

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

In the Matter of the Fair Hearing Request for:

CLAIMANT

and

FRANK D. LANTERMAN REGIONAL CENTER,

Service Agency

DDS No. CS0037385

OAH No. 2026060738

DECISION

Eric Sawyer, Administrative Law Judge (hearing officer), Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on July 28, 2026. The record closed and the matter was submitted for decision at the conclusion of the hearing.

Claimant was represented by her mother. (Titles are used instead of names to protect claimant's privacy and the confidentiality of this matter.)

Mirka Guerrero, Fair Hearing and Compliance Officer, represented Frank D. Lanterman Regional Center (service agency).

On July 30, 2026, claimant's mother filed with OAH a letter requesting the hearing officer re-open the record for the submission of her declaration and five new exhibits related to the hearing officer's question during closing argument of whether the service requests in this matter meet the definition of fundable services and supports pursuant to Welfare and Institutions Code section 4512. On the same date, claimant's mother filed her declaration, as well as the five new exhibits. Claimant's mother also requested the hearing officer take official notice of a 2015 OAH decision involving vision therapy funding.

Claimant's request was granted, the record was re-opened, the declaration of claimant's mother and the five new exhibits were admitted, and official notice was taken of the 2015 OAH decision. The record was held open until August 19, 2026, to allow the parties to take the actions specified by the hearing officer in his order granting claimant's request, including for either party, if interested, to request an additional day of hearing to address the issue discussed by the hearing officer during closing argument. The events that transpired while the record was re-opened are described in the hearing officer's orders marked as exhibits OAH 1 and OAH 2.

Neither party requested an additional day of hearing. Therefore, the record re-closed and the matter was re-submitted for decision on August 19, 2026.

ISSUES

1. Shall service agency reimburse claimant's mother \$395 for claimant's May 18, 2026 vision assessment by optometrist Gary L. Etting?

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2. Shall service agency provide prospective funding for vision therapy provided to claimant by Dr. Etting, through the course of 24 to 48 weekly sessions over approximately 6 to 12 months, as recommended by Dr. Etting, as well as reimburse claimant's mother for any payments she has made to Dr. Etting for his services already rendered while this matter is pending?

EVIDENCE RELIED ON

In making this Decision, the hearing officer relied on service agency exhibits 1 through 6; claimant's exhibits 101 through 180 (except exhibit 134 was withdrawn); as well as the testimony of Service Coordinator Mary Dzhbakchourian, Regional Manager Guadalupe Munoz, and claimant's mother.

FACTUAL FINDINGS

Parties and Jurisdiction

1. Service agency determines eligibility and provides funding for services and supports to persons with developmental disabilities under the Lanterman Developmental Disabilities Services Act (Lanterman Act), among other entitlement programs. (Welf. & Inst. Code, § 4500 et seq.; subsequent undesignated statutory references are to this code.)

2. Claimant is a 14-year-old female who is a consumer of service agency under the eligible category of autism. (Ex. 3.)

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3. On May 13, 2026, claimant's mother requested reimbursement in the amount of \$395 for a vision assessment of claimant by Dr. Gary L. Etting, an optometrist, to be conducted on May 18, 2026. (Exs. 101, 126, 127.)

4. Soon thereafter, claimant's mother submitted a report from Dr. Etting following his assessment, which recommended 50 minute sessions weekly for 24 through 48 sessions, over the course of 6 to 12 months, depending on claimant's progress. Claimant's mother requested service agency fund the vision therapy, as well as reimburse her for any payments made to Dr. Etting for sessions already provided to claimant. (Exs. 130, 132.)

5. On June 4, 2026, service agency issued a notice of action (NOA) advising claimant's mother it had denied her funding requests. Service agency advised it denied the requests for reimbursement because the Lanterman Act does not allow for retroactive funding requests, in the absence of an emergency. Service agency further advised it denied the prospective funding request for vision therapy because it was not clear claimant's mother had exhausted available generic resources; vision therapy is the kind of service borne by parents of typical children; and Dr. Etting was not a vendored provider within the regional center system. (Ex. 2.)

6. On June 5, 2026, claimant's mother filed an appeal with the Department of Developmental Services (DDS), requesting a hearing to contest the denial of her funding requests. Among various contentions, claimant's mother argued her requests for reimbursement are legally permissible because she provided notice to service agency of the vision assessment and therapy before they were provided; she cooperated with the process and provided service agency with all available information needed to make a decision; and there are legally valid reimbursement mechanisms available to pay her. As for the prospective funding request, claimant's

mother contended all available generic funding sources have denied her requests for funding; she has taken measures to reduce the billing from Dr. Etting and thus has acted cost-effectively; the vision therapy is related to claimant's disability needs; the vision assessment and vision therapy are complex medical services well beyond those borne by parents of typical children; and Dr. Etting's lack of vendor status within the regional center system is not a valid reason to deny funding, as multiple other legal provisions would allow such funding. (Exs. 1, 104, 105.)

Claimant's Relevant Background Information

7. In addition to autism, claimant has been diagnosed with ADHD, dyslexia, auditory-processing deficits, sensory conditions, and vision deficits. (Testimony [Test.] of mother; Exs. 3, 151.)

8. Claimant lives at home with her mother. (Test. of mother; Exs. 3, 151.)

9. Claimant received special education services from her local school district for several years, including most recently after she enrolled in high school. On a date not established, but no later than early 2026, claimant's mother unilaterally placed claimant at a local private school. (Test. of mother; Exs. 110-112, 115, 124.)

