BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matters of CLAIMANT,

vs.

ALTA CALIFORNIA REGIONAL CENTER, Service Agency

OAH Nos. 2018020723.1 and 2018030068.1

DECISION

Administrative Law Judge (ALJ) Ed Washington, Office of Administrative Hearings (OAH), State of California, heard these consolidated matters in Sacramento, California, on April 4, 13, 16, May 24, July 31, August 1, 2, 8, September 18, 27, and October 1, 2018.

The Service Agency, Alta California Regional Center (ACRC or regional center), was represented by Robin Black, Legal Services Manager.

Claimant was represented by her parents.

The issues for determination at hearing were:

(1) Whether ACRC was required to provide or fund equestrian services for claimant?

(2) Whether ACRC was required to reimburse claimant's parents for the amount the parents paid for a March 2017 reevaluation by Ride to Walk?[1]

On November 2, 2018, the ALJ issued the Decision and Order (2018 Decision) upholding ACRC's decision to terminate reimbursement to claimant's parents for the cost of Ride to Walk services purchased for claimant and upholding ACRC's decision not to reimburse claimant's parents for a Ride to Walk reevaluation performed on March 24, 2017. The evidence presented at hearing is now reconsidered in light of the Order on Remand described below.

ISSUE ON REMAND

Is claimant no longer qualified to be reimbursed by ACRC for equestrian services she receives, pursuant to the exemption specified in Welfare and Institutions Code section 4648.5, subdivision (c),[2] because those services:

(1) are not a primary or critical means of ameliorating the physical, cognitive or psychosocial effects of [claimant's] developmental disability, and because the Ride to Walk

---

[1] The issue for determination in OAH Case No. 2018030068, whether ACRC was required to reimburse claimant for the costs associated with a March 24, 2017 reevaluation, is not at issue on remand.

[2] Unless otherwise indicated, all statutory references are to the California Welfare and Institutions Code.

services are not necessary to enable [claimant] to remain in the home;

(2) are available from generic resources which are legally required to fund or provide services;

(3) constitute experimental treatment which is not evidence-based to be effective for ameliorating the physical effects of cerebral palsy;

(4) have not resulted in claimant making reasonable progress toward her objectives; or

(5) recreational in nature and the responsibility of claimant's parents to fund or provide recreational opportunities for all of their children, regardless of whether the children have a developmental disability?

FACTUAL FINDING

Remand

1. By way of a Petition for Writ of Administrative Mandamus, claimant sought judicial review of the 2018 Decision. On August 5, 2020, Judge James P. Arguelles, of the Sacramento Superior Court, in Case No. 34-2019-80003071, issued an order (Order on Remand) adopting his July 24, 2020 Tentative Ruling granting the Petition and remanding the matter back to OAH with certain directives. Judge Arguelles, in part, found: (1) That the burden of proof at the Fair Hearing should have been borne by ACRC, not by claimant; (2) that the exemption in Section 4648.5,

subdivision (c), should have been analyzed in terms of whether Equestrian Therapy is "a" primary means or critical means of ameliorating the effects of Cerebral Palsy for claimant, not whether it is "the" primary or critical means; and (3) That it was not clear to the Superior Court whether the ALJ had used "a" or "the" in the analysis.

2. Specifically, the Tentative Ruling includes the following language:

> The burden of proof is generally on the party "asserting the affirmative." [Citations.] Although Petitioner was the "claimant" who demanded the [Fair Hearing], ACRC is the party more aptly described as "asserting the affirmative" [at the Fair Hearing]. ACRC, not Petitioner, sought to change the status quo by defunding services memorialized in [claimant's] IPP and provided in compliance with administrative orders. Accordingly, … ACRC bore the burden of proving that [claimant] was no longer entitled to such funding. That is, ACRC bore the burden to prove that [claimant] no longer qualified for an exemption under Section 4648.5(c) and that her equestrian therapy was an experimental treatment or an unproven therapeutic service under Section 4648(a)(16).
>
> Section 4648.5(c) is clear: an exemption exists for a service that is "a" primary or critical means for ameliorating the effects of a developmental disability. The word "a" leaves open the possibility that other primary or critical means exist, whereas the word "the" would not.

> It is unclear from the Decision whether or the extent to which the ALJ applied an incorrect legal standard by substituting the word "a" for "the." On remand, the legal analysis should be trained on the language in the exemption, which speaks only of "a" primary or critical means of amelioration.

Claimant's Services and Supports

3. Claimant is a 13-year-old girl eligible for ACRC services based on a diagnosis of cerebral palsy. She receives services and supports pursuant to the Lanterman Developmental Disabilities Services Act. (§ 4500 et seq.)

4. One service ACRC funded for claimant was equestrian therapy (sometimes called "equine-assisted therapy" or "hippotherapy") services provided by Ride to Walk.[3] According to Ride to Walk's mission statement, they provide "innovative therapeutic horseback riding activities that are recreational in nature and adapted to the individual's needs and abilities [and strive] to provide a positive support system for individuals with disabilities, their parents/caregivers, and [the] community."

5. On January 9, 2009, claimant's service coordinator and parents met to develop claimant's Individual Program Plan (IPP). The IPP specified that, "[d]ue to delay in gross motor skills, low muscle tone, and decreased strength and endurance, [claimant] will benefit from equestrian recreational therapy." The IPP stated that ACRC would fund an "assessment for Ride to Walk specialized recreational equestrian

[3] There are distinctions between the terms "equestrian therapy," "equine-assisted therapy" and "hippotherapy," that are not consequential to this decision.

therapy," and that if the assessment indicated equestrian therapy was appropriate for claimant, ACRC would fund that therapy.

6. On March 24, 2009, Ride to Walk performed an initial evaluation for claimant, which noted that claimant had low postural muscle tone, decreased strength and endurance of postural muscle groups, decreased active range of motion and muscle strength in her trunk and extremities, impaired motor coordination skills, decreased sitting and standing balance, and decreased communication skills. The evaluation report specifies that therapeutic horseback riding was an "ideal activity" for claimant because it "simulates and facilitates the normal movement of the pelvis and trunk during ambulation and other functional mobility skills, helps build muscle tone and strength and improves muscle flexibility." The evaluation report also specifies that the "cadence of the horse and the position of the rider can be used to target specific muscle groups, enabling [claimant] to develop improved postural alignment, control, and balance." The evaluation report also noted that, because "horseback riding is very fun and motivating for most children" it is "an ideal avenue for stimulating language development and use." The evaluation report therefore recommended that claimant participate in therapeutic horseback riding for one-half hour each week.

7. From 2009 to the present, claimant receives or has received occupational therapy, physical therapy, and speech and language therapy at school through her Individualized Education Program (IEP); occupational therapy, either once a week or every two weeks, during the school year, and physical therapy "on a monthly consult basis" through the California Children's Services Medical Therapy Program; and physical therapy, including aquatic therapy, through Burger Rehabilitation Systems once a week. In May 2009, claimant began receiving weekly therapeutic horseback riding services from Ride to Walk.

