

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

vs.

NORTH LOS ANGELES COUNTY
REGIONAL CENTER,

Service Agency.

OAH No. 2014060628

DECISION

Administrative Law Judge David L. Benjamin, State of California, Office of Administrative Hearings, heard this matter on June 25, 2014, in Van Nuys, California.

Ruth Janka, Contract Administrator, represented North Los Angeles County Regional Center (NLACRC), the service agency.

Claimant was represented by his mother.

The record closed and the matter was submitted on June 25, 2014.

ISSUE PRESENTED

Whether the service agency may terminate its funding of speech therapy services for claimant, on the ground that such services are available to claimant under his health care plan.

FACTUAL FINDINGS

1. Claimant was born October 5, 2011. He lives at home with his mother, father, maternal grandmother and his preschool-age sister. Claimant attends preschool four days per week, outside the home, from 8:15 a.m. to 3:15 p.m.

2. Claimant's mother works full-time for Kaiser Permanente. She is enrolled in a health care plan through her work and maintains health benefits for claimant under that plan.

3. At an Individual Family Service Plan meeting on April 22, 2013, claimant was found eligible for services under the California Early Intervention Services Act¹ based on several criteria, including developmental delay, adaptive/self-help, and communication. Claimant and NLACRC developed a written IFSP the same day. At that time, the IFSP called for physical therapy and child development specialist services. In the IFSP, claimant's parents acknowledged that "we are required to use our private insurance or health care service plan for medical services (i.e., occupational therapy, physical therapy, speech therapy) identified in the IFSP"

4. On May 28, 2013, about a month after establishing the IFSP, claimant and NLACRC amended the IFSP to add speech therapy as a "new outcome." The amendment called for two, one-hour speech therapy sessions per week, to be provided in claimant's home from June 1, 2013, to June 30, 2014. The provider was identified as "ECA," which stands for "Every Child Achieves." ECA also does business under the name "Wellness Works." When the agency provides services through the regional center, it does so

¹ The Act is found at Government Code section 95000 et seq. Services under the Act, commonly referred to as "Early Start" services, are provided to eligible infants and toddlers from birth to two years of age.

under the name ECA; when it provides services under private insurance or a health care plan, it does so as Wellness Works.

5. NLACRC agreed to fund speech therapy while claimant's mother pursued receiving those services through her health plan. Claimant's mother asked Kaiser Permanente to pay for speech therapy through claimant's regional center provider. In a letter dated November 14, 2013, Kaiser Permanente denied that request on the ground that the regional center provider was an "out-of-Plan referral." Kaiser Permanente informed claimant that it had appropriately privileged and credentialed providers "in Plan," namely Dynamic Therapy Solutions, who could provide speech therapy services for claimant two times per week. Kaiser Permanente referred claimant to Dynamic Therapy Solutions for speech therapy services.

6. In a telephone call to claimant's service coordinator, Grace Granados, on November 17, 2013, claimant's mother stated that obtaining speech therapy through Dynamic Therapy Solutions would be a hardship for her because of scheduling concerns: she reported that she works during the day and cannot bring claimant to therapy, and cannot depend on her husband whose work schedule she described as erratic. Claimant's mother also reported that she does not let her mother drive claimant for any distance because of her age; claimant's mother is 72 years old. Claimant's mother did not access her health plan for speech therapy for claimant, and claimant continued to receive NLACRC-funded speech therapy. The therapist comes to claimant's home, twice a week, after claimant gets home from preschool.

7. Between November 2013 and May 2014, claimant's mother sought a "denial letter" from Kaiser Permanente, that is, a letter declining coverage through the health plan so that claimant could continue to receive speech therapy services from the regional center. Kaiser Permanente refused to issue the denial letter that claimant's mother sought.

8. On May 6, 2014, the regional center conducted an IFSP review. Claimant's mother attended the meeting. Granados and her supervisor reiterated the regional center's position that claimant was required by law to access speech therapy services through his health plan. Claimant's mother raised the same scheduling objections that she had expressed before: that because of her long commute, she does not get home in time to take claimant to speech therapy; that she had requested unpaid leave time from work to take claimant to therapy, but was not sure her family could afford for her to take time off without pay; and that her husband, who was now unemployed, needed to spend his time looking for work.

9. After the May 6 meeting, Granados surveyed the regional center's speech therapy providers to identify those who "accept Kaiser," meaning that they contract with Kaiser Permanente to provide speech therapy services and accept payment for those services from Kaiser Permanente. Granados found that Progressive Steps, Wellness Works, Learning Grove, McRory Pediatrics, and Community Therapies accept Kaiser. Generally, the latest appointments these providers offer is 5:00 p.m., but Granados found that Community Therapies offers Saturday appointments, and that Wellness Works will come to the consumer's home for an extra charge of \$15 per session. Granados sent this information to claimant's mother on May 8.

