

**BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA**

In the Matter of:

CLAIMANT,

vs.

WESTSIDE REGIONAL CENTER,

Service Agency.

OAH No. 2019120863

DECISION

Administrative Law Judge (ALJ) Chantal M. Sampogna, Office of Administrative Hearings, State of California, heard this matter on February 12, 2020, in Culver City, California.

Candace J. Hein, Fair Hearing Specialist, represented Westside Regional Center (WRC or Service Agency).

Mother¹ and father appeared on behalf of claimant, who was not present.

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on February 12, 2020.

On February 25, 2020, the ALJ reopened the record and directed Service Agency to submit claimant's Individualized Program Plan (IPP) and a statement addressing the vendorization status of Dream Catcher Los Angeles by March 3, 2020. The record remained open until March 10, 2020, for parents to respond with documents and written statement¹, and until March 17, 2020, for Service Agency to submit any objections to parents' submission. Service Agency timely submitted the IPP and statement of Ms. Hein. Parents did not submit a response. On March 17, 2020, the record was closed and the matter was submitted for decision.

ISSUES

1. Whether Service Agency must reimburse claimant for five sessions of Horseback Riding Therapy (HRT).
2. Whether Service Agency must fund six months of weekly Horseback Riding Therapy (HRT) sessions for claimant.

¹ Titles are used to protect claimant and her family's privacy.

EVIDENCE RELIED UPON

Documents: Service Agency's exhibits 1 through 11; claimant's exhibits A and B.

Testimony: mother; father.

Jurisdictional Matters

1. Claimant is a nine-year-old girl who resides with her parents and two minor sisters. Claimant is eligible for services under the Lanterman Developmental Disabilities Services Act (Lanterman Act) (Welf. & Inst. Code, § 4500 et seq.)² based on a diagnosis of Autism Spectrum Disorder (ASD). (§ 4512, subd. (a).) She has been a Service Agency consumer for approximately seven months.

2. In a Notice of Proposed Action dated November 26, 2019, Service Agency denied claimant's request for Service Agency to reimburse for and fund claimant's HRT.

3. Mother filed a Fair Hearing Request on December 18, 2019.

Claimant's Behaviors and Service Needs

4. Throughout claimant's life, she has consistently demonstrated challenges with sensory processing, impulse control, appropriate communication skills, emotional regulation, and following directions. Claimant's school district found her eligible for

² Statutory references are to the Welfare and Institutions Code, unless otherwise specified.

special education services when she was in first grade, during the 2015 – 2016 academic year, under the category of Autism.

5. Based on the parents' request for regional services for claimant, during May and June 2019, Diedre Cook, Psy.D., under the supervision of Gabrielle du Verglas, Ph.D., conducted a psychological evaluation of claimant, to assess whether claimant was eligible for services under the Lanterman Act. In September 2019, Dr. Cook diagnosed claimant with ASD, and determined that claimant requires substantial support in social communication and interaction, and demonstrates repetitive patterns of behavior.³

6. During the psychological evaluation, Dr. Cook observed the following behaviors: claimant does not initiate social interaction and has difficulty with reciprocal conversation, she has fleeting eye contact, and her speech is characterized by a loud volume and high pitch, even when she is not yelling. In addition, claimant demonstrated a persistent negative and verbally aggressive disposition, continually uttered insulting statements, the quality of her social responses were restricted to negativity and verbal aggression, and were inappropriate in the context. "Despite [claimant's] average cognitive abilities, her symptoms of ASD are significantly inhibiting her pragmatic/social communication, executive functioning (planning,

³ During the evaluation, Dr. Cook administered the Wechsler Intelligence Scale for Children – Fifth Edition and claimant obtained a Full Scale Index Quotient of 118, indicating global cognitive abilities in the high average range, and ruling out eligibility under the category of Intellectual Disability. Claimant is in the fifth grade and performs well academically.

organizing etc.), social interaction with peers, and ability to functioning [*sic*] in school due to behavioral difficulties." (Ex. 4, p. 13.) Dr. Cook recommended claimant receive Applied Behavior Analysis (ABA) to address claimant's emotion dysregulation and other behaviors that impair her social functioning.

7. The following are examples of claimant's behaviors which Dr. Cook observed and which, based on claimant's IPP and parents' credible testimony, are representative of her daily behavior.

