

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

OAH No. 2016080051

CLAIMANT

vs.

GOLDEN GATE REGIONAL CENTER,

Service Agency.

DECISION

Regina Brown, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in San Francisco, California, on November 3, 2016.

English/Vietnamese interpretation was provided at hearing by interpreter Quinn Doan.

Claimant was represented by his mother at hearing.¹

Lisa Rosene, LCSW, represented service agency Golden Gate Regional Center (GGRC).

The matter was submitted on November 3, 2016.

ISSUE

1. Whether GGRC is required to fund Independent Living Skills Instruction services to Claimant.

¹ To protect Claimant's privacy, the name of his mother is withheld.

2. Whether GGRC is required to fund Sensory Integration Therapy services to Claimant.

FACTUAL FINDINGS

1. Claimant is 13 years old and lives with his mother. Claimant receives services from GGRC pursuant to a diagnosis of autism. Claimant's mother is extremely dedicated to her son and is a strong advocate for his needs. She is providing a loving and safe home for him. Claimant's mother is his In-Home Support Services (IHSS) worker and provides assistance with his self-care needs, including personal care and dressing. They regularly attend church together.

2. Claimant attends middle school in the San Francisco Unified School District (SFUSD) where he receives special education services. He is generally in good physical health. He likes music, dancing and his computer. He has sensitivity to sound and wears headphones throughout the day to minimize feedback. Because Claimant has limited safety awareness, he is prone to wandering away and requires supervision at all times. He presents significant behavioral concerns, such as throwing objects, hitting his fists on the table, and pinching others when upset. He struggles with low frustration tolerance, short attention span, and navigating adjustments to his routine. He is primarily non-verbal, but with prompting he can express himself using picture symbols, gesturing, pointing, and an Augmentative and Alternative Communication device.

3. Claimant's current Person-Centered Individual Program Plan (IPP) is dated July 23, 2015. The long term goals are for Claimant to continue to improve on his communication skills, social skills, and self-care skills. The IPP reflects that Claimant received behavioral services from GGRC in the past, but the services he currently receives are case management and respite services. An annual review of the IPP was conducted on August 1, 2016.

SFUSD ASSESSMENTS AND IEP

4. In May 2013, SFUSD conducted an occupational therapy (OT) initial evaluation of Claimant because of his mother's concerns about his sensory processing and handwriting difficulties that affected his participation in the classroom. During the evaluation, it was observed that Claimant engaged in activities, such as jumping on the trampoline, hand flapping, and making unusual noises to himself to increase his sensory input. He has sensory avoidance behaviors, as certain sounds are aversive to him, and he might get overstimulated and avoid participating in group activities. Sensory-Motor Skills include sensory processing, body/spatial awareness, motor planning, bilateral motor coordination, posture and balance. Sensory-motor is defined as "the way in which a student will take in, process, and react (motor response) to the variety of stimuli (external and internal) in their daily environment." The Sensory Processing Measure (Main Classroom Form) (SPM) was administered, which is an integrated system of rating scales that covers a wide range of behaviors and characteristics related to sensory processing, social participation, and praxis in elementary school-aged children. The SPM revealed that Claimant demonstrated functional spatial awareness to maneuver his body around objects and people, but his imitation skills were poor. He also demonstrated bilateral motor coordination and functional balance. The SPM also revealed that Claimant has definite dysfunction in social participation that would impede his participation in the classroom. He has some problems in his body awareness, balance and motion, and planning and ideas. His total sensory systems score on the SPM was a "70 T-Score" which is classified as definite dysfunction in sensory processing. The occupational therapist recommended occupational therapy services to support his educational performance and participation in the classroom. The evidence did not establish when Claimant began receiving occupational therapy at school.

