

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT 1,

v.

ALTA CALIFORNIA REGIONAL  
CENTER,

Service Agency.

OAH No. 2014050009

In the Matter of:

CLAIMANT 2,

v.

ALTA CALIFORNIA REGIONAL CENTER,

Service Agency.

OAH No. 2014050012

DECISION

A fair hearing was held on June 27, 2014, before Karen J. Brandt, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, in Sacramento, California.

Camelia Houston, Supervising Counselor, represented Alta California Regional Center (ACRC).

Claimants' parents represented claimants.

Evidence was received, the record was closed, and these consolidated matters were submitted for decision on June 27, 2014.

## ISSUE

Should ACRC be ordered to fund vision therapy for claimants?

## FACTUAL FINDINGS

1. Claimants are identical twin boys. They were born in 1998. They are currently 16 years old. They qualify for services from ACRC under the Lanterman Developmental Disabilities Services Act (Lanterman Act), Welfare and Institutions Code section 4500 et seq., because they have been diagnosed with autism spectrum disorder. Claimants' parents requested that ACRC fund vision therapy for claimants. ACRC denied the parents' requests. Claimants' parents appealed from ACRC's denials. A fair hearing was held on June 27, 2014. At the fair hearing, the parties stipulated to consolidate these two matters for hearing and decision.

2. In September 2013, a planning team consisting of claimants' mother and an ACRC Service Coordinator developed Individual Program Plans (IPPs) for claimants. The IPPs set forth the annual goals and objectives for claimants. The September 2013 IPPs do not include any reference to vision therapy for claimants.

3. On November 26, 2013, claimants' eyes were checked by Steven Michael Frisby, O.D., in the Optometry Department of The Permanente Medical Group, Inc. (Kaiser). Dr. Frisby found that both claimants had "excellent visual acuity at distance and near," and that their "reading skills might benefit from evaluation for tracking, but no optical [aids] are required at this time."

4. On February 15, 2014, Christy J. Curtis, O.D., of Eye Optics Optometry Center (Eye Optics) conducted sensory motor evaluations on claimants and issued reports dated February 18, 2014. Dr. Curtis tested claimants on eye teaming, eye focusing, and eye movements. Dr. Curtis described "eye teaming" as relating to the "ability of the two eyes to direct and aim at the same point in space." According to Dr.

Curtis, problems with eye teaming “can result in double vision, eye fatigue, visual confusion, and poor spelling.” Dr. Curtis described “eye focusing” as relating to the “ability to bring objects into clear focus at different distances.” According to Dr. Curtis, problems with eye focusing “can result in blurred vision, slower processing speed, and difficulty with details or small words.” Dr. Curtis described “eye movements” as relating to the “ability to move two eyes smoothly from one word to the next while reading.” According to Dr. Curtis, problems with eye movements “can result in loss of place while reading, skipping lines, and re-reading sentences. This problem may also affect a person’s hand-eye coordination.” Although the reports are slightly different for each claimant, in general, Dr. Curtis found that claimants’ eye teaming and eye focusing were “weak,” and that the results of the Developmental Eye Movement Test (DEM) indicated “ocular motor dysfunction (poor eye-tracking).”

Dr. Curtis also tested claimants on vision form perception and visual information processing. Dr. Curtis described “visual form perception” as the “ability to identify objects in different locations or sizes or rotations.” Dr. Curtis described “visual information processing” as including a “large number of visual skills where the brain combines information received from other senses such as touch and hearing with vision.” Dr. Curtis found that claimant 2 did not have difficulty with visual form perception, but that claimant 1 did. She found that both claimants had “difficulty with laterality (left and right on self), directionality (left and right in space), and visual-motor speed (coordinating vision with motor action efficiently). She also found that claimant 1 had difficulty with “sentence copying speed.”

Dr. Curtis recommended 24 sessions of vision therapy to “remediate these poor vision skill areas.” There is no mention in Dr. Curtis’s reports of claimants’ autism spectrum disorder or the effect, if any, that the recommended vision therapy would have in addressing or remediating their autism spectrum disorder.

5. In a letter dated February 18, 2014, Dr. Curtis described "vision therapy" as "an optometric specialty that has been clinically shown to be an effective treatment for accommodative disorders (eye focusing problems), binocular dysfunction (inefficient eye teaming), ocular motility dysfunctions (eye movement disorders), strabismus (turned eye), amblyopia (lazy eye), and perceptual motor dysfunction." According to Dr. Curtis, vision therapy is a "set of procedures that are individualized for each patient" to "teach the patient how to improve a weak visual or processing skill through the use of lenses, prisms, special computer programs, and other activities." Dr. Curtis diagnosed claimants with "ocular motor dysfunction," "accommodative dysfunction," and "general binocular vision dysfunction." In her February 18, 2014 letter, Dr. Curtis did not mention autism spectrum disorder or suggest that the vision therapy she was recommending for claimants would address or treat their autism spectrum disorder.

