

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

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

CLAIMANT

And

INLAND REGIONAL CENTER,

Service Agency

OAH No. 2016091070

DECISION

Abraham M. Levy, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in San Bernardino, California, on February 2, 2017.

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 February 2, 2017.

ISSUE

Should IRC fund claimant's request for copayment assistance incurred for Speech and Physical Therapy visits claimant incurred before April 19, 2016?

FACTUAL FINDINGS

JURISDICTIONAL MATTERS

1. On September 9, 2016, IRC sent claimant a Notice of Proposed Action, denying claimant's request to pay copayments for speech and physical therapy prior to

April 19, 2016. IRC stated that it cannot authorize services retroactively and that authorizations for services must be made in advance of the provision of service, except for certain emergency situations not applicable to claimant's case.

2. On September 14, 2016, claimant's mother filed a request for a fair hearing objecting to IRC's decision. In her hearing request she asked that IRC pay copayments totaling almost \$1,500 that claimant incurred before April 2016.

CLAIMANT'S BACKGROUND

3. Claimant is a 5-year-old girl who is eligible for regional center services based on a category that was not specified at the hearing. She receives Supplemental Security Income and is Medi-Cal eligible. Per claimant's most recent Individual Program Plan, she is awaiting placement in an appropriate kindergarten within her school district. Claimant has Anthem Blue Cross/IEHP as her insurance, and she is required to pay \$75 for speech and 20 percent of the total costs for physical therapy.

IRC'S EVIDENCE PRESENTED AT HEARING

4. IRC Consumer Services Coordinator Deana Greider testified at the hearing. She has worked closely with claimant's mother over the last three years, and since January or February 2016, she discussed claimant's eligibility for copayment assistance with her. She testified that she sent claimant's mother a form captioned "Copayment/Co-Insurance/Deductible Assistance Request" at some time in February 2016. Claimant was required to submit this form in order for IRC to assess her income eligibility for copayment assistance. Ms. Greider added that she contacted claimant's mother to inquire about the status of the copayment assistance form, but she did not receive the completed form until April 2016. Claimant's mother completed and signed this form on April 19, 2016.

Moreover, since April 2016, Ms. Greider has attempted to obtain from claimant's mother completed "Explanation of Benefits" forms from claimant's health insurance coverage but has not been able to procure these forms from claimant's mother. IRC needs these forms so that IRC may pay the healthcare providers the copayments. But, even though claimant did not submit the required Explanation of Benefits forms from claimant's health insurance providers, IRC decided to authorize copayment assistance for claimant effective April 19, 2016.

TESTIMONY OF CLAIMANT'S MOTHER

5. Claimant's mother testified that she sent the copayment assistance form with a W-2 income form to IRC in February 2016, and IRC must have lost it. Aside from her testimony, she offered no facts to substantiate that she sent the copayment assistance form to IRC in February 2016.

EVALUATION OF EVIDENCE

6. To the extent claimant's mother's testimony conflicted with Ms. Greider's credible testimony that IRC did not receive the copayment assistance form from claimant's mother until April 2016, it is not accepted.

Claimant's mother presented no evidence to substantiate her testimony that she sent the copayment assistance form to Ms. Greider in February 2016. In contrast, Ms. Greider testified credibly that she had difficulty obtaining this form from claimant's mother between February and April 2016, and asked her about it. If claimant's mother had sent the form in February 2016, it is reasonable to expect that she would have asked Ms. Greider about the form she sent to IRC, and neither claimant's mother nor Ms. Greider testified in this regard. While claimant's mother may believe she sent the form to IRC in February 2016, the evidence does not support a conclusion that she did.

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 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 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 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.)

5. 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 does not exceed 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.)

6. 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.

7. California Code of Regulations, title 17, section 50612, provides:

(a) A purchase of service authorization shall be obtained from the regional center for all services purchased out of center funds. . . .

(b) The authorization shall be in advance of the provision of services except as follows:

(1) A retroactive authorization shall be allowed for emergency services if services are rendered by a vendor service provider. . . .

EVALUATION

8. A preponderance of the evidence did not establish that there is any basis to require IRC to provide copayment assistance for claimant's speech and physical therapy services before April 19, 2016, the date claimant's mother signed and submitted to IRC the completed copayment assistance form. IRC did not receive the completed copayment assistance form from claimant's mother until April 2016, and IRC cannot retroactively authorize copayment assistance.

ORDER

Claimant's appeal is denied.

DATED: February 9, 2017

ABRAHAM M. LEVY
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.