Restrictions on Services and Supports

8. After claimant's Ride to Walk services began, section 4648.5 was added to the Lanterman Act prohibiting the purchase of certain types of services for consumers. Specifically, Section 4648.5 provides:

> (a) Notwithstanding any other provision of law or regulations to the contrary, effective July 1, 2009, a regional centers' authority to purchase the following services shall be suspended pending implementation of the Individual Choice Budget and certification by the Director of Developmental Services that the Individual Choice Budget has been implemented and will result in state budget savings sufficient to offset the costs of providing the following services:
>
> (1) Camping services and associated travel expenses.
>
> (2) Social recreation activities, except for those activities vendored as community-based day programs.
>
> (3) Educational services for children three to 17, inclusive, years of age.
>
> (4) Nonmedical therapies, including, but not limited to, specialized recreation, art, dance, and music.
>
> (b) For regional center consumers receiving services described in subdivision (a) as part of their individual program plan (IPP) or individualized family service plan

(IFSP), the prohibition in subdivision (a) shall take effect on August 1, 2009.

(c) An exemption may be granted on an individual basis in extraordinary circumstances to permit purchase of a service identified in subdivision (a) when the regional center determines that the service is a primary or critical means for ameliorating the physical, cognitive, or psychosocial effects of the consumer's developmental disability, or the service is necessary to enable the consumer to remain in his or her home and no alternative service is available to meet the consumer's needs.

9. Through a Notification of Action letter, dated August 19, 2009, ACRC notified claimant that it had determined that her Ride to Walk services fit within the suspended services included in section 4648.5. Having also determined that claimant did not qualify for an exemption permitting the purchase of this service, ACRC proposed termination of funding. Claimant's parents objected to this determination and a Fair Hearing that addressed this issue was held on January 20, 2010, before Administrative Law Judge Karen J. Brandt.[4] Judge Brandt's findings include:

Given this description [of services specified in Ride to Walk's mission statement], the services claimant is receiving from Ride to Walk constitute nonmedical specialized recreation therapy as set forth in section 4648.5, subdivision

[4] OAH Case No. 2009091276.

(a)(4). Consequently, pursuant to section 4648.5, subdivision (a), ACRC must suspend the therapeutic horseback riding services claimant is receiving from Ride to Walk unless she qualifies for an exemption under section 4648.5, subdivision (c).

[¶] ... [¶]

When all the evidence is weighed and balanced, it establishes that the therapeutic horseback riding services that claimant is receiving from Ride to Walk are a primary and critical means for ameliorating the physical effects of her cerebral palsy. Claimant therefore qualifies for an exemption under section 4648.5, subdivision (c). Consequently, her therapeutic horseback riding services should not be suspended under section 4648.5.

10. As a result of this decision, ACRC continued to fund Ride to Walk services for claimant through November 2012.

Service Provider Devendorization

11. On November 20, 2012, ACRC issued a Notice of Proposed Action (2012 NOPA) to claimant, advising that "ACRC has terminated funding for equestrian therapy services for [claimant] from Ride to Walk" and, pursuant to an emergency devendorization, "Ride to Walk may no longer provide services to any ACRC clients effective November 14, 2012. [Claimant's] family is encouraged to schedule a planning team meeting as soon as possible to discuss whether [claimant] will require continued equestrian therapy services."

12. Claimant's parents filed a Fair Hearing Request appealing the 2012 NOPA, asserting that claimant should not be denied services she was entitled to receive "due to any vendor related certification issues" and also asserted that claimant's equestrian therapy services should continue pending resolution of the vendor certification issues. A Fair Hearing that addressed this issue was held on March 21 and 22, 2013, before Administrative Law Judge Susan H. Hollingshead.[5] Judge Hollingshead's Legal Conclusions included the following findings:

> Claimant has been found to "need" equestrian services as documented in her IPP and mandated by the decision in OAH Case No. 2009091276, which found that she met the criteria for an exemption pursuant to section 4648.5, subdivision (c). There was no evidence presented that this service is no longer needed and claimant does not stop requiring the service because a vendor is no longer available.
>
> [The regional center's] decision to devendorize [Ride to Walk] and to "close out" the vendorization of the remaining equestrian services providers … effectively prevents access to that service by claimant or any other ACRC consumers, now or in the future, who may be entitled to such service by meeting exemption criteria.

[5] OAH Case No. 2012120099.

There was no evidence presented to explain how the regional center intends to provide this service to consumers meeting exemption criteria. The intent of the legislature is to have the services available to consumers who meet the exemption or the services would have been suspended without the availability of an exemption.

ACRC is required to establish a resource. It cannot disallow vendorization and revendorization when there are consumers with established need and potential consumers with future needs meeting exemption criteria.

Section 4648.1, subdivision (d) provides that when terminating payments for services or its contract or authorization for the purchase of consumer services, a regional center shall make reasonable efforts to avoid unnecessary disruptions of consumer services. The term 'reasonable efforts' is not defined in the Lanterman Act. At a minimum it must mean 'some' effort. In this case the regional center began looking for alternative providers after [Ride to Walk] was already devendorized and the consumer was without services. That 'effort' came after the disruption had already occurred and, as such, would not demonstrate a reasonable effort to avoid the disruption. This is especially true since the regional center was aware of its concerns with [Ride to Walk] for several months.

> ACRC shall immediately take all necessary actions to provide or fund claimant's equestrian therapy services. These actions may include, but not be limited to, vendorization or contracting with a qualified provider, considering service code alternatives or revendorization.

13. Because Ride to Walk had been devendorized and had been refused revendorization by ACRC, claimant's parents receive ongoing funding from ACRC through purchase reimbursement for claimant's equestrian therapy, in accordance with Judge Hollingshead's Order in OAH Case No. 2012120099.

14. Claimant's IPP, dated December 17, 2013, specifies that ACRC "must reassess each year for the new IPP cycle if the exemption criteria continue to be met, as well as measure for progress made, assessed need, and other service options to meet the need. As part of re-assessment, ACRC will need to have access to gather all related information including therapies to assess ongoing need, measured progress, and review for exception criteria."

Continued Assessment of Exemption Criteria

15. Kristine Corn is a physical therapist. She is the Founder and Director of Ride to Walk and is also the founder of Sierra Pediatric Therapy Clinic (Sierra Pediatric), which provides physical therapy and related care to disabled children. Dr. Corn earned a bachelor's degree in physical therapy from the University of Southern California, and also holds a doctorate in physical therapy, which she received from the University of the Pacific. As a physical therapist, Dr. Corn has worked with individuals with neurological impairments for over 40 years.

