

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

Claimant,

vs.

KERN REGIONAL CENTER,

Service Agency.

OAH No. 2015041093

DECISION

This matter came on regularly for hearing on September 17, 2015, in Bakersfield, California, before H. Stuart Waxman, Administrative Law Judge, Office of Administrative Hearings, State of California.

Claimant<sup>1</sup> was represented by Kurt Van Sciver, Attorney at Law.

Kern Regional Center (Service Agency) was represented by Donte Williams, Program Manager.

Oral and documentary evidence was received. The record was held open to and including October 8, 2015, for the Service Agency to review two documents produced by Claimant two days before the hearing (Exhibits 13 and 14), serve and file a response to them and/or request another day of hearing to further cross-examine the witness who testified in regard to them. No written response to the documents was received by

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<sup>1</sup> Titles are used in lieu of the names of Claimant and members of her family in order to protect their privacy.

the Service Agency, and the Service Agency did not request another day of hearing. The record was closed on October 8, 2015, and the matter was submitted for decision.

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## SEALING OF EXHIBITS

Numerous exhibits collectively offered by the parties are rife with personally identifiable information including but not limited to names, social security numbers, medical information, and the like. Neither party redacted that information before offering it into evidence, nor did they offer any reason for their failure to do so. A protective order will issue and the exhibits will be sealed. The parties are admonished to redact all personally identifiable information from their exhibits in the future.

## ISSUE

The sole issue in this case is whether vision therapy is considered experimental such that the Regional Center should not be required to fund it for Claimant.

## EVIDENCE RELIED UPON

Service Agency's Exhibits A through E.

Claimant's Exhibits 1 through 14.

Testimony of Penelope Suter, D.O.

Testimony of Claimant's mother.

## FACTUAL FINDINGS

1. Claimant is a six-year-old female consumer of the Service Agency by way of a diagnosis of autism.
2. Claimant toe-walks, and she experiences strabismus (eye turn) in the left

eye. That condition was diagnosed at the UCLA Jules Stein Institute as left fourth cranial nerve palsy. Surgery was recommended, but Claimant's mother declined that recommendation in favor of vision therapy.<sup>2</sup> (Exhibit B.)

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3. Claimant's optometrist, Penelope S. Suter, O.D., has prescribed yoked prism glasses to help correct the toe walking. She has recommended in-office vision therapy once per week for 24-36 weeks to treat the strabismus. (Exhibit 3.)

4. Vision therapy was denied by Claimant's health care insurance carrier on grounds that it was not covered by her health plan.

5. Dr. Suter provided expert witness testimony at the hearing. Having received her doctorate in optometry in May 1984, she has been a licensed practicing and research optometrist since 1990. Dr. Suter has received several honors and is extensively published. She is well experienced in working with autistic patients.

6. Dr. Suter credibly testified that children with autism experience significant visual integration problems, and that pathways between processing areas in the brain can be interrupted because of them. Accordingly, there is a positive correlation between strabismus and autism, greater than that of the general population. This is occurring in Claimant. Because of the strabismus, she is intermittently unable to use her two eyes to-

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<sup>2</sup> Claimant's mother testified that the surgeon at UCLA wanted to take a "wait and see" approach to the problem even though the summary of an informal meeting with Service Agency personnel indicates that Claimant's mother was opposed to the surgery. Regardless of whether it was the surgeon or Claimant's mother who opposes surgery at this time, it is undisputed that Claimant's mother wants Claimant to undergo vision therapy because she believes it is less invasive and less expensive.

gether, which precludes her from consistently seeing in three dimensions. Thus, for Claimant, “the world pops in and out of 3D” (Dr. Suter’s testimony) creating significant visual motor deficits. Claimant’s sensory integration problem also affects her ability to walk. That is why her toe walking was altered when she was given prism glasses.

7. Dr. Suter opined that orthopic vision therapy, vision rehabilitation therapy, and functional vision therapy are well-established and scientifically-accepted methods of treatment for strabismus, and she proposes to use all three methods on Claimant. Dr. Suter does not intend to employ behavioral vision therapy because it is still experimental. She claims the various methods of vision therapy have been extensively studied and reported in the literature. Well patients who are reasonably well-rested have a success rate of over 90 percent with vision therapy. Dr. Suter explained that, although some eye turns respond better to surgery than to vision therapy, intermittent, outward eye turns, such as Claimant’s, respond better to vision therapy than to surgery.

8. The Service Agency did not offer any expert witness testimony or other evidence to counter Dr. Suter’s claim, that vision therapy is effective, non-experimental, and in this case, medically indicated for Claimant. Dr. Suter correctly based her opinions on the nature of the visual condition and its treatment, and on her expertise regarding the findings in the scientific literature.

## LEGAL CONCLUSIONS

1. Vision therapy is not experimental. The Regional Center should be required to fund it for Claimant.

2. Claimant bore the burden of proof in this case. The standard of proof is a preponderance of the evidence. A preponderance of the evidence requires the trier of fact to determine that the existence of a fact is more probable than its nonexistence. (*Katie V. v. Superior Court* (2005) 130 Cal.App.4th 586, 594.) Claimant sustained her burden of proof.

3. Welfare and Institutions Code section 4648, subdivision (a)(16) states:

Notwithstanding any other law or regulation, 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.

4. The testimony of Claimant's expert witness was sufficient to establish, by a preponderance of the evidence, that vision therapy is not an experimental treatment for strabismus, that a strong positive correlation exists between strabismus and autism, and that the chances of Claimant enjoying a successful outcome following vision therapy are high. The Service Agency did not offer any evidence to counter those findings.

5. Claimant has attempted to obtain funding for vision therapy through her health insurance carrier, but her request was denied on grounds that the therapy was not covered under the terms of the policy.

6. Dr. Suter recommended a regimen of visual therapy once per week for 24-36 weeks. A period of 36 weeks of vision therapy should be followed by a re-evaluation of the therapy's efficacy on Claimant.

## ORDER

1. Claimant's appeal of the Service Agency's denial of funding for vision therapy is sustained.

2. The Service Agency shall fund vision therapy for Claimant at a rate of one session per week for a period of 36 weeks.

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3. Claimant shall be re-evaluated prior to the end of the 36-week period to determine the efficacy of the vision therapy as it applies to her case.

Dated: October 13, 2015

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H. STUART WAXMAN

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.