

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

In the Matter of:

CLAIMANT,

vs.

SAN GABRIEL/POMONA REGIONAL CENTER,

Service Agency.

OAH No. 2020060073

DECISION

Thomas Y. Lucero, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter by videoconference on July 7, 2020.

Daniel Ibarra, Fair Hearing Representative, represented the San Gabriel/Pomona Regional Center. Claimant was represented by mother (whose name like that of claimant is omitted to protect privacy and confidentiality).

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on July 7, 2020.

ISSUE

Whether the service agency should fund co-payments that claimant is obligated to make under her medical insurance for additional speech therapy three times per week.

FACTUAL FINDINGS

Jurisdictional Matters

1. On May 13, 2020, the service agency sent claimant a cover letter and Notice of Proposed Action, collectively Exhibit 1. The service agency proposed to “[d]eny [claimant’s] requests to fund for co-payments for speech therapy service through Mi Sueño of \$72 copay/deductible each time, 3 times a week.”

2. Claimant’s Fair Hearing Request, Exhibit 2, is dated May 19, 2020.

Background

3. Claimant is nine years old and eligible for services under the Lanterman Developmental Disability Services Act, Welfare and Institutions Code sections 4500 through 4885 (Lanterman Act) based on a diagnosis of Mild Intellectual Disability, etiology Down Syndrome. (Sections cited below are sections of the Lanterman Act, except as specifically noted otherwise.) Claimant lives with mother, who alone provides claimant’s financial support.

4. In cooperation with mother, the service agency prepared Exhibit 3, an Individual Program Plan (IPP) dated May 8, 2019. The parties worked on a more recent

IPP in June 2020, which was not available at the time of the fair hearing. There was no change in the June 2020 IPP that affects the issue here.

5. Claimant is verbal and is able to communicate using short phrases. However, she has significant delays in language ability. Speech therapy has helped claimant develop her limited language skill.

6. Service agency personnel have participated in meetings at claimant's school to prepare claimant's Individualized Education Program (IEP).

7. Claimant has been receiving speech and other therapy funded by the local school district. The Speech therapy is part of claimant's January 23, 2020 IEP, Exhibit 4, prepared by the West San Gabriel Valley SELPA (Special Education Local Plan Area).

A. Speech therapy sessions are once per week. They used to be administered in person, but are now virtual.

B. The IEP includes these general comments on communication skills:

[Claimant] has made very nice progress with her speech and language goals. [Claimant] will express her wants and needs and can answer simple questions. She can also follow directions (e.g. "Give me a yellow crayon") and can be understood while producing 3+ word sentences with minimal verbal prompting. . . .

C. The IEP identifies a more specific communication need:

[Claimant] requires multiple verbal and visual prompts to correctly produce pronouns ("He" and "She") when responding to "What is the ___ doing?" questions. This is impacting [claimant's] expressive language in the school setting.

The IEP describes goals to meet the need. Mother testified that the school district was concentrating on claimant's pronouns, whereas mother believes that claimant would benefit significantly by a broader approach, not one so focused.

D. The IEP identifies another language skill claimant needs in addition to that involving pronouns:

Observations indicate that although [claimant] can express her wants and needs, she requires multiple prompts to include a descriptor (e.g. size, shape and/or color) in her sentences. This is impacting [claimant's] expressive language in the classroom setting.

E. The IEP identifies needs that have some relation to speech but are primarily concerned with other abilities, such as fine motor skills, stating this goal:

[Claimant] will demonstrate visual-motor coordination to write one short sentence (5 to 6 words) with proper spacing, formation, sizing, and within boundaries on one inch three-lined paper with no more than 3 verbal prompts and 3 errors, on 3 out of 4 opportunities.

8. Mother asked the school district for more frequent speech therapy sessions. In a February 12, 2020 letter, Exhibit 5, Dawn Rock, Director of Special Education and Student Support Services, Rosemead School District, Rosemead, California, denied mother's request: "In regards to Speech and Language services for [claimant], we fund and provide only the amount of minutes specified in a student's signed . . . IEP."

9. With the assistance of the service agency, mother is in the process of appealing the school district's decision to deny the request for more frequent speech therapy. Mother is also dealing with a number of other issues.

10. Before the crisis earlier this year, claimant's speech therapy from the school district was in-person. At about the time the crisis began, in-person meetings were prohibited and the school district discontinued all of claimant's speech therapy. It is unclear when in-person meetings and claimant's speech therapy may resume.

