BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: SELINA M., Claimant, vs. ALTA CALIFORNIA REGIONAL CENTER, Service Agency.	OAH No. 2016091191

DECISION

This matter was heard before Administrative Law Judge Susan H. Hollingshead, State of California, Office of Administrative Hearings (OAH), in Sacramento, California, on October 31, 2016.

The Service Agency, Alta California Regional Center (ACRC), was represented by Robin Black, ACRC Legal Services Manager.

Claimant was represented by her mother.

Oral and documentary evidence was received. Submission of this matter was deferred pending receipt of closing briefs. Claimant's Hearing Brief and ACRC's Closing Brief were received on November 10, 2016. The record was closed and the matter submitted for decision on November 10, 2016.

ISSUE

Is Alta California Regional Center required to fund equestrian services from Ride to Walk for Claimant?

FACTUAL FINDINGS

1. Claimant is a three-year-old girl who is eligible for ACRC services based on her diagnoses of cerebral palsy with spastic triplegia, epilepsy with intermittent seizure control, and under the fifth category, based upon her diagnosis of Global Developmental Delay, a condition closely related to intellectual disability or requiring treatment similar to that required for individuals with intellectual disability. She also has cortical visual impairment (CVI). The etiology of these conditions is severe hypoxic ischemic encephalopathy.

Claimant's parents expressed the severity of her condition by testifying that she began her first year of life on hospice. She is unable to walk or crawl and wears ankle-foot orthotics (AFOs) on both feet. She has a G-tube for nutrition but is also able to able to eat pureed foods. She requires assistance with all functional adaptive activities including eating, bathing, dressing and walking. Claimant qualified for California Early Start services through the California Early Intervention Services Act,[1] which provides early intervention services for infants and toddlers from birth to 36 months who have disabilities or are at risk of disabilities, to enhance their development and to minimize the potential for developmental delays.

2. Claimant began participating in the Early Intervention program in August 2013. Her placement in a comprehensive Infant Development Program included specialized instruction, physical therapy, nursing services, speech therapy, occupational therapy, vision services and warm water therapy.

Claimant was also receiving physical therapy, speech therapy and occupational therapy through Kaiser. In addition, Kaiser provided pediatric and

[1] California Government Code section 95000 et. seq.

neurologic medical care, as well as feeding therapy. California Children's Services (CCS) also provided therapy services.

3. At age three, claimant began receiving services and supports pursuant to the Lanterman Developmental Disabilities Services Act (Welfare and Institutions Code Section 4500 et seq.) subdivision (c). [2]

4. Jennifer Bloom is claimant's ACRC Client Services Manager. She testified that Claimant transitioned from the Infant Development Program to the Elk Grove School District and is currently participating in a specialized orthopedic classroom with a whole-class integrated physical therapy model. Claimant participates in the MOVE[3] program which focuses on acquiring motor skills and utilizes strategies for movement and physical exercise throughout her school day. She uses a gait trainer/PACER during her school program and utilizes a loner at her home. Her Individualized Education Program (IEP), dated May 12, 2016, includes direct physical therapy, physical therapy consult, collaboration and coaching, as well as integrated occupational therapy services (direct, instruction, consultation, collaboration and coaching), direct speech and language therapy, nursing consult and consultation, collaboration and coaching from a teacher of the visually impaired.

Ms. Bloom testified that ACRC is currently considering a request to purchase a gait trainer/PACER for use in claimant's home.

Ms. Bloom also testified that claimant has been attending the My Friends pediatric day care program which is designed for children with special needs and provides opportunities for play and movement for children with orthopedic

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[2] Unless otherwise indicated all statutory references are to the California Welfare and Institutions Code.

[3] Mobility Opportunities Via Education/Experience.

impairments, including floor time and use of adaptive play equipment. In addition, claimant is authorized to receive weekly physical therapy through Kaiser.

5. Claimant's parents have requested that ACRC fund equestrian therapy/hippotherapy[4] from Ride to Walk. The family began privately paying for weekly Ride to Walk services in November 2015 and believes this service is beneficial for claimant, but it is a financial hardship for them to continue funding.

6. Regional centers are governed by the provisions of the Lanterman Act. Section 4648.5, subdivision (a), which was enacted in 2009, suspends regional centers' authority to purchase the following services: (1) camping services and associated travel expenses; (2) social recreation activities, except for those activities vendored as community-based day programs; (3) educational services for children three to 17, inclusive, years of age; and (4) nonmedical therapies, including, but not limited to, specialized recreation, art, dance, and music.

