

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

vs.

SAN ANDREAS REGIONAL CENTER,

Service Agency.

OAH No. 2018100153

DECISION

Administrative Law Judge Holly M. Baldwin, State of California, Office of Administrative Hearings, heard this matter on October 17, 2018, in San Jose, California.

James Elliott, Special Services Manager, represented San Andreas Regional Center.

Claimant's mother represented claimant. Claimant's father was also present.

The matter was submitted for decision on October 17, 2018.

ISSUE

Is San Andreas Regional Center required to fund dental x-rays and an evaluation to be performed prior to putting claimant under general anesthesia for sedation dentistry work, or alternatively, to fund dental work by a private dentist?

FACTUAL FINDINGS

BACKGROUND

1. Claimant is a 34-year-old consumer of the San Andreas Regional Center

(SARC). He is eligible for regional center services due to moderate intellectual disability, trisomy, developmental delay, and contractures of the left hand. Claimant lives with his parents and brothers. He is conserved by his parents and two older brothers.

2. Claimant's current Individual Program Plan (IPP) is dated February 28, 2018. The IPP notes that claimant requires assistance to brush his teeth, and also notes that his mother has scheduled him an appointment to see his dentist, Nidhi D. Sikka, D.D.S. The IPP's goals include an objective that claimant will maintain his emotional and physical health, with a "to do" item that the family will schedule his appointments.

3. An IPP Progress Report for claimant, dated September 28, 2018, notes that claimant's dental health has changed since the IPP.

4. Claimant has been treated since childhood by Dr. Sikka, who is not a regional center vendor. Claimant's parents pay privately for regular cleanings every three months by Dr. Sikka.

5. Marylinn Reinhardt, D.D.S., is the only dentist who is vendorized to provide dentistry under general anesthesia for SARC's consumers.¹ SARC contracts with Dr. Reinhardt to pay a flat fee for her time and all treatment services performed for a consumer under sedation during a single appointment. This flat rate includes anesthesia and x-rays taken while the patient is under anesthesia within the sterile environment of a surgical suite.

6. Dr. Reinhardt previously treated claimant on September 1, 2016. On that date, claimant was placed under general anesthesia, x-rays were taken and a visual

¹ Dr. Reinhardt did not testify at hearing, and a copy of her vendor contract was not in evidence. The service agency's witnesses testified regarding Dr. Reinhardt's contract, her usual practices, and her communications with SARC about this case.

examination performed, and Dr. Reinhardt performed extensive dental work, including nine restorations, one extraction, and a root canal. Claimant was under anesthesia for approximately 3.5 hours. Dr. Reinhardt consulted with claimant's parents prior to performing the procedures, while claimant was under sedation.

CLAIMANT'S REQUEST FOR DENTAL SERVICES AND DISCUSSIONS WITH SARC

7. Sam Saetang is claimant's service coordinator at SARC. In July 2018, claimant's mother contacted Saetang to request that claimant be provided with dental services, which she understood he was due for, two years after his last dental work in 2016. The parties agree that claimant's dental work needs to be provided under general anesthesia in a hospital setting.

8. Saetang sent claimant's mother a form entitled "Consent to Surgery or Special Procedure" at Santa Clara Valley Medical Center (SCVMC), for procedures to be performed by "Dr. Marylinn Reinhardt, DDS and/or Steve Kerba, DDS."² The consent form includes a statement that the doctor has "provided the patient or patient's representative with an explanation of the procedure, its possible complications, risks and benefits, as well as the alternate courses of treatment or non-treatment and the risks and benefits involved in each." Claimant's mother objects to signing this form, because the above statement is not true, and she has not been provided with an explanation of the work to be performed.

The consent form's section describing the procedures to be performed is very broad, stating: "Left and/or Right, Dental Examination, Radiographs, Prophylaxis and Topical Fluoride, Scaling, Root Planing, Medicated Irrigation, Periodontal Surgery, Endodontic Treatment, Biopsy, Restorations, Dental Crowns, Extractions, add and or

² It was not established who Dr. Kerba is, or why his name is on the consent form.

remove dental prostheses and Photos, and such additional services they may deem reasonable and necessary, including, but not limited to, the administration and maintenance of the anesthesia and the performance of services involving pathology and radiology.”

