

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

MATTHEW T.,

Claimant,

OAH No. 2013090543

v.

HARBOR REGIONAL CENTER,

Service Agency.

DECISION

Carla L. Garrett, Administrative Law Judge (ALJ), Office of Administrative Hearings, State of California, heard this matter on November 7, 2013, in Torrance, California.

Gigi Thompson, Manager Rights Assurance, represented the Harbor Regional Center (Harbor or Service Agency). Claimant Matthew T.<sup>1</sup> (Claimant) was represented by his father (Father).

Oral and documentary evidence was received, the record was closed, and the matter was submitted for decision on November 7, 2013.

ISSUE

Must the Service Agency pay retroactive copayment assistance for Claimant's Applied Behavioral Analysis (ABA) services for 2012?

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<sup>1</sup> Claimant's initial is used in lieu of his surname in order to protect his privacy.

## FINDINGS OF FACT

1. Claimant is a four-year-old boy, and a consumer of the Service Agency. Specifically, Claimant has autistic disorder, and is eligible for services pursuant to the Lanterman Developmental Disabilities Act (Lanterman Act), California Welfare and Institutions Code, section 4500, et seq.<sup>2</sup>

2. On August 9, 2013, the Service Agency issued a decision letter denying Claimant's request for retroactive copayment assistance for his ABA services for 2012. On September 11, 2013, Father filed a Fair Hearing Request on behalf of Claimant. All jurisdictional requirements have been met.

3. Claimant lives with his parents within the Service Agency's catchment area. Claimant receives ABA services approximately 32.5 hours a week, which are funded through his parents' insurance plan. Claimant's parents (Parents) are required to pay a \$30 co-payment for each visit by his ABA providers. The copayments total approximately \$150 per week.

4. In September 2012, Parents submitted to the Service Agency a request for co-payment assistance. In response, the Service Agency advised Parents that in order to process their request, they would need to provide it with specific documentation. Specifically, Parents needed to provide evidence of coverage or authorization from their insurance company for ABA services for Claimant, a copy of their tax returns, and a progress report from the ABA service provider.

5. Over the next several months, Parents encountered difficulty obtaining the requested documentation from the insurance company. In addition, in November 2012, the Service Agency advised Parents that it had yet to receive a copy of their tax returns. Parents also encountered difficulty obtaining the required progress report from Claimant's

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<sup>2</sup> All statutory references are to the Welfare and Institutions Code.

ABA service provider.

6. On January 3, 2013, Parents submitted all of the requested documentation to the Service Agency. The Service Agency processed Parents' request, and then authorized co-payment assistance services to begin on January 15, 2013.

7. Parents requested the Service Agency to provide co-payment assistance retroactively to September 2012, when they made the initial request, as the Service Agency never formally advised Parents that any failure to provide the necessary documentation by a certain time would foreclose any opportunity for them to receive co-payment assistance for 2012.

## LEGAL CONCLUSIONS

The Service Agency is not required to pay retroactive copayment assistance for the reasons set forth below:

1. The Lanterman Act sets forth a regional center's obligations and responsibilities to provide services to individuals with developmental disabilities. As the California Supreme Court explained in *Associaton for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 388, the purpose of the Lanterman Act is twofold: to prevent or minimize the institutionalization of developmentally disabled persons and their dislocation from family and community and to enable them to approximate the pattern of everyday living of nondisabled persons of the same age and to lead more independent and productive lives in the community.

2. Welfare and Institutions Code section 4659, subdivision (a), provides that 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 governmental, other entities, programs or private entities.

3. Welfare and Institutions Code section 4659, subdivision (b), provides that regional centers may not pay for medical or dental services for a consumer over the age of

three unless the regional center is provided with documentation that a health care plan, private insurance, or Medi-Cal denied coverage and the regional center determined that the denial does not have merit.

4. In relevant part, Welfare and Institutions Code section 4659.1, provides that effective July 1, 2013, regional centers may fund co-payments or co-insurance only when: (1) the service or support is paid for, in whole or in part, by the health care service plan or health insurance policy of the consumer's parent; (2) the consumer is covered by his her parent's health plan or health insurance; (3) the family has an annual gross income that is less than 400% of the federal poverty level; and (4) there is no third party with liability for cost of the service or support.

5. Welfare and Institutions Code section 4659.1, subdivision (c) contains an exception to the prohibition when the service or support is necessary to successfully maintain the consumer at home in the least restrictive setting and the parents or consumer demonstrates one or more of the following:

- (1) The existence of an extraordinary event that impacts the ability of the parent, guardian, or caregiver to meet the care and supervision needs of the child or impacts the ability of the parent, guardian, or caregiver, or adult consumer with a health care service plan or health insurance policy, to pay the copayment or co-insurance.
- (2) The existence of a catastrophic loss that temporarily limits the ability to pay of the parent, guardian, or caregiver, or adult consumer with a health care service plan or health insurance policy and creates a direct economic impact on the family or adult consumer. For purposes of this paragraph, catastrophic loss may include, but is not limited to, natural disasters and accidents involving major injuries to an immediate family member.

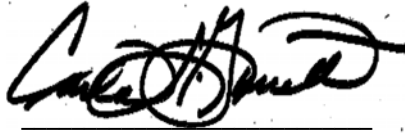
- (c) Significant unreimbursed medical costs associated with the care of the consumer or another child who is also a regional center consumer.

6. Here, Claimant has failed to sustain his burden of demonstrating that the Service Agency must pay retroactive copayment assistance for Claimant's ABA services for 2012, specifically, since September 2012, when Parents initially made their request for copayment assistance. There is nothing in the Lanterman Act that has ever provided or contemplated funding co-payment assistance on a retroactive basis. Even the most recent language concerning copayment assistance in the Lanterman Act, specifically Welfare and Institutions Code section 4659.1, though enacted subsequent to Parents' request, serves an instruction in this matter, as nothing in it addresses the prospect of retroactive copayment assistance. The absence of such language suggests that the Legislature found no compelling reason to modify the Lanterman Act to provide for retroactive copayment assistance. The evidence showed that the Service Agency provided Parents with all of the necessary information in order to process their request in a timely fashion, yet Parents failed to submit the required documentation until more than three months after their initial request. Claimant submitted no evidence demonstrating that the delay in Parents' submission of the documents was due to any action on the part of the Service Agency. Given these factors, Claimant's appeal must be denied.

## ORDER

Claimant's appeal is denied.

Date: November 20, 2013

A handwritten signature in black ink, appearing to read 'Carla L. Garrett', written over a horizontal line.

CARLA L. GARRETT

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.