

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

vs.

GOLDEN GATE REGIONAL CENTER,

Service Agency.

OAH No. 2015120417

DECISION

Karen Reichmann, Administrative Law Judge, State of California, Office of Administrative Hearings, heard this matter on February 17 and 29, 2016, in San Francisco, California.

Claimant was represented by his mother.

Lisa Rosene, L.C.S.W., Chief, Regional Center Services, represented Golden Gate Regional Center (GGRC), the service agency.

The matter was submitted for decision on February 29, 2016.

ISSUE

Should claimant be reimbursed for oral surgery and related expenses?

FACTUAL FINDINGS

1. Claimant is a 26-year-old male who lives in San Francisco with his mother and step-father. Claimant has moderate cerebral palsy, right hemiplegia, and a seizure disorder. Claimant is verbal, but his communication skills are impaired. He is not able to express his needs and is not a reliable reporter of pain. He has poor control of his mouth

and tongue and facial abnormalities. He requires assistance with self-care. In addition, he suffers from sleep apnea, severe constipation, and has a family history of blood clots.

2. Claimant is covered by Medicare and Medi-Cal, and is also covered by his mother's health and dental insurance plans. Medi-Cal patients receive dental benefits under a program known as Denti-Cal.

3. In around 2008, the family was made aware that claimant had impacted wisdom teeth and would likely need oral surgery to remove them. Because of claimant's various medical conditions, surgery would need to be performed under sedation and in a hospital setting. During the next several years, claimant's mother investigated possible avenues for removing the teeth, to no avail. She contacted two dental schools in San Francisco, UCSF and University of the Pacific, but was told they were not able to treat claimant. Claimant's family was unaware that claimant was covered by Denti-Cal and was unaware that GGRC could help them arrange for dental procedures.

4. On June 6, 2015, claimant exhibited behavior which suggested that he was suffering pain in his mouth. Claimant's mother called the emergency room at UCSF and spoke to an oral surgeon on the phone. He advised her that her best bet would be to take claimant to see the Blende Group in San Francisco for removal of claimant's wisdom teeth. Claimant's mother was familiar with the Blende Group because others had recommended it before. Claimant saw his dentist, Dr. Wanda Leong, and his osteopath, Dr. Melvin Friedman over the weekend. Claimant took Tylenol and ibuprofen to manage his pain. Claimant was able to go to camp the following week.

5. Claimant consulted with the Blende Group dental practice on July 25, 2015. They did an x-ray and proposed extracting nine teeth and building a bridge. The proposed expense for the procedures was \$17,825. Claimant's mother was alarmed by the cost. Claimant receives social security disability that does not cover his monthly needs. Claimant's mother started exploring means to pay for the surgery. Claimant

applied for a loan but was not approved. Claimant's mother talked to someone at a center for families of children with disabilities and was advised that claimant would be eligible for dental services through Denti-Cal. She contacted Denti-Cal and was told to contact GGRC for assistance arranging for dental services. The Blende Group does not accept Denti-Cal and is not a GGRC vendor.

6. Around August 19, 2015, claimant's mother attempted to contact claimant's caseworker, Jodie Campbell and did not reach her. On August 21, 2015, claimant's mother called GGRC and spoke with Norman Manglona, Social Worker Supervisor. She learned that Jodie Campbell had left GGRC and was therefore no longer claimant's caseworker. She explained claimant's urgent need for dental surgery to Manglona, who consulted with GGRC's staff physician. GGRC contacted claimant's primary care physician, Dr. Clarissa Kripke, to obtain additional information regarding claimant's medical conditions. Claimant's mother forwarded an x-ray and treatment plan that had been prepared by the Blende Group.

7. On August 25, 2015, GGRC's Dental Advocate, Tina Goldiano, was brought on board to work on securing dental services for claimant. Goldiano reviewed the Blende Group's x-ray and proposed treatment plan and consulted with dentist Allen Wong, who specializes in treating developmentally disabled patients and is a GGRC vendor and Denti-Cal provider. They determined that the extractions were necessary, but that the bridge proposed by the Blende group was inadvisable due to the difficulty for a disabled patient to perform the necessary cleaning regimen. In addition, Denti-Cal will not pay for bridges as they are considered cosmetic. Claimant's particular combination of medical conditions and physical abnormalities made the procedure unusually challenging. Dr. Wong decided he would be unable to perform the procedure and he and Goldiano began searching for an oral surgeon who could do it as quickly as possible. Goldiano did not believe that claimant's condition was imminently life-

threatening because he was not taking narcotics or antibiotics, and the x-ray that had been provided did not indicate infection.

