

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

vs.

REDWOOD COAST REGIONAL
CENTER

Service Agency.

OAH No. 2017020201

DECISION

Administrative Law Judge Michael A. Scarlett, State of California, Office of Administrative Hearings, heard this matter on April 5, 2017, in Eureka, California, and heard the matter telephonically on April 12, 2017, and May 4, 2017.

Lauren E. Gardner, Attorney at Law, represented Redwood Coast Regional Center (RCRC or Service Agency).

Claimant represented himself on all three days of the hearing.

Oral and documentary evidence was received and the record was left open until May 11, 2017, to allow the parties to submit written closing arguments. The matter was submitted for decision on May 11, 2017.

ISSUES

1. Is RCRC obligated to fund the cost of two Hanes 3-pack Ultimate X-Temp Boxers (\$36.64) and one Frigidaire Dehumidifier (\$449.99) for claimant to alleviate "complications of the immune system in persons with autism" (infections)?

2. If RCRC is obligated to provide funding for these items, is RCRC excused from that obligation on the ground that the regional center does not fund retroactive payments without prior authorization?

FACTUAL FINDINGS

1. Claimant is a 35-year-old adult consumer who is eligible for regional center services based on a diagnosis of Autism Spectrum Disorder (ASD). His ASD is considered “high functioning” and claimant does not have a cognitive disability. Claimant lives independently with a natural support person who assists him in performing some of his daily living activities.

2. In early December 2016, claimant purchased a Frigidaire dehumidifier at a cost of \$449.99, and two Hanes 3-pack Ultimate X-Temp Boxers cotton underwear at a cost of \$36.64. Claimant asserted that these items were needed to reduce exposure to moisture that he believed contributed to the ear and skin infections he has been experiencing since approximately 2014. Claimant asserts that the infections are caused by “complications of the immune system” in persons with autism, and that the dehumidifier and cotton underwear were needed to alleviate these complications.

3. Claimant purchased these items prior to notifying the Service Agency of his need for the items, and did not request approval from RCRC to fund the items prior to purchase. Claimant’s service coordinator, Robert Enge, and Kim Nash, the Director of Clinical and Community Service at RCRC, had no knowledge of claimant’s need for the items, and did not approve the purchase of the items. Consequently, the dehumidifier and cotton underwear were never included in claimant’s Individual Program Plan (IPP). Enge did not become aware that claimant had purchased the two items until December 27, 2016, when claimant requested RCRC to pay for the items. Nash did not have any discussions with claimant about the items until February 8, 2017, during the informal meeting after claimant filed his Fair Hearing Request (FHR).

4. On January 26, 2017, RCRC issued a Notice of Proposed Action (NOPA) informing claimant that the Service Agency had declined claimant's request to fund the cost of the dehumidifier and cotton underwear. RCRC advised claimant that the "medical conditions possibly alleviated" by the dehumidifier and cotton underwear are not related to a developmental disability. RCRC also notified claimant that the Service Agency did not fund retroactive payments without prior authorization.

5. On January 30, 2017, claimant filed a FHR requesting RCRC to fund the cost of the dehumidifier and the cotton underwear stating that the items would help medical needs that were related to his developmental disability, and that he had sought generic resources to pay for the items prior to seeking funding from RCRC.

DISCUSSION

6. Claimant has a history of tactile sensitivity (sensitivity to touch) as a result of his autism. Claimant's sensitivity to touch causes difficulty for claimant to perform personal hygiene and self-care activities, such as dental care, foot care and showering. Service Agency has provided behavioral and supported living services to address claimant's personal hygiene deficiencies resulting from his tactile sensitivity. Pursuant to claimant's most recent IPP dated April 21, 2016, RCRC funded, among other services not relevant to this FHR, 124.5 hours of Supported Living Services (SLS) provided by Radiant Living (Radiant), and six (6) hours per month of Behavior Analysis provided by Trumpet Behavioral Health Services (Trumpet). The Trumpet behavioral services are intended to work in conjunction with the Radiant SLS to assist claimant in overcoming his tactile sensitivity and to achieve proper personal hygiene and self-care.