10. Claimant's last completed individual program plan (IPP) was executed in 2025. (Ex. 3.) Claimant's most recent IPP meeting was convened on May 19, 2026; as of the hearing, the IPP document has not been finalized because claimant's mother has requested several revisions. (Test. of mother; Exs. 150-151.)

Claimant's Vision Problems and Assessments

11. Claimant has worn eyeglasses for the last several years. Her mother has noted several vision-related problems experienced by claimant. For example, claimant

frequently loses her place while reading, avoids chapter books unless text-to-speech or adult read-aloud support is available, and may give up reading within five minutes when visually fatigued. Claimant generally gravitates toward graphic novels with shorter lines and visual context. In the community, claimant has difficulty reading signs and bus-stop advertisements, struggles with handwritten and cursive text, and holds her phone close enough to trigger its distance alert. Claimant also has difficulty seeing information in her peripheral vision. (Test. of mother; Ex. 173.)

12. During an audiology test in 2023 related to claimant's special education program, the audiologist recommended claimant also have a vision processing assessment. (Test. of mother; Ex. 116.)

13. On February 6, 2024, claimant was assessed by optometrist Alan C. Brodney in connection with her special education program. Claimant's mother advised Dr. Brodney that claimant had distance blur, skipped and substituted words, read slowly, and avoided small print. As a result of his assessment, Dr. Brodney diagnosed claimant with Myopia [nearsightedness], Astigmatism [imperfection in the curvature of the cornea or lens causing blurred or distorted vision], and Oculomotor Dysfunction Saccades [both eyes quickly jump from one point to another]. Among other things, Dr. Brodney recommended claimant take a program of 20 vision therapy sessions, once per week. (Ex. 118.)

14. On February 26, 2025, claimant was assessed for vision therapy by Dr. Beth E. Ballinger. The assessment was done in connection with claimant's special education program. (Test. of mother; Ex. 101.) After a thorough and comprehensive assessment, Dr. Ballinger issued a report in March 2025. Although she did not include any diagnosis in her report, Dr. Ballinger described a number of vision problems

experienced by claimant, and recommended, among other things, that claimant take a minimum of 32 vision therapy sessions. (Ex. 122.)

15. Because her office is far from claimant's home, Dr. Ballinger referred claimant to Dr. Etting for vision therapy. (Test. of mother; Ex. 101.)

16. At the time of Dr. Ballinger's assessment and recommendations in March 2025, claimant was completing a CAPDOTS auditory processing intervention, which had resulted from the prior auditory assessment. CAPDOTS is a web-based auditory training program involving listening exercises. Claimant's mother decided to not proceed with vision therapy for claimant at that time because she was advised, and agreed, that completing auditory processing and vision therapy at the same time would be too much for claimant. (Ex. 101.)

17. By early 2026, claimant had completed the CAPDOTS program, and transferred to the new private school. She began receiving regular homework at the private school, something she had not experienced for a while. Claimant's mother was concerned about adding vision therapy with the new homework regimen. Thus, claimant's mother decided to further delay vision therapy. (Ex. 101.)

18. By an e-mail she sent on April 19, 2026, claimant's mother advised service agency:

[Claimant] recently had a routine vision exam, and the provider noted concern regarding a difference between her eyes and raised the possibility that vision processing may be contributing to some of her ongoing challenges. Given her history, this is something we want to take seriously. Her regular glasses are currently being updated with her new

prescription lenses and should be ready within the next few weeks. At this time, her tinted glasses are not being updated. Because this may affect [claimant's] functional access to reading, visual attention, and task completion, I wanted to make sure this updated information is included in her records and considered in future IPP planning, including any discussion of supports or services that may be needed, as we determine the most appropriate plan moving forward.

(Ex. 113.)

19. In an e-mail she sent to service agency on May 13, 2026, claimant's mother requested funding and/or reimbursement for a vision assessment she had scheduled with Dr. Etting's office for May 18th, which would cost \$395. (Ex. 127.)

20. In an e-mail she sent to service agency on May 14, 2026, claimant's mother explained the timing of her funding request as follows:

I accepted the Monday [May 18th] assessment appointment because updated assessment is needed to clarify [claimant's] current needs before summer begins. Summer is the least disruptive time for [claimant] to begin any recommended treatment because she will not also be managing school-day academic demands and assignments, and vision therapy includes nightly home practice/ homework.

(Ex. 126.)

21. On May 18, 2026, Dr. Etting conducted his vision assessment of claimant. (Ex. 125.)

22. In an e-mail she sent on May 18, 2026, claimant's mother requested service agency to fund Dr. Etting's recommended vision therapy program, which she briefly outlined. (Ex. 130.)

23. On May 19, 2026, Dr. Etting issued a report with his findings and recommendations. Dr. Etting diagnosed claimant with Right Hyperphoria [upward drift of one eye], Suppression of Binocular Vision, Saccadic Dysfunction [rapid, jumping eye movements], Accommodative Dysfunction [an eye-focusing disorder], Slow Visual Processing Speed, and Visual Processing Deficits. Dr. Etting recommended claimant complete a vision therapy program, consisting of 50-minute sessions weekly for 24-48 sessions, for 6 to 12 months, depending on her progress. (Test. of mother; Ex. 125.)

24. In his report, Dr. Etting clarified, "Vision therapy does not teach reading, writing, or spelling nor does it replace the services provided by educational therapists, psychologists, occupational therapists, speech and language specialists or tutors." (Ex. 125, p. A138.)