16. On March 6, 2013, Dr. Corn prepared a progress report regarding claimant's services at Ride to Walk. According to this report, there were consistent changes in claimant's muscle tone and strength noted at each riding session. Claimant's balance had increased "tremendously" and she felt claimant had showed functional areas of improvement for daily living activities such as entering or exiting both the bathtub and shower, getting her own food and water independently, getting out of a vehicle, opening and closing doors safely, navigating stairs, and not falling out of bed. Dr. Corn noted that claimant has made remarkable improvement, in part, because claimant "loved being near the horses, volunteers and other children," and seemed "genuinely excited" about riding, even when working. This report also specifies five goals for claimant for the 2014 through 2015 period, which include improving strength, range of motion, balance and alignment; maintaining and improving hip and spinal range of motion; improving posture during ambulation; and, improving claimant's ability to achieve mouth closure.

17. On March 6, 2014, Dr. Corn prepared another progress report regarding claimant's services at Ride to Walk. This report is virtually identical to the March 2013 report in identifying claimant's progress and future goals. Dr. Corn prepared another progress report dated May 24, 2016, which describes claimant's history and the activity she engages in while at Ride to Walk. In this report, Dr. Corn specifies that riding "has definitely helped" claimant maintain good trunk and upper extremity strength providing her with good sitting posture and balance. It has also helped to maintain the passive range of motion of her lower extremities, even though it has not been successful in changing her gait pattern that should be addressed in physical therapy through her school. In this report, Dr. Corn also specifies that riding has been very beneficial for claimant, and she requests that claimant continue to receive this service to help her maintain the many positive skills and functions. The current goal section of

the report specifies that prior goals for claimant to maintain hip and left knee range of motion and increase right knee range to full extension, were not met.

18. Deborah Van Buren, OTR-L, is a Licensed Occupational Therapist with extensive training and experience in equestrian services. ACRC vendorized Ms. Van Buren to perform evaluative services, which included describing and evaluating gains made by claimant through the Ride to Walk program to determine if the service could be described as a primary means for ameliorating the effects of claimant's disability.[6] Ms. Van Buren performed evaluations for this purpose on February 18, 2013, June 18, 23, and July 2, 2014, and May 11, 2015, and produced written reports reflecting her findings. Ms. Van Buren was unable to identify claimant's Ride to Walk services as being a primary or critical means of ameliorating the effects of her disability. In her initial 2013 evaluation report, she specified that "it's simply impossible to make a determination about" whether any one of the services claimant simultaneously received "could be described as the primary means for ameliorating the effects of [claimant's] disability."

19. Ms. Van Buren, initially identified claimant as "a good candidate for an Equine –assisted activities program," based on her visits with claimant, reports from claimant's parents, and her review of the evaluative reports provided to her. Over time, she became concerned with Ride to Walk's "overall presentation of services," and questioned whether they were providing therapy or recreational riding instruction. Her

[6] At various locations throughout Ms. Van Buren reports, she describes this component of her evaluations as determining whether Equine-assisted activities can be described as "the primary means for ameliorating the effects" and also as "a primary means for ameliorating the effects" of claimant's disability.

concerns also included that Ride to Walk was not recognized by either the American Hippotherapy Association or the Professional Association of Therapeutic Horsemanship, which are national organizations that provide standards of operation and education programs certifying instructors, occupational therapists, and physical therapists. These circumstances caused Ms. Van Buren to grown concerned that the Ride to Walk instructors and therapists may not be adequately trained to provide services safely. On March 18, 2016, Ms. Van Buren detailed her concerns in an occupational therapy report and declined to perform any further evaluations.

20. On or about November 21, 2016, claimant had extensive multi-level surgery on her lower extremities to improve her mobility. The surgery involved lengthening the tendons and muscles in claimant's legs and realigning bones in her feet. Claimant's Ride to Walk sessions were deferred after her surgery to allow time to recover. ACRC's assessment of those sessions was correspondingly deferred.

21. In or around March 2017, claimant's parents contacted ACRC and requested that claimant be reinstated to receive Ride to Walk Services. They provided the following letters to support their request:

> A letter from Shauna Arsenault, M.D., of UC Davis Medical Center, dated June 7, 2016, which states claimant has been receiving hippotherapy from Ride to Walk since 2009 which has reportedly produced continuous improvement in muscle tone, balance, posture, coordination, strength, flexibility, cognition and functional skills, and that Dr. Arsenault would like claimant to continue hippotherapy.

A letter from Elliot H. Sherr, M.D., Ph.D., professor in neurology and pediatrics at University of California, San Francisco, dated August 17, 2016. This letter specifies that claimant has made gradual and continuous physical improvement in gross motor skill, increased trunk core strength, control of extremities, reduced abnormal muscle tone and improved posture, symmetry, and that claimant's parents also report cognitive improvements, improved attention span, visual coordination, sensory input and expressive abilities. The recreational therapeutic equestrian services also offer the important psychological benefit to claimant in providing enjoyable interactions with the animal, opportunities for social interaction, and improve self-esteem. "As claimant's pediatric neurologist, I believe that it is safe and beneficial for claimant to continue the hippotherapy or recreational equestrian services."

A letter from John R. Davids, M.D., of Shriners Children's hospital, dated February 16, 2017, which states that claimant is now three months post-surgery and is doing well and progressing with outpatient physical therapy. Claimant benefits from her participation in hippotherapy and may return to this activity, effective March 21, 2017.

22. In response to the reinstatement request, ACRC informed claimant's parents that neither the documents submitted from claimant's healthcare providers, nor Dr. Corn's May 2016 report included any objective, measurable data, or

demonstrated progress, that the regional center could utilize to determine that equestrian therapy is a primary service that is ameliorating the physical impacts of claimant's disability. There was significant exchange between the parties regarding the data requested. Claimant returned to Ride to Walk services on or about April 1, 2017.

23. On March 23, 2017, claimant's parent's informed ACRC that Ride to Walk required that claimant be reevaluated prior to being reinstated for services. ACRC responded by asking claimant's parents to specify the basis for the reevaluation.

24. On March 24, 2017, Dr. Corn prepared a Ride to Walk reevaluation report regarding claimant's progress. The report specifies that claimant made many significant gains in functional control since engaging in the Ride to Walk program. Claimant grew significantly during this time and could not maintain good upright posture, and ambulated on poorly aligned feet and ankles, which caused her to walk with a crouched gait pattern, her postural tone in her trunk decreased and her strength in her lower extremities became weakened.

25. Dr. Corn prepared another evaluation on October 27, 2017, which reflects that claimant was able to passively flex and extend both hips and knees, and that her strength was "fair to good" in both lower extremities. The report reflects that claimant achieved "good standing alignment" but lacked endurance and focus. The report indicates that claimant could stand and ambulate in her walker in "fair to good" upright posture and achieved and maintained spine, hip, and knee extension for a few steps. Dr. Corn noted that this alignment and control was not possible when claimant initially returned after surgery, and resulted from beneficial activities performed by clients while riding, including sidestepping up or down a ramp, mounting and dismounting the horse, throwing beanbags, placing of hoops on different objects, all while receiving tactile and verbal reminders for keeping her mouth closed. The report

specifies that each of claimant's previous goals related to increasing strength of trunk and extremities, improving balance, maintaining and increasing passive range of motion of hips and knee joints, and strengthening hamstrings and glutes bilaterally were all accomplished. Dr. Corn concluded this report by stating she was encouraged with claimant's progress and that claimant "absolutely loves" riding, and is willing to stretch, strengthen, and work very hard while enjoying herself on the horse.

