

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of the Fair Hearing Request
of:

OAH No. 2017030766

CLAIMANT,

and

WESTSIDE REGIONAL CENTER,

Service Agency.

DECISION

The hearing in this matter was on May 4, 2017, at Culver City, California before David B. Rosenman, Administrative Law Judge, Office of Administrative Hearings. Claimant was represented by his mother, who is his authorized representative. (Titles are used to protect Claimant's confidentiality.) Westside Regional Center (WRC) was represented by Lisa Basiri, Fair Hearing Specialist.

Oral and documentary evidence was presented. The record was closed and the matter was submitted for decision on May 4, 2017.

ISSUE

The parties agreed on the following statement of the issue.

Is Claimant's family entitled to an exception such that the Service Agency would continue to pay the insurance copayment for Claimant's applied behavioral analysis (ABA) services?

FACTUAL FINDINGS

The Administrative Law Judge finds the following facts:

1. Claimant is a 16 year-old male and was found eligible for services from WRC.
2. For at least two years WRC has paid the insurance copayments for Claimant's ABA. The amount varies depending on the number of ABA sessions and whether an insurance deductible has been met. The copayments are \$45 per session. Claimant was receiving three sessions per week until about nine months ago when it dropped to two sessions per week. When sessions were three times per week, Claimant's mother paid a portion of the copayment. When sessions dropped to two sessions per week, WRC paid all of the copayment. Claimant benefits from the ABA services.
3. Claimant's services from WRC are included in his Individual Program Plan (IPP). The September 2016 IPP (ex. 6) identifies in-home respite and a socialization program as services WRC provides. The September 2017 IPP (ex. 5) identifies respite, a specialized supervision/socialization program as services it provides, and adds that WRC will continue to pay for monthly ABA copayments and that mother would submit financial paperwork. An IPP update dated April 3, 2017 did not modify this information.
4. Claimant's mother is a single parent. Every year she submits financial information to WRC, which has determined that the family income was below the cutoff to receive financial assistance, which allowed WRC to make the copayment. However, Claimant's mother recently got a pay raise and the family income is now above the cutoff.
5. On February 14, 2017, WRC notified Claimant's mother that it would no longer make the copayments because family income was above the cutoff. On February 20, 2017, Claimant's mother signed a Fair Hearing Request. All jurisdictional requirements have been met.

6. Under Welfare and Institutions Code section 4659.1,¹ discussed in more detail below, regional centers may pay insurance copayments if certain conditions are met, including that the family income does not exceed the cutoff for financial assistance. The cutoff is gross income that does not exceed 400 percent of the federal poverty level.

7. The evidence included two slightly different figures for the federal poverty level. A document used by WRC, prepared by Covered California (ex. 3), indicates that a family of two has an income limit for 2017 of \$16,020, and that 400 percent is \$64,080. An annual update from the U.S. Health and Human Services Department (ex. 8) indicates that a family of two has an income limit for 2017 of \$16,240, 400 percent of which is \$64,960.

8. Claimant's mother's annual income before her raise was approximately \$60,000; after the raise it was approximately \$73,000. As stated by Claimant's mother, she was at first quite happy about her raise and then saddened when she was informed of its effect on the insurance copayment.

9. Under section 4659.1, even if family income exceeds the cutoff, there are some situations in which the regional center may still make the copayments. One of these situations is the existence of "an extraordinary event that impacts the ability of the parent . . . to meet the care and supervision needs of the child or impacts the ability of the parent . . . to pay the copayment, coinsurance, or deductible."

10. After Claimant's mother filed the Fair Hearing Request, on April 5, 2017, Claimant's mother met with Mary Rollins for an informal conference. In her letter after

¹ All statutory references are to the Welfare & Institutions Code, except where otherwise noted. Section 4700 et seq. is known as the Lanterman Developmental Disabilities Services Act; Lanterman Act for short.

the conference, Rollins wrote that she reviewed the file, financial statements and WRC policies, and there were no grounds for an exception to be made. (Ex. 3.)

11. At the hearing, Claimant's mother gave additional information about her financial situation. Claimant's father does not contribute to his support and, because he is often living out of the country it is difficult for Claimant's mother to serve him to get a court order of support. Claimant has received Medi-Cal assistance in the past and mother annually receives an application for renewal. She did not receive a renewal application this year and was unaware until a claim was denied due to a lapse in coverage. Mother panicked because it is important for Claimant's care to have continuity, and gaps in his care often lead to regression in his status and progress. Mother was informed at the hearing that WRC can assist with the renewal application process. Also, Claimant's mother's family lives in Syria and has been dramatically affected by the ongoing war there. Before her father passed away about four years ago, the family was able to generate sufficient income. Since then, however, Claimant's mother sends money monthly to assist her mother, sister and brother with living expenses. She sends a minimum of \$500 per month, but often more. She can provide documentation of these payments. Claimant's mother also described her advocacy for Claimant to receive special education services from his school, stating that she "suffers with the school," implying that Claimant does not get all of the services which mother feels are needed. Claimant's mother stated that, with the cost of the insurance premiums for Claimant and other household expenses, she has very few discretionary funds each month, which she often uses for activities with Claimant. She stated that an obligation to pay copayments for ABA services would leave the family in financial hardship.