25. In her position statement filed in connection with the hearing, claimant's mother described the timing of her funding requests as follows:

The summer timing was deliberate and disability-informed. [Claimant] had completed a full year adjusting to a new one-to-one school setting, and summer offered the least disruptive period to begin a weekly treatment program with home practice, learn the routine, and assess tolerance before beginning her first year of high school. After the

assessment, [claimant] was placed on a separate waitlist for an available weekly treatment slot. [I] accepted the first suitable opening rather than delaying treatment further.

(Ex. 173, p. B376.)

26. The parties discussed Dr. Etting's vision assessment and planned vision therapy program during claimant's IPP meeting on May 19, 2026. However, as discussed above, by the time of the IPP meeting, claimant's mother had already incurred the cost of Dr. Etting's vision assessment, and had decided to enroll claimant in Dr. Etting's vision therapy program. (Test. of mother; Ex. 151.)

27. Dr. Etting's office charged claimant's mother \$395 for the vision assessment, which claimant's mother has paid. Dr. Etting was able to rely on much of the testing previously done by Dr. Ballinger, resulting in a substantial reduction of what he usually charges for a vision assessment. (Test. of mother; Ex. 166.)

28. Dr. Etting's office charges for vision therapy per unit. One unit consists of 12 vision therapy sessions and an evaluation report. Claimant's mother selected the less costly prepayment option, which reduced the cost of one unit of service to \$2,281. Claimant's mother prepaid claimant's first unit of vision therapy. (Test. of mother; Ex. 123.) Claimant began taking weekly vision therapy sessions in late June 2026. As of the hearing, claimant had taken five vision therapy sessions with Dr. Etting's office. Claimant's mother reports claimant has improved slowly. (Ex. 163.)

29. From May 13, 2026, through the hearing of this matter, claimant's mother continually provided updated information to service agency concerning the vision therapy services, as well as her progress in exhausting available generic resources. (Test. of mother; see, e.g., Exs. 108, 109, 127-133.)

Vision Services Provided By Claimant's Health Insurer

30. Claimant is covered by her mother's health insurance through Kaiser Permanente (Kaiser). (Test. of mother.)

31. Claimant is treated for her vision problems by Kaiser's Department of Optometry. On a date not established, two Kaiser optometrists tested claimant for eye teaming (binocularity), focusing (accommodation), and tracking (saccadic eye movements). In an undated note, the optometrists concluded claimant "has mild eye teaming deficits and was advised to not use her distance glasses for near tasks. In addition, she has mild tracking but significant naming speed dysfunction. Eye exercises were recommended to improve her tracking, but the naming speed disorder warrants a psychoeducational testing battery." (Ex. 120.)

32. Claimant's primary treating optometrist at Kaiser is Tristina Chung. In March 2024, Dr. Chung evaluated claimant's vision efficiency. As a result of her evaluation, Dr. Chung recommended 20 orthoptic therapy sessions for claimant. (Ex. 164.) Orthoptic therapy is prescribed, customized eye exercises and activities designed to train the eyes and brain to work together. (Ex. 5.) Claimant's mother testified claimant took 10 such sessions, but claimant made so little improvement that the therapy was stopped.

33. In July 2024, Dr. Chung wrote a letter advising that claimant may have more profound vision problems than those discovered by Kaiser, and therefore claimant should have a more comprehensive visual assessment. (Ex. 165.)

34. On May 13, 2026, Dr. Chung again evaluated claimant's vision efficiency. Dr. Chung concluded claimant has Accommodative Infacility [eyes struggle to change focus quickly and smoothly between near and far objects], Vergence Infacility or

Binocular-Vision Disorder [eyes tire quickly when alternating between inward and outward movement], and Oculomotor or Saccadic Dysfunction [eyes jump quickly among points]. (Ex. 133.)

35. In a letter dated June 4, 2026, Dr. Chung explained that Kaiser could provide orthoptic therapy for the problems she diagnosed, but could not evaluate or treat the visual-perceptual deficits identified in Dr. Ballinger's March 2025 report. Dr. Chung advised that claimant's areas of visual deficiency should be addressed by only one provider for consistency and to avoid redundancy and disruption between different providers. Dr. Chung referenced with approval Dr. Etting's recommendation for 24 to 48 weekly sessions to address all of claimant's vision problems. (Test. of mother; Ex. 133.)

36. Due in part to service agency's urging, claimant's mother requested Kaiser fund Dr. Etting's recommended course of vision therapy as an out-of-network provider. Kaiser denied the request, and claimant's mother appealed. By letter dated June 27, 2026, Kaiser denied the appeal. The stated reasons for denial were that Dr. Chung could manage claimant's vision problems by orthoptic therapy, and that the vision therapy offered by Dr. Etting was not evidence-based. (Ex. 5.)

37. Ms. Dzhabakchourian and Ms. Munoz of service agency testified that although Kaiser denied funding for Dr. Etting's out-of-network service, Kaiser still is willing to provide orthoptic therapy to treat claimant's vision problems. According to both service agency employees, this means Kaiser constitutes a generic service that should be exhausted before service agency considers funding other vision services.

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38. Claimant's mother testified that, to the extent Kaiser is viewed as a generic resource, she has exhausted the vision services it can provide claimant. Specifically, the only service offered by Kaiser for claimant's vision disorders is orthoptic therapy, which was not helpful when previously tried; in addition, Dr. Chung has indicated in her letters that claimant needs the vision therapy offered by Dr. Etting, and that she does not recommend claimant receive both orthoptic therapy from her and vision therapy from Dr. Etting. (Test. of mother.)