5. In April 2016, Claimant received an Occupational Therapy Triennial Evaluation through SFUSD. It was noted that Claimant's classroom had been modified to meet his needs, including a sensory corner where he has access to various hand fidgets. There is also a suspended cocoon swing to assist with sensory regulation and several bean bags which allow him to receive calming proprioceptive input when needed. Claimant sits on a textured air cushion which provides postural stability and support. He also wears noise canceling headphones while in the classroom and a lanyard with a low technology chewable oral input device. The occupational therapist noted, with regard to Claimant's sensory processing, that Claimant presents with auditory sensitivity and exhibits a need for increased oral input. According to the evaluation report, Claimant is "generally, regulated, but will tantrum when frustrated or when higher than usual demands are placed on him. Tantrums can be dangerous for himself and those around him." The occupational therapist concluded that Claimant continued to qualify for occupational therapy. She suggested that appropriate sensory equipment for self-regulation be provided in the classroom. For the plan of care for Claimant, the occupational therapist noted that she would "work with the classroom staff to provide activities to promote fine motor and independent self care skills."

6. Claimant's current Individualized Education Program (IEP) with SFUSD, dated April 7, 2016, noted his mother's concerns in the areas of functional academics, emotional/behavior, independent living, community participation, job training, and sensory integration. The IEP identified many areas of Claimant's needs and associated goals. The aids, services, and supports provided through the IEP include a sensory choice board and free choice activity board for preferred calming activities and noise canceling headphones. Claimant receives individual and group occupational therapy of 45 minutes per week. It was noted that 5 to 15 minutes of the 45 minutes per week was to implement sensory processing strategies and work collaboratively with the classroom

teacher. Claimant's mother disagreed with the IEP, and requested an increase in the amount of time for the weekly occupational therapy sessions. SFUSD denied the request on September 1, 2016.

7. On September 12, 2016, Claimant was assessed for adapted physical education including testing in areas of body and spatial awareness, directionality, basic movement skills, static balance, and integration of body parts. He was unable to complete some of the tests. The adapted physical education teacher made no recommendation and only provided information to assist the IEP team in deciding whether to provide the service through special education.

8. On October 6, 2016, the IEP team met and a GGRC social worker attended the meeting with Claimant's mother. Claimant's sensory concerns were addressed and his teacher explained that he uses a visual sensory choice board daily and the teacher and occupational therapist have collaborated to provide sensory time (sensory dice) which provides other opportunities for sensory input.

UCSF ASSESSMENTS AND REFERRALS

9. On July 28, 2013, Neal L. Rojas, M.D., a behavioral and developmental pediatrician with the UCSF Pediatric Behavioral Medicine Clinic, performed an assessment of Claimant. Dr. Rojas reviewed Claimant's medical history and developed a treatment plan for Claimant. Dr. Rojas diagnosed Claimant with sensory integration disorder of childhood. In his assessment report, Dr. Rojas recommended, among other things, the following:

[Claimant's] IEP should include increased behavioral supports for his sensory aversions which impair his ability to go about daily school routines such as transitions to/from lunch.

[Claimant's] dysregulated behaviors would also benefit from an Occupational Therapy consultation to his classroom and daily routines.

Occupational Therapy work with [Claimant] should focus on decreasing sensory aversions as they impair his self-care functions with getting dressed, staying dressed, and transitions to/from meals.

While [Claimant's] level of dysregulation stems from sensory and cognitive challenges related to autism, medication approaches to helping him be safer may be needed if additional supports are not successful.

10. Claimant was referred to UCSF's Occupational Therapy Department. On April 21, 2014, Claimant had an initial occupational therapy evaluation. At that time, he had not received occupational therapy services through the school district. After the assessment, the occupational therapist concluded that Claimant would benefit from skilled occupational therapy to assist with self-regulation for attention to task, activities of daily living (ADLs), therapeutic activities, and safety awareness.

11. The occupational therapist recommended that Claimant receive 45 minutes of occupational therapy for sensory integration weekly for six months. However, according to Claimant's mother, UCSF did not have the necessary equipment to provide the services and referred Claimant to California Pacific Medical Center (CPMC). However, CPMC denied the service because, according to Claimant's mother, Claimant was older than the age group of children that they accepted for this form of therapy. At that time, Claimant was receiving speech therapy at Kidspace, and the speech therapist

encouraged his mother to apply for occupational therapy at Kidspace because they had the necessary sensory integration equipment. However, Kidspace does not accept Medi-Cal, which insures Claimant. With the assistance of the occupational therapist at Kidspace, Claimant's mother obtained funding for six months of occupational therapy treatment for Claimant at Kidspace.

