

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

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

CLAIMANT,

v.

SAN GABRIEL/POMONA REGIONAL  
CENTER,

Service Agency.

OAH No. 2017020432

DECISION

Kimberly J. Belvedere, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in Pomona, California, on March 14, 2017.

Daniela Santana, Fair Hearing Manager, represented San Gabriel/Pomona Regional Center. (SGPRC).

Claimant's mother represented claimant, who was not present at the hearing.

The matter was submitted on March 14, 2017.

ISSUE

Should SGPRC reimburse claimant \$666 in copays she paid out-of-pocket for speech therapy?

FACTUAL FINDINGS

1. Claimant is a four-year-old female who received Early Start services from SGPRC until December 2015, when she was transitioned to services under the

Lanterman Act. A letter dated June 26, 2013, when claimant began receiving Early Start services, informed claimant's mother that all Early Start services would terminate on December 8, 2015. The letter was addressed to claimant's mother at the same address where claimant and her mother have resided since Early Start services began. Claimant's mother claimed she never received the letter.

2. A July 22, 2015, Individualized Family Services Plan (IFSP) prepared by SGPRC when claimant was still receiving Early Start services showed claimant was approved to receive speech therapy from August 1, 2015, through December 8, 2015. Claimant received those speech therapy services and SGPRC paid applicable copays during that time period. The IFSP was signed by claimant's mother.

3. SGPRC stopped making copayments to the speech therapy vendor in December 2015, pursuant to the IFSP. However, claimant continued going to speech therapy and incurring copayment costs until recently. Claimant's mother did not pay the copayments because, as she testified, she believed SGPRC was still making the payments. In November 2016, claimant's mother was informed by the vendor that she owed \$666 in copayments for services received during the 2016 calendar year.

4. According to claimant's Individualized Program Plan (IPP), claimant receives speech therapy two times per week through her school district. Thus, payment for speech therapy going forward is not the issue in this case. Claimant's mother testified that she is not seeking assistance with the copayments for claimant's speech therapy going forward as the fair hearing request seemed to indicate, rather, she is only seeking reimbursement for the past copayments she thought had been made by SGPRC during 2016.

5. Claimant's mother was sincere and credible during her testimony, and stated she is not looking to fight with anyone, rather, she is just looking for help to make the \$666 payment because it constitutes a financial hardship on the family.

6. On January 17, 2017, claimant's mother contacted SGPRC and requested reimbursement in the amount of \$666. The same day, Sonya Perez, claimant's service coordinator, sent claimant a Notice of Proposed Action denying the request for reimbursement.

## 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 that by a preponderance of the evidence that a regional center 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 Department of Developmental Services (DDS) is the public agency in California responsible for carrying out the laws related to the care, custody and treatment of individuals with developmental disabilities under the Lanterman Act. (Welf. & Inst. Code, § 4416.) In order to comply with its statutory mandate, DDS contracts with private non-profit community agencies, known as "regional centers," to provide the developmentally disabled with "access to the services and supports best suited to them throughout their lifetime." (Welf. & Inst. Code, § 4620.)

5. A regional center's responsibilities to its consumers are set forth in Welfare and Institutions Code sections 4640-4659.

6. Welfare and Institutions Code section 4646 requires that the Individual Program Plan and the provision of the services and supports be centered on the individual with developmental disabilities and take into account the needs and preferences of the individual and the family. Further, the provisions of services must be effective in meeting the IPP goals, reflect the preferences and choices of the consumer, and reflect the cost-effective use of public resources.

7. Welfare and Institutions Code section 4648 requires regional centers to ensure that services and supports assist individuals with developmental disabilities in achieving the greatest self-sufficiency possible and to secure services and supports that meet the needs of the consumer, as determined by the IPP. This section also requires regional centers to be fiscally responsible.

8. In implementing Individual Program Plans, regional centers are required to first consider services and supports in natural community, home, work, and recreational settings. (Welf. & Inst. Code, § 4648, subd. (a)(2).) Services and supports must be flexible and individually tailored to the consumer and, where appropriate, his or her family. (*Ibid.*) A regional center may, pursuant to vendorization or a contract, purchase services or supports for a consumer in order to best accomplish all or any part of the Individual Program Plan. (Welf. & Inst. Code, § 4648, subd. (a)(3).)

9. The regional center is required to consider all the following when selecting a provider of consumer services and supports: a provider's ability to deliver quality services or supports to accomplish all or part of the consumer's Individual Program Plan; provider's success in achieving the objectives set forth in the Individual Program Plan; the existence of licensing, accreditation, or professional certification; cost of providing services or supports of comparable quality by different providers; and the consumers, or,

where appropriate, the parents, legal guardian, or conservative of a consumer's choice of providers. (Welf. & Inst. Code, § 4648, subd. (a)(6).)

10. 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.)

11. 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 exceeds 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.)

12. 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

13. The Lanterman Act and the applicable regulations set forth criteria that a claimant must meet in order to qualify for regional center services. Claimant had the burden of demonstrating the need for the requested service or support, and that claimant's family's income meets all eligibility criteria to receive that service or support. Claimant has not met that burden.

Claimant's mother was informed in 2013 that claimant's Early Start services, which included claimant's speech therapy, would terminate on December 8, 2015. Even assuming claimant's mother did not receive that letter, claimant's IFSP contained the same information. Thus, once claimant continued to receive speech therapy services beyond December 8, 2015, the copayments became the responsibility of claimant's parents.

Moreover, claimant was transitioned to services under the Lanterman Act in December 2015, and her IPP does not indicate that SGPRC agreed to pay copayments for speech therapy. Retroactive reimbursement for services already received, where the services were not approved by the regional center prior to administration of the services, is not permitted by law. Thus, although claimant's mother's testimony was sincere and heartfelt with respect to the difficulty in making the \$666 payment to the vendor, SGPRC cannot provide assistance in making that retroactive payment.

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## ORDER

Claimant's appeal is denied.

DATED: March 27, 2017

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KIMBERLY J. BELVEDERE

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.**