A. On the first assessment day, claimant displayed intense tantrums. When father attempted to take claimant's phone from claimant so Dr. Cook could commence the evaluation, claimant screamed "no. Give it back. I hate you" to father, kicked and hit him, kicked the door against him, ran into the lobby and screamed, and returned to the examiner's office and repeated this behavior. (Ex. 4, p. 4.)

B. On the second assessment day, claimant's behavior was less disruptive, but she grabbed the examiner's cellular phone and turned off the timer, snatched the stimulus book from the table and refused to return it, and made comments like "of course I know that. I'm not stupid like you" to Dr. Cook. (Ex. 4, p. 5.) When Dr. Cook attempted to administer an academic measure, claimant refused to participate and said "no, you do it. Don't you know how to spell?" Claimant remained defiant and did not complete the academic measure.

C. On the third assessment day, Dr. Cook administered the Autism Diagnostic Observation Schedule, Second Edition (ADOS-2). Claimant demonstrated defiant, insulting, and verbally aggressive behavior. Claimant "arranged her fingers as if holding a gun and said to the examiner, 'I hope you get shot by a sniper. It only takes one shot.'" (Ex. 4, pp. 5-6.) At the end of the examination, Dr. Cook attempted to

open the door for claimant and claimant hit her on the arm and said "I'll do it stupid." (Ex. 4, p. 6.) On their way out, claimant said "I want to snipe you both" to mother and examiner. (*Id.*)

Claimant's IPP Outcome Goals and Services

8. On October 28, 2019, claimant, parents, and service coordinator met and finalized claimant's IPP. During the meeting and discussions about claimant's behaviors and interest, parents informed service coordinator about how much claimant enjoys horseback riding, and claimant informed service coordinator that horseback riding calms her. Considering claimant's behaviors and service needs, service coordinator included in the IPP that she would submit a funding request for therapeutic horseback riding, with vrending through claimant and parents for purchase reimbursement. Claimant's IPP outcomes and services are as follows:

A. Outcome 1: claimant will continue to live in her family home; parents will access generic resources; and Service Agency will provide parents information on respite.

B. Outcome 2: claimant will receive a free and appropriate public education; parents will attend IEP meetings; and Service Agency will submit a referral to education support services.

C. Outcome 3: claimant will learn how to better control her emotions, she will become happier and have a more positive self-image, and she will make friends; parents will continue to provide claimant with healthy social-emotional experiences, and will access ABA for claimant via private insurance; Service Agency will fund five sessions per month of psychotherapy with Nora Baladerian, Ph.D., from January 1 through April 30, 2020, to be reauthorized if appropriate; and service

coordinator will provide information on social skills programs and will make a formal request for therapeutic horseback riding. Though the IPP was signed on October 28, 2019, Service Agency did not authorize psychotherapy until February 2020. Though the IPP calls for Service Agency to make a formal request for HRT, and though Service Agency can vendor with claimant for purchase reimbursement for payment of HRT⁴, Service Agency did not make the funding request and instead issued the NOPA.

D. Outcome 4: claimant will remain in good overall health; parents will continue to schedule and attend all regular and necessary medical and dental appointments; and Service Agency provided information to parents about how to access Medi-Cal and parents will inform service coordinator if they would like to request a referral.

Effectiveness of Non-Horseback Riding Therapy Services

9. Before claimant was a regional center consumer, parents tried multiple service options to assist claimant. In 2015, parents attended approximately six parenting classes, applied the strategies taught, but were not successful in modifying claimant's behaviors. Claimant attended Occupational Therapy (OT) in Orange County after school, once per week, from April through October 2017. However, in October 2017, claimant was expelled from her school due to her behaviors, and her new school schedule precluded a weekly trip to Orange County. Parents observed the OT helped

⁴ Dream Catcher of Los Angeles is not a Service Agency vendor and is not a vendor of another regional center.

claimant adjust to her sensory overload, but it did not help claimant modify her violent and verbal outbursts.

10. Claimant began attending a new school in November 2017. Though claimant's Individualized Education Program provides that she receives OT funded by her school district, she has only received one OT session. That session was not successful and included claimant throwing objects, and stomping on the occupational therapist's foot and threatening him. Most recently, and prior to becoming eligible for Lanterman Act services, from May 2018 through February 2019, claimant attended therapy. However, parents ceased this service when, after nine months, they observed no change in claimant's behaviors but experienced claimant's tantrums before and during her therapy sessions. On February 5, 2020, Service Agency authorized individual therapy for claimant with Dr. Baladerian. Claimant has attended two psychotherapy sessions, but parents have not observed any changes to claimant's behaviors since claimant began therapy.