26. Elizabeth Brushwyler, MPT, is a physical therapist employed by Capuchino Therapy Group. She has held this position for 10 years. She holds a bachelor's degree in Biology from Point Loma Nazarene University and a master's degree in physical therapy from Chapman University. She performs evaluations for regional centers, workers compensation matters, and for school districts.

27. On December 19, 2017, she evaluated claimant at the request of ACRC to determine if claimant's Ride to Walk services were "the" primary or critical means of ameliorating the physical effects of claimant's disability. In performing this assessment, Ms. Brushwyler was asked to review claimant's progress on measurable goals to substantiate need for Ride to Walk services. Ms. Brushwyler reviewed reports and records available to her. She met with claimant, measured the range of motion in her lower extremities and compared it to what had been reported by Shriners hospital in January 2017. She examined claimant's muscle tone, strength, posture, mobility and gait, and balance.

28. In Ms. Brushwyler's evaluation report, she noted that while claimant's Ride to Walk sessions involved oversight by a physical therapist, a physical therapist was not present for every session. She also specified that it was unclear whether the "activity is considered therapy or recreational horseback riding." Ms. Brushwyler concluded that although claimant's Ride to Walk sessions "involve emotional and

psychological benefits that are difficult to measure objectively," those sessions were not "the" primary means to ameliorate the physical effects of claimant's disability in the year preceding the evaluation. Ms. Brushwyler opined that claimant's multi-level surgery and subsequent physical therapy had been "the" primary means of ameliorating the physical effects of claimant's disability during that period. She noted that prior to surgery, claimant's physical abilities were declining, "due to her tone, weakness, and contractures," and claimant had shown no progress in her physical skills, such as transfer ability or range of motion, despite twice a week sessions at Ride to Walk.

Notice of Termination of Reimbursement for the Cost of Ride to Walk

29. Based on all the available information, ACRC concluded that the Ride to Walk services being provided to claimant, no longer satisfied the exemption criteria for the provision of nonmedical therapies specified in section 4648.5, subdivision (c). On February 2, 2018, ACRC issued another Notice of Proposed Action (2018 NOPA) to claimant, advising that "ACRC is terminating reimbursement to [claimant's representatives] for the cost of Ride to Walk services [purchased for claimant]." The 2018 NOPA specified five separate bases for this decision as follows:

> (1) ACRC's authority to purchase social recreational activities or nonmedical therapies such as Ride to Walk services was suspended effective July 1, 2009, unless a client qualifies for an exemption … ACRC has determined that [claimant] no longer qualifies for an exemption permitting ACRC to reimburse [claimant's] family for these services because ACRC has determined that the Ride to Walk services [claimant] is receiving are not a primary or critical

means of ameliorating the physical, cognitive or psychosocial effects of [claimant's] developmental disability, and because the Ride to Walk services are not necessary to enable [claimant] to remain in the home.

(2) ACRC is prohibited from funding services available from generic resources which are legally required to fund or provide services, such as an individual's school district, or California Children's Services (CCS). [Claimant] receives physical therapy and occupational therapy through her school district to ameliorate the physical effects of her cerebral palsy, and physical therapy and occupational therapy may be available to [claimant] from CCS as well to ameliorate the physical effects of her cerebral palsy. ACRC may not supplant the budget of these generic agencies. Further, [claimant's] family private health care insurance is legally responsible to provide [claimant] any medically-necessary physical therapy or occupational therapy or other treatment to ameliorate the physical effects of her cerebral palsy. ACRC cannot purchase services which [is] the responsibility of private insurance … when such coverage is available but [claimant's] family chooses not to access it.

(3) ACRC is prohibited from funding hippotherapy or therapeutic horseback riding as it is an experimental treatment which is not evidence-based to be effective for ameliorating the physical effects of cerebral palsy.

Evidence-based treatment for cerebral palsy exists and is available from your school district, CCS, and healthcare providers.

(4) ACRC believes [claimant] has not made reasonable progress toward her objectives as a result of her Ride to Walk services. The only demonstrable progress ACRC has seen in [claimant's] physical condition was as a result of [claimant's] surgery and post-surgery physical therapy.

(5) [T]o the extent that the Ride to Walk services are recreational in nature, it is the responsibility of the parents of a minor to fund or provide recreational opportunities for all of their children, regardless of whether the children have a developmental disability.

30. The 2018 NOPA also detailed that ACRC's authority for its decision was supported by sections 4648.5; 4646.4; 4647, subdivision (a); 4648, subdivision (a)(7) and (16); and section 4659.

31. Claimant filed a Fair Hearing Request in response the 2018 NOPA, appealing the decision therein. Claimant's stated reasons for the appeal was that claimant continues to be qualified to receive equestrian therapy pursuant to the exemption provided for such services in section 4648.5, subdivision (c).

32. Approximately one week prior to hearing, claimant's parents provided newly drafted letters from claimant's health care providers, written in response to Ms. Brushwyler's evaluation report and ostensibly in response to ACRC's March 2017 request for objective, measurable data, with demonstrated and measurable progress,

in support of claimant's continued qualification for the exemption. Those letters were as follows:

> A letter from Dr. Arsenault, dated February 22, 2018, in response to Ms. Brushwyler's evaluation report, which states that she believes that the equestrian therapy services are a primary means and critical for ameliorating the physical, cognitive, and psychosocial effects of claimant's developmental disability. The service is also critical and necessary to continue enhancing and restoring functional ability and quality of life for [claimant], as well as to assist her independence and ability to remain in her home in the future. The Shriner surgical procedure should not be considered as a primary means to ameliorate the physical effects of developmental disability in any child with cerebral palsy. Claimant's surgery was meant to address the issues of muscle shortening, contractures, and bone deformities.
>
> A letter from Dr. Davids, received by ACRC on April 2, 2018, specifies that claimant's surgeries were a primary means for ameliorating the physical, cognitive, and psychosocial effects of claimant's developmental disability. Claimant's orthopedic surgery was meant to address the issue of muscle shortening, contractures, and bone deformities caused by her growth … With the equestrian therapy services claimant has reported to make credible and continuous improvement in the areas of improved gross

motor skills, daily functional activities, increased trunk strength, improved control of extremities, reduced abnormal muscle tone, improved balance and improved posture, symmetry. It was also reported that she made cognitive improvements such as improved attention span, visual coordination, [and] sensory input.

