

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

vs.

SAN GABRIEL/POMONA REGIONAL  
CENTER,

Service Agency.

OAH No: 2018050741

DECISION

Thomas Y. Lucero, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on July 13, 2018, in Pomona, California. Ernie Cruz represented the service agency, the San Gabriel/Pomona Regional Center. Mother and father represented claimant (family members' names are omitted to preserve confidentiality). Oral and documentary evidence was received. The record was left open until July 20, 2018 for claimant's submission of documents and until July 24, 2018 for the service agency's response, if any.

Claimant timely submitted the following exhibits, which were admitted into evidence:

Exhibit E: Service Agency's February 3, 2016 Notice of Proposed Action (NOPA);

Exhibit F: Psychological Evaluation by Edward G. Frey, Ph.D., November 10, 2015;

Exhibit G: Kaiser Permanente After-Visit Summary of August 24, 2017;

Exhibit H: Psychological Assessment, Franklin Carvajal, LCP, November 17, 2017;

Exhibit I: Speech-Language Pathology Re-evaluation, July 15, 2018;

Exhibit J: Occupational Therapy (OT) Re-evaluation report, July 19, 2018

On July 24, 2018, the service agency timely submitted its Response to Additional Documents, marked for identification as Exhibit 9. The service agency did not object to admitting Exhibits E through J into evidence, but stated that the exhibits provided no basis to change the NOPA.

The matter was submitted for decision on July 24, 2018.

## ISSUE

Whether the service agency should, based on the family's report of financial hardship, fund co-payments for OT and Speech-Language Pathology therapy (speech therapy).

## FACTUAL FINDINGS

1. Claimant is five years old and lives with his mother, father, and sister. Claimant's sister does not receive services or supports from the service agency. Claimant is eligible for services and supports based on a diagnosis of autism spectrum disorder (ASD). Claimant has deficits in communicating, self-care, behavior, and social skills. Claimant also has asthma, relieved at times with prescription medication.

2. The Service Agency sent claimant an April 13, 2018 NOPA, advising it would not fund claimant's co-payments for OT and speech therapy. Claimant timely requested a fair hearing.

3. The service agency authorized claimant's receipt of Applied Behavioral Analysis (ABA), 14 hours per week of direct services and 72 hours of enhanced supervision over a six-month period. ABA is "the design, implementation, and evaluation of systematic instructional and environmental modifications to promote positive social behaviors and reduce or ameliorate behaviors which interfere with learning and social interaction." (Welf. & Inst. Code, § 4686.2, subd. (d)(1).) The ABA services are provided by Kaiser Permanente as a covered benefit under claimant's health insurance.

4. As indicated in claimant's most recent Individual Program Plan (IPP), Exhibit 3, dated January 31, 2018, "[e]ducational services are funded through Duarte USD" (Duarte Unified School District). The IPP notes that claimant attends a Special Day Class at Valley View Elementary School, part of Duarte USD. Among the services claimant receives there are OT, speech therapy, and ABA.

5. Parents are responsible for a total of \$240 per month in co-payments, divided \$80 per month for OT and \$160 per month for speech therapy. As indicated below, the service agency is covering co-payments for ABA.

6. In a March 5, 2018 letter to the service agency, Exhibit 4, mother advised that the family was experiencing financial hardship. She testified to the same effect at the fair hearing. Mother and father have found it necessary to decrease the hours they work so that they are able to take claimant to his weekly therapy appointments and to spend time with him to encourage or assist with his therapeutic efforts. The evidence did not quantify how much parents' work has decreased and some of the decrease has not yet occurred. Mother plans to stop working full time and intends to work on a per diem basis so that she may devote more time to claimant. The parents' income still exceeds 400 percent of the federal poverty level, though their 2018 income has decreased from last year's level.

7. In addition to financial difficulties, mother and father struggle with health issues. Father takes medication prescribed for Ankylosing Spondylitis, a debilitating, painful condition of the spine. He continues to work, however, providing the family financial support. Mother's health has been monitored since she had treatment for an unspecified stage 2 cancer, now in remission. (Exhibit 4.)

8. The service agency's Exceptional Service Review (ESR) Note, Exhibit 6, dated April 4, 2018, shows that claimant was receiving speech therapy twice per week in 30-minute sessions, OT for 60 minutes per month, and ABA daily for 45 minutes. It also

notes claimant's request that the service agency fund co-payments for all such services based on parents' claim of financial hardship.

9. An inter-disciplinary (ID) note describes the service agency's telephone contact with mother on April 4, 2018. Claimant's service coordinator, Lizbeth Vazquez, advised that the ESR committee had examined a breakdown of parents' income and had approved claimant's request for funding ABA co-payments, but denied funding for the other co-payments. (Exhibit 7.)

10. In funding ABA co-payments, the service agency made an exception to its published Purchase of Service (POS) Policy, Exhibit 8.

A. The POS Policy states regarding ABA:

The regional center seeks to work cooperatively with the public school district to provide continuity of services across educational, home, and community settings. Parents are encouraged to facilitate communication and collaboration with the school district. The regional center may share responsibility for addressing some developmental skills with the school district, but is not responsible for funding services that are the legal responsibility of another publicly funded agency.

(Exhibit 8.)