11. Parents understand that the psychological evaluation recommends ABA, but parents do not believe claimant can participate in ABA at this time. Claimant is highly aware of how her behaviors are not typical, and frequently makes statements, as noted in the IPP, such as "I don't know why I am alive," and she often calls herself a bad person. Claimant resists attending ABA and comments on how it shows that she is not as good as her older sister. Claimant similarly resists school services because being pulled out from class also highlights her need for services.

Effectiveness of Horseback Riding Therapy

12. In response to questions Dr. Cook asked during the assessment sessions, parents informed Dr. Cook of activities claimant enjoyed, including horseback riding.

Dr. Cook informed parents of HRT as a possible regional center service. Parents researched HRT, and found Dream Catcher of Los Angeles, a HRT certified program which provides, among other services, HRT to children with ASD. By January 2020, Service Agency had not followed through with its commitment in claimant's IPP to make a formal request for HRT. During January 2020, parents, without informing Service Agency, and on their own initiative and at their own expense, had claimant attend five 30-minute HRT sessions, at a cost of \$50 per session. Claimant was the only client during the sessions, but multiple adults worked with her. Parents have observed these sessions and testified that when working with claimant the staff use strategies such as prompting, time delay, redirection, and social skills training to help claimant build rapport with, care for, and ride the horses.

13. Since claimant's participation in HRT, parents have experienced marked changes in claimant's behavior, specifically with decreased irritability and physical outbursts, and improved social skills and communication. In addition, when claimant is about to become stressed or violent, parents can remind claimant of her work with the horses and claimant calms down. Further, claimant attends HRT willingly and parents have heard claimant comment on how HRT calms her and that she is proud of her participation. Claimant is proud of her HRT and the skills she has learned there, both as they relate to her work with horses and how it has changed her ability to regulate her emotions.

14. Parents provided two examples supporting their determination that HRT is a primary means for improving claimant's social communication and interaction and ameliorating her repetitive patterns of physical and verbal aggression. First, when mother recently drove claimant to get food after a HRT session, the food was not prepared as claimant had ordered. On this occasion, claimant clenched her body, took

a breath, and then commented that it would be okay and she would eat the taco. Mother has experienced numerous similar occasions when circumstances did not meet claimant's expectations and claimant became verbally and physically aggressive, including throwing unwanted food in the car. The second example occurred recently when mother and claimant were getting ready to leave for school and claimant could not find a binder. Such an experience would normally result in claimant screaming and saying mean things to mother. However, when mother found the binder under a sweater, claimant shrugged her shoulders and commented on how silly it was that they could not find it.

15. Parents' observations of claimant's changed behaviors are consistent with the findings in an article addressing the long-term effect of HRT that parents reviewed when researching the effectiveness of HRT. (Gabriels, Pan, Guerin, Dechant, Mesibov. Long-Term Effect of Therapeutic Horseback Riding in Youth With Autism Spectrum Disorder: A Randomized Trial, *Frontiers in Veterinary Science* (2018) doi.org/10.3389/fvets.2018.00156.) The article reported on a study which assessed whether there were lasting benefits from HRT. The initial study demonstrated that for children between ages six and 16 years old, participating in 10-weeks of HRT resulted in significant improvements in irritability and social skills. Assessing a subset of these participants six months after conclusion of the study demonstrated that the initial improvement in irritability and social skills maintained after six-months. The results suggest that HRT may be an effective intervention to enhance social and verbal core symptoms of ASD and to reduce irritability behaviors.

16. Parents are requesting reimbursement for five sessions of HRT that they have already paid for, and six months of weekly HRT going forward, because they believe HRT has built and will continue to build claimant's confidence, decrease her

irritability and physical and verbal outbursts, and improve her social skills, behavioral changes which are foundational to claimant participating in and benefiting from other services, her education, and relationships. Parents request for six additional months of weekly HRT was an estimate of what they believed would achieve long term changes for claimant, but their request for six months of HRT was not otherwise supported by the evidence.

LEGAL CONCLUSIONS

Jurisdiction

1. The Lanterman Act governs this case. An administrative fair hearing to determine the rights and obligations of the parties is available under the Lanterman Act. (§§ 4700-4716.) Claimant requested a fair hearing to appeal a denial of her request to have Service Agency reimburse for and fund claimant's HRT. Jurisdiction was established. (Factual Findings 1-3.)

