

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of :

CLAIMANT,

Claimant,

vs.

SAN GABRIEL/POMONA REGIONAL  
CENTER,

Service Agency.

OAH No. 2019030385

DECISION

Matthew Goldsby, Administrative Law Judge with the Office of Administrative Hearings, heard this matter on March 27, 2019, in Pomona, California.

Daniel Ibarra, Fair Hearing Representative, appeared and represented the San Gabriel/Pomona Regional Center (the Service Agency).

Claimant's mother<sup>1</sup> appeared and represented claimant, who was not present.

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision at the conclusion of the hearing.

STATEMENT OF ISSUES

The issue in this matter is whether the Service Agency is required to provide funding for equine therapy and gymnastic services for claimant.

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<sup>1</sup> Claimant and mother are identified by party designation and relationship, not by name, in order to protect their privacy.

## EVIDENCE CONSIDERED

*Documents:* Service Agency's exhibits 1-10; claimant's exhibits A-F.

*Testimony:* Daniel Ibarra, Fair Hearing Representative; claimant's mother.

## FACTUAL FINDINGS

1. Claimant is a nine-year-old Service Agency consumer with diagnoses of cerebral palsy and mild intellectual disability. Pursuant to the most recent Individual Program Plan (IPP), claimant resides with his mother, maternal grandmother, and older sister, and visits with his father weekly. Claimant is unable to walk independently, tends to crawl for mobility, is able to stand for 15 minutes at a time with support, and ambulates by wheelchair. When using a manual wheelchair, claimant is able to wheel himself but his arms become tired. California Children's Services, County of Los Angeles Department of Public Health (CCS), supplies claimant's wheelchair, and also provides physical therapy for one hour per month to teach claimant to walk with a walker. Claimant's mother testified that claimant has "very poor balance" and he "requires someone nearby so he doesn't fall and hurt himself." (Ex. 3, p. 7.)

2. In addition, claimant suffers from Muscle Imbalance and Oculomotor Deficiency, a visual impairment "due to muscle imbalances and the neurological effects of Dandy Walker Syndrome." (Ex. A, p. 3.) Symptoms include difficulties with balance and double vision, and claimant mainly has difficulty "teaming his eyes." (*Id.*)

3. Claimant is eligible for special education services through the Pasadena Unified School District (School District). Claimant underwent various eligibility assessments, and the School District offered the following services: eight hours per month of physical therapy, eight hours per month of occupational therapy, four hours per month of speech therapy, two hours per month of visual therapy, and eight hours per month of adaptive physical education. However, claimant is not receiving these

public school services because he was granted a scholarship to attend a small private school. Claimant's mother testified that claimant thrives in a smaller school setting, and she believes it would be detrimental to claimant to enroll him in a public school solely to access these services.

4. The Service Agency is funding eight hours per month of aquatic therapy, 65 hours of one-to-one support services for after school programming, and 20 hours per month of respite service. On December 3, 2018, claimant's mother sent the Service Agency an email requesting additional services as follows:

This year has been socially challenging for [claimant] for [a] variety of reasons. We're working with him more but there's just not a lot of opportunities in our community. After looking at community activities he can join, I identified two places: one is for horseback riding and another for adaptive gymnastics, both would allow him to be more with children with disabilities, as he is beginning to struggle with identity issues. I did the leg work and found two organizations that will provide services he needs: MACH1<sup>2</sup> in Pasadena for equine therapy and Vernon Lee Gymnastics in Pasadena also.

(Ex. 4.)

5. In a telephone call to claimant's service coordinator on January 8, 2019, claimant's mother elaborated on the benefits of the requested services. She explained

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<sup>2</sup> Move A Child Higher, Inc. (MACH1) is a tax-exempt organization "dedicated to bringing self-confidence, physical strength, and emotional well-being to people with disabilities through equine assisted therapy and community involvement." (Ex. E.)

that “gymnastic skills in Pasadena would work on increasing [claimant’s] strength and mobility” and that “equine therapy would support [claimant] by increasing his balance, confidence and social skills as there are group exercises.” (Ex. 5, p. 17.)

6. Claimant greatly enjoys the equestrian therapy sessions. The services provided by MACH1 help claimant emotionally, physically, and socially. Claimant’s mother testified that “no alternative source” is available to meet claimant’s needs for these services. (See also, Ex. F.) Claimant does not have private insurance that will cover the requested services. Claimant’s Medi-Cal benefits do not provide support for the specialized service requested. Claimant’s parents cannot afford to pay for the requested services from their personal resources.

7. The Service Agency issued a Notice of Proposed Action on January 15, 2019. The Service Agency denied claimant’s request for equine therapy and gymnastic services because “these activities are considered social recreational activities that Regional Center is suspended from funding” pursuant to Welfare and Institutions Code section 4648.5, subdivision (a). (Ex. 1, p. 2.) Furthermore, the Service Agency determined that the requested services did not meet the criteria for an exemption from the statutory prohibition “since these services are not [claimant’s] primary program or a critical program that ameliorates his disability.” (*Id.*)

8. On February 3, 2019, claimant’s mother filed a Fair Hearing Request on behalf of claimant. All jurisdictional requirements have been met.

9. Pursuant to claimant’s most recent IPP dated April 17, 2018, a stated goal of regional center services is to support claimant in developing “strength in the lower-extremities gross motor and fine motor skills” and the ability to stand for at least 30 minutes with support. (Ex. 3, p. 14.) In support of this goal, the Service Agency agreed to fund aquatic therapy and a personal assistant through Maxim Healthcare. Claimant has

reportedly demonstrated improvement in safety and movement through the water, in exiting the pool, and in strength and balance.

