

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of Claimant's Request for  
Copayment Assistance for:

CLAIMANT,

v.

INLAND REGIONAL CENTER,

Service Agency.

OAH No. 2016040361

DECISION

Kimberly J. Belvedere, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in San Bernardino, California, on May 25, 2016, and June 15, 2016.

Leigh-Ann Pierce, Consumer Services Representative, Fair Hearings and Legal Affairs, represented Inland Regional Center (IRC).

Claimant's mother represented claimant, who was not present at the hearing.

The matter was submitted on June 15, 2016.

ISSUE

Should IRC fund claimant's request for copayment assistance for copayments incurred from January 2014 through July 2014 due to claimant's participation in an applied behavioral analysis program (ABA) through Easter Seals?

## FACTUAL FINDINGS

### JURISDICTIONAL MATTERS

1. On March 9, 2016, IRC sent claimant a Notice of Proposed Action, denying claimant's request to pay copayments for his participation in an applied behavioral analysis program (ABA)<sup>1</sup> administered by Easter Seals. IRC also denied claimant's request for funding assistance dating back to 2013 for copayments already paid for the same program.<sup>2</sup> The letter stated the following:

IRC is prohibited from authorizing services retroactively.

Authorizations shall be made in advance of the provision of service, except for certain emergency situations, which do not apply in this case.

IRC cannot consider funding of copays until it is determined whether or not your income qualifies you for assistance. IRC

---

<sup>1</sup> Applied Behavioral Analysis means the design, implementation, and evaluation of systematic instructional and environmental modifications to promote positive social behaviors and reduce or ameliorate behaviors which interfere with learning and social interaction." (Welf. & Inst. Code, § 4686.2, subd. (d).)

<sup>2</sup> The Fair Hearing Request did not specify whether the request was to solely cover expenses already incurred for treatment rendered in the past or whether it was intended to request IRC fund copayments in the future. At the hearing, claimant's mother testified that her request was limited to IRC covering expenses already incurred for treatment that occurred between January 2014 and July 2014. Thus, whether claimant qualifies for copayment assistance in the future was not considered in this decision.

has not received the income verification from you despite repeated attempts. Your CSC also discussed and documented the need for your income verification documents on [claimant's] last 3 years of IPPs dated 9-16-2013, 9-23-2014 and 9-15-2015.

As [of] the 09-15-2015 IPP meeting you reported that Kaiser has sent your account to collections for past due co-pays from 01-11-2013 to 03-10-2015. You also reported that Kaiser reduced the past due co-pay amount due from approximately \$7,000.00 to \$2,950.00. You made a second request for IRC to pay these co-pays, however, you stated that your taxes had not yet been filed for 2012 to 2014. You told your CSC on more than one occasion that you would get them done but as of 3-4-2016, IRC has not received the income verification documents to determine if you are eligible for assistance. The CSC attempted to contact you on 03-02-2016 regarding this matter but there was no answer.

2. On April 5, 2015, claimant's mother filed a request for a fair hearing objecting to IRC's decision. Claimant's mother and IRC representatives met and conferred telephonically on April 15, 2016, and discussed claimant's request for copayment assistance. To date, claimant's mother has not provided the proof of income required for IRC to determine whether claimant's request can be granted. IRC adhered to its denial; this hearing ensued.

#### CLAIMANT'S BACKGROUND

3. Claimant is a 15-year-old boy who is eligible for regional center services

based on a diagnosis of Autism Spectrum Disorder. He resides with his mother and two older brothers. He attends high school where he is receiving speech and language therapy, occupational assistance, and adaptive physical education services. Claimant has Medi-Cal/IEHP and Kaiser as his private insurance. Claimant receives 198 hours per month of In Home Supportive Services and IRC funds 48 hours per month of respite.