12. Lisa Basiri testified that she is not aware of any service policy or writing at WRC that provides any definition of, or direction for, determining the existence of the exceptions to the financial cutoff in section 4659.1. In her opinion, the language of the

statute is broad enough to consider and weigh various factors and scenarios to assist in the determination of whether an exception applies, and regional centers are given broad discretion to do so.

LEGAL CONCLUSIONS

Based upon the foregoing factual findings, the Administrative Law Judges makes the following legal conclusions:

1. Proper jurisdiction was established by virtue of WRC's decision to cease making copayments and the Fair Hearing Request on behalf of Claimant. (Factual Findings 2-5.)
2. The standard of proof in this case is the preponderance of the evidence, because no law or statute (including the Lanterman Act) requires otherwise. (Evid. Code, § 115.) The burden of proof is on the entity who seeks to change the status quo. (See Evidence Code section 500, Party who has the burden of proof: "Except 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.") WRC has the burden of proof in this matter.
3. ABA services are defined in section 4686.2, subdivision (d). As of July 1, 2012, insurance companies were required to provide coverage for ABA services such as those provided to Claimant, under Health and Safety Code section 1374.73.
4. Regional centers are required to explore other sources for funding or provision of services, such as school districts, community programs, or generic sources. Under section 4659 regarding sources of funding for regional center services, as of July 1, 2009, regional centers were instructed to no longer purchase services that were otherwise available from listed sources such as Medi-Cal and private insurance. If private insurance denied the service, families could appeal the denial and the regional center could pay for the service under certain conditions. The statute was clearly designed to

identify and pursue alternative funding sources for services that were previously funded by regional centers. However, subdivision (e) provides added protection for families; it states: "This section shall not be construed to impose any additional liability on the parents of children with developmental disabilities, or to restrict eligibility for, or deny services to, any individual who qualifies for regional center services but is unable to pay."

5. Another legislative enactment is specific to copayments. Section 4659.1 was effective June 27, 2013. Under subdivision (a), when a service is provided under an IPP, and "is paid for, in whole or in part, by the health care service plan or health insurance policy of the consumer's parent . . . , the regional center may, when necessary to ensure that the consumer receives the service or support, pay any applicable copayment or coinsurance associated with the service or support for which the parent, guardian, or caregiver is responsible," under certain conditions, including that the consumer is covered by the parent's health insurance plan. One condition in subdivision (a)(2) is the family "has an annual gross income that does not exceed 400 percent of the federal poverty level." As noted in Factual Findings 2 and 6-8, Claimant's family previously met these conditions, but now does not.

6. Section 4659.1, subdivision (c) and (c)(1) states:

(c) Notwithstanding paragraph (2) of subdivision (a) or paragraph (1) of subdivision (b), 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 the parents or consumer demonstrate one or more of the following:

- (1) The existence of an extraordinary event that impacts the ability of the parent, guardian, or caregiver to meet the care and supervision needs of the child or impacts the ability of the parent, guardian, or caregiver, or adult consumer with a health care service plan or health insurance policy, to pay the copayment, coinsurance, or deductible.

7. Claimant's ABA services are necessary and beneficial, and have been paid for by Claimant's mother's health insurance policy. Insurance policy copayments have been paid by WRC and Claimant's mother when Claimant received three sessions per week, and by WRC now that Claimant receives two sessions per week, under the statutory provisions allowing payment when the family's income was below 400 percent of the federal poverty level. A recent pay raise for Claimant's mother places the family income approximately \$8,000 above that cutoff. Claimant's mother established extraordinary events and circumstances that sufficiently impact her ability to meet Claimant's care and supervision needs or impacts her ability to pay the copayment. Under these circumstances, Claimant's mother should submit documentation of her payments to her family and WRC shall continue to make insurance copayments for Claimant's ABA services.

ORDER

Westside Regional Center's decision to deny funding for copayments is overruled. Westside Regional Center shall pay the copayments for ABA services provided to Claimant. Claimant's mother shall submit to Westside Regional Center documentation of the amounts she sends monthly to family members for their support, within 30 days of making those payments.

DATED:

DAVID B. ROSENMAN

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.