Regional centers retain authority to purchase the services enumerated in section 4648.5, subdivision (a), only where a consumer falls within the exemption set forth in section 4648.5, subdivision (c), which provides:

> An exemption may be granted on an individual basis in extraordinary circumstances to permit purchase of a service identified in subdivision (a) when the regional center determines that the service is a primary or critical means for ameliorating the physical, cognitive, or psychosocial effects of

[4] The requested equestrian services have also been termed equestrian therapy, equine-assisted therapy, therapeutic horseback riding, horseback riding therapy and hippotherapy. There was no persuasive evidence presented that this service was anything other than a nonmedical therapy.

> the consumer's developmental disability, or the service is necessary to enable the consumer to remain in his or her home and no alternative service is available to meet the consumer's needs.

7. In response to the mandates of section 4648.5, ACRC determined that section 4648.5, subdivision (a)(4), prohibits purchase of the equestrian therapy services provided by Ride to Walk because this service constitutes "a nonmedical therapy" which is a suspended service. ACRC further determined that claimant did not qualify for an exemption permitting the purchase of this service.

ACRC determined that not only was the requested service a suspended service, but it was not evidenced-based for the treatment of cerebral palsy and other services were available to more appropriately address claimant's needs.

8. On July 15, 2016, ACRC issued a Notice of Proposed Action (NOPA) to claimant, advising that "Alta California Regional Center (ACRC) is denying your request to fund equestrian therapy/therapeutic horseback riding for you daughter, [claimant]."

The NOPA advised claimant that the reason for this action was as follows:

> Equestrian therapy/therapeutic horseback riding is not recognized as an evidence-based therapy for the treatment of children with Cerebral Palsy and is not part of the standard of practice for the treatment of children with Cerebral Palsy. ACRC is prohibited from funding experimental therapies or treatments which are not proven scientifically safe or effective to treat Cerebral Palsy such as equestrian therapy/therapeutic horseback riding.
>
> Additionally, regional centers are currently prohibited from

> funding nonmedical therapies, including specialized recreation such as equestrian therapy/therapeutic horseback riding. Further, ACRC has determined that [claimant] does not qualify for an exemption from that prohibition because equestrian therapy/therapeutic horseback riding is not the primary or critical means to ameliorate the physical, psychosocial or cognitive effects of [claimant's] development disability, because it is not necessary to enable her to remain in her home, and because additional services are available to treat the physical effects of [claimant's] cerebral palsy.
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> Indeed, physical therapy services may be available to [claimant] under her IEP through her school district as a related service to address the physical effects of her Cerebral Palsy. ACRC may not fund services which are available to clients from generic resources (such as the school district) or private resources (such as private insurance).

9. Claimant filed a Fair Hearing Request dated July 27, 2016, appealing that decision. The reason for the request stated:

> [Claimant] has been denied funding for services for horseback riding therapy, which is necessary due to her diagnosis.
>
> [Claimant] would like Alta to fund horseback riding therapy services through "Ride to Walk."

During the course of negotiations, claimant withdrew this Fair Hearing Request, without a Final Agreement and without prejudice to request a later hearing.

10. On September 19, 2016, claimant filed a Fair Hearing Request that is the subject of this action. The request stated as follows:

> Already had informal meeting/mediation, needed to get addt'l
> D. info for hippotherapy through Ride to Walk.

Claimant still sought "funding for services through Ride to Walk provided to [claimant]."

11. Terrance J. Wardinsky, M.D. is a Consulting Staff Physician for ACRC, having previously served for many years as the agency's Medical Director. He reviewed records in consideration of claimant's equestrian therapy request. Dr. Wardinsky explained some of claimant's history beginning with Early Start services she received through the Sacramento County Office of Education (SCOE) program which included occupational therapy, physical therapy, feeding, vision and swim therapies. At three years of age, her school district began providing services.

12. Dr. Wardinsky testified that the services provided by Ride to Walk are equine-assisted or hippotherapy which constitute nonmedical therapy. He did not believe claimant qualified for an exemption to the prohibition on purchasing these services because they are not the primary or critical means for ameliorating her developmental disability. There was also no evidence presented that without this therapy, claimant would be unable to remain in her family home. He testified that alternative services, including those being provided through claimant's school district and physical therapy are available to meet claimant's needs and there is no evidence that hippotherapy is more effective than traditional therapy for addressing the effects of cerebral palsy.

