

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of Claimant's Request for
Funding for Vision Therapy from California
Oaks Vision Center of Optometry:

OAH No. 2018030074

CLAIMANT,

and

INLAND REGIONAL CENTER,

Service Agency.

DECISION

Kimberly J. Belvedere, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in San Bernardino, California, on March 22, 2018.

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

Claimant's mother represented claimant, who was present. Claimant's father was also present.

The matter was submitted on March 22, 2018.

ISSUE

Should IRC fund claimant's request for vision therapy from California Oaks Vision Center of Optometry (California Oaks)?

FACTUAL FINDINGS

1. Claimant is a 13-year-old girl who receives regional center services based on a diagnosis of Autism Spectrum Disorder (autism).

2. Claimant, who resides at home with her parents, currently receives 30 hours per month of respite services from IRC. Claimant also receives applied behavioral analysis services through ACCESS, Inc., which is funded by her private insurance. Claimant receives 207 hours per month of In Home Supportive Services (IHSS), and her mother is the IHSS provider.

3. Claimant receives special education services under the categories of autism and other health impairment. She is enrolled in a special day class at her school where she receives occupational therapy, speech therapy, behavioral intervention services, and adaptive physical education. According to claimant's mother, and Program Manager Amy Clark, the school district may provide some form of vision therapy services. However, the school district will not accept the assessment completed by California Oaks and instead wants to do its own assessment in order to determine claimant's needs. Claimant's mother does not want claimant to have another assessment and feels even if claimant did undergo another assessment, any vision therapy services the school district could provide would not be like the vision therapy services provided by California Oaks.

4. Claimant's primary medical insurance is United Healthcare, which does not cover vision services.

5. Claimant's secondary medical insurance is Inland Empire Health Plan (IEHP), which does cover "vision" services, but only from an in-network provider. On February 13, 2018, IEHP denied claimant's request for vision therapy services from California Oaks, as California Oaks is not an in-network provider, but notified claimant that it's denial of the specific services provided by California Oaks was not a denial of

vision services. The letter also advised claimant she could appeal the denial of vision therapy services from California Oaks; claimant did not appeal.

6. On February 5, 2018, IRC served claimant with a notice of proposed action denying claimant's request to fund vision therapy services through California Oaks. In its denial, IRC explained:

IRC must consider whether or not the funding of the vision therapy is needed in order to meet services and supports identified in the Individual Program Plan (IPP). In addition, regional centers are prohibited by law from funding medical or dental services unless the regional center is provided with documentation of a Medi-Cal, private insurance, or a health care service plan denial and the regional center determines that appeal by the consumer or family of the denial does not have merit. There are only specific circumstances when a regional center can fund medical or dental services

7. On February 22, 2018, IRC received claimant's request for a fair hearing objecting to IRC's decision, noting that claimant needs vision therapy based on "two doctor's recommendations."

8. On March 12, 2018, claimant's mother and representatives from IRC attended an informal meeting to try to resolve the issue. Following the meeting, IRC adhered to its denial. IRC explained in a letter the reason for adhering to its original determination:

[Claimant] was seen by Dr. Katie Elton, O.D., from California Oaks on December 27, 2017, for a comprehensive eye exam. It is reported that claimant has a mild amount of myopia

(nearsightedness) and astigmatism. She also struggles with accurately and efficiently using her eyes together as a team, which can [affect] the efficiency and accuracy of reading skills. EyeZen glass[es] with blue blocking technology were recommended . . . which help reduce visual stress. Dr. Elton said [claimant] would benefit from vision therapy services to help train her eyes on how to better coordinate as a team. Dr. Elton made recommendations for classroom accommodations. Dr. Elton recommended a developmental vision evaluation including visual perceptual testing to determine the full impact of [claimant's] vision on her learning and academics. She also recommended an individualized progress check to determine if further therapy would be beneficial. . . . California Oaks accepts United Healthcare PPO plans and IEHP.

[Claimant] was seen by Monica Vu, O.D., at Lobue Laser & Eye Medical Centers on December 2, 2017, for a dilated eye exam. According to a letter from Dr. Vu dated December 22, 2017, anterior and posterior ocular structures appeared normal and healthy. An outside optometry practice prescribed eyeglasses and her vision is 20/20 in both eyes with glasses. The outside optometry practice recommended a developmental vision screening and vision therapy. Dr. Vu referred [Claimant] to a specialist who can offer this diagnostic testing to better understand how her vision will [affect] her learning and development.