12. In a letter dated April 22, 2015, Dr. Rojas emphasized that Claimant required the necessary services, as in the "absence of adequate services, [Claimant] has shown some worsening of behaviors." Again, on September 7, 2016, Dr. Rojas wrote a letter of medical and educational necessity requesting therapy services from GGRC and SFUSD.

GGRC'S ACTIONS

13. On June 21, 2016, the IPP planning team met to discuss Claimant's request for Independent Living Skills (ILS) and Sensory Integration Therapy, as well as other requests for services. The IPP team determined that Sensory Integration Therapy is a non-evidenced based modality which GGRC is prevented from funding. Also, ILS instruction is intended for an adult's development of functional skills, and the school district serves as the generic resource for this kind of support for school-aged individuals. Claimant's mother was informed that Notices of Proposed Action (NOPA) would be issued.

14. On June 23, 2016, GGRC issued a NOPA denying ILS instruction for Claimant. GGRC issued a separate NOPA denying funding for Sensory Integration Therapy.

15. On July 18, 2016, Claimant's mother filed a fair hearing request on Claimant's behalf, as well as a request for an informal meeting with GGRC's director or designee.

16. Paul Ogilvie, GGRC Manager, convened an informal meeting on September 16, which concluded on October 14, 2016. Regarding the request for ILS, Claimant's mother reported that Claimant needs help with dressing as he cannot tie his shoes and sometimes puts his clothes on crooked or buttons incorrectly. Also, he requires assistance with tooth brushing, bathing, and completing hygiene tasks including requiring assistance with using toilet tissue. He is unable to prepare simple foods, like a sandwich. She believes that these are areas that ILS will help to "increase his independence in self-care."

Regarding Claimant's request for Sensory Integration Training, his mother reported to Ogilvie that Claimant's extreme sensitivity to sounds and noises affects his functioning in all areas. He wears headphones and she places him in a stroller as he is resistive to going outside because of the stimulation. His extreme sensitivities and reactions severely limit his mother's ability to engage Claimant in community activities. For example, when he experiences sensory overload, he will stop in his tracks, close his eyes, and hold onto something. Also, according to his mother, his temper tantrums are a result of sensory overload. He covers himself with a blanket to calm himself, enjoys rubbing himself with sand, and stands in the shower to feel the sensation of the water. Claimant's mother does not believe that the occupational therapy that he receives at school is sufficient to address his sensory needs. She hopes that if Claimant receives additional Sensory Integration Therapy he will experience decreased sensory problems, his behavior challenges will decrease, and he will make progress in all areas.

17. In his written recommendation, Ogilvie determined that based on Claimant's mother's description of his needs, it appeared that she was in fact requesting assistance for self-care skills and not ILS skills. Ogilvie considered the school district as a generic resource to address Claimant's self-care skills through OT services. Also, as Claimant's mother is his IHSS worker, she should be able to provide assistance for his

self-care needs and training can occur at that time. Ogilvie recommended that GGRC decline funding ILS services

18. Regarding the request for Sensory Integration Therapy, Ogilvie noted that the planning team was not in agreement that this type of therapy is evidence-based. Ogilvie cited to Welfare and Institutions Code section 4648, subdivision (a)(16), which forbids regional centers from purchasing experimental treatments. Ogilvie concluded the following:

[] As it is clear that [Claimant's] sensory difficulties act as a barrier keeping him from successfully accessing his environment, behavioral techniques such as systematic desensitization might be helpful in [Claimant] making improvements in tolerating different environments. Use of behavioral modification techniques might also help [Claimant] in reducing temper tantrums and increasing his cooperation with his mother during provision of self-care skills. At this time Beacon Health System has approved behavioral services funded through Medi-Cal but no vendor has yet been found to provide the service.