8. On September 3, 2015, GGRC conducted a team planning meeting with claimant's mother. GGRC explained that Goldiano was working with Dr. Wong. Claimant's mother expressed frustration and asked if GGRC could possibly pay to have the Blende Group perform the surgery. GGRC discussed the procedure for the Blende Group to become a vendor.

9. After determining that there was no appropriate Denti-Cal contracted venue in San Francisco, Dr. Wong worked to arrange for the procedure to be performed at Highland Hospital in Oakland. Because Highland Hospital does not generally accept patients who do not live in Alameda County, these arrangements were made as a "professional courtesy." Dr. Wong did not want to identify the probable surgeon to claimant's mother until he was certain that she was serious about moving forward. Wong asked Goldiano to arrange for claimant to have a screening appointment at Highland before a surgery date could be determined.

10. During the first three weeks of September, there were numerous conversations between claimant's mother and Goldiano. Claimant's mother was persistent and expressed a lot of frustration. Goldiano explained to claimant's mother that Dr. Wong was working on arrangements at Highland and tried to arrange for claimant to come to Highland for screening. Goldiano explained that Highland is a teaching hospital and that medical residents might play a role in the surgery, but that they would be overseen by an oral surgeon.

Claimant's mother insisted on knowing the name of the surgeon and did not want any residents involved in the surgery. She was reluctant to drive to Oakland and preferred to have the surgery performed in San Francisco. She continually expressed reservations about the plans GGRC was making and a preference to use the Blende

Group.

11. On September 20, 2015, Goldiano explained that it would take “about a month” to make the arrangements and asked claimant’s mother if she was willing to schedule a screening appointment. Claimant’s mother was insistent that no students be involved in the surgery and that the procedure be done that month. Because claimant’s mother was highly frustrated and constantly pressuring her for guarantees, Goldiano was cautious about what she said to her. When claimant’s mother pressured her for an assurance that the procedure would be done that month, Goldiano stated that if claimant’s mother absolutely needed it to be done that month, she should go with the Blende Group.

12. In a conversation with Manglona on September 21, 2015, claimant’s mother stated that claimant had been in excruciating pain. However, she also stated that claimant was being treated with over-the-counter pain relievers and reported that there was no infection, no abscess, and no swelling, although she added that there was the potential for infection. She was still uncertain as to whether to have the procedure done at Highland.

13. On September 22, 2015, claimant’s mother informed Goldiano that she had decided to have the Blende Group perform the procedure. She stated that she was aware that GGRC would not be able to fund the procedure, but that she felt more comfortable using the Blende Group.

On September 23, claimant’s mother informed Manglona that claimant would be having the procedure done through the Blende Group. She told Manglona that she was aware that GGRC was attempting to secure a generic resource for her and that she would not be asking GGRC to fund the procedure.

14. The Blende Group scheduled the procedure for October 21, 2015, at California Pacific Medical Center in San Francisco.

15. On October 19, 2015, claimant sent a formal complaint and request for immediate action to GGRC requesting reimbursement for claimant's upcoming oral surgery.

16. The procedure took place on October 21, 2015. The nine teeth were extracted and a bridge was installed. Claimant is doing well. The Blende Group billed \$17,825 for the procedure.

17. In a Notice of Proposed Action dated November 2, 2015, effective December 15, 2015, GGRC notified claimant that GGRC would not reimburse payment for oral surgery performed by the Blende Group because "the planning team previously identified a generic resource that is also vendored through GGRC, however [claimant's mother] declined the option as her preference was to have [claimant] seen by the Blende Group."