Burden and Standard of Proof

2. The party asserting a claim generally has the burden of proof in administrative proceedings. (See, e.g., *Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 789, fn. 9.) In this case, claimant bears the burden of proving, by a preponderance of the evidence, that claimant required and continues to require the requested service, and that reimbursement is warranted. (Evid. Code, §§ 115, 500.)

Regional Center Responsibilities

3. The state is responsible to provide services and supports for developmentally disabled individuals and their families. (§ 4501.) Regional centers are

“charged with providing developmentally disabled persons with ‘access to the facilities and services best suited to them throughout their lifetime’ and with determining “the manner in which those services are to be rendered.” (*Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 389, hereafter *ARC*, quoting from § 4620.)

4. A regional center must provide specialized services and supports toward the achievement and maintenance of the consumer’s independent, productive, and normal life that allows the consumer to “approximate the pattern of everyday living available to people without disabilities of the same age.” (§ 4501.)

5. Regional centers are responsible for conducting a planning process that results in an IPP, which must set forth goals and objectives for the consumer. (§§ 4512, subd. (b), 4646.5, subd. (a).)

6. To achieve the stated objectives of a consumer's IPP, the regional center must secure the consumer with needed services and supports which assist the consumer in achieving the greatest self-sufficiency possible, and with exercising personal choices which allow the consumer to interact with persons without disabilities in positive, meaningful ways. (§ 4648, subd. (a)(1).)

7. Though regional centers have wide discretion in how to implement the IPP, “they have no discretion in determining whether to implement: they must do so.” (*ARC*, 38 Cal.3d at p. 390, citing § 4648, subd. (a).)

Service Requirements

8. The services to be provided to any consumer must be individually suited to meet the unique needs of the individual client in question, and within the bounds of

the law each consumer's particular needs must be met. (See, e.g., §§ 4500.5, subd. (d), 4501, 4502, 4512, subd. (b), 4640.7, subd. (a), 4646, subds. (a) & (b), 4648, subd. (a)(1) & (a)(2).) The Lanterman Act assigns a priority to services that will maximize the consumer's participation in the community. (§ 4646.5, subd. (a)(2).)

9. Section 4512 provides the following:

A. 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 consumer's achievement and maintenance of an independent, productive, and normal life. (§ 4512, subd. (b).)

B. The IPP team determines a consumer's necessary services and supports on the bases of the consumer's needs and preferences, and must consider a range of service options proposed by IPP participants, the effectiveness of each option in meeting the IPP goals, and the cost-effectiveness of each option. (§ 4512, subd. (b).)

C. Services and supports may include training, education, recreation, and social skills training. (§ 4512, subd. (b).)

10. Service coordination includes those activities necessary to implement an IPP, including securing, through purchasing or by obtaining from generic agencies or other resources, services and supports specified in the consumer's IPP. (§ 4647.)

11. A service or support provided by an agency or individual may not be continued unless the consumer, or conservator, is satisfied and the regional center and the consumer, or conservator, agree that planned services and supports have been

provided, and reasonable progress toward objectives have been made. (§ 4648, subd. (a)(7).)

Consideration of Costs

12. Although regional centers are mandated to provide a wide range of services to implement the IPP, they must do so in a cost-effective manner, based on the needs and preferences of the consumer, or where appropriate, the consumer's family. (§§ 4512, subd. (b), 4640.7, subd. (b), 4646, subd. (a).)

13. If a needed service or support cannot be obtained from another source, a regional center must fund it. (*ARC, supra*, 38 Cal.3d at p. 390.) Generic resources shall be utilized first. A regional center is the provider of last resort.

Service Agency's Discretion to Fund HRT

14. Service Agency argued it was prohibited from funding HRT because it was a nonmedical therapy (citing section 4648.5) and because it was not established as an evidence-based ABA service (citing section 4686.2).

15. A regional center may not purchase social recreation activities or nonmedical therapies, including, but not limited to, specialized recreation. (§ 4648.5, subd. (a)(2) & (4).) An exemption may be granted on an individual basis in extraordinary circumstances "when the regional center determines that the service is a primary or critical means for ameliorating the physical, cognitive, or psychosocial effects of the consumer's developmental disability" (§ 4648.5, subd. (c).)

16. Section 4648, subdivision (a)(3)(B) provides the following:

A regional center may reimburse an individual or agency for services or supports provided to a regional center consumer if the individual or agency has a rate of payment for vendored or contracted services established by the department, pursuant to this division, and is providing services pursuant to an emergency vendorization or has completed the vendorization procedures or has entered into a contract with the regional center and continues to comply with the vendorization or contracting requirements. The director shall adopt regulations governing the vendorization process to be utilized by the department, regional centers, vendors, and the individual or agency requesting vendorization.

