

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

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

CLAIMANT,

v.

INLAND REGIONAL CENTER,

Service Agency.

OAH No. 2017110612

DECISION

Kimberly J. Belvedere, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in San Bernardino, California, on February 15, 2018.

Senait Teweldebrhan, Consumer Services Representative, Fair Hearings and Legal Affairs, represented Inland Regional Center (IRC).

There was no appearance on behalf of claimant.

The matter was submitted on February 15, 2018.

ISSUE

Should SGPRC provide copayment assistance to the vendor to cover copayments for claimant's speech and occupational therapy services rendered in the past?

FACTUAL FINDINGS

1. Claimant is a seven-year-old boy eligible for regional center services based on a diagnosis of intellectual disability as a result of Down Syndrome.

2. Claimant's mother currently receives 60 hours per month of preferred provider respite services and claimant receives 16 hours per month of behavioral counseling.

3. A March 23, 2017, Individualized Program Plan (IPP) prepared by IRC showed claimant's mother made a request for IRC to provide copayment assistance for occupational and speech therapy.

4. Kami Elliott, claimant's Consumer Service Coordinator, testified at the hearing. Ms. Elliott testified about the process by which a claimant may become eligible for copayment assistance. It entails making the request, filling out an application, submission of tax documents to verify if the family's income makes them eligible for assistance, and waiting for approval. Ms. Elliott explained the process in detail at claimant's IPP meeting and claimant's mother took notes.

5. Documentation provided by IRC show that IRC attempted from March 2017 through present to obtain the necessary documents from claimant's mother. IRC was able to obtain documentation that claimant received occupational therapy from May 1, 2017, to October 31, 2017, and speech therapy from November 1, 2017, through January 17, 2018.

6. IRC Program Manager Gabriela Hernandez testified at the hearing. IRC does not dispute that claimant would benefit from occupational and speech therapy. She noted that IRC will, on occasion, provide copayment reimbursement for services when it receives all necessary documentation within 30 days of the initial request. However, IRC typically does not reimburse for services rendered well in the past.

7. IRC sent claimant's mother a Notice of Proposed Action dated November 1, 2017, denying her request for retroactive copayment assistance because as of that date, claimant's mother still had not provided all requested documentation. IRC explained in that letter precisely what documents were needed.

8. On November 8, 2017, claimant's mother filed a fair hearing request stating "I submitted a copy of the requested tax forms" and "regional center to process tax return and assist with copayments." The fair hearing request did not contain any attachments and did not state anything about retroactive copayments.

9. Claimant's mother and IRC representatives attended an informal telephonic meeting on November 29, 2017, verifying claimant's mother was requesting copayment assistance for services already rendered. IRC also informed claimant's mother that her tax return had been received, but additional documentation previously requested still had not been received. The documents included, among others, explanation of benefit documents from claimant's insurance company, proof that claimant had attended speech and occupational therapy, and copies of claimant's insurance cards, among other things.

10. A hearing on this matter was originally set for December 27, 2017. On December 26, 2017, claimant's mother requested a continuance, which IRC did not oppose, and it was granted. The hearing was rescheduled for February 15, 2018. Claimant's mother received notice of the new hearing date from OAH.

11. At some point between December 17, 2017, and February 15, 2018, claimant's mother and IRC engaged in settlement negotiations. On February 14, 2018, IRC notified OAH that an agreement had been reached to settle the matter, however, IRC did not feel comfortable placing certain terms in the settlement document. OAH advised IRC that without a signed notice of resolution, the hearing would remain on calendar. Claimant's mother was not notified by anyone that the matter would be continued or taken off-calendar.

12. On February 15, 2018, at 7:58 a.m., claimant's mother sent an e-mail to IRC saying that she agreed to the terms of the settlement and would be "submitting the signed forms by this afternoon or tomorrow morning and [sic] the latest." Claimant's

mother did not contact OAH and request a continuance. Claimant's mother did not contact IRC to request a continuance. Most important, claimant's mother did not provide a signed notice of resolution.

13. The hearing was called at 11:00 a.m., almost an hour after it was scheduled to commence. Claimant's mother did not appear. An attempt was made to contact claimant's mother telephonically, but it went to voice mail. The matter therefore proceeded as a default.

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, requires a purchase of service authorization be obtained in advance of the provision of service and **does not permit retroactive authorization of payment for services** unless the services were rendered by a vendored service provider in an emergency situation.

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 also had the burden of establishing that the payments sought would be permitted by the Lanterman Act. Claimant has not met that burden.

Claimant's mother and IRC may have come to an agreement prior to the hearing regarding the reimbursement for claimant's speech and occupational therapy services. However, given that claimant's mother was not diligent in providing IRC with a signed notice of resolution, that agreement became void when the matter was called for hearing. Claimant's mother received proper notice of the hearing and did not request a continuance or otherwise make any attempt to appear at the hearing. Claimant's mother also did not provide a signed notice of resolution to resolve the matter, prior to the hearing.

IRC does not dispute that claimant may benefit from occupational therapy and speech therapy; if claimant wants to receive those services going forward, claimant may indeed be eligible for copayment assistance. But this hearing was not about copayment assistance into the future; it was about reimbursement for services already rendered. The services rendered were not emergency services. Had claimant's mother been more diligent in providing the requested documents to IRC and availing herself of settlement options prior to the hearing, the outcome might have been different. However, pursuant to California Code of Regulations, title 17, section 50612, IRC is therefore **prohibited** from providing reimbursement for copayments for claimant's occupational therapy from May 1, 2017, to October 31, 2017, and speech therapy from November 1, 2017, through January 17, 2018.

ORDER

Claimant's appeal is denied.

DATED: February 22, 2018

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.