9. After reading the consent form, claimant’s mother requested that x-rays be taken and a treatment plan provided before the dental work was performed. Saetang explained that SARC’s contract with Dr. Reinhardt provides for all services to be performed in one appointment while the patient is under general anesthesia.

10. A meeting was held on August 8, 2018, with claimant’s parents, Saetang, F. Scott Blow, and Deborah Narcisso, R.D.H.A.P., M.P.H. Blow is an Adult Services District Manager at SARC who oversees a team of service coordinators, including Saetang. Narcisso is a Dental Services Specialist at SARC, and acts as dental coordinator for consumers who require specialized dental care apart from generic resources. Claimant’s mother reiterated the request that Dr. Reinhardt take x-rays and provide an evaluation prior to the anesthesia. She explained that claimant is cooperative at his regular dental cleanings, and that he is capable of cooperating to have x-rays taken without sedation. Claimant’s parents offered to pay for the x-rays.

11. For informational purposes, claimant’s mother provided SARC with x-rays that were taken at Dr. Sikka’s office on October 5, 2017, and Dr. Sikka’s treatment plan dated July 2, 2018. That treatment plan called for six crowns, several fillings, and one extraction.

12. Narcisso consulted with Dr. Reinhardt regarding the request for a separate examination and assessment prior to the sedation dentistry. On August 10, 2018, Narcisso provided claimant’s mother (via email) with a summary of that consultation.

Dr. Reinhardt stated that SARC funds a “public health model” for sedation dentistry, in which all services are performed in one appointment, rather than a “private

practice model.” Dr. Reinhardt is concerned that even if claimant cooperated to have x-rays taken, changes in the treatment plan may be needed once treatment begins under sedation. If Dr. Reinhardt does not provide the appropriate level of care because the parents only agreed to a specific treatment plan in advance, then she is concerned about committing malpractice. Dr. Reinhardt also noted that if she left the sterile surgical field to consult with the parents and obtain consent for specific procedures, it would mean that claimant was under sedation longer than necessary, increasing the risk to him and potentially limiting the amount of work that can be completed in the available timespan.

Dr. Reinhardt also noted that when she treated claimant in 2016, she observed rampant caries (tooth decay) and very poor oral hygiene. Dr. Reinhardt believes that, knowing claimant’s difficulty with daily oral care, it would be malpractice for her to attempt the treatment plan proposed by Dr. Sikka, which included crowns. Without appropriate self-care, there is an increased risk of recurrent decay around the crown margins, putting claimant at a greater risk for tooth loss.

Dr. Reinhardt recommended that the family could consider “other public health options” at the dental schools at University of the Pacific or University of California, San Francisco, or self-funded treatment with Dr. Sikka, if they are dissatisfied with her approach.

13. In response to Narcisso’s email, claimant’s mother expressed her concern that the “public model” used by SARC’s vendor does not provide for two sessions, which would be necessary if it was determined that installing crowns was the appropriate dental treatment. She also objected to the notion that claimant’s problems with daily tooth brushing should dictate whether a particular treatment is appropriate. She requested another meeting.

14. Another meeting was held on September 11, 2018, with claimant’s parents,

Saetang, Blow, and Narcisso. Claimant again requested x-rays prior to anesthesia, so that the parents have some idea of what dental work is needed, and so that the dentist knows how much time to schedule. The parents again offered to pay for the x-rays.

15. On September 13, 2018, SARC issued a notice of proposed action denying claimant's request. The proposed action was: "SARC will not override the clinical judgment of the dental care provider." The stated reason for the action was: "San Andreas Regional Center does not have the statutory power to override the provider's clinical judgment and defers to their clinical expertise."

16. On September 19, 2018, claimant and his mother submitted a fair hearing request. The stated reasons for requesting a fair hearing were: "[Claimant] was denied a dental evaluation prior to being put under general anesthesia. Was told that the public option dental care used by San Andreas Regional Center does not allow first evaluating by taking x rays before putting [claimant] under general anesthesia. Was told that evaluation and procedure to fix teeth are done after he is put under general anesthesia."

The description of what is needed to resolve the complaint was: "I am requesting that x rays be done on [claimant] before putting him under general anesthesia and that an evaluation be given to parents as to which teeth need to be fixed and what procedures are necessary. Perform the appropriate procedure or pay Dr. Sikka to perform the procedure."