A letter from Dr. Sherr, dated February 12, 2018, that was prepared in response to Ms. Brushwyler's evaluation report. This letter specifies that both Dr. Sherr and claimant's parent believe that the equestrian therapy services are a primary means and critical for ameliorating the physical, cognitive, and psychosocial effects of claimant's developmental disability. The service is also critical and necessary to enable claimant to remain in her home due to claimant's unique condition.

Fair Hearing

TESTIMONY OF KRISTINE CORN

33. At hearing, Dr. Corn testified enthusiastically regarding the beneficial effects equestrian therapy can have on both the physiological and cognitive challenges individuals with cerebral palsy face on a daily basis. She testified that although there was currently "not good research," to support that equestrian therapy benefits individuals with cerebral palsy, some studies have reached this conclusion and she has personally witnessed its effectiveness.

34. Dr. Corn testified that cerebral palsy commonly produces muscle contractures and deformities that can produce a "crouched gait" and limit mobility. She has worked with claimant since claimant first attended Ride to Walk. Dr. Corn recalled that claimant initially presented with low postural muscle tone, decreased strength and postural endurance, decreased range of motion and strength in her trunk and extremities, and poor balance. She added that as claimant grew, her gait progressively deteriorated because her bones were growing faster than her muscles. She testified that claimant's 2016 multi-level surgery occurred to address this issue by lengthening claimant's muscles and realigning bones that were out of alignment due to claimant's condition.

35. Dr. Corn characterized claimant's multi-level surgery as a "structural repair," to improve claimant's posture and alignment, but noted that claimant "stood the same" post-surgery, because she had not developed the motor skills to correct her alignment and posture. She testified that claimant can now stand with her hips straight and has improved balance, neck positioning, core strength and mouth control, due to her continued work at Ride to Walk, post-surgery. Dr. Corn felt claimant's surgery made it possible to achieve these improvements "by fixing the hardware" and that Ride to Walk allowed her to achieve those improvements through effects of equestrian therapy.

36. Dr. Corn opined that through equestrian therapy, claimant received stimulation that was "physical, cognitive and emotional all at once" as it incorporates tactile, vestibular, proprioceptive, and visual senses, while also fostering social interaction. She added that "maybe" these benefits could be achieved through non-equestrian therapies, but added that there was no other form of therapy she knew of that could provide so many benefits in a 30-minute timeframe.

37. Dr. Corn testified again at hearing, several months after initially testifying. During her later testimony, Dr. Corn was less equivocal regarding whether Ride to Walk equestrian therapy was primary or critical to ameliorating claimant's challenges. She testified that claimant's equestrian therapy is, in fact, a primary and critical means of ameliorating the effects of her disability, because it takes what was provided through surgery and allows claimant to benefit from it by strengthening muscles in her core, hips, and legs, resulting in improved posture, balance, and gait.

TESTIMONY OF TANYA NALLEY

38. Tanya Nalley works as a client service manager for ACRC. She has held this position since July 2010 and has been employed by ACRC for over 20 years. Ms. Nalley holds both a bachelor's and master's degree in social work. She supervises 12 service coordinators in ACRC's Roseville office, including Kristine Franco, claimant's service coordinator.

39. Ms. Nalley served on the best practices committee that decided to no longer fund claimant's Ride to Walk services. She testified that all client services are reviewed each year, and some more frequently, in part, to ensure they are meeting client needs. She testified that despite any exemption for certain types of services, ACRC reviews all client cases to determine measurable progress under the Lanterman Act. She stated there should be measurable goals established with progress thresholds and that the regional center should review progress to see if thresholds are being met. Another reason for the ongoing review of regional center services is to ensure the regional center does not fund a duplication of services.

40. Ms. Nalley noted that claimant's January 2018 IPP reflects that she was receiving in-home support services, daycare services, in-home respite care, and an in-

home Applied Behavior Analysis Techniques program funded through private insurance. This IPP also indicates claimant has access to physical therapy through California Children's Services, through private health insurance, and through her school.

41. As a member of the best practices committee, Ms. Nalley reviewed the information provided to the regional center regarding claimant's Ride to Walk services, including information provided by claimant's parents, Ms. Van Buren, and Ms. Brushwyler. She agreed with Ms. Brushwyler's conclusion that, based on the evidence reviewed, claimant's twice weekly equestrian therapy sessions with the Ride to Walk were not "the" primary means to ameliorate the physical effects of her developmental disability over the previous year.

42. Ms. Nalley testified that she relied heavily on Ms. Van Buren and Ms. Brushwyler, as experts in physical therapy and its effects. She added that ACRC experienced ongoing challenges obtaining information regarding claimant's treatment and services, as claimant's parent were reluctant to sign authorizations to permit information to be released to ACRC. As a result, most of the records ACRC received relating to claimant were almost always received from claimant's family directly rather than from the vendors or the medical providers. This made it difficult for ACRC to procure records and to ensure that the records they receive from the family were complete. An example of this reluctance was documented in claimant's 2013 IPP regarding services and supports to increase claimant's strength and mobility. That document specifies that the "[p]arents report [physical therapy] is provided by CCS as well as some therapeutic services in the school setting. Parents opted not to sign the Release of Information for the regional center to gather and review related services and how they might aid in meeting this goal. Parents agreed to provide this

documentation and invite the regional center to the IEP meetings to discuss services such as OT and PT." Ms. Nalley testified that it has been "a pervasive topic that [claimant's] parents have wanted to be the ones to provide records to [the regional center] and have consistently denied signing releases of information."

43. Additionally, Ms. Nalley testified that she does not believe Ride to Walk services are necessary for claimant to remain in her home. She testified to several modifications being made to claimant's home and certain durable medical equipment provided to claimant to assist in her daily living activities. Ms. Nalley opined that the modifications to claimant's home and durable medical equipment claimant received, have provided "the" primary and critical means for claimant to remain in her home.

44. Regarding the denial of claimant's requests to be reimbursed an assessment fee of $145, Ms. Nalley asserted that the regional center should not be responsible for any additional assessment fees from Ride to Walk because the regional center agreed to fund the actual therapy and not fund separate fees for assessment or evaluation. Additionally, Ms. Nalley asserted that any assessment related to funded regional center services should be included as part of those services. Ms. Talley could not recall the regional center receiving a bill of this nature for funded services over the past nine years.

TESTIMONY OF ELIZABETH BRUSHWYLER

45. Elizabeth Brushwyler testified at hearing regarding her assessment of claimant's Ride to Walk services. She is familiar with hippotherapy. Ms. Brushwyler described hippotherapy as a tool that a physical therapist would use. She stated that a therapist would use a horse as they would a bolster or something else to achieve a

patient goal. She considers hippotherapy to be more of a modality for physical therapy rather than a separate type of therapy in and of itself.

