

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

Claimant,

vs.

SAN GABRIEL/POMONA REGIONAL  
CENTER,

Service Agency.

OAH No. 2016050630

CORRECTED DECISION

Glynda B. Gomez, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter on June 27, 2016, in Pomona, California.

Daniela Santana, Fair Hearings Manager, represented San Gabriel/Pomona Regional Center (SGPRC). Claimant was not present, but was represented by her mother (Mother).

The proceedings were translated into Mandarin.

The matter was submitted on June 27, 2016. The decision was issued on July 7, 2016. On July 11, 2016, OAH received a request from Claimant through the interpreter, for correction of legal conclusion 8 of the decision because the paragraph contained only a portion of one sentence. Upon review of the request, and no objection having been filed, the ALJ determined that the bulk of legal conclusion 8 and the entire legal conclusion 9 were inadvertently dropped from the decision. In accordance with,

California Code of Regulations, title 1, section 1048, subdivision (e), this corrected decision is issued and includes the inadvertently deleted portions of legal conclusion 8 and the entire legal conclusion 9. It also centers the word "Order".

## ISSUE

Should SGPRC be required to fund Claimant's adaptive skills training in addition to the Applied Behavior Analysis (ABA) funded by her private insurance.

## SUMMARY

Claimant contends that she has adaptive skills deficits that require training and that SGPRC should fund the training as a supplement to the ABA funded by her insurance.

SGPRC contends that Claimant receives ABA funded by her private insurance and that Claimant's adaptive skills should be addressed in her ABA program.

For the reasons set forth below, Claimant's appeal is denied.

## FACTUAL FINDINGS

1. Claimant is a 7-year-old girl who is eligible for regional center services based upon her diagnosis of mild intellectual disability, autism and epilepsy. Claimant takes medication for her seizures. She has disruptive behavior and tantrums. She lives with her family which includes her mother, father and older sister. Claimant speaks Mandarin and is learning English. (Exhibit 2; testimony of Mother)

2. Claimant attends a public school special day class where she receives special education and related services including occupational therapy and speech therapy. Claimant's Individualized Education Program (IEP), dated December 8, 2015, contains goals in the areas of communication, social/emotional development, reading,

writing, self-regulation, fine and visual motor skills, counting, sequencing, and phonological awareness. (Exhibit 7.)

3. Claimant receives ABA services from Pacific Child and Family Associates (PCFA), a provider funded by her private insurance. The ABA treatment plan dated July 31, 2015, contains goals related to behavior modification to address tantrums, self-injurious behavior, self-stimulatory behavior and skill acquisition deficits in social, play and independent living skills. (Exhibit 4.)

4. Claimant's Individual Program Plan (IPP) dated February 29, 2017 contains goals to address health, behavior, academics, social and adaptive skills, advocacy and communication. (Exhibit 3.)

5. Claimant's parents seek funding for adaptive skills training from SGPRC in addition to the ABA services provided by PCFA funded through Claimant's private insurance. (Exhibits 1 and 2.)

6. ABA is a methodology used for teaching skills and behavior modification. Adaptive skills training may be taught using ABA. (Testimony of Daniella Santana.) The Functional Behavior Analysis (FBA) prepared by PCFA identified areas of concern, including tantrums, self-injurious behavior, self-stimulatory behavior and deficits in communication, social, play, and independent living skills. (Exhibit 4.) A treatment plan was developed which targeted behavior reduction, functional communication, and skill acquisition in the areas of communication, following directions, sorting, structured games, fine motor imitation, vocal imitation, fill-in-the-blank statements and shoe typing for Claimant. (Exhibit 4.) The PCFA treatment plan proposes to teach adaptive skills acquisition using ABA. (Testimony of Daniella Santana; Exhibit 4.) The areas of focus were developed by the provider in consultation with Claimant's family after completion of the FBA. (Exhibit 4.)

7. SGRPC has a Purchase of Service (POS) Policy which guides its purchase and provision of services. The POS Policy was approved by the Department of Developmental Services in July of 2010. The POS has categories denominated "Behavior Intervention" and "Intensive Behavior Services for Children with Autism." Services under the latter category are described as: "individual instruction and behavioral techniques to teach new skills." (Exhibit 12.) SGPRC provides behavior intervention services which include adaptive skill acquisition to consumers who do not qualify for such services through their private insurance or Medi-Cal. (Testimony of Daniella Santana.)

