BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: JONAH F., Claimant, vs. NORTH LOS ANGELES COUNTY REGIONAL CENTER, Service Agency.	OAH No. 2013100389

DECISION

Administrative Law Judge Jerry Smilowitz, State of California, Office of Administrative Hearings, heard this matter on November 22, 2013, in Van Nuys, California, at the offices of North Los Angeles Regional Center (NLACRC or Service Agency).

Claimant was not present. He was represented by his father.[1]

Stella Dorian acted as the Fair Hearing Representative for the Service Agency.

Oral and documentary evidence was received, the record was closed, and the matter was submitted for decision on November 22, 2013.

[1] Initials and titles are used to protect the privacy of Claimant and his family.

ISSUE

The parties agreed on the following statement of the issue to be decided: Shall the Service Agency continue funding of co-payments for behavioral services Claimant is now receiving through his parents' private health insurance plan?

EVIDENCE RELIED UPON

Documents: Service Agency's exhibits 1- 5, Claimant's exhibit A.

Testimony: For Service Agency, Landon Hallbrooks, Consumer Services Supervisor; for Claimant, his father.

FACTUAL FINDINGS

1. Claimant is a 15-year old boy receiving services from NLARC because of a diagnosis of autism. He attends six sessions a week of behavioral programming provided through Behavior and Education, Inc., for a total of 12 hours each week. This program is funded through his parents' private health insurance, which required a co-payment of $40 per session. When Claimant's father informed his son's Service Coordinator that the co-payments were a barrier to Claimant's receipt of services, NLACRC agreed, in March of 2013, to fund the six co-pays each week.

2. On June 27, 2013, Welfare and Institutions Code[2] section 4659.1, one of several trailer bills which were intended by the State Legislature to change the availability of benefits due to budget restrictions, took effect. In pertinent part, the new statute provides:

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[2] All further statutory references are to the Welfare and Institutions Code unless otherwise noted.

(a) If a service or support provided pursuant to a consumer's individual program plan under this division or individualized family service plan pursuant to the California Early Intervention Services Act (Title 14 (commencing with Section 95000) of the Government Code) is paid for, in whole or in part, by the health care service plan or health insurance policy of the consumer's parent, guardian, or caregiver, the regional center may, when necessary to ensure that the consumer receives the service or support, pay any applicable copayment or coinsurance associated with the service or support for which the parent, guardian, or caregiver is responsible if all of the following conditions are met:

(1) The consumer is covered by his or her parent's, guardian's, or caregiver'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).

[¶] . . . [¶]

(c) Notwithstanding paragraph (2) of subdivision (a) or paragraph (1) of subdivision (b), a regional center may pay a copayment or coinsurance associated with the health care service plan or health insurance policy for a service or support provided pursuant to a consumer's individual program plan or individualized family service plan if the family's or consumer's income exceeds 400 percent of the federal poverty level, the service or support is necessary to successfully maintain the child at home or the adult consumer in the least-restrictive setting, and the parents or consumer demonstrate 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 coinsurance.

(2) The existence of 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.

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

(d) The parent, guardian, or caregiver of a consumer or an adult consumer with a health care service plan or health insurance policy shall self-certify the family's gross annual income to the regional center by providing copies of W-2 Wage Earners Statements, payroll stubs, a copy of the prior year's state income tax return, or other documents and proof of other income.

3. In August of 2013, Claimant's Service Coordinator informed Claimant's parents about the new statutory restriction on funding for behavioral co-payments. The Claimant's parents submitted their joint 2012 U.S. Income Tax Return. At the hearing, Claimant's father submitted part of his and his wife's joint 2012 California Income Tax Return.[3] (Exhs. 4 and A.)

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[3] Since section 4659.1, subdivision (f), declares any documentation submitted pursuant to the section to be confidential, both returns have been placed under seal.

4. NLACRC reviewed the federal returns, and determined that the family earned in excess of 400 percent of the federal poverty level. (Exh. 3.) It found that none of the statutory exemptions existed. By a letter which is tantamount to a Notice of Proposed Action,[4] dated October 30, 2013, NLACRC informed Claimant's parents that it would no longer fund the insurance co-payments for Claimant's behavioral services.

5. At a pre-hearing conference, and during the hearing, Claimant's father contended that he and his wife made a mistake in providing the federal returns, and that their State returns should be the basis for determining whether the family's income exceeds 400 percent of the federal poverty level. He pointed to the amount of his State wages as the determinant, maintaining that the principal concern should be the availability of cash on hand or, in other words, disposable income. He specifically characterized several items that are included in the calculation of gross income—e.g., "pass through income" from partnerships where he pays, as a partner, taxes on gains, some ordinary dividends, federal and state taxes—as not being actual dollars which he can expend for the care of his family. In his view, NLACRC should have relied upon his family's actual wages as identified in their W-2s and reported in their State income tax return as "State wages." Had NLACRC done so, Claimant's family would have qualified for co-payment assistance because their income would have been just below the cut-off for eligibility.

6. Further, Claimant's father maintains that section 4659.1 is written so poorly, it gives regional centers a rubber stamp to decline funding for any reason. As he argues, the statute allows a family to self-certify its income by just providing pay stubs.

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[4] While this Notice is not a financial document, it refers to documentation submitted by Claimant's family, and is deemed confidential. Consequently, it too has been placed under seal.