46. Ms. Brushwyler testified that when she evaluated claimant in December, 2017, she reviewed reports prepared by Ride to Walk, Ms. Van Buren, and records from Shriners Children's hospital. In reviewing these materials, she primarily considered the results of identified, objective, measurable goals, and gave far less consideration to subjective goals. She did not observe claimant while at Ride to Walk, because she did not believe observing claimant in equestrian therapy would be necessary to assess its results. Instead, Ms. Brushwyler visited claimant in claimant's home and measured claimant's range of motion, strength, balance, muscle tone, and posture. Ideally, Ms. Brushwyler preferred to evaluate claimant in her clinic, but claimant's mother preferred the evaluation occur in their home.

47. Ms. Brushwyler testified that she "looked back" at claimant's progression while receiving Ride to Walk services for many years and noted that many of claimant's abilities had not improved, but instead only maintained or declined. By her assessment, the "main thing that improved [claimant's] ability to move was [claimant's] single-event multi-level surgery."

48. Ms. Brushwyler acknowledged that there is an emotional component to equestrian training that does not exist in a clinic, because working with a horse can be enticing and motivating for some patients. She added that a trained physical therapist can attempt to address a lack of patient interest by making the clinical activities fun, changing their frequency, giving the patient options during treatment, and integrating music into the clinical sessions.

TESTIMONY OF BARBARA FRIEDMAN

49. Barbara Friedman is a staff physician with ACRC and has held that position since November 2014. She received her bachelor's degree in biology from Cornell University in 1983 and a doctorate in medicine from the University of Vermont College of Medicine in 1988. She was formerly board-certified in pediatrics and is currently board-certified in medical genetics. She works with children with cerebral palsy and intellectual disabilities to help determine their eligibility for regional center services. She also provides consultation to regional center service coordinators as needed.

50. Dr. Friedman is familiar with claimant and has had some involvement in providing services to claimant. Dr. Friedman did not recall having any involvement in the best practices committee's decision to terminate funding for claimant's Ride to Walk services.

51. Dr. Friedman testified that she is familiar with claimant's diagnoses, the effect the diagnoses have on claimant's abilities and level of independence. Dr. Friedman is also familiar with the terms equestrian therapy and hippotherapy. She noted that although they are commonly used synonymously, equestrian therapy is therapy associated with riding a horse, whereas hippotherapy involves the direct involvement by a physical therapist or occupational therapist who use a horse as a "prop" or tool for therapy.

52. Dr. Friedman testified that hippotherapy and equestrian therapy are commonly considered experimental therapeutic techniques. She explained that regional centers are prohibited from funding experimental or investigational treatments. She testified that insurance companies also do not fund hippotherapy due

to a lack of evidence demonstrating its effectiveness. To prepare for hearing, she reviewed policies regarding hippotherapy produced by Aetna Managed Care and Blue Cross of California. Aetna claims in its literature it "considers hippotherapy (also known as equine therapy) experimental and investigational for the treatment of [indications including cerebral palsy] and all other indications because there is insufficient scientific data in the peer reviewed medical literature to support the effectiveness of hippotherapy for the treatment of individuals with these indications." Blue Shield of California has claimed that hippotherapy (also called equine-assisted therapy) is "considered investigational." In a literature review of several published systematic reviews on hippotherapy in children with cerebral palsy, Blue Shield conclusions included, "poor-quality studies limited clinical interpretation, trial limitations include unclear clinical significance of outcomes, uncertain attributes or absence of the control group, and lack of long-term outcomes." When asked whether she personally considered hippotherapy or equestrian therapy to be experimental because of a lack of supportive evidence or peer-reviewed literature, or whether she was testifying to conclusions reached by others under the employ of Aetna and Blue Shield, Dr. Friedman replied:

> I don't believe that they consider … that the materials I've read considers it evidence-based. And from what I've read … the articles that I've had to read and the information I've had to read, I don't find that it's evidence-based.

53. Dr. Friedman also reviewed studies produced by claimant's parents prior to hearing. While she testified that she was "not a researcher," Dr. Friedman was concerned with the validity of the studies provided, considering the small number of participants and that some did not include blind studies. And, Dr. Friedman noted that

it is unclear what constitutes "hippotherapy," there is no evidence that hippotherapy or equestrian therapy are "any better than regular therapy," and there is no evidence of long term improvement in children with cerebral palsy due to these treatments.

54. Dr. Friedman also reviewed the initial letters prepared by Drs. Davids, Arsenault, and Sherr. She noted that while the drafter of each letter expressed a desire for claimant to continue to receive Ride to Walk services because those services are beneficial, none of the letters indicate those services are a primary or critical means of ameliorating the effects of claimant's disability. She added that, as a medical professional, she would expect a physician to write a prescription for any service the physician felt was central to a patient's recovery or improved health.

55. Dr. Friedman noted that although the subsequent letters from Drs. Davids, Arsenault, and Sherr, specify that equestrian therapy is a primary and critical means of ameliorating the effects of claimant's disability, these letters were also not persuasive for several reasons. She questioned the veracity of the conclusions drawn in the letters, because they each parrot the same standardized language needed to meet the exemption. She noted that the conclusions appear to be primarily based on "reporting" rather than objective medical evidence or measurements. She also noted that the authors provided no authority to support their conclusions, and that there was no evidence that the authors were aware of any of the other sources of physical therapy available to claimant.

TESTIMONY OF CLAIMANT'S PARENTS

56. Claimant's parents are opposed to ACRC terminating funding for equestrian therapy. They testified that the regional center must continue funding Ride to Walk services for claimant because all services are of primary or critical means of

ameliorating effects of her disability. Claimant's parents testified that ACRC referred claimant to Ride to Walk due to her condition. Claimant had bad balance; she could walk, but easily fell down. She had poor motor skills. She could not throw a ball and would fall out of her chair while sitting. She could only feed herself for a short while because she was very weak.

57. Claimant's parents testified that through Ride to Walk services, claimant experiences consistent improvements in core strength, tone, balance, and posture. This progress was interrupted by claimant's multilevel surgery in 2016. The parents testified that after claimant's surgery, she remained in leg casts for quite some time. When the casts were removed, claimant had no strength to stand on her own. Shriners Hospital provided five days of physical therapy thereafter and claimant still could not stand on her own. Claimant became depressed with her circumstances, did not eat, and lost approximately 15 pounds.

58. Claimant eventually returned to Ride to Walk in 2017, and her progress continued. Claimant's parents testified that claimant has achieved improved strength, balance, coordination, and control of her hands and fingers. They added that claimant can eat by herself, brush her own teeth, comb her own hair, and get a glass of water. Claimant also falls down less, and, therefore, suffers fewer injuries. Claimant's doctors were surprised with her progress.

59. Claimant's parents testified that physical therapy for claimant through other sources has only been available intermittently. They testified that school policy limits physical therapy through claimant's school to educational needs and accessing educational materials. Administrators at the school were also reluctant to secure physical therapy for claimant because they felt claimant was "too young and did not know many words." Claimant's parents also asserted that CCS told them that claimant

is not a good candidate for physical therapy, "because of [claimant's] low I.Q. and lack of skills to solve problems." They attempted to obtain physical therapy and occupational therapy through their private medical insurance at Burger Physical Therapy and Rehabilitation, but were told that physical therapy would not help claimant because "her issues were too complex."

