

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of the Fair Hearing Request of:

CLAIMANT,

vs.

FRANK D. LANTERMAN REGIONAL
CENTER,

Service Agency.

OAH Case No. 2017050777

DECISION

This matter was heard by Eric Sawyer, Administrative Law Judge (ALJ), Office of Administrative Hearings, State of California, on May 14, 2018, in Los Angeles. The record was closed and the matter submitted for decision at the conclusion of the hearing.

Claimant, who was not present, was represented by her parents.¹

Pat Huth, Esq., represented the Frank D. Lanterman Regional Center (service agency).

ISSUE

Shall the service agency reimburse claimant's parents for dental work done on claimant at the usual and customary rate in the total amount of \$50,963.05, or at the Medi-Cal rate in the total amount of \$23,384.20.

¹ Names are omitted to protect the privacy of claimant and her family.

EVIDENCE RELIED ON

In making this Decision, the ALJ relied upon service agency exhibits 1-12; claimant's exhibits A and B; and the testimony of Regional Manager Da Vonna Jenkins; Assistant Director Jocelyn Doucette; and claimant's mother.

FACTUAL FINDINGS

PARTIES AND JURISDICTION

1. The service agency determines eligibility and provides funding for services to persons with developmental disabilities under the Lanterman Developmental Disabilities Services Act (Lanterman Act), among other entitlement programs. (Welf. & Inst. Code, § 4500 et seq.)²

2. Claimant is a 28-year-old female who is a service agency consumer based on her qualifying diagnosis of moderate intellectual disability.

3. On December 31, 2007, letters of limited conservatorship of claimant's person were issued to claimant's parents pursuant to Probate Code section 2351.5, granting claimant's parents with various powers, including those allowing them to act as claimant's authorized representatives in this matter.

4. Beginning in December 2016, claimant's mother and service agency staff had discussions concerning claimant's need for extensive dental work. After the first of many phases of the dental work was later completed, claimant's parents requested the service agency reimburse them in the amount of \$14,591.

5. In April 2017, the service agency issued a Notice of Proposed Action,

² All further unspecified statutory references are to the Welfare and Institutions Code.

advising claimant's parents the service agency was legally prohibited from reimbursing the amount requested, which was the usual and customary rate billed to insurance plans, but rather could only reimburse them at the Medi-Cal rate of \$3,575. (Ex. 1.)

6. On May 4, 2017, a Fair Hearing Request was submitted to the service agency by claimant's mother, which appealed the denial of the request for full reimbursement of \$14,591 and requested a hearing. (Ex. 2.)

7. The hearing was continued twice at the parties' joint request, in order to allow the completion of the other phases of claimant's dental work, which occurred in March 2018. The total reimbursement request for all of the dental work is \$50,963.05. The service agency offers to reimburse claimant's parents at the Medi-Cal rate for those services totaling \$23,384.20.

8. In connection with the prior continuance requests, claimant's authorized representatives executed a written waiver of the time limit prescribed by law for holding the hearing and for the administrative law judge to issue a decision.

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CLAIMANT'S BACKGROUND INFORMATION

9. Claimant is described in an individual program plan (IPP) as a friendly and happy young lady. (Ex. 5, p. 1.) She needs physical assistance in daily living activities such as bathing and dressing, and needs to be supervised at all times because she has no concept of danger. (*Ibid.*) She is non-verbal, but communicates by signs and gestures. (*Ibid.*)

10. Claimant lives at home with her parents. She attends a private day program. (Ex. 5.)

11. Claimant easily becomes anxious and is terrified of medical and dental offices. It has always been extremely difficult to get her to visit such an office. Many times, doctors have been willing to make house calls to avoid this situation. (Test. of

claimant's mother.)

12. When claimant was younger and smaller, her father and two of her brothers would accompany her on visits to the dentist, and they were able to restrain her. However, as claimant has grown older and larger, such family restraint is less useful. Therefore, dentists now need to use anesthesia to sedate claimant while examining her teeth. Her last dental work at Cedars-Sinai Medical Center was in 2015 by Dr. Lebovics. It turned out to be an ordeal due to claimant's extreme resistance; she also had a difficult post-anesthesia experience. (Test. of claimant's mother; ex. 10, p. 13.)

CLAIMANT'S DENTAL WORK AND HER PARENTS' INCURRED EXPENSES

13. On a date in 2016 not established, claimant's mother noticed a small crack in one of claimant's teeth. By December 2016, claimant's mother noticed claimant was not chewing on the side of her mouth where the cracked tooth was located. She decided to take claimant to a dentist. (Test. of claimant's mother.)

14. Ms. Jenkins was approached by claimant's mother in December 2016 about claimant's need for dental work. She did not make a referral at that time. However, claimant's mother later called a higher level supervisor about claimant's need for dental care, which resulted in the involvement of the service agency's consulting dental hygienist, Leticia Reyes, in January 2017. (Test. of Jenkins.)