THE PARTIES' CONTENTIONS

17. Claimant's mother explained at hearing that she has a duty as claimant's conservator to look after his best interests. She is concerned that extracting teeth, rather than installing crowns, may not be in his best interest. She understands that once the dentist has claimant under general anesthesia, the scope of necessary work may turn out to be different than what was originally anticipated. But, she wants an explanation of what procedures the dentist anticipates performing on her son. Claimant's mother bears

no ill will toward Dr. Reinhardt, and simply wants as much information as possible about the dental work to be performed.

18. SARC contends that claimant's request has been appropriately handled according to their policies, and that the dispute is between claimant's family and the vendored dentist. It is not Dr. Reinhardt's practice to provide a separate visit in advance of the sedation dentistry appointment. She requires that the consent form be signed without alterations or conditions, and there is no way that SARC can compel Dr. Reinhardt to treat claimant in a way other than in her clinical judgment.

19. In support of its position, SARC offered the testimony of Narcisso, who has been a Dental Services Specialist at SARC for 12 years. Narcisso has been a registered dental hygienist since 1980, and a registered dental hygienist in alternative practice (R.D.A.H.P.) since 2005, with a focus on special needs patients. She also has a master's degree in public health, with a focus on health education, and has taught college-level dental students, including radiography. In addition to consulting with Dr. Reinhardt about this case, Narcisso reviewed Dr. Sikka's x-rays and treatment plan, and Dr. Reinhardt's notes from the 2016 treatment.

20. Claimant is capable of cooperating to have x-rays taken without sedation. However, it was not established that such x-rays are sufficiently diagnostic for the purposes of the dental work to be performed. In Narcisso's opinion, the x-rays taken for claimant by Dr. Sikka on October 5, 2017 are not diagnostic x-rays. The x-rays include two bite wing images and one set of periapical images, consistent with recall x-rays, and do not show all tooth surfaces. A full diagnostic series of x-rays would include 18 films, periapical images for all teeth, and four bite wing images. In addition, Narcisso noted that in this set of x-rays the mouth is open too wide, with claimant not biting down all the way, such that the bone level is not sufficiently visible. There is also a "cone cut," meaning part of the image is missing due to the x-ray beam being blocked by improper

placement of equipment or patient movement.

Even if the regional center paid for another dentist to take x-rays for claimant, Dr. Reinhardt cannot rely on another dentist's x-rays in order to formulate her treatment plan.

21. Dr. Reinhardt's vendor contract does not provide for her to take x-rays or consult with the patient's family prior to the anesthesia, or to have a separate appointment in advance of the sedation dentistry. Dr. Reinhardt does not believe that two appointments are medically necessary. Dr. Reinhardt has declined to attempt to take x-rays prior to sedation, even if the family paid.

It was not established whether Dr. Reinhardt would be willing to provide a separate consultation with claimant's parents to discuss the range of possible treatment options, if she were separately compensated for that consultation.

22. Dr. Reinhardt requires that the consent form be signed without conditions or limitations, and in the absence of that consent, she declines to treat claimant.

23. As noted above, Dr. Reinhardt is SARC's only vendor for general anesthesia sedation dentistry. SARC has tried to find other qualified dentists to accept the authorized reimbursement rate, and to find operating room space, without success. Dr. Reinhardt has treated thousands of patients for SARC over a period of 11 years.

24. Narcisso contends that informed consent does not require the patient or family knowing in advance what procedures will be performed. In a private practice setting, patients need to be aware of what items they will be billed for, and the dentist often will provide several treatment alternatives, some of which may be covered by insurance and others not. In the regional center's public health model, a flat fee is paid for all services that the dentist deems medically necessary. Narcisso explained that the goals of the public health treatment model are to eliminate infection and decay, and stabilize the patient, rather than providing full mouth restoration or cosmetic dentistry.

SARC contends that such a model meets the mandates of the Lanterman Act, and is the least restrictive, fiscally responsible method of providing services.