17. Emergency Services are those services which must be provided or purchased by a regional center to protect a consumer from immediate danger to her physical or mental health or safety. (Cal. Code Regs., tit. 17, § 50602, subd. (g).) A retroactive authorization must be allowed for emergency services if services are rendered by a vendored service provider. (Cal. Code Regs., tit. 17, § 50612, subd. (b)(1).)

18. The provisions of section 4648, subdivision (a)(3)(B), which allow for reimbursement and retroactive authorization are limited and do not apply to the facts of this case. Neither Dream Catcher nor parents were providing services pursuant to an emergency vendorization at the time claimant received HRT in January 2020, nor were claimant's January 2020 HRT sessions emergency services. Cause does not exist to require WRC to reimburse claimant's parents for five sessions of HRT which parents

incurred in January 2020, prior to the effective date of this decision. (Factual Findings 8, 12-16.)

19. Claimant established by a preponderance of the evidence that HRT assists claimant with achieving her IPP outcome goal number three. HRT has assisted claimant with controlling her emotions, becoming happier, and improving her self-image. Service Agency has not identified or offered claimant any IPP service which has achieved this affect. Though HRT is a nonmedical therapy, Service Agency may purchase HRT for claimant because it is a primary and critical means for ameliorating the psychosocial effects of claimant's developmental disability, meeting the exception provided in section 4648.5, subdivision (c). (Factual Findings 4-16.)

20. Section 4686.2, subdivision (b), prohibits Service Agency from purchasing ABA services or intensive behavioral intervention services unless the service reflects evidence based practices, promotes social behaviors, and ameliorates behaviors that interfere with learning and social interactions. Service Agency argued that HRT is not established as an evidenced based practice and is therefore not eligible for funding as an ABA service. (§ 4686.2, subd. (d)(1).)

21. For the purpose of section 4686.2, ABA means "the design, implementation, and evaluation of systematic instructional and environmental modifications to promote positive social behaviors and reduce or ameliorate behaviors which interfere with learning and social interaction." (§ 4686.2, subds. (b), (d).) The evidence did not establish that HRT was, or was attempting to be, an ABA service. As such, section 4686.2 is not applicable to this matter. (Factual Findings 4-16.)

Analysis

22. Service Agency must provide claimant services towards the achievement and maintenance of claimant's independent, productive, and normal life, that are individually suited to meet claimant's unique needs. Other than two therapy sessions in February 2020, Service Agency has not provided services to claimant since she became a consumer in September 2019. Further, Service Agency has not met claimant's unique need for specialized services aimed at improving claimant's ability to control her emotions, becoming happier, and have a more positive self-image. (Factual Findings 4-16.)

23. The evidence established that HRT, a nonmedical therapy, meets the extraordinary circumstances exception provided for in section 4648.5, subdivision (c). Though parents requested six months of HRT, parents did not have a basis for the length of time requested. The article presented by parents demonstrated that 10 weeks of HRT resulted in immediate and long-term benefit to children with ASD. Extraordinary circumstances exist warranting Service Agency's funding of 10 HRT sessions, a service individually suited to meet claimant's unique needs and within the bounds of the Lanterman Act. (Factual Findings 4-16.) The funding of HRT is consistent with the Lanterman Act's requirement that regional centers provide a wide range of services in a cost-effective manner.

24. If parents so request, WRC shall convene another IPP meeting to determine whether funding for additional HRT sessions is warranted in order to meet claimant's IPP goals.

ORDER

Claimant's appeal is granted in part and denied in part.

1. Claimant's request that Service Agency reimburse claimant for five sessions of HRT, \$50 per session, for a total reimbursement of \$250, in which claimant participated in January 2020, is denied.

2. Claimant's request for Service Agency to fund six additional months of HRT is denied.

3. Claimant's IPP outcome number 3 is amended to include 10 sessions of HRT for claimant, \$50 per session, for a total expenditure of \$500.

4. Service Agency is ordered to vendor with claimant for purchase reimbursement for payment of HRT.

5. If parents so request, WRC shall convene another IPP meeting to determine whether funding for additional HRT sessions is warranted in order to meet claimant's IPP goals.

DATE:

CHANTAL M. SAMPOGNA
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.