Other Generic Resources Have Been Exhausted

39. In addition to Kaiser, service agency recommended to claimant's mother that she pursue three other generic resources for vision therapy funding. (Test. of mother.)

40. Claimant's mother dutifully pursued the identified sources, but all have denied her requests. Specifically, claimant's local school district denied the funding request because claimant has been unilaterally placed in a private school. Due to the private placement, the Department of Rehabilitation (DOR) has some funding responsibility for claimant; however, DOR advised that its service scope excludes vision therapy. A representative of Westview Services, an entity that handles grant requests, confirmed that Westview does not fund grants for vision therapy. (Test. of mother; Exs. 102, 121, 124.)

Reimbursement Mechanisms

41. Claimant's mother testified service agency has reimbursement mechanisms available which it has used in the past to reimburse her for expenses. Therefore, she contends her reimbursement requests in this case are legally valid, despite the timing of her funding requests.

42. For example, service agency has confirmed that claimant's mother is a vendored parent under vendor number VD2548, which is used to reimburse claimant's mother for transportation expenses she incurred that service agency previously agreed to fund. (Test. of mother; Exs. 138, 147.)

43. Service agency also authorizes parent-reimbursement arrangements for claimant through fiscal-management services. For example, claimant's mother advances the cost of authorized horseback-riding services and submits invoices or proof of payment for reimbursement. Service agency also has used purchase-reimbursement arrangements for approved camps and other services. (Test. of mother; Exs. 138, 147.)

Vision Therapy

44. In its denial of claimant's appeal, Kaiser opined the vision therapy offered by Dr. Etting is not evidence-based, and offered the following as support:

Recommendations for multidisciplinary evaluation and management must be based on evidence of proven effectiveness demonstrated by objective scientific methodology. [. . .] It is important that any therapy for learning disabilities be scientifically established to be valid before it can be recommended for treatment.

Currently, there is no adequate scientific evidence to support the view that subtle eye or visual problems cause learning disabilities. Furthermore, the evidence does not support the concept that vision therapy or tinted lenses or filters are effective, directly or indirectly, in the treatment of

learning disabilities. Thus, the claim that vision therapy improves visual efficiency cannot be substantiated. Diagnostic and treatment approaches that lack scientific evidence of efficacy are not endorsed or recommended.

(Ex. 5, p. A28.)

45. In response to the Kaiser letter, claimant's mother presented numerous guidelines, articles, and scientific research abstracts indicating vision therapy is evidence-based. (Test. of mother; Exs. 155-162.)

46. Based on this limited record concerning whether vision therapy is evidence-based, on balance claimant's evidence is more convincing than service agency's, and therefore claimant established by a preponderance of the evidence that vision therapy is evidence-based.

47. The guidelines, articles, and research abstracts presented by claimant at hearing (Exs. 156-162) indicate the vision problems and disorders addressed by vision therapy are experienced by children and adults of all developmental conditions, typical or disabled. This material also makes clear that the vision therapy treatment rendered to children and adults generally is the same regardless of their developmental status.

48. According to a two-page guideline created by the American Optometric Association (AOA), children with developmental and intellectual disabilities are reported to have significantly more eye and vision problems (e.g., strabismus, refractive errors, and nystagmus) than children without these disabilities. (Ex. 151, p. B234.)

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49. In its Comprehensive Pediatric Eye and Vision Examination clinical trial guideline, the AOA concluded children in various delineated groups, including those with autism, are at high-risk for vision problems, and should be referred for a comprehensive eye and vision examination. (Ex. 156, p. B261.)

50. One of the documents claimant's mother submitted while the record was re-opened after the hearing is an on-line article created by an optometry clinic in Minnesota stating that many symptoms attributed to an autistic person in fact are caused by visual problems which can be addressed by vision therapy. (Ex. 175.) As this is essentially a commercial advertisement without any supporting citation to scientific research, it is of very limited probative value.

51. Three of the documents claimant's mother submitted while the record was re-opened after the hearing concern an incident in September 2024 at claimant's residence in which she hit her head on a support pillar and sustained a concussion. (Exs. 177-179.) In her declaration, claimant's mother advises she offers these documents as an example of her daughter's difficulty noticing and responding to visual information in her environment. (Ex. 180, p. B413.)

52. One of the documents claimant's mother submitted while the record was re-opened after the hearing is a scientific abstract of a study "aimed to evaluate the effectiveness of vision therapy in visual perceptual skills and oculomotor function in children with ASD [autism]." (Ex. 176, p. B396.) This "prospective study" concluded "preliminary evidence that DIR-guided vision therapy, particularly when combined with occupational and behavioral therapy, may enhance visual perceptual and oculomotor functions in children with ASD. However, randomized controlled studies with longer follow-up are needed to confirm these results." (*Ibid.*) As indicated in the abstract, this study was preliminary, based on a very small sample size of children, and needed to be

followed up with a longer study to confirm the results. Moreover, the vision therapy involved in the study was specialized to the children involved, similar to DIR Floortime concepts, and combined with other specialized therapies developed for children with autism, unlike the vision therapy provided by Dr. Etting. Thus, this abstract has very limited probative value.

53. While the record was re-opened, the hearing officer took official notice of a prior OAH decision involving the Lanterman Act, i.e., OAH case number 2015030191 (Decision). OAH decisions are not binding on non-involved parties, but have persuasive value depending on similarities to the dispute in another case. The Decision is 11 years old and, while it involved funding of vision therapy, the parties litigated whether vision therapy is evidence-based and cost-effective, and whether the consumer's parents in that case had exhausted generic resources. The Decision does not discuss or interpret the statutory provision addressed by the hearing officer during closing argument in this case, and thus has no probative value on that issue.

