

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

vs.

KERN REGIONAL CENTER,

Service Agency.

OAH No. 2017020203

DECISION

This matter was heard by Julie Cabos-Owen, Administrative Law Judge with the Office of Administrative Hearings, on June 21, 2017, in Delano, California. Claimant was represented by her mother and authorized representative.¹ Kern Regional Center (Service Agency or KRC) was represented by its Program Manager for Special Projects, Mark Meyer, LCSW.

Oral and documentary evidence was received, and argument was heard. The record was closed, and the matter was submitted for decision on June 21, 2017.

¹ Names are omitted throughout this Decision to protect the parties' privacy.

ISSUE

Should the Service Agency be required to fund occupational therapy services through M.A.R.E.² for Claimant?

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EVIDENCE

Documentary: Service Agency exhibits A-H; Claimant exhibit 1.

Testimonial: Claimant's mother.

FACTUAL FINDINGS

1. Claimant is a four-year-old female client of KRC who lives with her mother. She qualifies for regional center services under a diagnosis of Moderate Intellectual Disability.

2. Claimant also has a diagnosis of Rett's Syndrome. She has suffered from hypotonia since she was an infant. According to a notation in her April 22, 2016 Individual Program Plan, Claimant suffers from "Other Motor Dysfunction, Etiology: Rett's Syndrome." (Ex. F, p. 2.)

3. Claimant is unable to stand without support. She has poor trunk control and is unable to properly grasp a simple utensil such as a spoon. Claimant uses a wheelchair for mobility; she is able to sit in the wheelchair but cannot move it without assistance.

² M.A.R.E. is the acronym for "Mastering Abilities Riding Equines."

4. Claimant's health care is funded through a private insurance provider, Kaiser Permanente (Kaiser). Kaiser is currently funding occupational therapy (OT) and physical therapy (PT) services for Claimant, which she receives once per month for 30 minutes each. She had initially received OT and PT once per week but those services were decreased when she showed little improvement. Kaiser will not fund equestrian therapy through M.A.R.E.

5. Claimant attends a special day class at elementary school five days per week. The school district has just begun funding PT for Claimant to work with her using a walker. She can stand with it, but cannot take consistent steps yet.

6(a). Claimant's parents requested that KRC fund OT for Claimant through M.A.R.E. That program provides hippotherapy, also known as equestrian therapy, wherein the clients ride horses to gain muscle strength.

6(b). On January 20, 2017, the Service Agency sent Claimant's parents a Notice of Proposed Action (NOPA) informing them that it was denying funding for the requested OT services "due to Kern Regional Center [purchase of service (POS)] guidelines." (Exhibit A1.) The stated reason for the denial was as follows: "Due to the [Welfare and Institutions] Code 4646.4 which says to utilize generic services and supports when appropriate. Consideration of the family's responsibility for providing similar services and supports for minor child without disabilities." (*Ibid.*) As authority for its action, the Service Agency cited Welfare and Institutions Code section 4646.4, subdivision (a).

6(c). Claimant's parents filed a fair hearing request on January 27, 2017, seeking funding for the M.A.R.E. program. (Exhibit A2.)

7(a). At the fair hearing, Claimant's mother testified on Claimant's behalf. She believes that Claimant could benefit from additional OT in the form of

hippotherapy since Claimant continues to experience substantial delays in both her fine motor skills and gross motor development.

7(b). Claimant was evaluated at the M.A.R.E. program.³ M.A.R.E. told Claimant's mother that the program would help Claimant strengthen her weak core, which in turn will help her to sit up and may help her with balance and walking. Additionally, Claimant's mother believes that holding the reins may help Claimant use her hands better.

7(c). Claimant submitted a prescription from her neurologist stating: "[Claimant] is under my care for Rett[s] Syndrome. She has hypotonia and poor core strength. She may benefit from hippotherapy." (Exhibit 1.)