15. Meanwhile, someone claimant's mother knew from claimant's day program referred her to Dr. Kenneth K. Lee, a dentist in Tarzana who specializes in treating high-anxiety special needs patients like claimant. Claimant's mother made an appointment with Dr. Lee. (Test. of claimant's mother.)

16. Claimant was evaluated by Dr. Lee in mid-January 2017. Claimant displayed extreme resistance and would not enter Dr. Lee's office. Dr. Lee therefore came out of his office to look in claimant's mouth while others held her. Dr. Lee saw enough to opine that claimant needed extensive dental work to address several

problems, not just one cracked tooth. The dental treatment was scheduled for February 1, 2017, which was at least a few weeks away. (Test. of claimant's mother.) No evidence presented indicates Dr. Lee believed this to be an emergency situation requiring immediate attention. (See, e.g., Exs. A & B.)

17. By January 20, 2017, the service agency received a detailed plan from Dr. Lee for claimant's dental services under anesthesia. The estimated charge for these services was \$12,000, at the usual and customary rate used to bill insurance plans. (Ex. 10, pp. 13-14.) Claimant's parents have dental insurance, but the plan would only reimburse them a maximum of \$2,000 per year. Although Dr. Lee is a service agency vendor, he did not initially discuss with claimant's parents the option of billing the service agency at the Medi-Cal rate for this dental work.³

18. Dr. Lee's treatment plan for claimant was reviewed by Ms. Reyes on January 20, 2017. Ms. Reyes believed a second opinion was warranted. She and Ms. Jenkins contacted claimant's mother about needing a second opinion, and she agreed. (Ex. 7.)

19. A. On January 30, 2017, claimant's parents took her to see Dr. Diana Zschaschel for a second opinion. Ms. Reyes was also present. (Ex. 7.)

B. Dr. Zschaschel was able to examine claimant. She concluded claimant

³ Claimant's mother testified Dr. Lee later told her it would be "a waste of time trying to get paid by the regional center." On the other hand, Ms. Jenkins testified Dr. Lee has accepted the Medi-Cal rate for other service agency clients. The evidence also indicates Dr. Lee's office later told claimant's mother that because she first approached them with her insurance plan, as opposed to a referral from the service agency, Dr. Lee was precluded from charging at the Medi-Cal rate. Without more context, or evidence on this topic from Dr. Lee's office, any more particular finding here would be speculative.

needed extensive dental care and generally agreed with Dr. Lee's treatment plan. (Ex. 7.)

C. In addition, Dr. Zschaschel told claimant's parents she could provide the same services contemplated by Dr. Lee, but that she would bill the service agency at the Medi-Cal rate. Dr. Zschaschel said she could begin the dental work on February 23, 2017, and that she could sedate claimant. (Ex. 7.)

D. Dr. Zschaschel told claimant's parents their daughter's dental situation was not an emergency and that she could wait three weeks to start treatment. (Test. of claimant's mother.)

20. At all times, service agency staff told claimant's parents that if they had claimant's dental work done by Dr. Lee, the service agency could only reimburse them at the Medi-Cal rate, which was approximately one-third to one-half the rate contemplated by Dr. Lee. Service agency staff also clearly told claimant's parents that Dr. Zschaschel could perform the same dental work and would accept the Medi-Cal rate for the service, which the service agency would pay entirely. (Test. of Jenkins, Doucette & claimant's mother.)

21. Claimant's parents went forward with Dr. Lee's treatment plan. Dr. Lee began his treatment on February 2, 2017. Claimant's mother testified she did so because her daughter was in pain and she did not want to wait any longer; and that Dr. Lee had a better schedule that could accommodate emergencies than Dr. Zschaschel.

22. A. Dr. Lee's treatment of claimant spanned several months in 2017 and 2018. In summary, he installed crowns on 17 teeth, performed five root canals, inserted five posts, and did three tooth extractions, one filling, and periodontal maintenance. (Ex. 7.)

B. As reflected by exhibit B, Dr. Lee rendered treatment on the following dates and was paid the following amounts by claimant's parents:

February 1, 2017- \$14,591.00.

April 24, 2017- \$10,250.00.

May 17, 2017- \$8,539.55.

August 28, 2017- \$7,565.00.

February 21, 2018- \$6,457.50.

March 14, 2018- \$3,560.00.

C. The total payments by claimant's parents to Dr. Lee amounted to \$50,963.05. (Ex. B.)

23. Ms. Reyes reviewed Dr. Lee's bills. She agrees all of his work was reasonable and necessary. (Ex. 7.) Ms. Reyes assigned the Medi-Cal "Schedule of Maximum Allowances" rates to all of Dr. Lee's rendered services and arrived at a total amount of \$11,384.20. Dr. Lee also charged for sedation at an hourly rate totaling \$12,000. Because Medi-Cal generally does not pay for sedation, Ms. Reyes believes the service agency should reimburse the full amount of those charges, which the service agency has agreed to do. (Ex. 7.) Based on Ms. Reyes's calculations, the service agency has agreed to reimburse claimant's parents the total amount of \$23,384.20.