6. Claimants' mother asked that the Elk Grove Unified School District (EGUSD) pay for the vision therapy recommended by Eye Optics. On February 6, 2014, EGUSD sent an email to claimants' mother denying her request, stating, in relevant part, "The district will not provide vision therapy as it is not a research-based practice. If the boys are having issues with tracking it will need to be addressed medically and not through the school system." Claimants' mother did not appeal from EGUSD's denial.

7. Claimant's mother asked Kaiser to pay for the vision therapy recommended by Eye Optics. On March 7, 2014, Kaiser issued letters denying vision therapy for claimants.<sup>1</sup> In its March 7, 2014 letters, Kaiser stated that the "Optometry

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<sup>1</sup> At hearing, claimants' parents objected to Kaiser's March 7, 2014 letters offered by ACRC, arguing that they were not complete, and that complete copies of these letters were included in claimants' exhibits. But when the letters offered by ACRC (Exhibit 7) are compared to the letters offered by claimants' parents (Exhibits I and J), it is clear

Department Chief shared that there may not be actual treatments for the inability to track objects, especially with patients diagnosed with autism.” In addition, Kaiser stated that, “Although there are numerous claims, that non mainstream treatment plans may be available, it is not accepted as standard of practice.”

By letters dated March 29, 2014, Kaiser continued to deny the request of claimants’ mother for vision therapy, stating, in relevant part,

This request was denied because the Expedited Physician Review Committee considered the following information while reviewing your request: Vision Therapy is not an evidence based treatment. There is no evidence in the medical literature which suggests the efficacy of this treatment within the medical practice community to show that it is not experimental in nature. The Kaiser Permanente Northern California Region researched this therapy and agreed with the findings that it is experimental in nature. Experimental services are not medically indicated for

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that they are different letters. The letters offered by ACRC are dated March 7, 2014, and the letters offered by claimants’ parents are dated March 29, 2014. Although the March 7, 2014 letters offered by ACRC do not include attached information about how claimants’ parents could request additional review, one of these letters includes Kaiser’s full decision. (It is not clear from the March 29, 2014 letters whether they constituted additional review as requested by claimants’ parents of the March 7, 2014 decisions.) Exhibit 7, which consists of Kaiser’s March 7, 2014 letters, is admitted into evidence.

treatment in the current medical community. As a result, the Expedited Physician Review Committee determined that it is not medically indicated for [claimants] to be provided these treatments. We recommend that [claimants] follow up with [their] primary care physician regarding any treatment [they need]. In addition, we can provide an opinion with the Kaiser Permanente Plan, with an ophthalmologist.

8. Claimant's mother submitted an application for an Independent Medical Review (IMR) of Kaiser's denial of vision therapy to the Department of Managed Health Care (DMHC). DMHC referred the IMR application to Maximus Federal Services, Inc. (Maximus), an Independent Medical Review organization. On April 15, 2014, Maximus conducted IMRs and issued decisions, which determined that the "requested therapy is not likely to be more beneficial for treatment of [claimants'] medical condition than any available standard therapy." Consequently, Maximus upheld Kaiser's denial of funding for vision therapy. On April 16, 2014, DMHC notified claimants' mother that it had adopted Maximus's decisions as its final decisions.

9. By letters dated April 7, 2014, ACRC denied funding for vision therapy for claimants, stating, in relevant part,

Vision therapy is not recognized as an evidence-based therapy for the treatment of autism in children. ACRC is prohibited from funding experimental therapies or treatments which are not scientifically proven safe or effective, such as vision therapy to be provided to address [claimants'] poor vision skill areas, and there is no mention in the evaluation that those "poor vision skill areas" are in any

way related to [claimants'] autism. ACRC cannot fund services which are not directly related to a clients' developmental disability. Finally, pursuant to the IDEA, [claimants'] school district is responsible for ameliorating any vision deficits [claimants] may have which may interfere with [claimants'] ability to access [their] educational programming. You have the right under the IEP process to appeal the decision of the school district that it will not fund the vision therapy. ACRC cannot even consider funding services unless generic resources (such as school district funding) has been exhausted as a potential funding source.