LEGAL CONCLUSIONS

Jurisdiction and Burden of Proof

1. An administrative hearing to determine the rights and obligations of the parties is available under the Lanterman Act to appeal a contrary regional center decision. (§§ 4700-4717.) Claimant timely appealed service agency's NOA denying her funding requests. Thus, jurisdiction exists for this appeal. (Factual Findings 1-6.)

2. The standard of proof in this case is the preponderance of the evidence because no law or statute, including the Lanterman Act, requires otherwise. (Evid.

Code, § 115.) This standard is met when the party bearing the burden of proof presents evidence that has more convincing force than that opposed to it. (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.)

3. When one seeks government benefits or services, the burden of proof is on her. (See, e.g., *Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161 [disability benefits].) Since service agency has not before agreed to provide either of the funding requests in question, claimant bears the burden of proving by a preponderance of the evidence that she is entitled to such funding.

Governing Law

4. The Lanterman Act acknowledges the state's responsibility to provide services and supports for developmentally disabled individuals and their families, including the coordination of services among other state agencies and community groups. (§ 4501.)

5. The primary goal identified in the Lanterman Act is to enable regional center consumers to approximate the pattern of everyday living enjoyed by non-disabled people of the same age and to lead more independent and productive lives in the community. (§§ 4501, 4750; *Association for Retarded Citizens v. Dept. of Developmental Services* (1985) 38 Cal.3d 384, 388.)

6. The Lanterman Act makes distinctions between those services which address a consumer's developmental disability and the services that are common to everyone, disabled or not. For example, section 4512, subdivision (b), defines services and supports that can be funded under the Lanterman Act as "specialized 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 an independent, productive, and normal life. . . .”

7. Regional centers are specifically directed not to fund duplicate services that are available through another publicly funded agency or other “generic resources.” Regional centers are required to “identify and pursue all possible sources of funding.” (§ 4659, subd. (a).) Examples of generic resources include Medi-Cal, private insurance, school districts, and federal security income. (§ 4659, subd. (a)(1) & (2).)

8. The IPP process is a collaboration among the regional center, consumer, and the consumer’s parents and/or authorized representative. (§§ 4646; 4646.5.) An important goal of the Lanterman Act is to foster improved coordination and cooperation between system participants. (§ 4511, subd. (a).)

9. The Lanterman Act does not specifically authorize retroactive reimbursement for services in the fair hearing context. California Code of Regulations, title 17, section (regulation) 50612 suggests that such funding only is available when either the service has been preauthorized or in limited emergency situations before such authorization can be obtained. (Reg. 50612, subds. (a), (b) & (c).)

10. Yet, the lack of specific statutory authorization is not necessarily dispositive of the issue. In the fair hearing context, a hearing officer is empowered by statute to resolve “all issues concerning the rights of persons with developmental disabilities to receive services under [the Lanterman Act]. . . .” (§ 4706, subd. (a).) That statutory provision may be broad enough to encompass the right to retroactive benefits.

11. If the Lanterman Act is to be applied as the Legislature intended, reimbursement should only be available in particular cases where equity requires it. Otherwise, the general requirement that services be established after IPP meetings, and the above-described regulatory restrictions on funding, would be superfluous. Thus, based on the general principles articulated in *Association for Retarded Citizens v. Department of Developmental Services, supra*, 38 Cal.3d 384, reimbursement should be ordered when the principles of equity apply or when, if not granted, the purposes of the Lanterman Act would be thwarted.

Analysis and Resolution of Issues

PROSPECTIVE FUNDING OF VISION THERAPY

12. The analysis should start with the service underlying all of claimant's funding requests, i.e., Dr. Etting's vision therapy program, which claimant began taking in late June 2026.

13. As noted above, section 4512, subdivision (b), makes clear that services fundable under the Lanterman Act either must be "specialized services and supports" or "special adaptations of generic services and supports." No evidence presented in this case indicates Dr. Etting's vision therapy is a specialized service or an adaptation of a generic service. All of the information from Dr. Etting's office indicates the vision therapy claimant currently receives is the same offered to any other member of the public, whether typical or disabled. Nor is there any information indicating that Dr. Etting has adapted his vision therapy for claimant in any way due to her autism. (Factual Findings 11-38; Legal Conclusions 1-6.)

14. The above conclusion is supported by several other key facts. For example, it is clear from all of the submitted vision assessment reports that claimant's

vision problems are related to her various eye disorders. None of claimant's vision assessments link claimant's visual disorders to autism, nor recommend for her vision therapy different from what is available to any other member of the public. In fact, Dr. Etting clearly specified in his vision assessment report that vision therapy does not teach reading, writing, or spelling, and is not intended to replace various specialized therapies offered to children enrolled in special education. Finally, one of the scientific abstracts submitted by claimant's mother indicates there are vision therapy programs offered to autistic children that mirror DIR-Floortime concepts, which is a specialized service provided to ameliorate autism, but nothing in the record indicates Dr. Etting's vision therapy contains any such component. (Factual Findings 11-38, 47, 52; Legal Conclusions 1-6.)

REIMBURSEMENT REQUESTS

15. As a preliminary matter, it is axiomatic that if claimant's underlying vision therapy service is not fundable under the Lanterman Act, neither should her related reimbursement requests.