[] The San Francisco Unified School District has agreed to refer [Claimant] to the Autism Center of Northern California for a comprehensive assessment. This writer strongly encourages [Claimant's mother] to pursue this assessment as it will hopefully yield recommendations which are better tailored to address [his] multiple needs utilizing a comprehensive approach.

[] The Planning Team should reconvene to complete discussions regarding service requests made by [Claimant's mother] that are not yet resolved.

19. On October 20, 2016, GGRC's Executive Director informed Claimant's mother that he concurred with Ogilvie's recommendation to deny her requests. Claimant pursued her appeal and this hearing followed.

20. According to GGRC's Guidelines for Developing IPPs, Appendix 8-G, ILS training is defined as "a program that provides adults functional skills training necessary to secure a self-sustaining, independent living situation in the community and/or provide the support necessary to maintain those skills. . . . The individual must be at least 18 years of age."

21. Under GGRC's guidelines, a service or support may be purchased for a GGRC consumer under certain circumstances. The service or support must be the most cost-effective approach that will meet the person's need. Also, the guidelines require that "[t]he service is not experimental, unproven or potentially harmful to the person (including aversive behavioral techniques). To be considered non-experimental a service must be peer reviewed and published in a reputable professional journal such as the Journal of the American Medical Association." Exceptions to the purchase of service standards may be made only in rare circumstances based on individual needs with the approval of the executive director of GGRC.

22. Mai Nguyen, Ph.D., has been a GGRC staff psychologist for five years. Her duties include providing consultation to families and staff and conducting psychological assessments. She has experience working with children with autism.

Dr. Nguyen testified about the circumstances under which any therapy is considered to be evidence-based which includes a type of intervention effective through rigorous scientific research and in-depth literature review. Dr. Nguyen testified about

the Overview of National Professional Development Center ASD 2014 Report on Evidence-Based Practices (report). The report was created by a collaboration of universities that reviewed many therapies to determine which were considered as evidence-based treatment for autism. The report concluded that 27 documented therapies were considered to be evidence-based practices for autism. These included, for example, Exercise (ECE) which is antecedent based physical exertion to reduce interfering behavior or increase appropriate behaviors, and cognitive behavioral intervention (CBI) which is instruction on cognitive processes leading to changes in behavior. Sensory Integration Therapy was not included in the list of 27 documented therapies considered to be evidence-based treatment for autism. According to Dr. Nguyen, Sensory Integration Therapy was not included in the report because the research was inconclusive and showed limited effectiveness. Dr. Nguyen explained that, "inconclusive" means that the "research does not meet the threshold of consistency, quality," and "cannot be replicated by multiple authors to show effectiveness."

Dr. Nguyen acknowledged that Sensory Integration Therapy is a form of therapy, typically administered by an occupational therapist. According to Dr. Nguyen, occupational therapists view this therapy as evidence-based, but the larger medical community does not have the same viewpoint. Dr. Nguyen explained that there are many available therapies that claim to be useful and effective for the treatment of autism, but health professionals can only rely on evidence-based practices. Dr. Nguyen also stated that Sensory Integration Disorder is a controversial diagnosis because it is not in the DSM-V.² However, it is a diagnostic criterion for autism, although not a

² DSM-V refers to Diagnostic and Statistical Manual of Mental Disorders, 5th Edition (2013).

required criteria. Dr. Nguyen reaffirmed that GGRC is not allowed to fund therapies that are not evidence-based.

Dr. Nguyen was credible in her testimony. However, her testimony and reliance on only one report, was not persuasive to make the critical and binding determination that Sensory Integration Therapy is not an evidence-based therapy. Such a determination requires a “review of the best available scientifically rigorous research.” Reliance on one report appears insufficient to represent the “best available scientifically rigorous research.”