11. In June 2020, mother located a private company that could provide claimant's speech therapy. This provider is Mi Sueño Speech Therapy (Mi Sueño), headquartered in Covina, California, which provides speech therapy under the family's medical insurance policy with Aetna. Mi Sueño's June 15, 2020 Plan of Care for claimant, Exhibit 6, notes that claimant's rehabilitation potential is good, as opposed to fair or guarded. Mi Sueño would provide therapy in 30-minute sessions three times per week. Mother would be obligated to pay a \$30 co-payment per session. Continuing the therapy is recommended.

12. Mother testified that she would suffer financial hardship from paying deductibles. Mother is the only person financially responsible for claimant's care.

Mother works in a doctor's office, but did not provide details on her income and expenses.

13. Mother observed that claimant's therapy sessions, which were previously in-person, not only helped claimant's speech but also provided helpful socialization, encouraging claimant's interaction with others. Currently, because of the crisis, all of claimant's therapy is provided virtually, online and not in-person. Mother hopes that claimant will return to in-person therapy at school in mid-August, when her school district plans to reopen. But mother has doubts school will reopen in August. The crisis continues and in-person meetings may not be permitted until after summer 2020.

14. The service agency acknowledged at the hearing that at times it is appropriate that it fund insurance co-payments when a service is approved, needed, and the claimant or claimant's family is unable to pay. But the service agency argued that before it may provide such funding, claimant must exhaust other resources or opportunities. For instance, the school district may grant claimant's appeal and agree to speech therapy sessions more frequent than once a week. In any event, assistance from the service agency, whether in helping claimant with the appeal to the school district, or in funding insurance co-payments, would not affect whether claimant's speech therapy is virtual or in-person.

15. At the hearing, mother quoted from and emphasized that section of the service agency's Purchase of Service Policy quoted below. She stated that more than one session of speech therapy per week, as provided in the IEP, is necessary. Mother also believes that more sessions for her daughter as proposed by Mi Sueño, will offset any detriment from how it is being delivered now because of the crisis, virtually rather than in-person.

16. Mother argues that, with more speech therapy, claimant will be in a better position to socialize with others when crisis-related restrictions are lifted. In this way, mother asserts, claimant will be better enabled to achieve the three goals the Purchase of Service Policy espouses: (1) approximating a normal living pattern; (2) acting independently and productively in the community; and (3) participating in public opportunities.

PRINCIPLES OF LAW

1. Under Evidence Code sections 115 and 500, claimant, as the party who urges a change from the status quo, has the burden of proof. The standard claimant's evidence must meet is proof by a preponderance of the evidence.

2. Section 4646 provides for cooperation between the service agency and the claimant or claimant's representative in developing an IPP. The IPP is, in effect, the agreement on services the service agency is to provide a consumer.

3. Section 4646.4 provides that when an IPP is developed or modified, a service agency

shall ensure . . . the establishment of an internal process.

This internal process shall ensure adherence with federal and state law and regulation, and when purchasing services and supports, shall ensure all of the following:

(1) Conformance with the regional center's purchase of service policies, as approved by the department [of Social Services]

(2) Utilization of generic services and supports when appropriate. . . .

(3) Utilization of other services and sources of funding as contained in Section 4659.

(4) Consideration of the family's responsibility for providing similar services and supports for a minor child without disabilities in identifying the consumer's service and support needs as provided in the least restrictive and most appropriate setting. In this determination, regional centers shall take into account the consumer's need for extraordinary care, services, supports and supervision, and the need for timely access to this care.

4. Section 4659, subdivision (a), provides:

Except as otherwise provided in subdivision (b) or (e), the regional center shall identify and pursue all possible sources of funding for consumers receiving regional center services. These sources shall include, but not be limited to, both of the following:

(1) Governmental or other entities or programs required to provide or pay the cost of providing services, including Medi-Cal, Medicare, the Civilian Health and Medical Program for Uniform Services, school districts, and federal supplemental security income and the state supplementary program.

(2) Private entities, to the maximum extent they are liable for the cost of services, aid, insurance, or medical assistance to the consumer.

Subdivision (b) of section 4659, mentioned above, is not pertinent here. Subdivision (e), also mentioned above, provides:

This section shall not impose any additional liability on the parents of children with developmental disabilities, or to restrict eligibility for, or deny services to, any individual who qualifies for regional center services but is unable to pay.