16. Even if claimant's prospective vision therapy could be funded by the Lanterman Act, her retroactive reimbursement requests cannot.

17. As service agency pointed out in its NOA, the Lanterman Act does not provide retroactive service funding, unless an emergency situation defined in regulation 50612 exists. No such emergency existed in this case. In fact, claimant's mother received recommendations for her daughter to undergo vision therapy in February 2024, and again in February 2025, but consciously decided to delay enrolling her daughter in such a program until May 2026. (Factual Findings 12-20; Legal Conclusion 9.)

18. While the lack of statutory or regulatory authorization does not necessarily prevent reimbursement, claimant's mother failed to establish equity requires such funding, or that the Lanterman Act would be thwarted by not ordering it. (Factual Findings 1-53; Legal Conclusions 4-11.)

19. Specifically, the IPP planning process requires the entire IPP team to be involved in discussing funding requests, and for the parties to work collaboratively on such a request. Here, claimant's mother knew of a vision therapy recommendation as early as February 2024, but waited over two years to first broach the topic with service agency. It is true she contacted service agency in April 2026 about claimant's vision problems, but inexplicably she failed then to specifically reference the two prior vision therapy recommendations or advise service agency that she would be requesting it to fund such a service in the near future. Although claimant's mother had decided in 2025, and again in early 2026, to delay vision therapy until the summer of 2026, she failed to advise service agency of her plans. Instead, claimant's mother waited until five days before Dr. Etting's vision assessment to both notify service agency of her interest in this service and at the same time request service agency to provide funding for it. (Factual Findings 1-53; Legal Conclusions 4-11.)

20. The fact that claimant's mother thereafter provided service agency with information about the vision assessment and therapy after she received it is irrelevant. The Lanterman Act required her to do that before she incurred any expenses, absent an emergency. Thus, through her actions, claimant's mother converted the IPP process into a team of one, her, who made all the decisions, and decided when to provide relevant information to service agency. These actions are not consistent with equity or the collaborative workings envisioned by the Lanterman Act. (Factual Findings 1-53; Legal Conclusions 4-11.)

21. In light of the above conclusions, the various other arguments raised by the parties are moot and therefore are not decided.

ORDER

Service agency shall not reimburse claimant's mother for claimant's May 18, 2026 vision assessment by Dr. Gary L. Etting.

Service agency shall not provide prospective funding for vision therapy provided to claimant by Dr. Etting.

Service agency shall not reimburse claimant's mother for any payments she has already made to Dr. Etting for his vision therapy services already rendered.

DATE:

ERIC SAWYER

Administrative Law Judge

Office of Administrative Hearings

NOTICE

This is the final administrative decision. Each party is bound by this decision. Either party may request reconsideration pursuant to subdivision (b) of Welfare and Institutions Code section 4713 within 15 days of receiving the decision, or appeal the decision to a court of competent jurisdiction within 180 days of receiving the final decision.

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

In the Matter of:

CLAIMANT,

and

FRANK D. LANTERMAN REGIONAL CENTER,

Service Agency.

DDS No. CS0037385

OAH No. 2026060738

ORDER DENYING CLAIMANT'S APPLICATION FOR RECONSIDERATION

An Administrative Law Judge from the Office of Administrative Hearings (OAH), acting as hearing officer, issued a decision in this matter on September 1, 2026 (Decision). The Decision denied Claimant's appeal of Service Agency's denial of (1) Claimant's request for reimbursement of payments made for a vision assessment and several sessions of vision therapy and (2) Claimant's request for prospective funding for vision therapy for the next six to 12 months.

On September 15, 2026, Claimant, through her mother (Mother), applied to OAH for reconsideration of the Decision under Welfare and Institutions Code section

4713 (Application for Reconsideration). A Presiding Administrative Law Judge assigned the Application for Reconsideration to the undersigned hearing officer, who did not hear the matter or write the decision for which reconsideration is requested.

A party may apply for reconsideration to correct a mistake of fact or law, or a clerical error in the decision, or to address the decision of the original hearing officer not to recuse themselves following a request pursuant to Welfare and Institutions Code section 4712, subdivision (g). (Welf. & Inst. Code, § 4713, subd. (b).) (All further statutory citations are to the Welfare and Institutions Code unless otherwise stated.) The application for reconsideration must be decided within 15 days of receipt; the hearing officer responsible for deciding the application may deny it, grant it and modify the decision, or grant it and set the matter for another hearing. (§ 4713, subd. (d).)

The language of section 4713, subdivision (b), considered with the expedited deadline for deciding an application set by section 4713, subdivision (d), makes clear that the mistake of fact or law in question must be apparent from the decision (for example, an obvious mathematical error in calculating hours of service, an order that fails to accurately encompass the facts or legal conclusions, citation to the wrong statute, or reliance on a law that is no longer in effect). Nothing in section 4713 suggests that an application for reconsideration contemplates the hearing officer reviewing the entire record, including the admitted exhibits and the recording of the hearing, to determine if the hearing officer made errors in evidentiary rulings or made mistakes of fact or law. That process is undertaken in an appeal of the decision to the Superior Court, not in an application for reconsideration under section 4713. (See Cal.Civ.Proc. § 1094.5, subd. (b) & (c) [evaluation of the evidence, abuse of discretion in

evidentiary rulings, and interpretation of statutes are proper issues for an administrative writ].)

On September 17, 2026, OAH notified Service Agency of the Application for Reconsideration. Service Agency did not file a written statement supporting or opposing the Application.