10. The Service Agency has a published Purchase of Service Policy (POS Policy) that governs the purchase of therapy services and supports. The POS Policy was approved by the Service Agency's Board in December 2009 and by the Department of Developmental Services (DDS) in July 2010. With respect to the purchase of therapy services, the POS Policy states in pertinent part as follows:

Therapy services and supports include occupational, physical, speech or nutritional therapies that are required to prevent deterioration of a special condition, or to improve functional skills. [¶] In most cases the need for therapy is met by public school programs, [CCS], Medi-Cal, Medicare, private family insurance, military health insurance or other resources.

(Ex. 10, p. 107.)

11. Pursuant to the terms of the POS Policy, the Service Agency may purchase therapy services if all of the following criteria are met: (1) therapy is required to prevent a deterioration (worsening) in a person's condition or to enable him or her to make progress in achieving developmental or functional skills; (2) an assessment by a qualified licensed professional with a specialty in the therapy service and/or the appropriate regional center specialist has been completed and indicates that the client would benefit from therapy; and (3) the child or adult is not eligible for the service through CCS, Medi-Cal, Medicare, public schools, private family insurance, military health insurance or other resource.

12. At the hearing, claimant presented a neurological report, which recommended the continuation of "hippotherapy<sup>3</sup> and aquatherapy," and concluded that claimant "may also benefit from participating in such activities as martial arts, dance, and gymnastics to improve coordination and balance." (Ex. B.)

13. In support of claimant's request for services, claimant's pediatrician furnished a written statement offering the following opinion:

The therapeutic services including Gymnastkids and equine therapy (hippotherapy) will be beneficial for [claimant's] overall health. Both these therapeutic services will promote his gross and fine motor function, by optimizing his mobility. Gymnastic therapy through Gymnastkids will allow [claimant] to further develop physical balance, postural symmetry, and control of extremities. Equine therapy will be beneficial for [claimant] in increasing his physical strength and cognitive capabilities by fostering visual coordination, and social and community inclusion.

(Ex. C.)

## LEGAL CONCLUSIONS

1. Effective July 1, 2009, the Legislature suspended the Service Agency's authority to purchase the following services, among others: (a) Social recreation

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<sup>3</sup> Hippotherapy is defined as "physical therapy in which a patient (as one affected with cerebral palsy or multiple sclerosis) sits or lies on the back of a horse for the therapeutic effect of the horse's movement." (www.merriam-webster.com/medical/hippotherapy.)

activities, except for those activities vendored as community-based day programs, and (b) nonmedical therapies, including, but not limited to, specialized recreation, art, dance, and music. (Welf. & Inst. Code, § 4648.5, subd. (a)(2) and (4).)

2. An exemption may be granted in extraordinary circumstances in which the Service Agency determines that the service is a primary or critical means for ameliorating the physical, cognitive, or psychosocial effects of the consumer's developmental disability, or the service is necessary to enable the consumer to remain in his or her home and no alternative service is available to meet the consumer's needs. (Welf. & Inst. Code, § 4648.5, subd. (c).)

3. The determination of which services and supports are necessary for each consumer shall be made through the IPP process. (Welf. & Inst. Code, § 4512.) 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 IPP participants, the effectiveness of each option in meeting the goals stated in the IPP, and the cost-effectiveness of each option. (Welf. & Inst. Code, § 4512, subd. (b).)

4. Claimant bears the burden of proof as the party seeking government benefits or services. (*Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156.) The standard of proof is the preponderance of the evidence. (Evid. Code, § 115.)

5. Equine therapy and gymnastics are reasonably classified as social recreation activities and nonmedical therapies. Accordingly, the requested therapeutic services are subject to the restrictions of Welfare and Institutions Code section 4648.5 and the Service Agency's POS Policy.

6. Claimant's mother credibly and persuasively testified about the many positive benefits that claimant has realized from these services. Written statements from a neurologist and claimant's primary physician both recommend the continuation of

these activities for health benefit reasons. Claimant is eligible for other physical therapy services through public schools, but his mother reasonably believes the academic and personal benefits of the intimate setting of the private school outweigh the therapeutic resources available at public school.

7. Notwithstanding the undisputed benefits of the requested activities and services, the evidence does not establish that either gymnastics or equine therapy is a primary or critical means for ameliorating the effects of claimant's developmental disability. Neither therapy is necessary to enable claimant to remain in his home. The plain and ordinary language of the exemption connotes a level of essentiality that requires more than a showing of an overall health benefit of a proposed therapy. Claimant did not establish that the requested services are any more beneficial than other forms of physical therapy or modalities used during physical therapy, such as aquatic therapy which is currently funded by the Service Agency.

8. The Service Agency made its determination through the IPP process and denied equine therapy and gymnastic services on the basis of the needs and preferences of claimant and in consideration of a range of service options proposed by the IPP team. Claimant has failed to meet his burden to prove that he is entitled to the requested services, and the Service Agency's denial of those services was reasonable and appropriate.



## ORDER

Claimant's appeal is denied. The Service Agency is not required to provide funding for equine therapy and gymnastic services for claimant.

DATED:

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MATTHEW GOLDSBY  
Administrative Law Judge  
Office of Administrative Hearings

## NOTICE

This is the final administrative decision. This decision binds both parties. Either party may appeal this decision to a court of competent jurisdiction within 90 days.