LEGAL CONCLUSIONS

JURISDICTION AND BURDEN OF PROOF

1. An administrative hearing to determine the rights and obligations of the parties, if any, is available under the Lanterman Act to appeal a contrary regional center decision. (§§ 4700-4716.) Claimant's mother requested a hearing to contest the service

agency's proposed decision to deny her reimbursement request, and therefore jurisdiction for this appeal was established. (Factual Findings 1-8.)

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.)

3. When one seeks government benefits or services, the burden of proof is on her. (See, e.g., *Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161 (disability benefits).) In this case, claimant's mother requests funding the service agency has not before agreed to provide, i.e., reimbursement for Dr. Lee's dental services rendered to claimant in the amount of \$50,963.05, and therefore claimant has the burden of proving by a preponderance of the evidence that she is entitled to that funding.

THE REIMBURSEMENT REQUEST

4. A. The Lanterman Act specifically provides for funding of "specialized medical and dental care...." (§ 4512, subd. (b).)

B. However, a purchase of service authorization is required from a regional center for all services purchased out of center funds. (Cal. Code Regs, tit. 17, § 50612, subd. (a).) Regulations applicable to the service agency provide that the maximum rate of reimbursement for dental services shall be in accordance with the Schedule of Maximum Allowances (SMA) within the Medi-Cal system. (Cal. Code Regs., tit. 17, § 57332, subd. (b)(6).)

C. In this case, it was established that the service agency advised claimant's parents before the dental services were performed that it would only authorize and pay for dental work performed by Dr. Zschaschel or would reimburse the family for Dr. Lee's services at the Medi-Cal rate. It was further established that the Medi-Cal rates applicable to Dr. Lee's services (except for sedation, which the service agency has agreed

to pay in full) total \$23,384.20. Pursuant to these regulations, the service agency may only reimburse claimant's parents that amount. (Factual Findings 22-23.)

5. Yet, the lack of specific statutory authorization is not necessarily dispositive of the issue. In the fair hearing context, an ALJ is empowered by statute to resolve "all issues concerning the rights of persons with developmental disabilities to receive services under [the Lanterman Act]. . . ." (§ 4706, subd. (a).) That statutory provision may be broad enough to encompass the right to retroactive benefits. However, pursuant to the general principles articulated in *Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, if the Lanterman Act is to be applied as the Legislature intended, reimbursement should only be available when the purposes of the Lanterman Act would be supported. Thus, prior Fair Hearing decisions in other cases have included orders for reimbursement when the equities weighed in favor of the consumer and/or when the purposes of the Lanterman Act would be thwarted if not granted.⁴

6. A. In this case, the equities do not weigh in favor of claimant's parents. No evidence was presented indicating claimant or her family were put in jeopardy by this situation or that an emergency existed. No evidence presented from Dr. Lee's office indicates claimant was suffering from an emergency requiring immediate dental work.

B. To the contrary, Dr. Zschaschel advised claimant's parents the dental work in question could wait three weeks until she could see claimant. Claimant's parents argue their daughter was in pain and Dr. Lee had a more accommodating schedule for possible future emergencies. Yet those concerns relate to claimant's parents' preference in using Dr. Lee and not the necessity of doing so. In any event, no evidence indicates

⁴ Prior OAH decisions pertaining to other consumers are only advisory, not binding.

claimant had an unforeseen dental emergency requiring a more flexible schedule.

C. Nor were claimant's parents misled or put in a worse position by comments or actions of the service agency. Claimant's parents were clearly advised at all times by staff from the service agency that if they went forward with Dr. Lee's treatment plan, they would only be reimbursed at the lower Medi-Cal rate, not the amounts Dr. Lee would charge at the higher usual and customary rate billed to insurance plans.

D. Nor was it established in this case that denying the request of claimant's parents will thwart the purposes of the Lanterman Act. The regulations make clear that the service agency may only reimburse for dental services at the Medi-Cal rate. The service agency offered to claimant's parents a competent practitioner who was ready, willing and able to perform the dental services in question at the Medi-Cal rate and accept payment from the service agency. Claimant's parents were advised at all times of their choice of either proceeding with Dr. Lee and being reimbursed at the lower Medi-Cal rate or having the dental work done by Dr. Zschaschel at no cost. This is exactly how the Lanterman Act is supposed to work. (Factual Findings 1-23; Legal Conclusions 1-5.)

ORDER

Claimant's appeal is denied. The Frank D. Lanterman Regional Center shall reimburse claimant's parents in the amount of \$23,384.20 for claimant's dental work.

DATED:

ERIC SAWYER,
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.