After a review of the Application for Reconsideration, the Decision, and applicable statutes and case law, the undersigned administrative law judge finds the Application for Reconsideration does not identify any mistakes of fact or law made by the hearing officer that are correctable by section 4713, as described more fully below.

ANALYSIS

The Application for Reconsideration requests that the administrative law judge modify the Decision "on the existing record" for "material errors of law and fact." According to the Application for Reconsideration, modification of the Decision is warranted because the Decision mistakenly (a) "applied an unduly restrictive legal test" under section 4512, subdivision (b); (b) found that the treatment recommended by Gary Etting, Claimant's optometrist, was the "same" as treatment offered to members of the public, "without identified comparative clinical testimony;" (c) failed to analyze sections 4659, subdivision (d), and 4646.4 when addressing reimbursement; and (d) "relied on a 'team of one' equity characterization that conflicts with the Decision's own chronology of advance notice, pre-service funding requests, Individual Program Plan (IPP) discussion, and continuing information sharing." (Application for Reconsideration, p. 1.) The Application for Reconsideration also asserts issues regarding the post-hearing consideration of evidence.

Alleged Mistake One – Improper Application/Interpretation of Section 4512, Subdivision (b)

Legal Conclusions 13 and 14 of the Decision find that Claimant's vision therapy does not meet the definitions of services and supports fundable under the Lanterman Developmental Disabilities Services Act (Lanterman Act) as stated in section 4512, subdivision (b). That subdivision defines services and supports for persons with developmental disabilities to consist of "specialized 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 an independent, productive, and normal life."

Claimant contends that Legal Conclusions 13 and 14 of the Decision are based on a mistake of law because the hearing officer impermissibly conflated the two definitions of covered services and supports in section 4512, subdivision (b), i.e., "specialized services and supports" and "special adaptations of generic services and supports." According to Claimant, the subdivision recognizes "two alternative concepts: a specialized service or support, or a special adaptation of a generic service or support," and that only the second concept requires that the service or support be specific to the developmental disability, i.e., autism-specific in this case. (Application for Reconsideration, p. 4.) Claimant asserts the cited Legal Conclusions incorrectly assume that "specialized services and supports" become non-specialized if persons without developmental disabilities can receive the same treatment modality provided to persons with developmental disabilities. Claimant contends no such requirement is found in section 4512, subdivision (b), and the hearing officer's incorporation of the requirement into the definition of covered services is contrary to the individualized

planning and decision making underlying the individual program planning process. According to Claimant, vision therapy is a specialized service covered by the Lanterman Act because it addresses Claimant's individual medical needs, is directed to Claimant's physical habilitation and rehabilitation, and will help Claimant achieve an independent life.

Claimant cites no statute or case law to support her interpretation or demonstrate that the cited Legal Conclusions are contrary to the law. Nor does Claimant complain that the factual findings underlying the cited Legal Conclusions are mistaken. Rather, Claimant's complaint about the Decision reflects a disagreement over how subdivision (b) of section 4512 should be interpreted. The Decision, citing subdivision (b), distinguishes between services that address a consumer's developmental disability and those that are common to everyone, disabled or not. (Legal Conclusion 6.) In Legal Conclusion 13, the hearing officer finds that the vision therapy offered to Claimant, while individual to her ophthalmological and optical deficiencies, does not constitute a "specialized service or support" because the therapy has not been modified because of Claimant's autism. Thus, according to the hearing officer, while vision therapy is a specialized service in that it addresses Claimant's individual vision issues, the specialization is not related to Claimant's autism and therefore is not a service covered by the Lanterman Act.

Disagreement over an interpretation of a statute does not constitute a mistake of law. Accordingly, the hearing officer's conclusion that vision therapy does not constitute a "specialized service or support" does not constitute grounds for reconsideration.

Alleged Mistake Two – Absence of Evidentiary Support for Legal Conclusion 14

Legal Conclusion 14 of the Decision concludes that Claimant's recommended vision therapy is the same therapy offered to members of the public and therefore cannot be considered a "specialized service or support" under section 4512, subdivision (b). Claimant contends this conclusion is mistaken because it lacks evidentiary support. Specifically, Claimant contends that no evidence was presented showing all vision therapy is the same or that Claimant's treatment is identical to that provided to every other member of the public.

Contrary to Claimant's claim, the Decision does not find that Claimant's vision therapy is identical to that offered to any other member of the public. Rather, the hearing officer found that the vision problems identified by Dr. Etting are those experienced by children and adults, regardless of whether they have disabilities, and the vision therapy offered by Dr. Etting addresses those shared vision problems. (Factual Findings 23, 47.) Based on those findings, the hearing officer concluded that "vision therapy treatment rendered to children and adults *generally* is the same regardless of their developmental status." (Factual Finding 47; italics added.) Thus, the hearing officer's legal conclusion that Claimant's vision therapy is not "different from what is available to any other member of the public" is well-supported by the hearing officer's factual findings. (Legal Conclusion 14.)

Claimant does not assert that the factual findings underlying Legal Conclusion 14 are incorrect, but rather that the evidence is incomplete. However, it is Claimant's burden to supply evidence showing that the vision therapy she seeks is different from what others receive because of Claimant's autism. That the hearing officer based his

legal conclusion on the evidence before him does not constitute a mistake of fact or law and therefore is not a ground for reconsideration.