10. Claimants' mother filed a Fair Hearing Request to appeal from ACRC's denial of funding of vision therapy for claimants. On May 7, 2014, an informal meeting was held by ACRC, and on May 14, 2014, a decision was issued upholding the denial of funding for vision therapy for claimants.

11. On May 21, 2014, Dr. Curtis and Denise Curtis, M.Ed., of Eye Optics, wrote a letter further explaining the vision therapy they were recommending for claimants as follows:

We have recommended treating both boys with a 24 session program of vision therapy to remediate weaknesses in eye-tracking, eye-teaming, awareness of right and left on themselves and in space, and eye focusing. Our goal is to help each boy organize visual space and gain peripheral stability so that they may be better able to attend to and appreciate central vision. In addition treatment will allow

each boy to improve the efficiency of their eye-teaming and visual information processing. Ultimately, by improving these areas, both boys will be able to better function in their surroundings and find it easier to engage with society leading to a more productive and fulfilling life.

There is no mention in the May 21, 2014 Eye Optics letter of claimants' autism spectrum disorder.

12. On June 17, 2014, Terrance Wardinsky, M.D., ACRC's Physician Consultant, issued a letter regarding the requests of claimants' parents for vision therapy. Although Dr. Wardinsky admitted in his letter that he was "not an ophthalmologic or optometric eye expert," he has "practiced developmental pediatrics and [has] been a Regional Center physician for the past 19 years and [has] had a lot of experience with the various forms of developmental disabilities as well as their therapies." In his letter, Dr. Wardinsky opined that:

Vision Therapy for autism disorder is not a recognized evidence-based therapy. Because of this, most insurance companies, and also centers for autism treatment, i.e., M.I.N.D. Institute, and school educational programs do not fund or recommend vision therapy as a best practice treatment for Autism Spectrum Disorder.

13. Since October 2007, Robin J. May, LCSW, Ed.M., has been employed by ACRC as an Autism Spectrum Disorder Clinical Specialist. In this position, Ms. May consults with ACRC staff and consumers' families regarding autism spectrum disorder diagnoses and treatment. Ms. May has participated in the California Autism Professional Training and Information Network (CAPTIN), a state-level evidenced-based practice



dissemination project. Between August 2005 and September 2007, Ms. May was employed by ACRC as a Service Coordinator and Autism Team Leader.

14. Ms. May testified that, under the Lanterman Act, ACRC may only fund therapies for consumers with autism spectrum disorder that constitute “evidence-based practices.” In defining what constitutes evidence-based practices, Ms. May pointed to Welfare and Institutions Code section 4686.2, subdivision (d)(3), which provides:

(3) “Evidence-based practice” means a decisionmaking process that integrates the best available scientifically rigorous research, clinical expertise, and individual’s characteristics. Evidence-based practice is an approach to treatment rather than a specific treatment. Evidence-based practice promotes the collection, interpretation, integration, and continuous evaluation of valid, important, and applicable individual- or family-reported, clinically-observed, and research-supported evidence. The best available evidence, matched to consumer circumstances and preferences, is applied to ensure the quality of clinical judgments and facilitates the most cost-effective care.

15. Ms. May explained that ACRC relies upon the National Professional Development Center (NPDC) and the National Standards Project (NSP) when determining which therapies for consumers with autism spectrum disorder are evidenced-based and therefore may be funded under the Lanterman Act. As of 2014, these organizations have identified 27 evidenced-based practices for children, youth and young adults with autism spectrum disorder. These practices do not include vision therapy. They do include “visual supports,” which are defined as “concrete cues that

provide information about an activity, routine, or expectation and/or support skill demonstration.” Visual supports include “photographs, icons, drawings, written words, objects, environmental arrangement, schedules, graphic organizers, organizational systems, and scripts.” Visual supports are “commonly used to: 1) organize learning environments, 2) establish expectations around activities, routines, or behaviors (e.g., visual schedules, visual instructions, structured work systems, scripts, power cards), 3) provide cues or reminders (e.g., conversation and initiation cues, choice making supports, visual timers, finished box), and 4) provide preparation or instruction (e.g., video priming, video feedback).”

16. The visual therapy described in the Eye Optics reports is very different from the description of “visual supports” set forth in the information provided by ACRC. In addition, the visual therapy requested by claimants’ parents is not one of the evidence-based practices for treating individuals with autism spectrum disorder described by NPDC and NSP in their literature. As Ms. May explained, because vision therapy is not recognized by the NPDC and NSP as an evidence-based practice for treating individuals with autism spectrum disorder, ACRC may not fund such therapy for its consumers.

