BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: R.L., Claimant, vs. KERN REGIONAL CENTER, Service Agency.	OAH Case No. 2013060146

DECISION

This matter came on regularly for hearing before Samuel D. Reyes, Administrative Law Judge, Office of Administrative Hearings, on September 16, 2013, in Bakersfield, California.

Susan Hernandez, Interim Director of Client Services, represented Kern Regional Center (Regional Center or Service Agency).

Susan L.[1], Claimant's mother, represented Claimant.

Oral and documentary evidence was received at the hearing and the matter was submitted for decision.

[1] Initials have been used instead of family surnames to protect Claimant's and his family's privacy.

ISSUE

Should Regional Center reimburse the mileage cost of driving Claimant to out-of-town dental appointments?[2]

FACTUAL FINDINGS

1. Claimant is a 14-year-old Service Agency consumer with qualifying diagnoses of mental retardation, cerebral palsy and epilepsy. He resides with his parents and his older brother.

2. Claimant requires specialized treatment due to his medical conditions, which include Mitochondrial Disease and Chronic Lung Disease. His Cerebral Palsy has resulted in quadriplegia, and he has suffered seizures over the past three years. Claimant relies on a gastric tube for alimentation. Ten doctors or clinics are involved in his care. Seven of the doctors are specialists and six of them are located outside Kern County.

3. Claimant requires specialized dental care, which is in part related to his qualifying conditions. His permanent teeth do not have enamel, and require special treatment. He does not tolerate anesthesia well because of his lung disease. Since 2004, he has been attending the UCLA Children's Dental Center, where staff uses special holds and techniques to perform routine and complex dental procedures, making accommodations and adaptations to take into account Claimant's developmental and medical conditions.

4. Claimant started attending the UCLA Children's Dental Center because there

[2] The parties also presented evidence regarding reimbursement for out-of-town travel to appointments with Dr. Berkley Powell, a geneticist. However, during the hearing, they resolved the issue to their mutual satisfaction and the issue was removed from consideration by the Administrative Law Judge.

were no local dentists who could provide the specialized care that Claimant requires. However, as Service Agency Director of Medical Services Fidel B. Huerta, M.D., testified without contradiction, there are now several dentists in the Bakersfield area that provide specialized services to Regional Center consumers.

5. Claimant relies on a wheelchair for transportation, and needs a specially-adapted minivan to travel to out-of-town medical appointments.

6. Service Agency has agreed to reimburse Claimant's family for the cost of out-of-town medical or dental appointments, so long as the visits are related to his qualifying diagnoses.

LEGAL CONCLUSIONS

1. In enacting the Lanterman Developmental Disabilities Act, Welfare and Institutions Code[3] section 4500 et seq., the Legislature accepted its responsibility to provide for the needs of developmentally disabled individuals and recognized that services and supports should be established to meet the needs and choices of each person with developmental disabilities. (§ 4501.) "Services and supports should be available to enable persons with developmental disabilities to approximate the pattern of everyday living available to people without disabilities of the same age. Consumers of services and supports, and where appropriate, their parents, legal guardian, or conservator, should be empowered to make choices in all life areas. These include promoting opportunities for individuals with developmental disabilities to be integrated into the mainstream of life in their home communities, including supported living and other appropriate community living arrangements. . . ." (*Id.*)

[3] Further references are to the Welfare and Institutions Code.

2. Welfare and Institutions Code section 4512, subdivision (b), in pertinent part, defines the services and supports that may be funded as follows:

"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 social, personal, physical, or economic habilitation or rehabilitation of an individual with a developmental disability, or toward the achievement and maintenance of independent, productive, normal lives. The determination of which services and supports are necessary for each consumer shall be made through the individual program plan process. The determination shall be made on the basis of the needs and preferences of the consumer, or where appropriate, the consumer's family, and shall include consideration of a range of service options proposed by individual program plan participants, the effectiveness of each option in meeting the goals stated in the individual program plan, and the cost-effectiveness of each option."

Thus, the statute requires regional centers to provide "specialized services and supports or special adaptations of generic services," taking into account consumer needs and desires as well as cost-effectiveness.

3. The Lanterman Act gives regional centers, such as Service Agency, a critical role in the coordination and delivery of services and supports for persons with disabilities. (§ 4620 et seq.) Thus, regional centers are responsible for developing and implementing individualized program plans (IPPs), for taking into account consumer needs and preferences, and for ensuring service cost-effectiveness. (§§ 4646, 4646.5, 4647, and 4648.)

4. In this case, circumstances have changed, which may require revisiting the cost-effectiveness of funding out-of-town trips to the dentist. Whereas when Claimant first required specialized dental services they were not locally available, there may now be

dentists in Kern County that can meet Claimant's needs. Accordingly, funding will be allowed to continue for a transition period to enable the parties to ascertain whether there is a local dentist who can meet Claimant's needs.

ORDER

1. Claimant's appeal is granted in part.

2. For a reasonable period not to exceed three months, Claimant and Service Agency shall explore the availability of dental services in the Bakersfield area that can meet Claimant's specialized needs consistent with the parental choice and cost-effectiveness requirements of the Lanterman Act. If no such dentist is found, then Service Agency shall continue to reimburse of continued travel to the UCLA Children's Dental Center, which continued funding may be revisited yearly in connection with the IPP process and the findings and conclusions of this Decision.

Dated: September 26, 2013

_____/S/_____

SAMUEL D. REYES

Administrative Law Judge

Office of Administrative Hearings

NOTICE

This is the final administrative decision in this matter and both parties are bound by this Decision. Either party may appeal this Decision to a court of competent jurisdiction within 90 days.