BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: CLAIMANT, and INLAND REGIONAL CENTER, Service Agency.	OAH No. 2015010774

DECISION

Adam L. Berg, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in San Bernardino, California, on April 22, 2015.

Claimant's mother, with the assistance of Brian Allen, Educational Consultant/Advocate, represented claimant.

Stephanie Zermeño, Consumer Services Representative, Fair Hearings and Legal Affairs, represented the Inland Regional Center (IRC).

The matter was submitted on April 22, 2015.

ISSUES

Should IRC be required to reimburse claimant for treatment with a neurologist

Should IRC be required to provide funding for future treatments with a neurologist?

FACTUAL FINDINGS

JURISDICTIONAL MATTERS

1. On December 15, 2014, IRC notified claimant's mother that it had denied her request for reimbursement for services performed by Rosabel R. Young, M.D., a neurologist. IRC also denied claimant's request for funding future neurology services provided by Dr. Young.

2. On January 15, 2015, claimant filed a Fair Hearing Request appealing IRC's determination that it would not reimburse her and fund future neurology visits.

EVIDENCE PRESENTED AT HEARING

3. Claimant is a 45 year old female with a diagnosis of profound intellectual disability, infantile cerebral palsy, autism, epilepsy, and other unclassified seizures. Her Individual Program Plan (IPP) outlined the services and supports funded by IRC and other agencies. Claimant lives at home with claimant's mother and receives 264 hours a month of In Home Supportive Services. IRC also provides 30 hours a month of respite care, transportation services, and reimbursement for acupuncture treatments. Claimant receives Medi-Cal healthcare benefits through Inland Empire Health Plan (IEHP).

4. On August 19, 2014, IRC prepared an addendum to claimant's IPP, in which IRC agreed to reimburse claimant for acupuncture treatments she received if a neurologist recommended acupuncture to alleviate claimant's seizures. As a requirement of funding acupuncture, claimant's mother agreed to provide a neurologist's recommendation regarding the medical benefit of acupuncture for claimant's seizures.[1]

---

[1] IRC submitted a Lanterman Mediation Summary marked as Exhibit #2 for identification. Claimant's advocate objected to its submission as confidential

5. On August 28, 2014, Kathryn Davisson, claimant's Consumer Services Coordinator, sent claimant's mother a list of neurologists who accepted Medi-Cal within a 20 mile range of claimant's home. Because claimant's mother was concerned that claimant would become agitated if she had to wait to be seen by the doctor, Ms. Davisson suggested that claimant's mother should request the first appointment of the day to decrease the wait time at the doctor's office.

6. Ms. Davisson contacted an in-network provider located at Arrowhead Regional Medical Center. Arrowhead Medical Center advised Ms. Davisson that if claimant's primary care physician stated on the referral form that claimant must be seen immediately, the doctor would see claimant first and she would not have to wait. Ms. Davisson called claimant's mother on September 3, 2014, and recommended this option.

7. Claimant's mother testified that claimant had previously seen an in-network neurologist for treatment of seizures. However, this neurologist refused to write a letter recommending acupuncture as a medically necessary treatment for claimant. Claimant's mother acknowledged that she received from IRC the list of neurologists who accepted Medi-Cal. She called several of these providers but was not satisfied that claimant could be seen without having to wait. Claimant's mother called Arrowhead Regional and was told that they could not guarantee that claimant would not have to wait. Claimant's mother expressed concern about previous appointments at neurology clinics, where claimant would become agitated due to the wait, and the clinic would have them wait in a storage room. Claimant's mother stated that IEHP had refused to authorize an out-of-network provider.

---

communication made during the mediation process. The objection was sustained and the document excluded. (Evid. Code, § 1119.)

8 Instead, claimant's mother took claimant to Dr. Young, who is not a Medi-Cal/IEHP provider, and who did not accept claimant's insurance. Claimant has seen Dr. Young four times for treatment of seizures. Dr. Young also recommended acupuncture as medically beneficial for treating seizures. Claimant's mother paid out-of-pocket for these office visits. Claimant's mother did not seek pre-authorization from either Medi-Cal or IRC for these visits.

9 Claimant's mother sought reimbursement through IEHP for $250 spent out of pocket for a neurology consult with Dr. Young. IEHP denied the claim, and claimant's mother appealed. On January 15, 2015, the Department of Healthcare Services denied the appeal on the basis that Dr. Young was not a Medi-Cal provider and that claimant failed to seek a referral for an out of network provider.

ARGUMENTS

10. IRC argued that claimant could have seen a neurologist who accepts Medi-Cal. IRC provided Mother with a list of neurologists within 20 miles of her home who would accept Medi-Cal. IRC contended that a regional center is prohibited from purchasing any service that would otherwise be available through Medi-Cal or other insurance. IRC further argued that regulations prohibit IRC from providing retroactive payment for a service obtained without authorization.

