instructed the parents to seek treatment with a dentist who could treat their child with anesthesia. A dental anesthesia qualification review list completed by that treating dentist on September 3, 2015, indicated that claimant was not receiving benefits through Medi-Cal; that the dental treatment provided usually did not require general anesthesia in healthy, nondisabled individuals; but that the claimant "does not allow any dental treatment including routine exam due to medical history, specifically his low functioning autism."

5. Email correspondence between claimant's mother and SDRC, beginning October 13, 2015, advised that claimant wished to submit his anesthesia bills for prior procedures. Internal SDRC emails documented that the agency was unaware that anesthesia services would be provided and questioned why the requested service had not gone through the planning team process/prior approval process. SDRC directed claimant to various purchase of service requirements, with follow-up emails from claimant's mother indicating she reviewed those, but they did not stand for the proposition SDRC was asserting. In the emails, claimant's mother explained that while her son was under anesthesia for orthodontic work, his dentist performed routine dental care. One email from SDRC documented that when the caseworker went out on medical leave for a few months, the paperwork regarding the dental authorization was not processed. An email from claimant's mother outlined the history of claimant's increasing aggression, leading to a dental examination that discovered his dental issues, resulting in the removal of his molars under anesthesia, coupled with the routine dental work.

6. SDRC case notes documented claimant's increasing aggression, the family's request for services, and SDRC requests for documentation to justify the dental care performed.

7. The SDRC Purchase of Service Standards (POS) outlined the standards to be used for the purchase of basic services, as well as all other types of services, including dental services. The standards contain many requirements including that the planning team determine that the service will result in a "more independent, productive, normal life" for the consumer; that all possible resources be identified and pursued; and that the service be the most cost effective means available to meet the consumer's need. The dental services portion of the POS documented that services are generally met through generic resources; that the parents are primarily responsible for providing services; that minors are generally eligible for Medi-Cal; that regional centers may purchase only those services related to the developmental disability; and that regional centers are prohibited from purchasing any service that would otherwise be available from a generic resource unless there is a written denial from the generic resource and the family's appeal to the provider of the generic resource is determined to have no merit.

8. At the second day of hearing, SDRC introduced internal, intranet, documents regarding SDRC dental funding procedures. Of concern, although this document clearly lays out the process to be followed, it was never provided to the claimant's family, who repeatedly, as noted in their emails, sought guidance as to the proper procedure for obtaining treatment or being reimbursed. It was unclear why the family was never given the information contained in this document. Providing it to them could have prevented them from incurring costs that cannot be reimbursed or, at the very least, put them on notice that if they did not follow these procedures they ran the risk they would not be reimbursed. Having that information, claimant's parents could have made an informed decision before going forward with their son's dental treatment.

9. SDRC Program Manager, Tamara Crittenden, testified about why the request was denied. She explained that the reasons for the denial were due to claimant's failure to obtain pre-approved authorization from the planning team, despite having been advised in the past to do so; the lack of any indication for the routine dental service; and the available generic resources. Ms. Crittenden testified about the prior history with this family. In the past, SDRC agreed to reimburse the parents for prior procedures that had not been pre-approved, but she testified that SDRC had explained to the parents that those reimbursements were for the purpose of settling those prior claims, and would not be an ongoing policy in the future. Moreover, Ms. Crittenden explained that regional centers are no longer permitted to reimburse parents; they must pay the providers directly. Thus, SDRC is prohibited from reimbursing claimant's parents now despite having done so in the past. Ms. Crittenden also testified about SDRC's repeated and unsuccessful attempts to obtain documentation from claimant's dental providers explaining the need for the services rendered. The providers merely sent repeated, duplicate, copies of the billing statements without explanation of the procedures performed or justification for them, and a review of the bills indicated nothing more than routine dental procedures which would not be subject to regional center reimbursement. After the first day of hearing, SDRC reviewed the records received and reaffirmed its position that the procedures were routine, that they had not been authorized prior to being provided, and continued to maintain that the request for reimbursement should be denied.