#### IRC'S EVIDENCE PRESENTED AT HEARING

4. IRC Consumer Services Coordinator Diane Hernandez testified at the hearing. According to Ms. Hernandez, she has discussed claimant's eligibility for copayment assistance with claimant's mother on several occasions since July 2013. Ms. Hernandez has provided claimant's mother with details about what information is needed in order to assess claimant's eligibility (i.e. tax returns, paycheck stubs, or other financial information) at several IPP meetings. To date, claimant's mother has not provided any of the requested information.<sup>3</sup> Claimant's Individual Program Plans and numerous e-mail communications dating back to 2013 support Ms. Hernandez's testimony regarding how she has tried to obtain the required financial information from claimant's mother.

5. Program Manager Marilee Gribbon testified at the hearing. According to Ms. Gribbon, although IRC can provide copayment assistance going forward if claimant's mother meets the financial criteria, IRC considered the request to pay copayments from January 2014 through July 2014 a request for retroactive services and IRC cannot provide retroactive reimbursement. Ms. Gribbon corroborated Ms. Hernandez's testimony with respect to the multiple attempts IRC has made to obtain the required financial information from claimant's mother.

---

<sup>3</sup> Claimant's mother provided her 2013 W-2 on June 6, 2016. However, claimant's mother and father are still married and IRC indicated that it needed to take into consideration the income of both claimant's parents prior to rendering any determinations.

## E-MAIL COMMUNICATIONS BETWEEN CLAIMANT'S MOTHER AND IRC

6. Various e-mail communications between Ms. Hernandez and claimant's mother were exchanged beginning in July 2013. Specifically, the e-mails dealt with claimant's mother's request for copayment assistance. In multiple e-mails, Ms. Hernandez requested that claimant's mother provide tax documents (Form 1040). Claimant's mother indicated she had not filed her taxes. None of the e-mail communications document that claimant's mother could provide alternative sources of income documentation in the event she did not have her taxes. However, several of the e-mail communications contained an attachment identified as an "AB 89 Copay Letter" that was not provided as an exhibit. Several of the e-mail communications also referred claimant's mother to the department at IRC responsible for making the determination as to whether claimant's family met the financial requirements under the Lanterman Act to receive copayment assistance. Further, an e-mail from Ms. Hernandez dated July 8, 2013, informed claimant's mother that IRC is not able to provide retroactive copayment assistance.

7. On July 8, 2013, claimant's mother sent an e-mail to Ms. Hernandez stating that she spoke to Laura Dandrea at Easter Seals and that all outstanding past copayments had been waived. Claimant's mother was also under the impression that she would not be required to pay any future copayments. Thus, at the time of this e-mail, there no longer remained any request for IRC to pay copayments that accrued prior to July 2013.

8. In an e-mail dated March 25, 2014, almost 8 months after the above-referenced e-mail, claimant's mother informed IRC that she received a bill from Easter Seals in the amount of \$550. Claimant's mother stated that it appeared Kaiser stopped paying the \$25 per-session copayment in December 2013, and began charging the \$25 copayments in January 2014. Claimant's mother inquired as to whether IRC would cover the copayments incurred between January 2014 and her March 25, 2014, e-mail.

Ms. Hernandez responded on the same date that she would make the request to

have Easter Seals reimbursed for the prior copayments, but there were “no guarantees.” Ms. Hernandez again requested claimant’s mother send tax documents (Form 1040) to IRC so that IRC could see if she qualified for copayment assistance based on income.

9. E-mails in 2014 and 2015 show IRC continued making attempts to obtain claimant’s family’s tax documents (Form 1040) and claimant’s mother repeatedly assuring IRC that she was attempting to do her taxes as soon as possible to “try and get the retro co-pays taken care of.” Claimant’s mother indicated in several of the e-mails that she was having difficulty obtaining her husband’s documentation to file taxes because they were in the process of a divorce.

#### TESTIMONY OF CLAIMANT’S MOTHER

10. Claimant’s mother testified at the hearing that she and her husband are still married, but do not share a house. Claimant’s mother stated that she and her husband have been separated since 2010, but claimant’s mother did not provide any court documentation to show whether it was a legal separation or separation by choice.

11. Claimant’s mother testified that she believed the copayments for claimant’s ABA services subsequent to July 2013 would be waived after she spoke with someone at the Easter Seals organization in July 2013. She did not realize until March 2014 when she received the outstanding bill for copayments that began in January 2014 that her copayments were no longer waived.