7. Trumpet set up behavioral goals for claimant to encourage proper personal hygiene. One goal is for claimant to shower once per day, with his socks on, and then remove the socks. This behavioral goal's aim is to desensitize claimant by exposing him to different textures (tile, linoleum, carpet and fabric (sock)) in the natural

context of taking a shower. A “Podiatric Desensitization” goal was also established to address claimant’s sensitivity to touching his feet. This goal involved claimant engaging in structured and predictable physical stimulation of the feet by tapping his toes and applying pressure to the toes, and then tapping and applying pressure to the toes randomly. Finally, a behavioral goal was established for claimant to rinse his mouth with mouthwash twice per day to address his sensitivity to dental care. The SLS workers and claimant’s natural support were relied on to monitor claimant’s compliance with these goals and to chart and report his progress. SLS workers and the natural support prompt claimant to engage in the behavioral goals. If claimant fails to engage in the behavioral goals on a daily basis, protocols were established to address claimant’s noncompliance. These included SLS staff and natural support meeting with claimant to discuss his noncompliance, and texting claimant on his cell phone to notify him of the need to engage in the behavioral goals.

EAR AND SKIN INFECTIONS

8. Medical records provided by claimant indicate that in April 2014, claimant began experiencing intermittent ear problems which required intermittent medical treatment from 2014 to 2016. In approximately October or November 2016, claimant was diagnosed with pseudomonas, a bacterial ear infection. Claimant was treated with antibiotics to address this infection. Claimant was treated at the Open Door Community Health Center (Open Door) for this infection. In October 2016, Maureen Frank, Family Nurse Practitioner, recommended that claimant use ear plugs when showering and advised that a dehumidifier in claimant’s bedroom would be helpful to reduce moisture in the air.

9. At some point, claimant began to wear headphones to reduce noise or decibels, which claimant’s prior behavioral services provider, Multiplicity, suggested would lower the probability of claimant becoming agitated or angry in loud venues or

crowded places. Claimant believes that the prolonged use of the headphones increased moisture in his ear canals, which he believes was a contributory cause of his ear infections. However, there was no medical evidence to substantiate the headphones caused claimant's ear infections.

10. Claimant's medical records also indicated that he began to develop infections on his inner thighs in approximately May 2016, which was treated at Open Door with antibiotics as well. Claimant was again treated with antibiotics for these infections. In November 2016, Frank recommended that claimant continue with his hygiene changes (referring to the Trumpet behavioral services with the regional center), and that he use cotton underwear to reduce sweat from wearing polyester next to the skin, to lessen the risk of the skin infections.

11. On January 6, 2017, Frank wrote a letter stating that claimant was under her care for recurrent leg and ear infections. She stated that claimant needed a dehumidifier to reduce the moisture that was causing the infections. This letter was not addressed to the Service Agency and it is not clear that claimant ever provided the letter to RCRC.

12. Claimant failed to establish that his developmental disability, autism, causes his ear and skin infections. There is insufficient evidence to conclude that claimant's ear and skin infections are a result of an immune deficiency in persons with autism as claimant asserts. John Sullivan, M.D., is the medical consultant on RCRC's clinical team at the regional center. Dr. Sullivan credibly testified that there was no correlation between claimant's autism and his propensity for ear and skin infections. He opined that it was more likely that claimant's infections were being caused by eczema rather than an immune deficiency. Although Dr. Sullivan conceded that some people with autism had immune deficiencies, he opined that there was no causal link between autism and immune deficiencies and that further medical study was required before any

such relationship could be made. Dr. Sullivan also noted that immune deficiency was not common in persons with autism. In fact, Dr. Sullivan reviewed claimant's medical records which showed that claimant's blood tests did not reveal an immune deficiency.