13. Dr. Wardinsky explained that regional centers are prohibited from funding experimental or investigational treatments. He testified that insurance companies do not fund hippotherapy due to the lack of evidence of its effectiveness. Aetna takes the position

in its literature that it "considers hippotherapy (also known as equine therapy) experimental and investigational for the treatment of [indications including cerebral palsy] and all other indications because there is insufficient scientific data in the peer reviewed medical literature to support the effectiveness of hippotherapy for the treatment of individuals with these indications." Blue Shield of California has taken the position that hippotherapy (also referred to as equine-assisted therapy) is "considered investigational." In a literature review of a number of published systematic reviews on hippotherapy in children with cerebral palsy, Blue Shield conclusions included, "poor-quality studies limited clinical interpretation, trial limitations include unclear clinical significance of outcomes, uncertain attributes or absence of the control group, and lack of long-term outcomes." Overall, hippotherapy was not found to have a clinically significant impact on children with cerebral palsy.

14. One record Dr. Wardinsky reviewed was the following note electronically signed and dated by claimant's neurologist, Gregg Nelson, M.D. dated September 14, 2015:

> 3Y with cerebral palsy and history of infantile spasms with generalized epilepsy who has shown marked gains during hippotherapy in regards to her CVI, sensory and motor skills. It is necessary to continue this therapy.

Dr. Wardinsky testified, and reiterated in a sworn declaration, that he discussed claimant's request by telephone with her neurologist, Dr. Nelson, who agreed that current evidence supporting hippotherapy's effectiveness for cerebral palsy is weak. Dr. Nelson's statement that claimant had shown marked gains during hippotherapy was based solely on information relayed to him from claimant's mother. He further testified that Dr. Nelson stated his belief that if he wrote a recommendation for Ride to Walk services, ACRC would

be able to fund them.

15. Claimant's pediatrician, Dr. Ratanasen provided the following "Verification" dated July 27, 2016:

> [Claimant] is a patient being followed by our Kaiser pediatric and subspecialty physicians. Her diagnoses include cerebral palsy. As her primary care physician, I have been following her, and during the course of her therapeutic horseback riding therapy through the Ride to Walk program, I have observed recent improvement in her motor skills, muscle tone, and strength. For that reason, I am advocating for her to continue all current therapies, including horseback riding therapy through the Ride to Walk program. I feel the continuation of participating in the Ride to Walk program would be beneficial to her and help her to continue to show improvements in her strength, balance and coordination in order to maximize her function and developmental gain.

Dr. Ratanasen followed with an updated Verification dated September 14, 2016:

> [Claimant] was seen in the clinic on 9/14/16. [Claimant] is a patient being followed by our Kaiser pediatric and subspecialty physicians. Her diagnoses include cerebral palsy. As her primary care physician, I have been following her, and during the course of her therapeutic horseback riding therapy through the Ride to Walk program, I have observed continued improvement in her motor skills, muscle tone, and strength. For that reason, I am advocating for her to specifically continue

> the Ride to Walk program. I feel the continuation of participating in the Ride to Walk program would be beneficial to her and help her to continue to show improvements in her strength, balance and coordination in order to maximize her function and developmental gain. I feel this therapy is required to continue her developmental gain because other therapies have been difficult in implementing due to her non-compliance.

16. Dr. Lawrence Manhart, claimant's physical medicine and rehabilitation physician, did not provide input on this issue.

17. There was no evidence presented that any health care provider had observed claimant while she participated at Ride to Walk.

18. Dr. Wardinsky concluded that the regional center is precluded from funding hippotherapy as it is presently considered experimental or investigational. He opined that it would also be difficult to conclude that a therapy that has not been proven to be effective for cerebral palsy could be the primary and critical means for ameliorating the effects of that condition. He did consider it an "interesting adjunctive therapy" that at some time may become evidence based, but is "not a first line therapy established for this patient." He concluded that claimant did not qualify for an exemption because other services, including the integrated therapies provided through her educational program and physical therapy, not Ride to Walk, are the primary or critical service for ameliorating the effects of her developmental disability. In addition, while equestrian therapy services may provide a benefit to consumers in general, in light of the statutory changes, ACRC is prohibited from providing the service absent an exemption.

19. Kristine Corn, PT, MSPT, DPT, is the Founder and Executive Director of Ride

to Walk therapeutic horseback riding program[5]. She has been a physical therapist for over forty years and, prior to the 2009 changes to the Lanterman Act had been vendored with ACRC to provide services.