60. Claimant's parents also testified that other methods of physical therapy would not be effective for claimant, due to claimant's low intellectual capacity, poor vision, and unwillingness to participate in physical therapy in a clinical setting. They explained that one of the key benefits to equestrian therapy was that claimant is unaware she is receiving physical therapy when attending Ride to Walk, because it is fun.

61. Claimant's parents testified that virtually all of claimant's improvement both before and after her multilevel surgery was due to equestrian services provided by Ride to Walk. They stated that without Ride to Walk, claimant would not be able to "stand, walk, sit up, feed herself, dress herself, hold a pen, or take care of her own hygiene." They stated it is critical that claimant have these abilities to ameliorate her condition and allow her to live with her parents long-term.

LEGAL CONCLUSIONS

Applicable Law

1. The Lanterman Act sets forth the regional center's responsibility for providing services to persons with development disabilities. An "array of services and supports should be established … to meet the needs and choices of each person with developmental disabilities … to support their integration into the mainstream life of

the community … and to prevent dislocation of persons with developmental disabilities from their home communities." (§ 4501.) The Lanterman Act requires regional centers to develop and implement an IPP for each individual who is eligible for regional center services. (§ 4646.) The IPP includes the consumer's goals and objectives as well as required services and supports. (§§4646.5 & 4648.)

2. Section 4648, in part, specifies as follows:

> In order to achieve the stated objectives of the consumer's individual program plan, the regional center shall conduct activities including, but not limited to, all of the following:
>
> (a) Securing needed services and supports.
>
> (8) Regional center funds shall not be used to supplant the budget of any agency which has a legal responsibility to serve all members of the general public and is receiving public funds for providing those services.
>
> [¶] … [¶]
>
> (16) Notwithstanding any other provision of law or regulation to the contrary, effective July 1, 2009, regional centers shall not purchase experimental treatments, therapeutic services, or devices that have not been clinically determined or scientifically proven to be effective or safe or for which risks and complications are unknown. Experimental treatments or therapeutic include experimental medical or nutrition therapy when the use of

the product for that purpose is not a general physician practice …

3. Section 4659, subdivisions (a), in part, provides:

Except as otherwise provided in subdivision (b) or (c), the regional center shall identify and pursue all possible sources of funding for consumers receiving regional center services. These sources shall include, but not be limited to, both of the following:

(1) Governmental or other entities or programs required to provide or pay the cost of providing services, including Medi-Cal, Medicare, the Civilian Health and Medical Program for Uniform Services, school districts, and federal supplemental security income and the state supplementary program.

(2) Private entities, to the maximum extent they are liable for the cost of services, aid, insurance, or medical assistance to the consumer.

4. Section 4648.5 of the Lanterman Act provides:

(a) Notwithstanding any other provision of law or regulations to the contrary, effective July 1, 2009, a regional centers' authority to purchase the following services shall be suspended pending implementation of the Individual Choice Budget and certification by the Director of

Developmental Services that the Individual Choice Budget has been implemented and will result in state budget savings sufficient to offset the costs of providing the following services:

(1) Camping services and associated travel expenses.

(2) Social recreation activities, except for those activities vendored as community-based day programs.

(3) Educational services for children three to 17, inclusive, years of age.

(4) Nonmedical therapies, including, but not limited to, specialized recreation, art, dance, and music.

(b) For regional center consumers receiving services described in subdivision (a) as part of their individual program plan (IPP) or individualized family service plan (IFSP), the prohibition in subdivision (a) shall take effect on August 1, 2009.

(c) An exemption may be granted on an individual basis in extraordinary circumstances to permit purchase of a service identified in subdivision (a) when the regional center determines that the service is a primary or critical means for ameliorating the physical, cognitive, or psychosocial effects of the consumer's developmental disability, or the service is necessary to enable the consumer to remain in his or her

home and no alternative service is available to meet the consumer's needs.

5. There was no evidence that claimant's equestrian therapy service is appropriately categorized as anything other than "nonmedical therapy" and, as such, it falls within the prohibition of section 4648.5, subdivision (a)(4). ACRC determined that it is prohibited from funding equestrian therapy services for claimant as it is an identified suspended service and section 4648.5 expressly prohibits regional centers from purchasing nonmedical therapies by suspending their authority to do so. ACRC determined that such services are no longer authorized and that claimant did not otherwise qualify for an individual exemption.

DETERMINATIONS ON REMAND

The Exemption Requirements

6. As specified in Legal Conclusion 4, Section 4648.5, subdivision (c), of the Lanterman Act, in part, provides that a regional center may be exempted from the prohibition against funding nonmedical therapies when the regional center determines that the service is a primary or critical means for ameliorating the physical, cognitive, or psychosocial effects of the consumer's developmental disability. The 2018 Decision described the exemption requirements as both "a" primary or critical means of ameliorating the effects of the consumer's disability and, as "the" primary or critical means of ameliorating the effects of the consumer's disability. The findings in both the 2018 Decision and the instant decision on this issue are based solely on whether the hippotherapy claimant receives is "a" primary or critical means of ameliorating the effects of her disability, as described in the controlling statute. The use of the term

"the" rather than "a" when referring to the exemption in portions of the 2018 Decision was unintentional and did not alter the application of the exemption, as codified.

Burden and Standard of Proof

7. The 2018 Decision determined, in error, that claimant bore the burden of proof. As specified in the Order on Remand, ACRC is the party seeking to change the status quo by defunding services identified in claimant's IPP and prior administrative orders. Therefore, ACRC has the burden to prove the basis for its decision, as specified in the 2018 NOPA: that claimant no longer qualified for an exemption; that her equestrian therapy is an experimental treatment or therapy; that her equestrian therapy is available from generic services available to claimant that are legally required to fund those services; that she failed to make reasonable progress toward her objectives as a result of her equestrian therapy; or that claimant's equestrian therapy is recreational in nature, and therefore, the responsibility of claimant's parents to fund.

8. "Burden of proof" means the obligation of a party to establish by evidence a requisite degree of belief concerning a fact in the mind of the trier of fact or the court; except as otherwise provided by law, the burden of proof requires proof by a preponderance of the evidence. (Evid. Code, § 115.) 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 the party is asserting. (Evid. Code, § 500.) This is significant, in that a considerable portion of the legal conclusions reached in the 2018 Decision were based upon what "claimant" failed to establish under the presumption that claimant bore the burden of proof.

Eligibility to Receive Reimbursement

A PRIMARY OR CRITICAL MEANS OF AMELIORATION

9. There was significant testimony and documentary evidence presented at hearing regarding the issues for determination. However, neither party convincingly established that the Ride to Walk services were, or were not, a primary or critical means for ameliorating the physical, cognitive, or psychosocial effects of claimant's disability. This was ACRC's burden to prove, and it has not met its burden.