5. Section 4659.1, subdivision (a), provides:

If a service or support provided pursuant to a consumer's [IPP] . . . is paid for, in whole or in part, by the health care service plan or health insurance policy of the consumer's parent . . . , the regional center may, when necessary to ensure that the consumer receives the service or support, pay any applicable copayment, coinsurance, or deductible associated with the service or support for which the parent . . . is responsible if all of the following conditions are met:

(1) The consumer is covered by their parent's . . . health care service plan or health insurance policy.

(2) The family has an annual gross income that does not exceed 400 percent of the federal poverty level.

(3) 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).

6. The service agency's Purchase of Service Policy, Exhibit 7, states on its first page:

[The service agency] may purchase services and supports when services and supports will: (1) enable the individual to approximate the pattern of everyday living of a nondisabled person of the same age, (2) lead to a more independent, productive and normal life in the community, and (3) promote opportunities to participate in public life.

ANALYSIS

1. The service agency has cooperated with claimant in preparing an IPP, in conformity with section 4646. Under the IPP, the parties agreed that speech therapy as administered by the school district was appropriate to claimant's needs.

2. As required by section 4646.4, the service agency is following an established internal process. More specifically in accordance with subdivisions (a)(1) and (a)(2) of section 4646.4, the service agency is properly following its Purchase of Service Policy in seeking that persons, other than the service agency and claimant, fund claimant's services, and especially a generic service like speech therapy funded by a school district.

3. By seeking all possible sources of funding for claimant's speech therapy, the service agency is likewise acting in accordance with section 4659, subdivision (a). It is appropriate under subdivision (a)(1) that the service agency assist mother for purposes of the IEP and will assist further in mother's appeal to the school district for more speech therapy.

4. Mother contends that, because of the pandemic-related health crisis (crisis), circumstances have changed and so should the IPP and IEP. The speech therapy agreed by the school district is not currently provided and, in any event, because therapy sessions are no longer in-person, more frequent therapy sessions ought to be used to compensate for new difficulties.

5. Mother contends that one such new difficulty is that if she pays for more speech therapy from Mi Sueño, mother will suffer economic hardship. The question then arises whether the service agency is acting contrary to subdivision (e) of section 4659 by restricting claimant's eligibility for or denying claimant services because of an inability to pay for services.

6. Mother did not present sufficient evidence that she is unable to pay for services from Mi Sueño. The extent of her financial difficulty or economic hardship was not documented or quantified. The evidence did not establish that the service agency is in violation of subdivision (e) of section 4659.

7. Mother did not provide sufficient evidence to show that the service agency is obligated to fund her insurance co-payments under section 4659.1, subdivision (a).

8. There is no dispute that claimant benefits from speech therapy. She is receiving speech therapy and her speech is improving. The issue is whether more

speech therapy will provide claimant significant additional benefit. The evidence is lacking to decide this part of the dispute in favor of more speech therapy because the evidence is lacking that more speech therapy will be to claimant's significant additional benefit.

9. Mother believes more specifically that the change from in-person therapy is to claimant's detriment. The evidence in this regard was not convincing. Its relevance is also questionable. Mother's belief is not so much that the virtual therapy itself is less effective in assisting claimant's speech as that in-person therapy results in claimant's being better socialized. That is, in-person therapy benefits claimant's ability to speak, but quite apart from that ability it benefits her ability to deal with other people.

10. Mother reasons that if speech therapy is provided more frequently, that will compensate for claimant's loss of the previous socialization benefit. Mother's reasoning is not supported by competent evidence, however, such as an opinion from a speech therapist or an expert on socialization. It is evident from mother's testimony that she sincerely believes that more speech therapy will benefit her daughter in several ways, such as allowing claimant to "approximate the pattern of everyday living of a nondisabled person of the same age," as stated in the service agency's Purchase of Service Policy. But that belief alone is not adequate to demonstrate that the service agency must arrange for additional speech therapy.

11. Mother is correct that the crisis has changed claimant's speech therapy, in that, because it is no longer in-person, it is in a sense less social. Observing her child, mother senses and concludes that the change is detrimental. But any detriment and its extent is not clear. Likewise, unclear from the evidence is that the detriment would be removed by more speech therapy.

CONCLUSION OF LAW

The evidence does not at present support the conclusion that the service agency should fund insurance co-payments for claimant's additional speech therapy from a private provider.

ORDER

Claimant's appeal is denied.

DATE:

THOMAS Y. LUCERO
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.