Dr. Corn explained the process for providing services to claimant and described claimant as being one of her most challenging clients. When claimant first came to Ride to Walk, she was unhappy, would cry when she was on the horse and had difficulty being with a stranger and away from her mother. She had extremely limited neck and head control and needed complete assistance with postural control. Over time, claimant is gaining core and trunk strength and making gains. She described claimant's current service experience as "a very different scenario than we first saw."

Dr. Corn was passionate about the individual benefits of therapeutic horseback riding but acknowledged that the current body of research is "more anecdotal."

20. Claimant's mother testified that the family began privately funding Ride to Walk services for claimant in November 2015. While claimant has received and continues to receive numerous services, her parents believe that she has not made as many improvements with those services as she has made in her time with Ride to Walk.

21. Claimant's mother appropriately described her as a "little miracle baby" after detailing her traumatic birth, when she was not expected to live, and her parents were told that if she did survive she would not have "any quality of life." Claimant spent her first six weeks in the Neonatal Intensive Care Unit (NICU) after which she was released home on hospice. After a year, her prognosis improved and she was removed from hospice. While she has improved, she is still severely delayed and her parents are doing all they can to

[5] Dr. Corn testified that hippotherapy requires a participant to have the ability to sit independently on the horse while therapeutic horseback riding allows a therapist to intervene.

"get her the help she needs with therapies and services that will help her get stronger, enhance her developmental skills, increase her quality of life, and to one day potentially live and function independently." Claimant has a loving and supportive family who are very involved in her care, working with her daily to increase her abilities.

22. Prior to Ride to Walk services, claimant's mother reports that she could do assisted sitting for approximately five to eight minutes and could stand in her prone stander for approximately 30 minutes. She is stronger on her right side and could roll from stomach to back rolling on her left side, with very little use of her left hand. Claimant tired quickly and could only stay focused on an activity for short periods of time.

Claimant's mother testified that after participating in Ride to Walk services, she saw significant changes. She explained that when claimant first began the therapy, it was difficult and tiring for her, she did not want to stay engaged and would cry when she was on the horse. After being in the program, claimant became more patient and developed stronger overall core and trunk strength and increased her balance. She is able to sit and stand for longer periods of time and has acquired new skills such as initiating a few steps in her gait trainer and balancing while playing with toys.

Claimant's mother also testified that Ride to Walk has not only helped claimant physically but also has aided with her socio-emotional and sensory impairments, and with her communication.

23. Claimant's mother stated that claimant "has never done well with physical therapy at Kaiser due to non-compliance. She would throw tantrums every time she went and showed no progress. . . the therapy was a complete waste of time." She also stated that the Kaiser physical therapist would try to convince claimant's parents that claimant did not need to continue with the therapy due to the lack of progress. No Kaiser physical therapist provided testimony. Claimant is authorized to receive weekly physical therapy through Kaiser, however her mother testified that she is not currently accessing this

service. She attempted to obtain warm water therapy through CCS, until CCS no longer accepted Kaiser medical insurance.

24. Claimant's mother testified that Ride to Walk "offers a unique therapy that is unlike any other traditional therapies. It can not be replicated or be replaced by any other alternatives." She believes it is a primary or critical means to ameliorate the physical, cognitive, or psychosocial effects of claimant's disability and that no alternative service is available to meet claimant's needs. Video and photographs were presented at hearing that showed progress made by claimant over the time she has participated in Ride to Walk.

25. Claimant's mother testified that equestrian therapy was not required to maintain claimant in the family home.

LEGAL CONCLUSIONS

1. The Lanterman Act sets forth the regional center's responsibility for providing services to persons with development disabilities. An "array of services and supports should be established...to meet the needs and choices of each person with developmental disabilities...to support their integration into the mainstream life of the community...and to prevent dislocation of persons with developmental disabilities from their home communities." (§ 4501.) The Lanterman Act requires regional centers to develop and implement an IPP for each individual who is eligible for regional center services. (§ 4646.) The IPP includes the consumer's goals and objectives as well as required services and supports. (§§4646.5 & 4648.)

2. Section 4648, subdivisions (a)(8) and (16), specify:

> In order to achieve the stated objectives of the consumer's individual program plan, the regional center shall conduct activities including, but not limited to, all of the following:
>
> (a) Securing needed services and supports.

(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.

(16) Notwithstanding any other provision of law or regulation to the contrary, 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 or safe or for risks and complications are unknown. Experimental treatments or therapeutic include experimental medical or nutrition therapy when the use of the product for that purpose is not a general physician practice. . .