23. Haley Bogosian is a licensed marriage and family therapist and a social worker for GGRC. Her job duties include service coordination, oversight of service and referral, and writing IPPs and funding requests for services. She served as Claimant’s case manager from November 2015 until August 2016. At hearing, Bogosian confirmed that there is no goal in the IPP that addresses independent living skills, but there is some language about self-care skills which encompass hygiene, dressing, bathing, and toileting. Bogosian discussed that self-care skills are different from the objectives of ILS which includes budgeting and maintaining a household to prepare a consumer to live on his own. It is not expected that a 13-year-old would need these types of skills. Bogosian also discussed GGRC’s purchase of service guidelines. Bogosian explained that IHSS is considered a generic resource for self-care skills because it provides support to the consumer for personal care. Also, according to Bogosian, the school district is the appropriate entity to provide Sensory Integration Therapy services to Claimant.

24. Claimant’s mother testified at hearing. Claimant’s mother requests that GGRC pay for the services to which her son is entitled. She described his sensory issues and reiterated that his doctor diagnosed Claimant with sensory integration disorder which requires therapy. She explained that UCSF does not have the necessary OT equipment. Also, CPMC refused to accept Claimant for this therapy because of his age.

Ultimately, she was successful in obtaining Sensory Integration Therapy for Claimant at Kidspace, but the funding ended and she seeks financial assistance to continue with the therapy.

Although the distinctions between ILS and self-care skills were explained at the hearing, Claimant's mother continued to request assistance through ILS, and she also requested help with self-care. Claimant's mother was not aware of any appeals procedure that she could have taken when her son was rejected by CPMC. She also did not know if Medi-Cal covered occupational therapy. She did not appeal the school district's denial for increased occupational therapy services. Claimant's mother contends that GGRC has not assisted her with advocacy to obtain these services to which Claimant is entitled.

25. In a letter dated November 8, 2014, Lani Hessen, Occupational Therapist with Kidspace, confirmed that Claimant received occupational therapy services. His goals were centered around ADLs, independence, self-regulation, skill building, strengthening, and motor skills acquisition. Hessen noted that Claimant had some behavioral overreaction during his sessions at Kidspace, but they had taken a milder form than when he was at home or in the community. She wrote the following in her letter: "To increase [Claimant's] calm alert states, we have been implementing some deep pressure and joint compression technique, which is very calming for [him]. He responds well to deep pressure input and his mother has implemented this strategy at home as well."

26. It is undisputed that Claimant has sensory difficulties which act as a barrier to his successfully accessing his various environments. It appears that GGRC believes that these can be addressed with behavioral therapy provided through his insurance. However, Claimant does have a diagnosis of sensory integration disorder from his medical provider and occupational therapy is a recommended treatment. He has received Sensory Integration Therapy services at Kidspace. He has received some

therapy to address sensory concerns through his IEP. He was also referred to CPMC for therapy, which was refused. There is insufficient evidence to make a determination that Sensory Integration Therapy is or is not evidenced-based, at this time. In any event, Claimant did not meet his burden to establish that GGRC is required to fund Sensory Integration Therapy services. There appears to be generic resources that have not been exhausted through the various appeals processes to access this form of therapy. Also, GGRC has an obligation to provide advocacy services so that Claimant may have access to this therapy.

LEGAL CONCLUSIONS

1. The State of California accepts responsibility for persons with developmental disabilities under the Lanterman Developmental Disabilities Services Act (Lanterman Act), Welfare and Institutions Code section 4500, et seq.³ 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 are charged with the responsibility of carrying out the state’s responsibilities to the developmentally disabled under the Lanterman Act. (§ 4620, subd. (a).) The Lanterman Act directs regional centers to develop and implement an IPP that states the consumer’s goals and objectives and delineates the services and supports needed by the consumer. (§§ 4646, 4646.5, 4648.)

2. Neither the Lanterman Act appeal process (§ 4700 et seq.) nor its implementing regulations (Cal. Code Regs., tit. 17, § 50900 et seq.) assigns burdens of

³ All statutory references are to the Welfare and Institutions Code unless otherwise noted.

proof. Here, Claimant is requesting additional supports and therefore bears the burden of proof. And, as there is no statute that provides otherwise, the standard of proof to be applied in this proceeding is the preponderance of the evidence. (Evid. Code, § 115.)