It fails to define what constitutes an "extraordinary event" or even give guidelines. He believes that his family's financial situation qualifies as an "extraordinary event" since his contributions to health, dental, and vision insurance have doubled in 2013, taking another 12-15 percent out of his income. He anticipates that 2013 earnings will be $10,000 less than the sales commissions he earned last year, and he has incurred some unreimbursed medical expenses and other costs on behalf of Claimant which arise from the latter's disability. However, Claimant's father did not identify what portion of the $14,481 he declared as medical expenses in his joint federal tax return was attributable to his care of Claimant.

CONCLUSIONS OF LAW AND DISCUSSION

1. The Service Agency may cease funding of insurance co-payments for behavioral services Claimant is receiving from Behavior and Education, Inc.

2. There is no need in this Decision to address whether the Legislature, in enacting section 4659.1, intended that "Annual Gross Income"—identified on line 22 of the federal income tax return, Form 1040, as "total income"—or "Adjusted Gross Income"— total income less certain specified deductions—is the yardstick for determining eligibility for co-payment funding. As revealed in the family's tax returns, the difference between the two figures is only $12, an amount that does would not affect any finding that the family's gross income is, or is not, greater than 400 percent of the federal poverty level.

3. The California Resident Income Tax Return, Form 540, requires the entering, on line 13, of the "federal adjusted gross income." The federal adjusted gross income is the starting point for making State adjustments or subtractions. Thus, it would make no difference if the federal or State return is consulted since both include the federal adjusted gross income amount.

4. As explained by the Court in *Katz v. Los Gatos-Saratoga Joint Union High School District* (2004) 117 Cal.App.4th 47, 61, statutory interpretation begins by "examining the statutory language, giving the words their usual and ordinary meaning." If the meaning is without ambiguity, doubt, or uncertainty, then the language controls because there is nothing to interpret or construe. (*Ibid.*) That approach applies here. Claimant's father believes that the use of gross income or adjusted gross income is unfair. However, there is no ambiguity about the Legislature's intent or its directive to regional centers. The term "annual gross income" was designed to be a bright-line marker for a regional center to determine whether a consumer's family is financially eligible for co-payment assistance. Regional centers are not equipped to determine what taxes, dividends, or gains constitute income. Besides, that calculation has already been made through federal tax laws and regulations which define annual gross income, and adjusted gross income.

5. In light of these Legal Conclusions, the annual gross income of Claimant's family exceeds 400 percent of the federal poverty level. Consequently, NLACRC is statutorily prohibited from funding the family's co-payments unless, pursuant to section 4659.1, subdivision (c), "the service or support is necessary to successfully maintain the child at home . . ., and the parents or consumer demonstrate one or more" situations warranting an exemption. A party in an administrative hearing, like NLACRC, generally has the burden of proof in seeking a change from the status quo. (*Brown v. City of Los Angeles* (2002) 102 Cal.App.4th 155.) However, section 4659.1 shifts the burden to Claimant's family to prove that one of the three stated exemptions applies to them.

6. The record is devoid of any showing that the family has undergone a "catastrophic loss" akin to natural disasters or accidents involving major injuries to an immediate family member, as is required under section 4659.1, subdivision (c)(3).

7. The record also does not show that the family has experienced unreimbursed medical costs associated with the care of Claimant or another child who is also a regional center consumer, as required by section 4659.1, subdivision (c)(2). While the federal tax return reveals that $14,851 was identified as overall medical expenses, the record does not identify on whose behalf these expenses were incurred. Under section 4659.1, there must be "[s]ignificant unreimbursed medical costs associated with the care of the consumer or another child who is also a regional center consumer." None of Claimant's siblings are consumers with a regional center.

8. The remaining exemption applies to "an extraordinary event that impacts the ability of the parent . . . to meet the care and supervision needs of the child or impacts the ability of the parent , . . to pay the copayment. . . ." Here, Claimant's father identifies as an extraordinary event the doubling of health insurance, causing an expenditure of another $12,000 for the insurance needs of his family, accompanied by a $10,000 loss in income as compared to last year.

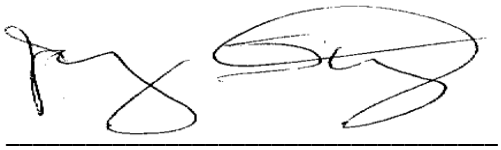
9. "Extraordinary" is variously defined, but it usually describes a situation that is very unusual or very different from the norm. In this context, an "extraordinary event" must mean more than a financial strain experienced by a family, which is the case here. Section 4659.1 presumes that a family with an income in excess of 400 percent of the federal poverty level has the ability to make co-payments. There is no indication from the record that Claimant's family is unable to cover the co-payments because of a loss of employment, or an illness or condition which prevents the parents from working.

10. A new calendar year is approaching. If Claimant's father is accurate about his expenses and projected income, he may be able to qualify under the means test in section 4659.1. Nothing in the ensuing order prevents Claimant's parents from submitting tax returns or other financial documents to show that their annual gross income has changed.

ORDER

The appeal by Claimant's family from a decision by NLACRC to discontinue funding of insurance co-payments is denied.

Dated: December 5, 2013



JERRY SMILOWITZ
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.