17. At the hearing, claimants’ mother disputed ACRC’s position that vision therapy was not an evidence-based practice. She asserted that vision therapy is a therapy for the eyes that is similar to occupational therapy, physical therapy and speech therapy. She also asserted that vision therapy has been around since the late 1980s so it can no longer be considered experimental. Claimants are now reading at about a second or third grade level. They do not make eye contact. At times they appear not to see people, so they run into them. They are not safe functioning outside the home without supervision. Claimants’ parents believe that treating claimants’ vision problems with vision therapy would help remediate some of their autism spectrum disorder issues,

and would help them better and more safely function in the world as independent adults.

18. Claimants' parents submitted articles regarding vision therapy, some of which were downloaded from the internet. Many of these articles discuss the benefits of vision therapy in treating vision problems other than autism spectrum disorder. For example, the American Optometric Association states that "[r]esearch has demonstrated that vision therapy can be an effective treatment option" for ocular motility dysfunctions, non-strabismic binocular disorders, strabismus, amblyopia, accommodative disorders, visual information processing disorders, and visual sequelae of acquired brain injury.

19. Claimants' parents submitted a two-page paper from the College of Optometrists in Vision Development entitled "Vision and Autism," which, in relevant part, states:

Vision therapy activities are used to stimulate general visual arousal, eye movement and the central visual system. The goals for the treatment program using lenses, prisms, and vision therapy are to help the individual organize visual space and gain peripheral stability so that he or she can better attend to and appreciate central vision. In addition, treatment is directed at gaining efficient eye teaming and visual information processing. [1] Treatment programs are coordinated with the patient's primary care physician and others who may be participating in the multidisciplinary management of the patient.

In addition, claimants' parents submitted a paper from the College of Optometrists in Vision Development entitled "A Summary of Research and Clinical Studies on Vision and Learning," which, in relevant part, states:

Vision therapy is an individually prescribed program of procedures used to change and improve visual abilities. Developmental optometrists use vision therapy and special lenses to train the eyes and brain to work together more effectively. Improvements in visual function enable the child to become a more effective learner.

This paper includes a "listing of some of the research reports and clinical studies on the relationship of vision to reading and learning ability and the effectiveness of vision therapy in the treatment of learning-related vision problems." As described in the listing, the reports and studies summarized research relating to reading and learning issues, and not to autism spectrum disorder.

20. Claimants' parents also submitted various articles describing "vision therapy success stories" achieved by developmental optometrists who have worked with children with autism spectrum disorder.

21. ACRC submitted a "Joint Statement – Learning Disabilities, Dyslexia, and Vision" dated August 2009 from the American Academy of Pediatrics, Section on Ophthalmology, Council on Children with Disabilities, the American Academy of Ophthalmology, the American Association for Pediatric Ophthalmology and Strabismus, and the American Association of Certified Orthoptist, which, in relevant part, states:

Vision problems can interfere with the process of learning; however, vision problems are not the cause of primary dyslexia or learning disabilities. Scientific evidence does not

support the efficacy of eye exercises, behavioral vision therapy, or special tinted filters or lenses for improving the long-term educational performance in these complex pediatric neurocognitive conditions. Diagnostic and treatment approaches that lack scientific evidence of efficacy, including eye exercises, behavioral vision therapy, or special tinted filters or lenses, are not endorsed and should not be recommended.

## DISCUSSION

22. When all the evidence is considered, claimants' parents did not show that the vision therapy they are seeking has been clinically determined or scientifically proven to be effective for the treatment or remediation of claimants' autism spectrum disorder. The documents that claimants' parents submitted do not substantiate that vision therapy is an "evidence-based practice," as that term is defined in Welfare and Institutions Code section 4686.2, subdivision (d)(3), or that it has been proven to be effective in ameliorating behaviors that interfere with learning and social interactions.

23. In contrast, the evidence submitted by ACRC was persuasive that vision therapy has not been recognized by the NPDC or the NSP as an evidence-based practice for treating individuals with autism spectrum disorder to allow ACRC to fund it under the Lanterman Act. In addition, ACRC's argument that claimants' parents have not exhausted all avenues available to them to appeal from EGUSD's denial of funding for vision therapy was persuasive. From the information presented by claimants' parents, to the extent that there is any scientific support for vision therapy, that support appears to be related primarily to its use in addressing vision issues affecting reading. Consequently, claimants' parents must first exhaust their efforts to seek funding from EGUSD before seeking funding from ACRC.