3. A regional center is required to secure the services and supports needed to achieve the stated objectives as determined in the IPP. (§ 4648, subd. (a).) Conversely, a regional center may only secure those secure services and supports where they are contained in the IPP. (§ 4512, subd. (b).) In short, the IPP process is the exclusive decision making process under the Lanterman Act.

4. While regional centers have a duty to provide a wide array of services to implement the goals and objectives of the IPP, 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. Towards this end, regional centers must identify and pursue all possible sources of funding, including funding that may be available from school districts. (§§ 4659, subd. (a)(1); 4646.4.) Additionally, regional centers are directed to provide "advocacy to assist persons ... in securing educational services, and other benefits to which they are entitled." (§ 4685, subd. (c).)

5. A regional center also has discretion in determining which services it should purchase to best accomplish all or any part of a consumers IPP. (§ 4648.) This entails a review of a consumer's needs, progress and circumstances, as well as consideration of a regional center's service policies, resources and professional

judgment as to how the IPP can best be implemented. (§§ 4646, 4648, 4624, 4630, subd. (b), and 4651; *Williams v. Macomber* (1990) 226 Cal.app.3d 225, 233.)

INDEPENDENT LIVING SKILLS

6. In 2011, the Legislature added section 4648.55, which prohibits a regional center from purchasing independent living program services for a consumer who is 18 to 22 years of age if that consumer is eligible for special education. If the planning team determines that generic services can meet the consumer's independent living need, the regional center must assist the consumer in accessing those services. (§ 4648.55, subd. (a).) Also, GGRC's guidelines specify, in Factual Finding 20, that ILS training is only available to consumers who are at least 18 years of age.

7. Claimant did not meet his burden of establishing that GGRC was required to fund ILS services. It appears that Claimant's mother may have confused self-care skills with the skills to be attained through ILS. In this case, self-care skills may be accessed through the school district as a generic resource, which Claimant should pursue. Also, GGRC should provide advocacy services, if necessary, to secure self-care services.

SENSORY INTEGRATION THERAPY

8. 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 for safe or for which risks and complications are unknown." (§ 4648, subd. (a)(16).) GGRC contends that Sensory Integration Therapy is not evidence-based.⁴

⁴ Pursuant to section 4686.2, evidence-based practice as defined in reference to behavioral services is, among other things, "a decisionmaking process that integrates the best available scientifically rigorous research, clinical expertise, and individual's

9. Again, the evidence did not support a determination as to whether Sensory Integration Therapy is evidence-based or not. However, in the instant case, GGRC is precluded from expending its resources to pay for these services because Claimant's school district has a duty to provide him with such services. As the payer of last resort, GGRC has a duty to ensure that it does not fund duplicate services that are available from another public agency. Towards this end, GGRC may decline to fund this therapy until there is a final administrative determination regarding the nature and extent of the school district's legal obligation to provide this service to Claimant. To require GGRC to fund Sensory Integration Therapy, when alternative sources of funding exist, would contravene the express provisions of the Lanterman Act which require GGRC to provide services in the most cost-effective manner possible. As indicated above, GGRC must assist Claimant in his administrative appeal to the school district on this issue, and any other forums of appeal. Claimant did not meet his burden of establishing that GGRC was required to fund Sensory Integration Therapy services to Claimant. Accordingly, the appeal will be denied.

ORDER

Claimant's appeal is denied. However, GGRC shall assist and advocate for Claimant to receive appropriate educational services and all other benefits, as described herein, to which he is entitled.

characteristics," "an approach to treatment rather than a specific treatment," and is matched to consumer circumstances and preferences and "applied to ensure the quality of clinical judgments and facilitates the most cost-effective care." (§ 4686.2, subd. (d)(3).)

DATED: November 17, 2016

REGINA BROWN

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.