## LEGAL CONCLUSIONS

1. The Lanterman Developmental Disabilities Services Act (Lanterman Act) governs this case. (Welf. & Inst. Code, § 4500 et seq.) An administrative "fair hearing" to determine the rights and obligations of the parties, if any, is available under the Lanterman Act. (§§ 4700-4716.) Claimant requested a fair hearing to appeal SGPRC's decision to deny her request for AST.

2. The burden of proof is on the party seeking to terminate the service or change the status quo. In this case, that burden is on Claimant as the party seeking to obtain the service. The standard of proof in this matter is a preponderance of the evidence. (See Evid. Code, §§ 115 and 500.)

3. The purpose of the Lanterman Act is two-fold: to prevent or minimize the institutionalization of developmentally disabled persons and their dislocation from family and community, to enable them to approximate the pattern of everyday living of nondisabled persons of the same age, and to enable them to lead more productive and independent lives in the community. (*Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 388.)

4. In enacting the Lanterman Act, the Legislature accepted its responsibility to provide for the needs of developmentally disabled individuals and recognized that services

and supports should be established to meet the needs and choices of each person with developmental disabilities. (Welf. & Inst. Code, § 4501.) The Lanterman Act gives regional centers, such as SGPRC, a critical role in the coordination and delivery of services and supports for persons with disabilities. (Welf. & Inst. Code, § 4620 et. seq.) Welfare and Institutions Code section 4512, subdivision (b), defines the services and supports that may be funded, and sets forth the process through which such are identified, namely, the IPP process, a collaborative process involving consumers and service agency representatives.

5. Welfare and Institutions Code section 4512, subdivision (b), defines services and supports for persons with developmental disabilities as specialized 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. Thus, regional centers are responsible for developing and implementing IPPs, for taking into account consumer needs and preferences, and for ensuring service cost-effectiveness. (Welf. & Inst. Code §§ 4646, 4646.4, 4646.5, 4647, and 4648.)

6. Welfare and Institutions Code section 4646, subdivision (a) provides that it is the intent of the Legislature to ensure that the IPP and provision of services and supports by the regional center system is centered on the individual and the family of the individual with disabilities and takes into account the needs and preferences of the individual and the family, where appropriate, as well as promoting community integration, independent, productive, and normal lives, and stable and healthy environments. It also provides that it is the further intent of the legislature that the provision of services to consumers and their families be effective in meeting consumer

needs, and maintain a balance between reflecting consumer and family preference on the one hand while being cost-effective on the other hand.

7. Welfare and Institutions code section 4659 provides that regional centers must identify and pursue all possible generic resources and sources for funding of a consumer's needs including private insurance and prohibits the regional center from funding services that are covered by a consumer's insurance.

8. Health and Safety Code section 1374.73 provides that every health care service plan contract that provides hospital, medical or surgical coverage shall also provide coverage for behavioral health treatment for pervasive developmental disorder or autism. Health and Safety Code section 1374.73, subdivision (c)(1) further provides that "behavioral health treatment" means professional services and treatment programs, including applied behavior analysis and evidence-based behavior intervention programs, that develop or restore to the maximum extent practicable, the functioning of an individual with pervasive developmental disorder or autism. Health and Safety Code section 1374.73, specifies that the treatment is to be provided pursuant to a treatment plan which "describes the patient's behavioral health impairments or developmental challenges that are to be treated."

9. In this case, Claimant is a 7 year-old girl struggling with developmental delays, including delays in adaptive skills and behavior issues. As required by California law, Claimant's private insurer funds her ABA services provided by PCFA. Among the goals that the provider is working on are adaptive skills such as tying shoes and functional communication. ABA is a methodology used to address skill acquisition including behavior modification. Claimant receives age appropriate adaptive skills training through her IEP provided by the public school system and through the ABA funded by her health insurance. Accordingly, SGPRC is not required to fund additional adaptive skills training for claimant because the service is provided through generic

resources and such provision would be prohibited duplication of service. Accordingly, claimant's appeal is denied.

## ORDER

Claimant's appeal is denied. The San Gabriel Pomona Regional Center is not required to fund adaptive skills training in addition to the ABA services provided by Claimant's insurer.

DATED: August 10, 2016

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Glynda B. Gomez  
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.**