25. Narcisso provided a document entitled, "Dental Treatment for Regional Center Consumers: Considerations for Decision Making, February 2009," which she obtained at a recent conference of regional center dental coordinators, and which was prepared by the Southern California Regional Centers Clinical Directors/Dental Coordinator Group. The document provides "general principles for regional centers to consider in evaluating requests for dental funding based on current statutory requirements," and states, "[a]ll decisions in response to requests for regional center funding must be individually based on the unique needs of the consumer and meet the statutory requirements."

It was not established whether any specific points listed in this document resulted in SARC's decision in claimant's case. The document does state, among other things, that proposed dental procedures should "be evaluated in the context of the consumer's current oral health and prognosis for future oral health," to ensure effective and cost-effective service delivery under the Lanterman Act. It also includes medical risk versus benefit for each procedure as part of that consideration. The document discusses special considerations for people who require sedation or general anesthesia in order to receive dental treatment, including the note that such treatment is expensive, complicated, and has increased risk, "[t]herefore it is especially important that all the risks and benefits and alternatives be weighed when considering treatment performed in this manner."

LEGAL CONCLUSIONS

STATUTORY AND REGULATORY FRAMEWORK

1. In the Lanterman Developmental Disabilities Services Act (Lanterman Act), the State of California has accepted responsibility for persons with developmental

disabilities. (Welf. & Inst. Code, § 4500 et seq.³) The Lanterman Act mandates that “[a]n array of services and supports should be established ... to meet the needs and choices of each person with developmental disabilities ... and to support their integration into the mainstream life of the community.” (§ 4501.) The purpose of the scheme is twofold: (1) to prevent or minimize the institutionalization of persons with developmental disabilities and their dislocation from family and community, and (2) to enable persons with developmental disabilities to approximate the pattern of everyday living of nondisabled persons of the same age and to lead more independent and productive lives. (§§ 4501, 4685; *Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 388.)

2. The Department of Developmental Services (Department) is the state agency charged with implementing the Lanterman Act. It contracts with regional centers that are charged with the responsibility of providing developmentally disabled individuals with access to services and supports best suited for them. (§ 4620, subd. (a).)

To determine how a consumer is to be served, regional centers conduct a planning process that results in the development of an IPP. (§ 4646.) The IPP is developed by an interdisciplinary team with participation by the consumer and/or his or her representative. Among other things, the IPP must set forth goals and objectives for the consumer, contain provision for the acquisition of services, and reflect the consumer’s desires and preferences. (§§ 4646, 4646.5.) It is the intent of the Legislature that the services be effective in meeting the goals of the IPP, reflect the consumer’s preferences and choices, and reflect the cost-effective use of public resources. (§ 4646, subd. (a).)

³ Statutory references are to the Welfare and Institutions Code, unless otherwise specified.

3. A regional center may purchase services and supports for consumers that are directed toward the alleviation of a developmental disability, or directed toward the social, personal, physical, or economical habilitation or rehabilitation of an individual with a developmental disability, or toward the achievement and maintenance of independent, productive, and normal lives. (§ 4512, subd. (b).) The determination of what services and supports the consumer needs is to be made in the IPP process. (*Ibid*; see also § 4647, subd. (a) [service coordination includes securing services and supports specified in the IPP through purchasing or obtaining from generic resources].)

4. Under SARC's Health Care Policy⁴ purchase-of-service standard, the regional center "will purchase only those services that are generally recognized by clinical professionals as safe, effective, and which are intended to maximize the individual's potential." The Health Care Policy also provides that SARC's executive director and the director's designees have the discretion to authorize purchases of service that are exceptions to the purchase-of-service policies and standards.

5. A regional center "may, pursuant to vendorization or a contract, purchase services or supports for a consumer from any individual ... which the regional center and [consumer or consumer's family] determines will best accomplish ... any part of the consumer's program plan." (§ 4648, subd. (a)(3).) Vendorization is the "process for identification, selection, and utilization of service vendors ... based on the qualifications and other requirements necessary in order to provide the service." (§ 4648, subd. (a)(3)(A).) A regional center may reimburse an individual for providing services to a

⁴ SARC does not have a separate written purchase-of-service policy for dental care.

consumer if the individual has completed the vendorization procedures, or if the services were provided pursuant to an emergency vendorization. (§ 4648, subd. (a)(3)(B).)

