

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of the Fair Hearing Request
of:

OAH Case No. 2016050829

CLAIMANT

vs.

KERN REGIONAL CENTER,

Service Agency.

DECISION

This matter was heard by Eric Sawyer, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, on August 9, 2016, in Bakersfield. The record was closed and the matter submitted for decision at the conclusion of the hearing.

Claimant, who was present, was represented by her mother and father.¹

The Kern Regional Center (service agency) was represented by Mark E. Meyer, LCSW, Special Projects Program Manager.

ISSUE

May the service agency terminate claimant's funding for hippotherapy?

¹ Names are omitted to protect the privacy of claimant and her family.

EVIDENCE RELIED ON

In making this Decision, the ALJ relied upon service agency exhibits A-G (claimant submitted none); as well as the testimony of Mr. Meyer and claimant's parents.

FACTUAL FINDINGS

PARTIES AND JURISDICTION

1. Claimant is a four-year-old girl who is a service agency consumer based on her qualifying diagnosis of mild intellectual disability.

2. For the past few years, claimant has been funded by the service agency to receive hippotherapy by M.A.R.E., a vendored service provider. Hippotherapy is the use of horseback riding as a therapeutic or rehabilitative treatment, especially as a means of improving coordination, balance, and strength.

3. On May 12, 2016, the service agency issued a Notice of Proposed Action (Notice) to claimant's mother, advising her that the service agency intended to terminate the hippotherapy funding. The stated reason was that claimant was also receiving other therapy services and the hippotherapy was therefore viewed as a duplicate service.

4. On May 18, 2016, the service agency received a Fair Hearing Request (FHR) on claimant's behalf, submitted by her mother. In the FHR, claimant's mother requested the hippotherapy funding continue because it helps claimant gain confidence and encouraged her to walk and be agile.

5. Because claimant's mother submitted the FHR within 10 days receipt of the Notice, claimant was entitled to continued funding for this service while this case has been pending. (Welf. & Inst. Code, § 4715, subd. (a).)

6. The hearing was initially scheduled for July 7, 2016. However, the hearing was continued at the request of claimant's parents to August 9, 2016. In connection with

the continuance, claimant's mother waived the time limit prescribed by law for holding the hearing and for the ALJ issuing a decision.

CLAIMANT'S THERAPY NEEDS

7. Claimant first became a service agency client under the Early Start program when she was two years old, based on global delays in development.

8. The service agency began funding M.A.R.E. to provide hippotherapy services for claimant approximately two years ago. That funding was part of a constellation of services provided to claimant to address her various delays. For example, in June 2014, tests showed claimant's gross and fine motor skills were 50 percent delayed. (Ex. F.) At the time, claimant could not crawl or bear weight, had trouble with the left side of her body and could not walk. (Ex. G.) As a result, claimant's physician, Dr. Rehana Rafiq, recommended hippotherapy for claimant to help her "improve balance and coordination." (Ex. E.)

9. Claimant also receives occupational therapy (OT) and physical therapy (PT), which are both provided by TerrioKids. (Exs. B & C.) The OT focuses on claimant's fine motor skills, mainly using her hands, and the PT focuses on her balance, coordination, climbing stairs and trunk control. The OT and PT are offered weekly in 30 minute sessions.

10. Funding for claimant's OT and PT is secured through the family's private insurance provider, Pinnacle, which is a PPO.

11. The hippotherapy has been very successful. Claimant's mother advised the service agency that claimant was able to walk without support as a result of the hippotherapy (but does experience some problems with balance) and that there were no notable problems with trunk control. (Ex. B.) Claimant's ability to walk was observed during the hearing. Claimant's mother has reported that claimant has achieved

substantial gains in her motor skills development under the collective therapeutic interventions that have been provided by TerrioKids and M.A.R.E. (Ex. B.)

12. Claimant has been receiving preschool-level special education programming and services through her local school district. (Ex. B.) During the forthcoming school year she will reportedly be enrolled at her local elementary school. So far, the school district has just provided speech therapy. Service agency staff has discussed with the family the possibility of seeking additional therapy services for claimant through the special education program.

13. Claimant's parents believe hippotherapy has made a huge difference with claimant's balance, fine motor skills and ability to walk. However, they believe hippotherapy is still necessary, because claimant is still learning how to do things such as run, jump and climb. While the PT and OT have also been beneficial, claimant's parents believe the hippotherapy is more beneficial with her gait and balance. They would like the funding to continue to address those needs.

LEGAL CONCLUSIONS

JURISDICTION AND BURDEN OF PROOF

1. The Lanterman Developmental Disabilities Services Act (Lanterman Act) governs this case. (Welf. & Inst. Code, § 4500 et seq.²)

2. An administrative hearing to determine the rights and obligations of the parties, if any, is available under the Lanterman Act to appeal a contrary regional center decision. (§§ 4700-4716.) Claimant requested a hearing and therefore jurisdiction for this appeal was established. (Factual Findings 1-6.)

² Undesignated statutory references are to the Welfare and Institutions Code.

3. The standard of proof in this case is the preponderance of the evidence, because no law or statute (including the Lanterman Act) requires otherwise. (Evid. Code, § 115.)

4. A regional center seeking to terminate or change a service being provided to a consumer has the burden to demonstrate its proposal is correct, because the party asserting a claim or making changes generally has the burden of proof in administrative proceedings. (See, e.g., *Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 789, fn. 9.) In this case, the service agency bears the burden of proving by a preponderance of the evidence the termination of claimant's funding for hippotherapy is warranted. (Factual Findings 1-6.)

FUNDING FOR HIPPO THERAPY

5. An important component of the delivery of services and supports is cost. Services provided must be cost-effective and efficient, and the Lanterman Act requires the regional centers to reasonably control costs. (See, e.g., §§ 4512, subd. (b), 4631, 4640.7, subd. (b), and 4646, subd. (a).)

6. Section 4659, subdivision (a), requires regional centers to look for funding from other sources, such as governmental agencies or programs required to pay the cost of providing services, Medi-Cal, school districts and private insurance.

7. A consumer's individual program plan (IPP) "shall be reviewed and modified by the planning team . . . as necessary, in response to the person's achievement or changing needs," (§ 4646.5, subd. (b).) The planning process relative to an IPP shall include, among other things, "[g]athering information and conducting assessments to determine the . . . concerns or problems of the person with developmental disabilities." (§ 4646.5, subd. (a).) The service in question should not be continued unless reasonable progress has been made toward goals and objectives, and

the funding has been cost-effective. (§§ 4512, subd. (b), 4646, subd. (a), and 4648, subd. (a)(11)).

8. In this case, the hippotherapy was initially funded to address claimant's delays in walking, coordination and balance. She is now able to walk and has no problem with trunk control. Although she still struggles with finer movements, such as climbing and jumping, those skills can be, and are being, addressed by the OT and PT she still receives. Her special education program may also be a resource in the future for her fine and gross motor needs. Under these circumstances, it would not be cost-effective to continue the hippotherapy funding. The main goals for receiving that service have been met and reasonable progress toward residual goals can be met by the OT and PT services. Continuing to fund the hippotherapy would constitute a duplication of services, which is frowned upon by the Lanterman Act. (Factual Findings 1-13, Legal Conclusions 1-7.)

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ORDER

Claimant's appeal is denied. The Kern Regional Center may terminate claimant's funding for hippotherapy.

DATED: August 15, 2016

ERIC SAWYER,
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.