10. Claimant's mother testified about her repeated requests for services, introducing an October 14, 2014, email she sent to SDRC advising of the need for the dental treatment and requesting reimbursement for anesthesia. In that email, claimant's mother specifically asked SDRC to approve the service or issue a denial letter so she could file an appeal. SDRC never responded to that email. Claimant's mother explained

that her son, who is nonverbal, was exhibiting increased aggression which, after examination, was attributed to his incoming wisdom teeth and molars. Claimant's mother testified about SDRC's prior reimbursement for anesthesia services; her son's many needs that require he undergo dental work with anesthesia; the scheduling involved in ensuring that both his orthodontist and the dentist are available to perform treatment at the same time; and the desire that the treatment be performed simultaneously so that her son only undergoes anesthesia one time. She also explained the wonderful relationship her son shares with his dentist and orthodontist, which is why she wishes the relationship to continue.

LEGAL CONCLUSIONS

BURDEN OF PROOF

1. In a proceeding to determine whether or not an individual is eligible for services, the burden of proof is on the claimant to establish that the services are necessary to meet the consumer's needs. The standard is a preponderance of the evidence. (Evid. Code, § 115.)

STATUTORY AUTHORITY

2. The Lanterman Act is set forth at Welfare and Institutions Code section 4500 et seq.

3. Welfare and Institutions Code section 4501 acknowledges that California has accepted responsibility for persons with developmental disabilities and that an "array of services and supports should be established which is sufficiently complete to

meet the needs and choices of each person with developmental disabilities, regardless of age or degree of disability, and at each stage of life and to support their integration into the mainstream life of the community." One goal is "to prevent the dislocation of persons with developmental disabilities from their home communities."

4. Welfare and Institutions Code section 4512, subdivision (b), provides that services and supports are "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." Determining which "services and supports are necessary for each consumer shall be made through the individual program plan process."

5. Welfare and Institutions Code section 4646 provides that the Legislature intended that the [IPP] and "provision of services and supports by the regional center system is centered on the individual and the family . . . and takes into account the needs and preferences of the individual and the family, where appropriate, as well as promoting community integration, independent, productive, and normal lives, and stable and healthy environments." The Legislature further intended that "the provision of services to consumers and their families be effective in meeting the goals stated in the [IPP], reflect the preferences and choices of the consumer, and reflect the cost-effective use of public resources."

6. Welfare and Institutions Code section 4646.4 requires regional centers to consider generic resources and the family's responsibility for providing services and supports when considering the purchase of regional center supports and services for its consumers. The section also requires the regional center to conform to its purchase of service policies.

7. Welfare and Institutions Code section 4646.5 sets forth the process for the IPP, including creating a schedule of the type and amount of the services and supports to be purchased or obtained from generic resources.

8. Welfare and Institutions Code section 4648 requires regional centers to ensure that services and supports assist consumers in achieving the greatest self-sufficiency possible; secure services and supports that meet the needs of the consumer, as determined by the IPP; and be fiscally responsible.

9. Welfare and Institutions Code section 4659, subdivision (c), prohibits regional centers from purchasing services available from generic resources.

EVALUATION

10. The Lanterman Act and the applicable regulations set forth criteria that a claimant must meet in order to qualify for regional center services. Claimant had the burden of demonstrating his need for the requested services, retroactively funding his dental services. Claimant did not meet that burden.

The evidence established that claimant was previously advised that if he wanted SDRC to fund his dental/anesthesia services, SDRC authorization was required prior to those services being rendered. While claimant's parents' position that they did not want their son to undergo a second anesthesia treatment was understandable, they were requesting SDRC to fund the service, and as such, had to comply with SDRC requirements. Their frustration with the delay that such authorization may take, although reasonable, does not allow them to circumvent the regional center procedures. As they failed to follow the proper procedures, their request for reimbursement for services previously performed is denied.

ORDER

Claimant's appeal from San Diego Regional Center's determination that it will not fund his February 5, 2015, and his October 5, 2015, dental/anesthesia services is denied. SDRC shall not fund claimant's request for reimbursement of those services.

DATED: August 4, 2016

_____/s/_____

MARY AGNES MATYSZEWSKI

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 ninety days.