BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: CLAIMANT, v. INLAND REGIONAL CENTER, Service Agency.	OAH No. 2017110117

DECISION

Adam L. Berg, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in San Bernardino, California, on November 27, 2017.

Stephanie Zermeño, Consumer Services Representative, Fair Hearings and Legal Affairs, represented the Inland Regional Center (IRC).

Claimant's father represented claimant.

The matter was submitted on November 27, 2017.

ISSUE

Should IRC reimburse claimant $210 for dental services?

FACTUAL FINDINGS

1. Claimant is a seven-year-old male who receives regional center services based on a diagnosis of autism. A May 24, 2017, Individualized Program Plan (IPP) prepared by IRC indicated that claimant went to the dentist on September 26, 2016, but the dentist was only able to perform a visual exam because claimant was very

uncomfortable. Claimant's Consumer Services Coordinator, Alisa Payne, recommended a dentist in the area who worked with special needs patients.

2. On September 26, 2017, claimant submitted to IRC a request for reimbursement for an annual dental cleaning in the amount of $210. Claimant attached an invoice from Daniel Smith, DMD, dated July 28, 2017. Claimant submitted the claim to his insurer, but because the dentist was out-of-network, the maximum the insurer would pay was $141, and claimant has a $150 deductible. Thus, claimant was responsible for the full $210 charge.

3. On October 5, 2017, IRC sent claimant a notice of proposed action denying his request for reimbursement of dental services. As the reasons for denying the request, IRC stated that it was forbidden from authorizing services retroactively except in an emergency, and claimant did not use generic resources –his private insurance or Denti-Cal – but instead used an out-of-network provider.

4. Claimant timely appealed; this hearing ensued.

5. Ms. Payne and Amy Clark, a program manager at IRC, testified that IRC is generally prohibited from funding retroactive requests for services. Additionally, consumers are required to utilize generic resources first, and claimant could have received a dental cleaning from an in-network provider under his private insurance. Claimant would then have to submit any remaining balance to Denti-Cal for reimbursement. Thus, claimant did not fully utilize an available generic resource.

6. Claimant's father testified that claimant treated with this particular dentist because of his specialization with special needs children. He submitted the claim to his insurance, but the amount it would pay was less than the annual deductible. Claimant's father was under the belief that he could submit requests for deductible reimbursement to IRC and was unaware that he had to seek prior approval. Indeed, instructions in IRC's claim form for reimbursement indicate that claimant is supposed to submit a copy of

the Explanation of Benefits from the insurance company, which would only be issued once the service had been performed.

LEGAL CONCLUSIONS

BURDEN OF PROOF

1. In a proceeding to determine whether an individual is eligible for services, the burden of proof is on the claimant to establish that by a preponderance of the evidence that a regional center should fund the requested service. (Evid. Code, §§ 115, 500; *McCoy v. Bd. of Retirement* (1986) 183 Cal.App.3d 1044, 1051-1052.)

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THE LANTERMAN ACT

2. Welfare and Institutions Code section 4501 outlines California's responsibility for persons with developmental disabilities and the State's obligation to provide services and supports to them.

3. Welfare and Institutions Code section 4512, subdivision (b) defines "services and supports" as:

> [S]pecialized 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. The determination of which services and supports are necessary for each consumer shall be made through the individual program plan process. 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 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 . . . . Nothing in this subdivision is intended to expand or authorize a new or different service or support for any consumer unless that service or support is contained in his or her individual program plan.

4. Welfare and Institutions Code section 4646 requires that the IPP and the provision of the services and supports be centered on the individual with developmental disabilities and take into account the needs and preferences of the individual and the family. Further, the provisions of services must be effective in meeting the IPP goals, reflect the preferences and choices of the consumer, and reflect the cost-effective use of public resources.

5. Welfare and Institutions Code section 4646.4 requires the regional centers to consider generic resources and the family's responsibility for providing services and supports when considering the purchase of supports and services.

6. Welfare and Institutions Code section 4659 requires regional centers to identify and pursue all possible sources of funding for consumers receiving regional center services and prohibits regional centers from purchasing any service that would otherwise be available from Medi-Cal, Medicare, the Civilian Health and Medical Program for Uniform Services, In-Home Support Services, California Children's Services, private insurance, or a health care service plan.

7. A regional center may pay a copayment, coinsurance, or deductible 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 certain conditions are met. (Welf. & Inst. Code, § 4659.1.)

8. California Code of Regulations, title 17, section 50612, provides:

> (a) A purchase of service authorization shall be obtained from the regional center for all services purchased out of center funds. . . .
>
> (b) The authorization shall be in advance of the provision of service except as follows:
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> (1) A retroactive authorization shall be allowed for emergency services if services are rendered by a vendor service provider. . . .

EVALUATION

9. The Lanterman Act and applicable regulations set forth criteria that a claimant must meet in order to qualify for regional center services and that the regional center must follow when securing those services. Claimant had the burden of demonstrating his need for the requested services and for reimbursement of services. Claimant could have received the requested dental services from an in-network provider at no cost. The Lanterman Act prohibits IRC from funding any service that would otherwise be available from Medi-Cal or private insurance. (Welf. & Inst. Code, § 4659.) If there was no in-network dentist who could provide the level of care for a special-needs

patient, claimant would have to have requested authorization from his insurer to treat with an out-of-network dentist, and if that was denied, utilize the state appeals process. Furthermore, as claimant did not seek authorization from IRC prior to seeing Dr. Smith, IRC is prohibited by regulation from reimbursing claimant unless it was an emergency, which this was not. (Cal. Code Regs., tit. 17, § 50612.)

Although there was apparently some miscommunication between Ms. Payne and IRC regarding coverage of dental services, IRC is prohibited by law from reimbursing claimant for services that were not authorized in advance or that would have been covered by a generic resource.

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ORDER

Claimant's appeal is denied.

DATED: December 8, 2017

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ADAM L. BERG

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.