B. The POS Policy states regarding therapy services:

In most cases the need for therapy is met by public school programs, California Children's Services (CCS), Medi-Cal, Medicare, private family insurance, military health insurance,

or other resources. . . . Regional center shall not purchase educationally related therapy services after the age of 3.

(Exhibit 8.)

11. Claimants' exhibits, Exhibits E through J, were helpful in providing background and context regarding claimant's condition and progress, and indicate that claimant benefits from a variety of therapies, including ABA, OT, and speech therapy. The evidence, however, does not indicate any extraordinary or catastrophic events that might impact providing services and supports to claimant.

## LEGAL CONCLUSIONS

1. As claimant is the party seeking to change the status quo, claimant has the burden of proof. The evidentiary standard is proof by a preponderance of the evidence. (Evid. Code, §§ 115 and 500.) Claimant did not meet that burden in this case.

2. Service agencies implement the Lanterman Act, Welfare and Institutions Code section 4500 et seq. The Lanterman Act describes "a comprehensive statutory scheme . . . 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.'" (*Assn. for Retarded Citizens v. Dept. of Developmental Services* (1985) 38 Cal.3d 384, 388, quoting Welf. & Inst. Code § 4501.)

3. Because the statutory scheme is meant to be comprehensive, a service agency provides many services and supports. As set out in part in Welfare and Institutions Code section 4512, subdivision (b), "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 . . . cost-effectiveness . . ."

4. However many or few services and supports a service agency provides, it must take care to conserve resources.

A. Under Welfare and Institutions Code, section 4646.4, subdivision (a)(1), the service agency in its purchase of services and supports “shall ensure . . . [c]onformance with the regional center’s purchase of service policies.”

B. Several provisions of Welfare and Institutions Code, section 4648, mandate fiscal responsibility. Thus subdivision (a)(8) of section 4648 provides that the service agency’s funds “shall not be used to supplant the budget of any agency that has a legal responsibility to serve all members of the general public and is receiving public funds for providing those services.”

C. Under section Welfare and Institutions Code section 4650, a service agency must operate within an annual plan and program budget.

D. A service agency is required to consider generic resources and the family’s responsibility for providing resources when considering purchase of services and supports. (Welf. & Inst. Code, § 4646.4.)

5. Welfare and Institutions Code section 4659.1 provides that a service agency may fund copayments under a health insurance policy on certain conditions, including that the family’s annual gross income does not exceed 400 percent of the federal poverty level. The service agency may nevertheless fund copayments when a family’s income exceeds the 400 percent level in certain circumstances if, under Welfare and Institutions Code section 4659.1, subdivision (c), the service or support is necessary to successfully maintain claimant at home in the least-restrictive setting, and the family demonstrates one or more of the following:

- (1) The existence of an extraordinary event that impacts the ability of the parent, guardian, or caregiver to meet the care and supervision needs of the child or impacts the ability of the parent, guardian, or caregiver, or adult consumer

with a health care service plan or health insurance policy, to pay the copayment, coinsurance, or deductible.

- (2) The existence of catastrophic loss that temporarily limits the [family's] ability to pay . . . with a . . . health insurance policy and creates a direct economic impact on the family . . . . For purposes of this paragraph, catastrophic loss may include, but is not limited to, natural disasters and accidents involving major injuries to an immediate family member.
- (3) Significant unreimbursed medical costs associated with the care of the consumer or another child who is also a regional center consumer.

6. The service agency's decision to fund ABA copayments suggests that funding those copayments is proper under Welfare and Institutions Code section 4659.1, subdivision (c). It was claimant's burden, however, to show that funding more in copayments, specifically OT and speech therapy copayments, was also necessary to keep claimant at home in the least-restrictive setting. In addition, it was claimant's burden to demonstrate the applicability of at least one of the three conditions of Welfare and Institutions Code section 4659.1, subdivision (c), quoted above.

7. Claimant did not make the required showing under Welfare and Institutions Code section 4659.1, subdivision (c). Duarte USD provides OT and speech therapy to claimant at school. The evidence did not indicate claimant would be deprived of the home setting if he did not receive OT and speech therapy. Claimant likewise did not demonstrate that any of the conditions described in Welfare and Institutions Code section 4659.1, subdivision (c)(1), (c)(2), or (c)(3), is applicable.

A. The evidence does not demonstrate an extraordinary event impacting parents' ability to provide care to claimant. Parents have both had illnesses, but the mother's is past, a cancer in remission. The father's illness is considered debilitating in some sense, but does not prevent him from supporting the family financially. Parents'

plan to decrease their work hours is not extraordinary. It has not driven the family below the federal poverty level. Many parents go to extra effort to care for their children. Parents' care for their child is commendable, but must not be considered the sort of extraordinary event described in Welfare and Institutions Code section 4659.1, subdivision (c)(1). (Finding 6.)

B. Subdivision (c)(2) is inapplicable. Mother testified credibly that the family is experiencing financial difficulty, but there was no indication that the difficulty is catastrophic, or the result of major injuries to a family member, or other loss from which there would be no recovery absent more funding of copayments. (Findings 6 and 7.)

C. Subdivision (c)(3) is inapplicable. Claimant's sister is not a regional center consumer. (Finding 1.)

## ORDER

Claimant's appeal is denied.

DATED:

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THOMAS Y. LUCERO

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.