3. Section 4659, subdivisions (a)(1) and (2) provide:

(a) Except as otherwise provided in subdivision (b) or (c), the regional center shall identify and pursue all possible sources of funding for consumers receiving regional center services. These sources shall include, but not be limited to, both of the following:

(1) Governmental or other entities or programs required to provide or pay the cost of providing services, including Medi-Cal, Medicare, the Civilian Health and Medical Program for Uniform Services, school districts, and federal supplemental security income and the state supplementary

program.

(2) Private entities, to the maximum extent they are liable for the cost of services, aid, insurance, or medical assistance to the consumer.

4. Section 4648.5 of the Lanterman Act provides:

(a) Notwithstanding any other provision of law or regulations to the contrary, effective July 1, 2009, a regional centers' authority to purchase the following services shall be suspended pending implementation of the Individual Choice Budget and certification by the Director of Developmental Services that the Individual Choice Budget has been implemented and will result in state budget savings sufficient to offset the costs of providing the following services:

(1) Camping services and associated travel expenses.

(2) Social recreation activities, except for those activities vendored as community-based day programs.

(3) Educational services for children three to 17, inclusive, years of age.

(4) Nonmedical therapies, including, but not limited to, specialized recreation, art, dance, and music.

(b) For regional center consumers receiving services described in subdivision (a) as part of their individual program plan (IPP)

or individualized family service plan (IFSP), the prohibition in subdivision (a) shall take effect on August 1, 2009.

(c) An exemption may be granted on an individual basis in extraordinary circumstances to permit purchase of a service identified in subdivision (a) when the regional center determines that the service is a primary or critical means for ameliorating the physical, cognitive, or psychosocial effects of the consumer's developmental disability, or the service is necessary to enable the consumer to remain in his or her home and no alternative service is available to meet the consumer's needs.

5. There was no evidence that claimant's equestrian therapy service is appropriately categorized as anything other than "nonmedical therapy" and, as such, it falls within the prohibition of section 4648.5, subdivision (a)(4). ACRC determined that it is prohibited from funding equestrian therapy services for claimant as it is an identified suspended service and section 4648.5 expressly prohibits regional centers from purchasing nonmedical therapies by suspending their authority to do so. ACRC determined that such services are no longer authorized and that claimant did not otherwise qualify for an individual exemption.

6. Claimant bears the burden of establishing that she qualifies for an exemption under section 4648.5, subdivision (c).[6] Claimant has not met that burden.

[6] California Evidence Code section 500 states that "[e]xcept as otherwise provided by law, a party has the burden of proof as to each fact the existence or nonexistence of which is essential to the claim for relief or defense that he is asserting."

Claimant has definitely made gains during the time she has received Ride to Walk services. There is no reason to believe that those services are not a benefit to claimant. However, claimant has and continues to receive many supportive services and the evidence did not prove that the Ride to Walk service is the primary or critical means for ameliorating the physical, cognitive, or psychosocial effects of the her developmental disability. Evidence was clear that these services are not necessary to enable the claimant to remain in her home. Alternative services are available to meet the consumer's needs, some of which are being accessed while others are not. There was no credible evidence that other services she receives are ineffective. ACRC is required to access generic services and the fact that claimant is choosing not to access Kaiser physical therapy services, does not mean they are unavailable alternative services. It is understandable that claimant reportedly dislikes and tantrums during this therapy, however her mother testified that she did the same thing when initially accessing Ride to Walk. Claimant is continually growing and maturing and her response to services may change with time.

Even though this service may provide benefit to the claimant, ACRC is prohibited from funding a suspended service unless claimant qualifies for an exemption pursuant to this section. In addition, while this service may be beneficial for claimant there is currently insufficient scientific data in the peer reviewed medical literature to support its effectiveness for the treatment of individuals with Cerebral Palsy; further research is needed.

The evidence does not support a finding that ACRC fund equestrian services from Ride to Walk for Claimant.

ORDER

The appeal of claimant Selina M. is denied. ACRC is prohibited from funding claimant's equestrian services from Ride to Walk at this time.

DATED: November 23, 2016

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SUSAN H. HOLLINGSHEAD

Administrative Law Judge

Office of Administrative Hearings

NOTICE

This is the final administrative decision in this matter. Each party is bound by this decision. An appeal from the decision must be made to a court of competent jurisdiction within 90 days of receipt of this decision. (Welf. & Inst. Code, § 4712.5, subd. (a).)