13. Dr. Sullivan agreed that claimant's tactile sensitivity could cause poor personal hygiene, i.e. insufficient showering and skin care, and that poor hygiene may increase the risk of ear and skin infections. However, he did not believe that a dehumidifier or cotton underwear would necessarily alleviate the infections. Dr. Sullivan opined that although a dehumidifier would reduce the moisture in the air, it was unlikely that this equipment would reduce moisture in claimant's ear. He also opined that the dehumidifier would not eliminate the risk of skin infections caused by poor personal hygiene, although he believed cotton underwear could help.

14. Although the dehumidifier and cotton underwear could possibly reduce the risk of infections experienced by claimant, it was not established that infections were directly related to claimant's developmental disability. Claimant's argument that poor hygiene related to his tactile sensitivity caused his infections was not established by the evidence. Claimant's medical records showed that his infections were more likely caused by excessive moisture, not poor hygiene or autism. The dehumidifier and cotton underwear could very well reduce moisture and the risk for infections, but this would be the same for any person without a developmental disability. Moreover, RCRC currently funds behavioral and SLS services in claimant's IPP designed to address claimant's issues with tactile sensitivity and poor hygiene. The successful implementation of these services is more likely to reduce the risk of claimant's infections than a dehumidifier or cotton underwear.

15. Finally, claimant failed to notify RCRC of his need for the dehumidifier and cotton underwear or to seek approval for the purchase of these items prior to the purchase. Claimant also failed to provide RCRC a medical authorization or prescription

for the items for review by the Service Agency's medical clinical team. Although claimant's family nurse practitioner recommended that claimant needed these items for skin infections to reduce moisture exposure, Frank did not diagnose a relationship between claimant's autism and the infections. Consequently, the dehumidifier and cotton underwear were never approved by RCRC or incorporated into claimant's IPP prior to claimant purchasing these items.

16. Accordingly, there is no basis upon which to require RCRC to fund the cost of the Frigidaire dehumidifier and the two Hanes 3-pack Ultimate X-Temp Boxers. Because it is determined that RCRC did not inappropriately deny funding for the dehumidifier and cotton underwear, the issue of whether the Service Agency is required to retroactively fund these items need not be determined.

LEGAL CONCLUSIONS

1. The State of California accepts responsibility for persons with developmental disabilities under the Lanterman Developmental Disabilities Services Act (Act). (Welf. & Inst. Code, § 4500, et seq.) The 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." (Welf. & Inst. Code, § 4501.) Regional centers are charged with the responsibility of carrying out the state's responsibilities to the developmentally disabled under the Act. (Welf. & Inst. Code, § 4620, subd. (a).) The Act directs regional centers to develop and implement an IPP for each individual who is eligible for regional center services. (Welf. & Inst. Code, § 4646.) The IPP states the consumer's goals and objectives and delineates the services and supports needed by the consumer. (Welf. & Inst. Code, §§ 4646, 4646.5, & 4648.)

2. "'Services and supports for persons with developmental disabilities' means 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, and normal lives. The determination of which services and supports are necessary for each consumer shall be made through the individual program plan process....” (Welf. & Inst. Code, § 4512, subd. (b).)

3. Claimant failed to establish that the ear and leg infections that he is experiencing were caused by his developmental disability. It was also not established that the dehumidifier and cotton underwear would alleviate the infections claimant is experiencing. Claimant also failed to seek prior approval from the Service Agency prior to purchasing these items, thereby circumventing the IPP process. Accordingly, RCRC is not required to fund the costs of the Frigidaire dehumidifier and Hanes 3-pack Ultimate X-Temp Boxers cotton underwear he purchased.

ORDER

The appeal of claimant from the decision of Redwood Coast Regional Center to deny funding for the Frigidaire dehumidifier and Hanes 3-pack Ultimate X-Temp Boxers is denied.

DATED:

MICHAEL A. SCARLETT

Administrative Law Judge

Office of Administrative Hearings

NOTICE

This is the final administrative decision pursuant to Welfare and Institutions Code section 4712.5, subdivision (a). Both parties are bound by this decision. Either party may appeal this decision to a court of competent jurisdiction within 90 days.