10. At a transition meeting with NLACRC and the Los Angeles Unified School District on June 5, claimant's mother told Granados that the providers Granados identified did not have the availability she was looking for. Claimant's mother stated that, because of her commute, she was only available in the late afternoon and on Saturday. Granados told Claimant's mother that Wellness Works would come to her home, but that claimant's family would need to pay the extra charge of \$15 per visit, and she pointed out that Community Therapies offered Saturday appointments, which would leave only one weekday appointment to cover.

11. On May 29, 2014, NLACRC sent claimant a Notice of Action, informing claimant that it would stop funding speech therapy effective June 30, 2014. Claimant filed a timely appeal, and this hearing followed.

12. On the morning of the hearing, Granados called each of the speech therapy providers identified in Finding 9 and confirmed that each one had available therapists, and that each one accepted payment from Kaiser. Granados also confirmed that Community Therapies had available Saturday appointments.

13. Claimant's mother remains strongly opposed to securing speech therapy through her health care plan. She maintains that the speech therapists identified by Granados cannot provide appointments that work with her schedule; that she cannot afford to take time off work; and that claimant's father must be available to take last-minute jobs if he is called. In addition, claimant's mother now questions whether any of the providers can provide appointments for two sessions per week on a consistent basis. The concerns she expressed on this issue are not supported by any direct evidence. On the contrary, Kaiser Permanente informed claimant that it can provide two sessions of speech therapy per week, and Granados credibly testified that consistency of treatment is important for a two-year-old, and therefore in her experience speech therapists strive to achieve a consistent schedule.

LEGAL CONCLUSIONS

1. The Early Intervention Services Act provides for early intervention services for infants and toddlers from birth to two years of age "who have disabilities, or are at risk of having disabilities, to enhance their development and to minimize the potential for developmental delays." (Gov. Code, § 95001, subd. (a)(1).) The Department of Developmental Services and regional centers are responsible for providing Early Start services for all eligible infants and toddlers, with the exception of those infants and toddlers whose impairments fall within the responsibility of the California Department of

Education and the local educational agency. (Gov. Code, § 95014, subd. (b)(1).) When a regional center provides Early Start services, it must comply with the Lanterman Developmental Disabilities Services Act (Welf. & Inst. Code, § 4500 et seq.).

2. In 2009, as part of a broad effort to significantly reduce the state's budget, the state Legislature amended the Early Intervention Services Act, and the Lanterman Act, to require Early Start consumers to use private health insurance when it is available. Government Code section 95004, subdivision (b)(1), was amended to read as follows:

In providing services under this title, regional centers shall comply with the Lanterman Developmental Disabilities Services Act . . . and its implementing regulations . . . , except where compliance with those provisions would result in any delays in, the provision of early intervention, or otherwise conflict with this title and the regulations implementing this title . . . and applicable federal regulations

Notwithstanding any other law or regulation to the contrary, private health insurance for medical services or a medical health care plan identified in the individualized family service plan, other than evaluation and assessment, shall be used in compliance with applicable federal and state law and regulation.

And Welfare and Institutions Code section 4659, subdivision (c), part of the Lanterman Act, was amended to read as follows:

Retroactive to July 1, 2009, notwithstanding any other provision of law or regulation to the contrary, regional centers shall not purchase any service that would otherwise

be available from Medi-Cal, Medicare, the Civilian Health and Medical Program for Uniform Services, In-Home Support Services, California Children's Services, private insurance, or a health care service plan when a consumer or family meets the criteria of this coverage, but chooses not to pursue that coverage.

3. Speech therapy services have been available to claimant through his health care plan at Kaiser Permanente since November 2013, and remain available now. (Findings 5, 7, 9 & 12.) Depending on the provider claimant's mother chooses, obtaining speech therapy services for claimant through her health plan may be less convenient than obtaining treatment through NLACRC, and it may be more expensive: if claimant's mother chooses the convenience of home visits, claimant's family will have to pay an extra charge of \$15 per visit; if claimant's mother sets Saturday appointments, claimant will require another weekday session to achieve two sessions per week, and claimant's mother may need to take time off work without pay, or claimant's father may need to forego potential work opportunities at those times; if claimant's mother sets weekday appointments at a provider's office, then claimant's mother or father will need to take claimant to those appointments. These burdens, however, are not so significant that they make speech therapy unavailable under claimant's health care plan; rather, they are typical burdens that families face when they access benefits under a health plan. By its 2009 amendments to Government Code section 95004, subdivision (b)(1), and to Welfare and Institutions Code section 4659, subdivision (c), the Legislature intended that consumers bear these burdens before accessing taxpayer-funded benefits. Claimant may not continue to receive speech therapy services funded by NLACRC, when those services are available under his health care plan.

ORDER

Claimant's appeal from the decision of North Los Angeles County Regional Center to terminate funding of speech therapy for claimant is denied.

DATED: July 10, 2014

DAVID L. BENJAMIN

Administrative Law Judge

Office of Administrative Hearings