10. Claimant established that Ride to Walk services are clearly beneficial to claimant. While this does not establish that these services fall within the described exemption, it is important to note that during the several years claimant received Ride to Walk services, particularly after her multi-level leg surgery, she has shown measurable improvements in key areas that contribute to her mobility and independence. Claimant asserted that, because equestrian therapy provides simultaneous physical, cognitive, and emotional stimulation, and is also fun, it is more effective than other forms of physical therapy. It was not disputed that there are other forms of physical therapy available to claimant, to address low muscle tone, decreased strength, and endurance.

11. Dr. Corn testified passionately about the benefits of equine therapy and the positive changes it produced for claimant. She testified and produced reports lauding the physical, cognitive, and social benefits of Ride to Walk and describing her first-hand knowledge of how these benefits have helped ameliorate the effects of claimant's disability. Dr. Corn's explanation of how equestrian therapy has exponential benefits when compared to other forms of physical therapy was both credible and logical, given her detailed explanation, education, and experience.

12. Dr. Corn acknowledged that there is currently a lack scientific studies to support many of her conclusions, because it is difficult to produce meaningful scientific studies regarding the treatment of Cerebral Palsy because it affects children in so many different ways. Her testimony also evolved over the course of the hearing. She was initially more equivocal on what became the central issue at hearing: whether Ride to Walk was a primary or critical means of ameliorating the effects of claimant's disability. Later during the hearing, she testified that Ride to Walk was "absolutely" a primary or critical means of ameliorating the effects of claimant's disability. Despite this variance, throughout the hearing, Dr. Corn remained confident and consistent that Ride to Walk played a very important role in a comprehensive treatment plan for claimant, that included necessary surgical procedures.

13. Claimant's parents also testified about the positive effects Ride to Walk has had on claimant's ability to perform several daily activities, however, their testimony was largely anecdotal and lacked medical support. The notes from Drs. Davids, Arsenault, and Sherr, who did not testify at hearing, were also conclusory and lacked supporting medical documentation.

14. Dr. Friedman opined that Ride to Walk equine therapy was beneficial but neither primary nor critical to addressing the effect of claimant's disability. She also testified to legitimate concerns with the substance of supportive letters provided by claimant's health care providers. However, her conclusions that hippotherapy is just a version of physical therapy "using a horse as a prop," and that hippotherapy and equestrian therapy are not "any better than regular therapy," does not establish that claimant's services fall outside of the exemption for this type of nonmedical therapy.

EXPERIMENTAL TREATMENT

15. ACRC did not establish by a preponderance of the evidence that the equestrian therapy claimant receives from Ride to Walk is an experimental treatment. Again, neither party presented persuasive evidence as to whether the Ride to Walk service claimant receives is, or is not, an experimental treatment. Virtually all the evidence presented on this issue was a recitation of out-of-court articles or other materials prepared by witnesses who did not testify at hearing.

16. Dr. Friedman testified that equestrian therapy is "experimental" and "investigational in nature." ACRC did not present sufficient information to establish this fact. Dr. Friedman's opinion was based largely, if not entirely, on policies from insurance providers regarding their funding practices. She admitted that she "was not a researcher" and that she essentially parroted what she read in the articles, while under oath. The individuals who drafted those policies did not testify at hearing regarding their studies, findings, or conclusions, to establish how their funding decisions related to those made by the regional center, if at all. And, Dr. Friedman appeared to have no first-hand knowledge of the studies or other information the authors of those policies relied upon when forming their opinions.

GENERIC RESOURCES

17. Considering its burden, ACRC did not establish by a preponderance of the evidence that the services claimant receives from Ride to Walk are available from generic resources legally required to fund or provide those services, such as physical therapy or occupational therapy provided by a school district or CCS. While there are likely similarities and overlap between the physical therapy or occupational therapy services available to claimant at a clinic, school district, or CCS, those services are not

the same services provided by Ride to Walk. Multiple witnesses testified to the unique benefits of equestrian therapy including: an emotional component associated with riding a horse that does not exist in a clinic; that claimant is more engaged in her treatment because it is fun and she is unaware she is receiving physical therapy when attending Ride to Walk; and because it requires claimant to utilize, and ostensibly improve, more of her senses when compared to a clinical setting, as equestrian therapy incorporates claimant's tactile, vestibular, proprioceptive, and visual senses, while also fostering social interaction.

REASONABLE PROGRESS

18. ACRC also did not establish a basis to terminate reimbursement for the cost of claimant's Ride to Walk services due to her not making reasonable progress toward her objectives. The evidence established that claimant made little to no progress at times and then made more significant progress at other times, particularly after claimant's 2016 multi-level surgery on her lower extremities. However, the regional center did not establish by a preponderance of the evidence that claimant's progress was unreasonable at any time, given the effects of her developmental disability. Nor did the regional center establish how much, if any, of claimant's alleged lack of progress toward objectives was attributable to Ride to Walk services. Any plateau in claimant's progress could just as easily be attributable to other services claimant received or even her own growth spurts, as Dr. Corn described.

OTHER MATTERS

19. ACRC presented little to no evidence to support that claimant's Ride to Walk services are a recreational opportunity that her parents are obligated to fund regardless of whether claimant has a developmental disability. Therefore, ACRC failed

to establish this basis to terminate reimbursement for the cost of these services by a preponderance of the evidence. All remaining issues and arguments not specifically addressed in this Decision that are not consistent with the legal conclusions herein, have been considered and are rejected.

Conclusion

20. In summary, neither party's evidence was much more convincing than the other's on the critical issues for determination. When that evidence is considered, in light of ACRC having the burden of proof, ACRC did not present sufficient persuasive evidence to support its decision to terminate reimbursement for claimant's Ride to Walk therapy. "Preponderance of the evidence" means evidence that has more convincing force than that opposed to it. (*Glage v. Hawes Firearms Company* (1990) 226 Cal.App.3d 314, 324-325.) Evidence that is deemed to preponderate must amount to "substantial evidence." (*Weiser v. Board of Retirement* (1984) 152 Cal.App.3d 775, 783.) And to be "substantial," evidence must be reasonable in nature, credible, and of solid value. (*In re Teed's Estate* (1952) 112 Cal.App.2d 638, 644.) If the evidence is so evenly balanced that one side does not preponderate over the other side, the party who had the burden of proof has failed to sustain the burden. (*People v. Mabini* (2001) 92 Cal.App.4th 654, 663.)

21. As the regional center has failed to sustain its burden, claimant remains qualified to be reimbursed by ACRC for equestrian services she receives, pursuant to the exemption specified in Section 4648.5, subdivision (c), and claimant's appeal of ACRC's decision to terminate reimbursement for those services must be granted.

ORDER

Claimant's appeal is GRANTED. Claimant remains qualified to be reimbursed by ACRC for equestrian services she receives, pursuant to the exemption specified in Welfare and Institutions Code section 4648.5, subdivision (c).

DATE: May 19, 2021

ED WASHINGTON
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.