In a letter dated November 10, 2015, that was sent along with the Notice of Proposed Action, James Shorter, Executive Director of GGRC, writes "I would like to apologize for our system's inability to respond to your son's dental needs in a more timely manner. The frustration you have experienced due to the lack of resources is a direct result of the erosion of the system by chronic underfunding." Shorter concluded that GGRC would be able to provide claimant with reimbursement of \$1,800.

Claimant requested an informal hearing. The informal hearing took place on December 14, 2015. Claimant was notified of GGRC's decision to uphold its denial by letter dated December 21, 2015. Claimant requested a fair hearing.

18. Claimant's mother expressed frustration at having been unaware that GGRC could assist in procuring dental services for claimant. She stated that she had told claimant's caseworker during IPP meetings in the past that claimant was in need of wisdom teeth surgery and that no offer of assistance was forthcoming, other than a suggestion that she call University of the Pacific.

Claimant's mother explained that she opted to have the procedure done by the Blende Group because claimant was suffering and at risk of a life-threatening infection. GGRC had not identified a specific surgeon or date for the procedure. She felt that GGRC was "not invested" in finding someone to perform surgery and was "purposefully lagging." She felt that claimant was in jeopardy and consulted his doctors. She was anxious and fearful. She did not want claimant to languish and suffer so she moved forward with the Blende Group who were able and available to perform the needed surgery.

19. Claimant's mother disputes that GGRC identified a generic resource to perform the dental surgery because they had not identified a surgeon or a date.

20. Claimant received some insurance coverage for the procedure and some charitable donations from friends and family members. Claimant is seeking reimbursement in the amount of \$10,075.

LEGAL CONCLUSIONS

1. Pursuant to the Lanterman Developmental Disabilities Services Act, the State of California accepts responsibility for persons with developmental disabilities. (Welf. & Inst. Code, § 4500, et seq.¹) The Lanterman Act mandates that an "array of services and supports should be established . . . to meet the needs and choices of each person with developmental disabilities . . . and to support their integration into the mainstream life of the community." (§ 4501.) Regional centers have the responsibility of carrying out the state's responsibilities to the developmentally disabled under the Lanterman Act. (§ 4620, subd. (a).) The determination of which services and supports are necessary is made after analyzing the needs and preferences of the consumer, the range

¹ All statutory references are to the Welfare and Institutions Code.

of service options available, the effectiveness of each option in meeting the goals of the client's individual program plan, and the cost of each option. (§§ 4646, 4646.5 & 4648.)

2. While regional centers have a duty to provide a wide array of services, they are directed by the Legislature to provide services in a cost-effective manner. (§ 4646, subd. (a).) Accordingly, regional centers may not fund duplicate services that are available through another public agency. This prohibition, often referred to as "supplanting generic resources," is contained in section 4648, subdivision (a)(8):

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

Regional centers must identify and pursue all possible sources of funding when determining whether to fund a requested service. (§§ 4659, subd. (a)(1) & 4646.4.)

3. As the payer of last resort, GGRC has a duty to ensure that it does not fund services that are available from another public agency. Here, GGRC endeavored to arrange for claimant to have surgery performed by a Denti-Cal provider at Highland Hospital, at no cost to claimant. Although claimant's mother was frustrated at the delay in scheduling the procedure, the evidence established that GGRC was diligently working to arrange what all acknowledge was a complex surgery. The record established that surgery would likely have been scheduled within a few weeks of the date on which it ultimately occurred, approximately two months after claimant initially requested these services from GGRC. It was not established that there was an urgent medical need to have the surgery performed sooner than this timeframe such that the delay would have endangered claimant's well-being.

Accordingly, GGRC established that it lawfully determined that generic resources

existed to meet claimant's need for oral surgery.

Because claimant had generic resources available to him, in the form of Denti-Cal, which would have funded the procedure, GGRC correctly determined that funding the procedure would violate its duty to refrain from duplicating other publicly-funded resources.

ORDER

The appeal of claimant from GGRC's Notice of Proposed Action dated November 2, 2015, is denied.

DATED: March 9, 2016

KAREN REICHMANN

Administrative Law Judge

Office of Administrative Hearings

NOTICE

This is the final administrative decision in this matter. Judicial review of this decision may be sought in a court of competent jurisdiction within ninety (90) days.