Alleged Mistake Three – Failure to Address Sections 4659 and 4646.4 and Mistaken Timing Analysis

The Decision denied Claimant's requests for reimbursement on several grounds: first, Claimant's underlying vision therapy is not fundable under the Lanterman Act and therefore her related reimbursement requests are likewise not fundable; second, no emergency, as defined by California Code of Regulations, title 17, section 50612, existed that would permit reimbursement; and third, Claimant failed to establish that equity requires such funding. (Legal Conclusions 15–18.)

Claimant asserts the hearing officer's timing analysis of when she requested funding is incomplete, and the legal analysis mistakenly omits consideration of sections 4659, subdivision (d)(1), and 4646.4, subdivision (a). Regarding the timing analysis, Claimant contends the hearing officer omitted in his consideration of Claimant's reimbursement request that Mother requested funding for the assessment and vision therapy before either had occurred. However, the hearing officer acknowledged that Claimant made these same contentions as part of her appeal (Factual Finding 6), and found that Claimant's mother had requested funding for the assessment five days before it took place, and paid for the assessment and therapy without receiving prior authorization from the regional center. (Factual Findings 19–28.) According to the hearing officer, although the issues were discussed in the IPP meeting, the regional center never approved the costs. Thus, the relevant issue is not that Claimant requested the services before purchasing them but that she purchased them before Service Agency's approval. Without prior authorization, Claimant was precluded from seeking reimbursement for such costs unless there was an emergency,

which Claimant did not establish. Claimant's disagreement with the hearing officer's interpretation does not reflect a mistake of fact.

Claimant's contentions regarding the applicability of sections 4659, subdivision (d)(1), and 4646.4, subdivision (a), likewise fail to show a mistake of law. Section 4659, subdivision (d)(1), states that a regional center shall not purchase medical services for a consumer unless it is provided with documentation of an insurance plan denial and determines that an appeal by the consumer or family does not have merit. The subdivision also states that the regional center may pay for medical services while coverage is being pursued but before a denial is made. Section 4646.4, subdivision (a), states the regional center, through the IPP process, must ensure that in purchasing services and supports, it conforms to the regional center's purchase of service policies, utilizes generic services and supports if appropriate as well as other funding services, considers the family's responsibility for providing similar services and supports for a minor child without disabilities, and considers the consumer's needs for the services and barriers to access.

Neither statute, however, addresses retroactive reimbursement requests, which the hearing officer determined were made by Mother. Furthermore, both statutes presume the medical services for which funding is sought are the types of services and supports funded under the Lanterman Act. In this case, the hearing officer found Claimant's vision assessment and therapy did not qualify for funding under the Lanterman Act. Therefore, the hearing officer's failure to consider these statutes does not constitute a mistake of law.

Alleged Mistake Four – Improper Characterization of Mother’s Efforts as “Team of One” and Impact of Characterization on Equity Analysis

In the Decision, the hearing officer asserts that Mother “converted the IPP process into a team of one, her, who made all the decisions, and decided when to provide relevant information to service agency.” (Legal Conclusion 20.) According to Claimant, this characterization “materially affected the Decision’s conclusion that equity did not support reimbursement” and conflicted with the Decision’s own factual findings.

The hearing officer’s characterization of Mother’s conduct is not a finding of fact or law. Rather, it is his judgment based on his review of undisputed facts. Thus, his characterization and its resulting impact on the determination that equity did not support reimbursement do not constitute a basis to reconsider the Decision.

Other Issues

As stated in the Decision, the Notice of Action in this matter did not assert that Claimant’s vision therapy failed to meet the requirements of section 4512, subdivision (b), and the issue was first addressed by the hearing officer in closing argument. Although the hearing officer kept the record open for additional evidence on the issue and gave the parties the option of seeking an additional hearing day, Claimant asserts she was mistakenly informed that the hearing was for documents only, not for testimony. Claimant further contends that the evidence regarding vision therapy’s relationship to autism was not fully developed because no expert testified regarding whether Claimant’s vision therapy was tailored to her autism.

The Decision notes that by separate order, the hearing officer granted Mother’s request to re-open the record to allow Claimant to upload five exhibits pertaining to

whether Claimant's service requests meet the definition of fundable services and supports stated in section 4512, subdivision (b), and a declaration by Mother. The hearing officer also granted Claimant's request to take official notice of a 2015 OAH decision involving vision therapy funding. (Decision, p. 2.) The hearing officer offered to schedule another day of hearing limited to the issue raised during closing argument if either party requested. (*Ibid.*) Nothing in the Decision states that the extra hearing day contemplated by the hearing officer excluded testimony or was limited to the production of exhibits.

That Claimant mistakenly believed that the extra hearing day was for documents only does not constitute a mistake of fact or law in the Decision. Likewise, the hearing officer's decision regarding whether Claimant's vision therapy constituted a specialized service fundable under the Lanterman Act was based on the evidence presented. The hearing officer could have requested expert evidence if he believed such evidence was required to make a decision. Further, if Claimant believed expert evidence would be useful to support her position, she could have supplied an expert affidavit if she believed the extra day of hearing was for exhibits only. That the parties failed to present expert evidence is not a basis for reconsideration. (See Cal.Civ.Proc., § 1094.5, subd. (e) [improper exclusion or lack of consideration of evidence shall be considered in an administrative writ proceeding].)

Disposition

Based on the foregoing, Claimant has not demonstrated any mistake of law or fact or clerical error that warrants reconsideration of the Decision. Accordingly, the requested relief is not warranted.

ORDER

Claimant's application for reconsideration of the final decision is denied.

DATE:

CINDY FORMAN

Administrative Law Judge

Office of Administrative Hearings