11. Claimant's advocate believed that Medi-Cal does not cover neurology visits, and thus, she cannot receive proper medical treatment. He argued that as the payor of last resort, IRC should provide reimbursement for claimant's neurology appointments and fund future services. Claimant's advocate also contended that IRC failed to provide a list of generic resources in the community relating to neurologists in violation of the Lanterman Act.

LEGAL CONCLUSIONS

BURDEN OF PROOF

1. In a proceeding to determine whether or not an individual is eligible for services, the burden of proof is on the claimant to establish that the services are necessary to meet the consumer's needs. The standard is a preponderance of the evidence. (Evid. Code, § 115.)

STATUTORY AND REGULATORY AUTHORITY

2. The Lanterman Act is set forth in Welfare and Institutions Code section 4500 et seq.

3. Welfare and Institutions Code section 4501 outlines California's responsibility for persons with developmental disabilities and the State's obligation to provide services and supports to them.

4. Welfare and Institutions Code section 4646 requires that the IPP and the provision of the services and supports be centered on the individual with developmental disabilities and take into account the needs and preferences of the individual and the family. Further, the provisions of services must be effective in meeting the IPP goals, reflect the preferences and choices of the consumer, and reflect the cost-effective use of public resources.

5. Welfare and Institutions Code section 4646.4 requires the regional centers to consider generic resources and the family's responsibility for providing services and supports when considering the purchase of supports and services.

6. Welfare and Institutions Code section 4648, subdivision (a)(1), requires regional centers to "secure services and supports that meet the needs of the consumer, as determined by the consumer's individual program plan. . . . " Subdivision (a)(8) of this section prohibits regional center funds from being used to "supplant the budget of any

agency which has the legal responsibility to serve all members of the general public and is receiving public funds for providing those services."

7. Welfare and Institutions Code section 4659 requires regional centers to identify and pursue all possible sources of funding for consumers receiving regional center services and prohibits regional centers from purchasing 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.

8. California Code of Regulations, title 17, section 50612, provides:

(a) A purchase of service authorization shall be obtained from the regional center for all services purchased out of center funds. . . .

(b) The authorization shall be in advance of the provision of services except as follows:

(1) A retroactive authorization shall be allowed for emergency services if services are rendered by a vendor service provider.

EVALUATION

9. The Lanterman Act and applicable regulations set forth criteria that a claimant must meet in order to qualify for regional center services and that the regional center must follow when securing those services. Claimant had the burden of demonstrating her need for the requested services and for reimbursement of services.

10. Claimant's advocate's contention that Medi-Cal would not pay for neurology services is unsubstantiated. There were neurologists within 20 miles of claimant's home who accepted claimant's insurance. Indeed, claimant had seen neurologists in the past who accepted Medi-Cal. However, one of these neurologists refused to recommend acupuncture as a medically appropriate treatment for seizures. Claimant's mother decided that she did not want to take claimant to an in-network

provider; instead, she decided to take claimant to Dr. Young. Although it is understandable that claimant's mother would be concerned about claimant becoming agitated during a long wait time, she did not attempt to schedule claimant with an in-network provider in the morning, as suggested by IRC.

11. The Lanterman Act prohibits IRC from funding any service that would otherwise be available from Medi-Cal or private insurance. (Welf. & Inst. Code, § 4659.) Because neurologists were available to claimant as a Medi-Cal beneficiary, IRC is not required to reimburse claimant for the treatments she received or fund claimant's future treatments with Dr. Young. Furthermore, as claimant did not seek authorization from IRC prior to seeing Dr. Young, regulation prohibits IRC from reimbursing claimant. (Cal. Code Regs., tit. 17, § 50612.)

12. Finally, claimant's advocate argued that IRC violated the Lanterman Act by failing to provide claimant with a list of generic resources relating to neurology services. This claim is unfounded. To the contrary, IRC provided claimant's mother with a list of neurologists who accepted Medi-Cal within a 20 mile radius of claimant's residence. IRC took the additional step of addressing claimant's mother's concerns about long wait times. IRC suggested that she schedule the appointment for first thing in the morning and that she obtain a referral from claimant's primary care physician stating that claimant should be seen without waiting. Thus, it was established that IRC satisfied its obligations for providing claimant with information about generic resources. (Welf. & Inst. Code, § 4647.)

//

//

ORDER

Claimant's appeal is denied. IRC is not required to reimburse claimant for Dr.

Young's services, and IRC is not required to pay claimant's future treatments with a neurologist.

DATED: May 5, 2015

_____

ADAM L. BERG

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 ninety days.