

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

OAH No. 2014091154

Claimant,

vs.

SAN GABRIEL/POMONA REGIONAL
CENTER,

Service Agency.

DECISION

This matter was heard by Humberto Flores, Administrative Law Judge with the Office of Administrative Hearings, on November 26, 2014, in Pomona, California.

Claimant did not appear at the hearing but was represented by his parents. Daniela Santana, Fair Hearing Manager, represented the San Gabriel/Pomona Regional Center (regional center).

Evidence was received and the matter was submitted for decision. The Administrative Law Judge makes the following findings, legal conclusions and order.

ISSUE

Should the regional center provide funding for claimant's a behavioral service known as "DIR/Floortime" provided by Real Connections?

FACTUAL FINDINGS

1. Claimant is a seven-year-old boy who qualifies for regional center services based on a diagnosis of autism.

2. According to claimant's latest Individual Program Plan (IPP) dated October 16, 2014, claimant exhibits challenging behaviors such as temper tantrums that affect social interactions with his family. The IPP further stated that claimant sometimes "has a short fuse and will engage in fights with his younger brother." (Exhibit 6.)

3. Claimant had been receiving Developmental Individual Difference Relationship (DIR) services through Real Connections for approximately four years. It is a program that is designed to help children who suffer from autism but are relatively high functioning.

4. Claimant's father testified that claimant's consumer service coordinator recommended the DIR service for claimant and suggested Real Connections as a service provider. The DIR service was originally funded by the regional center. In 2009, the legislature passed Welfare and Institutions Code section 4659, which prohibited regional centers from purchasing services that would otherwise be available through a consumer's insurance or health care plan. Sometime after passage of this statute, claimant's parents were able to obtain coverage for claimant's DIR through Blue Shield, which was the insurance plan provided by claimant's father's employer.

5. In January 2014, claimant's father's employer changed insurance plans. Claimant's family is now covered by Kaiser Permanente. After the change to Kaiser, claimant's father requested coverage for claimant's DIR services. Kaiser denied the request for coverage in a written letter dated August 29, 2014. In its letter of denial, Lizbeth Illingworth, Senior Case Manager, Member Services Department, states that coverage was denied because "the Physician's review determined that that floor time therapy is not medically indicated since the services are considered non-evidence[d] based treatment. It has been recommended that [claimant] obtain a behavioral health evaluation in Plan to determine the appropriate services for his current medical condition." (Exhibit 2.) Ms. Illingworth also states in the letter that Kaiser covers only

those services that are “medically necessary” or that are “provided, prescribed, authorized, or directed by a Plan Physician

A service is ‘Medically Necessary’ if it is medically appropriate and required to prevent, diagnose, or treat your condition or clinical symptoms in accord with generally accepted professional standards of practice that are consistent with a standard of care in the medical community.” Finally, the letter also included an attachment explaining Kaiser’s review or grievance process if the insured disagrees with the determination of non-coverage. Although claimant’s parent did not agree with Kaiser’s determination, they did not file a grievance or appeal the decision.

6. After receiving the letter of denial from Kaiser, claimant’s parents requested that the regional center fund the DIR services provided by RealConnections.

7. On September 8, 2014, the regional center issued a Notice of Proposed Action (NPA) notifying claimant that the regional center denied claimant’s request for funding for DIR services. The regional center based its decision on Welfare and Institutions Code section 4659, which directs regional centers not to purchase services that are available to a consumer through his health insurance plan. In addition, the regional center cites Welfare and Institutions Code section 4659.1, which prohibits regional center from funding deductibles for health care service plans. Finally, the NPA cites Welfare and Institutions Code section 4686.2, which identifies and establishes standards for purchase of behavior or intervention services by regional centers. On September 22, 2014, claimant filed a request for hearing.

8. Claimant’s father and mother both testified that the DIR services have been extremely helpful in addressing claimant’s behavioral problems but that claimant continues to need these services. Claimant father also testified that DIR is an evidenced-based treatment plan. In support of his testimony, claimant’s father introduced treatment plans with attached evaluation checklists indicating claimant’s improvements

(Exhibits A, Band C). However, claimant did not introduce expert testimony which would explain how these treatment plans and evaluation checklists establish that DIR is an "evidenced-based treatment plan" for problem behaviors.

LEGAL CONCLUSIONS

1. Welfare and Institutions Code section 4512, subdivision (b) of the Lanterman Developmental Disabilities Services Act states in part:

"Services and supports for person with developmental disabilities" means specialized service 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 live
Services and supports listed in the individual program plan may include, but are not limited to, ... behavior modification
...

2. The services to be provided to any consumer must be individually suited to meet the unique needs of the individual client in question. Within the bounds of the law each client's particular needs must be met, taking into account the needs and preferences of the individual and the family. This requires an active participation by the consumer and his legal guardians. (See Welf. & Inst. Code, §§ 4646, subds. (a) & (b), and 4648, subd. (a) (2).)

3. Services provided must be cost effective (Welf. & Inst. Code § 4512(b), *supra*), and the Lanterman Act requires the regional centers to control costs so far as

possible, and to otherwise conserve resources that must be shared by many consumers. (*See, e.g.*, Welf. & Inst. Code, §§ 4640.7, subd. (b), 4651, subd. (a), 4659, and 4697.) To be sure, the obligations to other consumers are not controlling in the decision-making process, but a fair reading of the law is that a regional center is not required to meet a disabled child's every possible need or desire, in part because it is obligated to meet the needs of many children and families.

4. Insurance Code section 10144.51 requires health plans and insurers to provide behavioral health treatments for individuals with autism and pervasive developmental disorder. Welfare and Institutions Code section 4659, subdivision (c), provides that regional centers shall not purchase any service that would otherwise be available through a health care service plan when a consumer or family meets the criteria of this coverage but does not pursue that coverage. Subdivision (d)(l) provides that a regional center shall not purchase medical services unless a denial of such services received by a consumer and the regional center determines that an appeal of that determination does not have merit. In this case, claimant's parents decided not to appeal the determination by their health insurance company denying coverage for DIR behavioral services. The decision issued by Kaiser denying the requested coverage for DIR sets forth conclusions and does not clearly explain the underlying factual basis for the decision. The decision by claimant's parents not to appeal Kaiser's determination is voluntary. Therefore, the regional center is precluded under Welfare and Institutions Code section 4659, subdivisions (c) and (d), to provide funding for DIR services provided by Real Connection. This decision does not make any findings or legal conclusions on the issue of whether DIR is an evidence-based therapy as there was insufficient evidence presented to make such a determination.

5. Cause exists to affirm the decision of the San Gabriel/Pomona Regional Center denying claimant's request for funding for **DIR** behavioral services provided by

Real Connections. This decision is based on the facts set forth in findings 1 through 8, the application of Welfare and Institutions Code sections 4512, 4646, 4648, 4659, subdivision (c), and Insurance Code section 10144.51 to the facts of this case.

ORDER

The decision of the San Gabriel Pomona Regional Center denying claimant's request for funding for DIR behavioral services for claimant is affirmed. Claimant's appeal is denied.

DATED: December 16, 2014


HUMBERTO FLORES

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.