6. The governing regulations impose numerous, specific obligations upon all vendored individuals, including the obligation to accept payment for authorized services at the rate established by the regional center. (Cal. Code Regs., tit. 17, § 54326.) The maximum rate of reimbursement is set in the Schedule of Maximum Allowances (SMA) for dentistry. (Cal. Code Regs., tit. 17, § 57332, subd. (b)(6).)

7. Vendors must agree to accept the established rate from the Department as payment in full for all authorized services provided to the consumer, and may not bill the consumer for any supplemental amount regardless of the cost of providing the authorized service. (Cal. Code Regs., tit. 17, § 54326, subd. (a)(12).) The regulation goes on to state that this does *not* preclude the vendor from billing the consumer for services provided that were authorized by the consumer or family, and not authorized by the regional center. (*Ibid.*)

DETERMINATION OF ISSUES

8. It has not been shown that diagnostic x-rays can be taken for claimant without general anesthesia. (Finding 20.) And, Dr. Reinhardt has declined to attempt taking x-rays prior to sedation. (Finding 21.) Dr. Reinhardt will not rely on another dentist's x-rays in formulating a treatment plan. (Finding 20.) Claimant has not shown that the vendored dentist's plan to take x-rays under general anesthesia violates the standard of care for the practice of dentistry in California. Given these facts, and the lack of legal authority for SARC to override a dentist's clinical judgment, it is determined that SARC properly denied claimant's request to have x-rays taken by Dr. Reinhardt or another dentist prior to general anesthesia.

9. The request for an evaluation is a separate consideration. The term "evaluation" in this context is used to encompass both the dentist's assessment of what

procedures are needed (informed in part by x-rays), and the provision of that assessment to claimant's conservators. The latter point implicates the issue of informed consent. The narrow issue raised in this appeal is whether claimant is entitled to a pre-anesthesia evaluation of needed dental procedures.

The evidence established that a final treatment plan cannot be formulated until the dentist has taken diagnostic x-rays and conducted a visual examination. Claimant acknowledges that the full scope of necessary work may not be revealed until claimant is under general anesthesia. (Finding 17.) Given that a final treatment plan for claimant cannot be confirmed prior to the administration of general anesthesia, it is determined that SARC properly denied claimant's request to provide his conservators with an evaluation prior to anesthesia.

10. In addition to seeking pre-anesthesia x-rays and an evaluation, claimant's fair hearing request asks that Dr. Reinhardt "[p]erform the appropriate procedure" or that the regional center "pay Dr. Sikka to perform the procedure." Dr. Sikka is not a vendored dentist with SARC (Finding 4), and for that reason he is not an authorized provider of dental services under the Lanterman Act. (§ 4648, subd. (a)(3).) Accordingly, SARC properly denied the request to pay Dr. Sikka for performing claimant's dental work.

11. Claimant's conservators do not want to sign the very broadly written consent form provided to them prior to treatment. (Finding 8.) They understand that if they do not sign the form, Dr. Reinhardt will not perform the treatment. (Finding 22.) However, the language of the consent form is not at issue in this appeal. Further, it has not been established by competent expert evidence that the use of this consent form by Dr. Reinhardt in her practice violates the standard of care for dentistry in California. Nevertheless, it must be assumed that if Dr. Reinhardt performs dental procedures on claimant, her practice will conform to the standard of care regarding informed consent

from claimant's conservators. SARC has not shown by competent expert evidence that the standard of care regarding informed consent in dentistry differs according to whether the dentist is paid from public health funds or private funds.

None of the above findings and conclusions would prevent the dentist from providing a pre-anesthesia consultation to discuss with claimant's conservators the range of possible treatment options, based on currently available information, with the understanding that the final scope of treatment must be determined under anesthesia.⁵ Dr. Reinhardt's contract does not include such a separate consultation, and it has not been shown whether she would provide one if she were paid for it. But, that question is beyond the scope of this appeal.

ORDER

Claimant's appeal is denied.

DATED: _____

HOLLY M. BALDWIN

Administrative Law Judge

Office of Administrative Hearings

⁵ It is noted that in 2016, Dr. Reinhardt discussed procedures with the parents while claimant was under anesthesia (Finding 6), but her current process does not provide for that.

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. (Welf. & Inst. Code, § 4712.5, subd. (a).)