[Claimant] has IEHP/Medi-Cal. California Oaks submitted an authorization request to IEHP. IRC has a copy of a February 6, 2018, denial notice but the notice does not explain the reason for the denial. IRC also has a copy of a letter from IEHP dated February 13, 2018, that states, "This us NOT a denial of services." It is a notice to let you know that IEHP Direct, under contract with IEHP, is not responsible for providing the optometry services, **but that the services can be obtained directly from IEHP Member Services for Optometry by calling IEHP Member Services for Optometry at (800)440-4347.**

[Claimant's] IEP team added some vision-related accommodations to her IEP. You stated that the school district wants to see if the accommodations help her and then will re-review your request for the school district to provide vision therapy. It is important to note you can still request the school district provide an assessment related to vision therapy and vision-related services. Dr. Elton recommended a developmental vision evaluation including visual perceptual testing to determine the full impact of [claimant's] vision on her learning and academics. I'm enclosing Chapter 2 and Chapter 5 from "Special Education Rights and Responsibilities" as they relate to school assessments and related services. [Claimant] may be eligible to receive vision therapy as a related service if [claimant] needs vision therapy in order to benefit from special

education. Vision therapy may include remedial and/or developmental instruction provided directly by – or in consultation with – an optometrist, ophthalmologist, or by another qualified licensed physician or surgeon. [Cal. Code Regs., tit. 5, § 3051.75].

At this time, IRC is standing by its decision to deny your request for vision therapy services because your medical insurance and Special Education Services have not been fully exhausted. . . . [Emphasis in Original]

IRC then recommended claimant contact IEHP Member Services for Optometry and file a written request with claimant's school district to obtain vision therapy services.

9. Documentation provided at the hearing included the vision reports referred to in IRC's informal meeting letter and supported IRC's summary of their content. Ms. Clark also confirmed that the basis for the denial was because all generic resources had not yet been exhausted.

10. Claimant's mother testified at the hearing and her testimony is summarized as follows: Claimant's mother passionately advocated on behalf of her daughter and believes claimant needs the vision therapy immediately. She said she recalled discussing IEHP's coverage of vision therapy at the informal meeting as well as the fact that IEHP will cover some vision services. She agreed on cross-examination that IEHP said she can file a request for in-network vision services, but she does not feel claimant needs any more assessments. Claimant's mother feels that the California Oaks assessments should be enough. She also does not feel that any vision therapy services provided by the school district would be comparable to what California Oaks would

provide. Claimant's mother asked "why look for another doctor when we already have one that we want to use?"

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 IRC should fund his request to attend driving school. (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. (*Association 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 State 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 shall 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. Welfare and Institutions Code Section 4646.4, subdivision (a), requires IRC to adhere to its Purchase of Service Standards (POS) when determining what services it will fund. POS policy requires IRC to purchase all services and supports from companies vendored with IRC, except in very limited circumstances.

CAUSE DOES NOT EXIST TO REQUIRE IRC TO FUND VISION THERAPY SERVICES THROUGH CALIFORNIA OAKS VISION CENTER

12. 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 his need for the requested service or support, funding for vision therapy services through California Oaks Vision Center. Claimant has not met that burden.

It is possible that claimant may, at some point, qualify for vision therapy services funded by IRC. However, claimant has not exhausted all generic resources to the point that IRC may presently fund the requested service. IRC properly advised claimant at the informal meeting that she should contact IEHP's optometry services division and pursue vision therapy through claimant's school district. If either of these avenues had been denied, then claimant might have qualified for services through IRC since all resources would have then been exhausted.

IRC is a payor of last resort, which means, all other resources must be exhausted before IRC may consider funding a service request. This would also mean that if

requested and approved for vision therapy services through claimant's school district or IEHP, claimant must also follow the directions provided, even if that includes another assessment, and even if claimant's mother does not believe claimant would benefit from the services being provided. In other words, before IRC can fund vision therapy services, claimant would have to show that she tried the vision therapy services offered by IEHP or the school district; that the services did not meet or cannot meet claimant's needs; that claimant would only benefit from the services provided by California Oaks; and that no other vision therapy provider vendored with IRC could provide the requested services. As noted above, that burden was not met.

Here, there doctors have agreed that claimant could possibly benefit from some sort of vision therapy services, and she may indeed. However, until all resources are fully exhausted as described above, IRC is prohibited by law from funding vision therapy services through California Oaks.

ORDER

Claimant's appeal from Inland Regional Center's determination that it will not fund vision therapy services from California Oaks Vision Center is denied.

DATED: March 29, 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.