7(d). Claimant's mother admitted that Rett's Syndrome is not one of the regional center qualifying developmental disabilities. However, since Rett's Syndrome is rare and little is known about it, she is having Claimant try various therapies to see what will help.

8. At the fair hearing, the Service Agency pointed out that Claimant's qualifying diagnosis is Moderate Intellectual Disability and that the additional diagnosis of Rett's Syndrome and hypotonia are not regional center eligible conditions. The Service agency argued that Claimant's motor challenges stem from the Rett's Syndrome, not her regional center eligible condition of Moderate Intellectual Disability, and that KRC may only fund for services that address her regional center eligible condition. The Service Agency also argued that there may be additional therapeutic services available through generic resources such as the

³ Claimant's mother testified that M.A.R.E. informed her it had sent a report of Claimant's evaluation via facsimile to KRC. However, Mr. Meyer denied that KRC received the report.

school district. Lastly, the Service Agency pointed out that while Claimant's physician indicated that she "may" benefit from hippotherapy, there was insufficient support for integrating this service as part of her therapy.

9. According to the Service Agency's POS Guidelines, "KRC's policy is to purchase only those services that relate to a client's developmental disability and only when all other resources have been exhausted." (Exhibit C4.)

LEGAL CONCLUSIONS

1. Claimant's appeal of the Service Agency's denial of funding OT through M.A.R.E. for Claimant is denied. (Factual Findings 1 through 9; Legal Conclusions 2 through 6.)

2. An administrative hearing to determine the rights and obligations of the parties, if any, is available under the Lanterman Developmental Disabilities Services Act (Lanterman Act) to appeal a contrary regional center decision. (Welf. & Inst. Code, §§ 4700-4716.) Claimant timely requested a hearing following the Service Agency's denial of funding for OT through M.A.R.E., and therefore, jurisdiction for this appeal was established.

3. When a party seeks government benefits or services, she bears the burden of proof. (See, e.g., *Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161 [disability benefits].) In a case where a party is seeking funding for services not previously provided or approved by a regional center, that party bears the burden of proof. The standard of proof in this case is the preponderance of the evidence, because no law or statute (including the Lanterman Act) requires otherwise. (See, Evid. Code, § 115.) In seeking funding for OT through M.A.R.E., Claimant bears the burden of proving by a preponderance of the evidence that the funding is necessary. Claimant has failed to meet her burden.

4. Welfare and Institutions Code section 4512, subdivision (b), provides, in part:

[T]he 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. . . .

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5. Welfare and Institutions Code section 4646.4 provides:

(a) Effective September 1, 2008, regional centers shall ensure, at the time of development, scheduled review, or modification of a consumer's individual program plan developed pursuant to Sections 4646 and 4646.5 . . . , the establishment of an internal process. This internal process shall ensure adherence with federal and state law and regulation, and when purchasing services and supports, shall ensure all of the following:

- (1) Conformance with the regional center's purchase of service policies, as approved by the department pursuant to subdivision (d) of Section 4434.
- (2) Utilization of generic services and supports when appropriate.
- (3) Utilization of other services and sources of funding as contained in Section 4659.
- (4) Consideration of the family's responsibility for providing similar services and supports for a minor child without disabilities in identifying the consumer's service and support needs as provided in the least restrictive and most appropriate setting. In this determination, regional centers shall take into account the consumer's need for extraordinary care, services, supports and supervision, and the need for timely access to this care. . . .

6. In this case, although the OT/equestrian therapy may help Claimant's core strength, she did not establish the service was necessary to specifically address her regional center qualifying diagnosis, i.e., Moderate Intellectual Disability. Moreover, Claimant is already receiving OT, funded by her health insurance company, which could be supplemented by services funded through other generic resources such as her school district. Given the foregoing, the Service Agency's denial of funding for OT through M.A.R.E. was appropriate.

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ORDER

Claimant's appeal is denied. Kern Regional Center's denial of funding for occupational therapy through M.A.R.E. for Claimant is upheld.

DATED: June 26, 2017

JULIE CABOS-OWEN

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.