12. Claimant’s mother testified that she has not filed taxes for 2012, 2013, 2014, or 2015. She indicated at the hearing that she cannot obtain the required documents from her husband so she can file her back taxes. She referred to Welfare Institutions Code, section 4649.1, and testified that if she had been told by IRC that she could have provided her W-2 or paycheck stubs to prove income, she would have done so. Claimant’s mother testified she did not recall Ms. Hernandez asking her for any documents to prove income other than tax Form 1040 at claimant’s 2014 or 2015 IPP meetings.

13. Claimant's mother also testified that she did not recall if IRC's Consumer Services Representative Leigh-Ann Pierce asked her for any document other than the tax Form 1040 during a telephonic conversation in April 2016 or during any informal meeting.

14. Claimant's mother stated that she did not feel IRC provided her with correct information regarding income verification because if she had been told she could provide a W-2 to meet the income requirements, she would have provided it. Claimant's mother also provided four past regional center decisions claiming each decision demonstrated copayment assistance for services already provided could be funded by IRC.<sup>4</sup>

## LEGAL CONCLUSIONS

### BURDEN OF PROOF

1. In a proceeding to determine whether an individual is eligible for services, the burden of proof is on the claimant to establish that by a preponderance of the evidence that IRC should fund the requested service. (Evid. Code, §§ 115, 500; *McCoy v. Bd. of Retirement* (1986) 183 Cal.App.3d 1044, 1051-1052.)

### THE LANTERMAN ACT

2. The Legislature enacted a comprehensive statutory scheme known as the

---

<sup>4</sup> Administrative decisions are not binding. Regardless, the issues in each of the four cases presented by claimant's mother were not the same as the issue in this case. In each of the four cases, all parties agreed that the claimants' families met the financial requirements for copayment assistance, but the regional centers did not agree to the number of ABA sessions that would be needed to meet each claimant's needs. None of the cases involved a request for copayment assistance where a determination had not yet been made regarding claimant's family's financial position prior to denial of the requested service. Therefore, even if these cases had precedential value, they are inapplicable.

Lanterman Developmental Disabilities Services Act (Welf. & Inst. Code, § 4500 et seq.) to provide a pattern of facilities and services sufficiently complete to meet the needs of each person with developmental disabilities, regardless of age or degree of handicap, and at each stage of life. The purpose of the statutory scheme is twofold: To prevent or minimize the institutionalization of developmentally disabled persons and their dislocation from family and community, and to enable them to approximate the pattern of everyday living of nondisabled persons of the same age and to lead more independent and productive lives in the community. (*Assn. for Retarded Citizens v. Dept. of Developmental Services* (1985) 38 Cal.3d 384, 388.) Welfare and Institutions Code section 4501 outlines the state's responsibility for persons with developmental disabilities and the state's duty to establish services for those individuals.

3. Welfare and Institutions Code section 4512, subdivision (b) defines "services and supports" as:

[S]pecialized services 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 lives. The determination of which services and supports are necessary for each consumer shall be made through the individual program plan process. The determination shall be made on the basis of the needs and preferences of the consumer or, when appropriate, the consumer's family, and shall include consideration of a range of service options proposed by individual program plan



participants, the effectiveness of each option in meeting the goals stated in the individual program plan, and the cost-effectiveness of each option . . . Nothing in this subdivision is intended to expand or authorize a new or different service or support for any consumer unless that service or support is contained in his or her individual program plan.

4. The Department of Developmental Services (DDS) is the public agency in California responsible for carrying out the laws related to the care, custody and treatment of individuals with developmental disabilities under the Lanterman Act. (Welf. & Inst. Code, § 4416.) In order to comply with its statutory mandate, DDS contracts with private non-profit community agencies, known as "regional centers," to provide the developmentally disabled with "access to the services and supports best suited to them throughout their lifetime." (Welf. & Inst. Code, § 4620.)