24. It was apparent at the hearing that claimants' parents are seeking vision therapy in an effort to help their children achieve their highest potential in order to independently function in the world as well and as safely as possible. But ACRC is prohibited by the Lanterman Act from funding therapies that have not been clinically determined or scientifically proven to be effective for the treatment or remediation of developmental disabilities. The legislature enacted this prohibition not only to safeguard taxpayers from the wasteful spending of public funds, but also to protect consumers and their parents from the false hope of therapies that have not been established to meet the claims made by some of their practitioners. There was inadequate support presented at hearing for the effectiveness of vision therapy in ameliorating claimants' autism spectrum disorder. Consequently, ACRC's denial of funding must be upheld.

## LEGAL CONCLUSIONS

1. Under the Lanterman Act, regional centers fund services and supports for persons with developmental disabilities. Welfare and Institutions Code section 4512, subdivision (b), defines "services and supports for persons with developmental disabilities," in relevant part, as follows:

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, and 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, when 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.

2. Welfare and Institutions Code section 4648, imposes limits on the services and supports that regional centers may fund, and, in relevant part, provides:

In order to achieve the stated objectives of a consumer's individual program plan, the regional center shall conduct activities, including, but not limited to, all of the following:

(a) Securing needed services and supports.

[¶] ... [¶]

(8) Regional center funds shall not be used to supplant the budget of any agency that has a legal responsibility to serve all members of the general public and is receiving public funds for providing those services.

[¶] ... [¶]

(16) Notwithstanding any other provision of law or regulation to the contrary, effective July 1, 2009, regional centers shall not purchase experimental treatments, therapeutic services, or devices that have not been clinically

determined or scientifically proven to be effective or safe or for which risks and complications are unknown. Experimental treatments or therapeutic services include experimental medical or nutritional therapy when the use of the product for that purpose is not a general physician practice. For regional center consumers receiving these services as part of their individual program plan (IPP) or individualized family service plan (IFSP) on July 1, 2009, this prohibition shall apply on August 1, 2009.

3. Welfare and Institutions Code section 4686.2 imposes limitations on the types of therapies a regional center may fund to address the behaviors of consumers with autism spectrum disorder, and, in relevant part, provides:

(b) Effective July 1, 2009, notwithstanding any other provision of law or regulation to the contrary, regional centers shall:

(1) Only purchase ABA services or intensive behavioral intervention services that reflect evidence-based practices, promote positive social behaviors, and ameliorate behaviors that interfere with learning and social interactions.

[¶] ... [¶]

(d) For purposes of this section the following definitions shall apply:

[¶] ... [¶]



(3) "Evidence-based practice" means a decisionmaking process that integrates the best available scientifically rigorous research, clinical expertise, and individual's characteristics. Evidence-based practice is an approach to treatment rather than a specific treatment. Evidence-based practice promotes the collection, interpretation, integration, and continuous evaluation of valid, important, and applicable individual- or family-reported, clinically-observed, and research-supported evidence. The best available evidence, matched to consumer circumstances and preferences, is applied to ensure the quality of clinical judgments and facilitates the most cost-effective care.

4. Claimants' parents did not establish that the vision therapy they seek has been clinically determined or scientifically proven to be effective for the treatment or remediation of claimants' autism spectrum disorder. Consequently, under Welfare and Institutions Code section 4648, subdivision (a)(16), ACRC may not fund the requested vision therapy.

5. Claimants' parents did not establish that the vision therapy they seek for claimants is an evidence-based practice that promotes positive social behaviors, and ameliorates behaviors that interfere with learning and social interactions. Consequently, under Welfare and Institutions Code section 4686.2, ACRC may not fund the requested vision therapy.

6. Claimants' parents did not establish that they have exhausted all appeals to obtain funding for the vision therapy they seek from claimants' school district. Consequently, under Welfare and Institutions Code section 4648, subdivision (a)(8), ACRC may not fund the requested vision therapy.

7. When all the evidence is considered, claimants' parents did not establish that ACRC should be ordered to fund vision therapy for claimants. Their request for funding from ACRC must therefore be denied.

## ORDER

Claimants' appeals are DENIED. Alta California Regional Center's denials of funding for vision therapy for claimants under the Lanterman Act are SUSTAINED.

DATED: July 3, 2014

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KAREN J. BRANDT

Administrative Law Judge

Office of Administrative Hearings

## NOTICE

**This is the final administrative decision in this matter. Each party is bound by this decision. An appeal from the decision must be made to a court of competent jurisdiction within 90 days of receipt of the decision. (Welf. & Inst. Code, § 4712.5, subd. (a).)**