5. A regional center's responsibilities to its consumers are set forth in Welfare and Institutions Code sections 4640-4659.

6. Welfare and Institutions Code section 4646 requires that the Individual Program Plan 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.

7. Welfare and Institutions Code section 4648 requires regional centers to ensure that services and supports assist individuals with developmental disabilities in achieving the greatest self-sufficiency possible and to secure services and supports that meet the needs of the consumer, as determined by the IPP. This section also requires regional centers to be fiscally responsible.

8. In implementing Individual Program Plans, regional centers are required to first consider services and supports in natural community, home, work, and recreational settings. (Welf. & Inst. Code, § 4648, subd. (a)(2).) Services and supports shall be flexible and individually tailored to the consumer and, where appropriate, his or her family. (*Ibid.*) A regional center may, pursuant to vendorization or a contract, purchase services or supports for a consumer in order to best accomplish all or any part of the Individual Program Plan. (Welf. & Inst. Code, § 4648, subd. (a)(3).)

9. The regional center is required to consider all the following when selecting a provider of consumer services and supports: a provider's ability to deliver quality services or supports to accomplish all or part of the consumer's individual program plan; provider's success in achieving the objectives set forth in the individual program plan; the existence of licensing, accreditation, or professional certification; cost of providing services or supports of comparable quality by different providers; and the consumers, or, where appropriate, the parents, legal guardian, or conservative of a consumer's choice of providers. (Welf. & Inst. Code, § 4648, subd. (a)(6).)

10. The regional center is also required to consider generic resources and the family's responsibility for providing services and supports when considering the purchase of regional center supports and services for its consumers. (Welf. & Inst. Code, § 4646.4.)

11. A regional center may pay a copayment, coinsurance, or deductible associated with the health care service plan or health insurance policy for a service or support provided pursuant to a consumer's individual program plan or individualized family service plan if the family's or consumer's income exceeds 400 percent of the federal poverty level, the service or support is necessary to successfully maintain the child at home or the adult consumer in the least-restrictive setting, and certain conditions are met. (Welf. & Inst. Code, § 4659.1.)

12. In order to determine if a family's income is below 400 percent of the federal

poverty level, Welfare and Institutions Code section 4659.1, subdivision (d), requires the following:

The parent, guardian, or caregiver of a consumer or an adult consumer with a health care service plan or health insurance policy shall self-certify the family's gross annual income to the regional center by providing copies of W-2 Wage Earners Statements, payroll stubs, a copy of the prior year's state income tax return, or other documents and proof of other income.

#### EVALUATION

13. The Lanterman Act and the applicable regulations set forth criteria that a claimant must meet in order to qualify for regional center services. Claimant had the burden of demonstrating the need for the requested service or support, and that claimant's family's income meets all eligibility criteria to receive that service or support. Claimant has not met that burden.

Claimant's mother has not presented sufficient documents to IRC so that IRC could determine whether claimant's family's income met the requirement for copayment assistance between January 2014 and July 2014. Although there is some dispute as to what documents other than tax Form 1040 were requested, Ms. Hernandez testified credibly that she told claimant's mother in IPP meetings that a W-2 or other document could be considered as proof of income. Further, even though claimant's mother provided her 2013 W-2 on June 6, 2016, claimant's mother and father are still married and IRC does not have claimant's father's tax documents or other financial information to determine whether claimant's family's overall income falls below 400 percent of the federal poverty level. It is claimant's family's income – and not claimant's mother's income – that must be

determined under Welfare and Institutions Code section 4659.1.

Claimant's mother was sincere and well-prepared in her presentation. It was clear from her testimony that she wants the best for her son. However, a preponderance of the evidence did not establish that there is any statutory or regulatory basis to require IRC to provide copayment assistance for ABA services rendered to claimant between January 2014 and July 2014 when claimant's mother has not provided documents to IRC that would allow IRC to determine her income and her husband's income for that time period.

//

//

## ORDER

Claimant's appeal is denied.

DATED: June 22, 2016

\_\_\_\_\_/s/\_\_\_\_\_  
KIMBERLY J. BELVEDERE

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.**