

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of the Fair Hearing Request  
of:

OAH Case No. 2018050986

CLAIMANT,

vs.

EASTERN LOS ANGELES REGIONAL  
CENTER,

Service Agency.

DECISION

This matter was heard by Eric Sawyer, Administrative Law Judge (ALJ), Office of Administrative Hearings, State of California, on October 15, 2018, in Alhambra. The record was closed and the matter submitted for decision at the conclusion of the hearing.

Claimant, who was not present, was represented by his mother.<sup>1</sup>

Jacob Romero, Fair Hearing Coordinator, represented the Eastern Los Angeles Regional Center (service agency).

ISSUE

Shall the service agency reimburse claimant's mother for claimant's dental work in the amount of \$13,530?

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<sup>1</sup> Names are omitted to protect the privacy of claimant and his family.

## EVIDENCE RELIED ON

In making this Decision, the ALJ relied upon service agency exhibits 1-13; claimant's exhibits A through E; and the testimony of Service Coordinator Marcos Orozco, Supervisor Lonetta Johns-Yarleque, and claimant's mother.

## FACTUAL FINDINGS

### PARTIES AND JURISDICTION

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

2. Claimant is a 17-year-old male who is a service agency consumer based on his qualifying diagnoses of cerebral palsy and intellectual disability.

3. As discussed in more detail below, during an Individual Program Plan (IPP) meeting held on July 24, 2017, claimant's mother and the service agency began discussions concerning claimant's need for dental work. The discussions continued periodically until April 12, 2018, when claimant's mother advised service agency staff that dental work had been performed on claimant (including removal of wisdom teeth and treatment for gingivitis) in the amount of \$13,530, which amount claimant's mother wanted to be reimbursed.

4. On or about May 2, 2018, the service agency issued a Notice of Proposed Action, advising claimant's mother that the service agency denied her request because it had not authorized funding before the dental work was performed, and claimant's mother

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<sup>2</sup> All further unspecified statutory references are to the Welfare and Institutions Code.

had not shown she had exhausted available generic funding resources. (Ex. 1.)

5. On or about May 8, 2018, a Fair Hearing Request was submitted to the service agency by claimant's mother, which appealed the denial of her reimbursement demand and requested a hearing. (Ex. 2.)

6. On June 4, 2018, the parties participated in an Informal Meeting concerning claimant's Fair Hearing Request. (Ex. 12.)

7. A hearing was timely scheduled, but thereafter continued twice, once at each party's request. In connection with the continuance requests, claimant's mother executed a written waiver of the time limit prescribed by law for holding the hearing and for the ALJ to issue a decision.

#### CLAIMANT'S BACKGROUND INFORMATION

8. Claimant is described as a person who loves to be active and outdoors. His biggest challenge is frustration over communication problems.

9. He lives at home with his mother and sister; his sister is also a service agency customer.

10. Claimant attends a charter school. He is mainstreamed but receives special education services and supports.

11. Due to his cerebral palsy, claimant has weak muscles throughout his body, including his mouth and jaw. (Ex. C.) As a result, his tongue does not have enough lateral movement to efficiently move food in his mouth, and he has difficulty chewing. (*Ibid.*) Therefore, he adheres to a soft diet to make it easier for him to chew and swallow. (*Ibid.*) Despite efforts by others to help him brush his teeth and floss, claimant usually has food left on his teeth after eating, which results in the development of plaque and calculus on his teeth, progressive gingivitis (inflammation of the gums), and susceptibility to periodontal disease (recession of the bone in the jaw). (*Ibid.*) In addition, claimant has a partially obstructed airway, also caused by his cerebral palsy, which prevents him from

keeping his mouth open for dental procedures. (*Ibid.*) Therefore, dental procedures must be performed under general anesthesia with a dedicated anesthesiologist to ensure the appropriate intake of oxygen during the procedure. (*Ibid.*)

12. Claimant formerly had dental work performed by staff at Childrens' Hospital Los Angeles (CHLA), which accepts payment through the Medi-Cal Dental Program (Denti-Cal). However, claimant's mother stopped taking him to CHLA because staff would physically restrain claimant during dental work, such as routine cleaning. Claimant's mother worried her son would be traumatized by such restraint and develop fear of dental work. Given claimant's constant need for dental services due to the problems discussed above, claimant's mother wanted to avoid any risk of trauma during dental work.

13. Claimant's current dentist is Dr. Sarkissian. Claimant had braces, which were removed in June 2016. He had a dental examination in June 2017 with Dr. Sarkissian. Due to claimant's susceptibility to the dental issues described above, Dr. Sarkissian recommends that claimant's teeth be cleaned three times per year. Denti-Cal will only cover two cleanings per year.

#### CLAIMANT'S RECENT DENTAL WORK AND HIS MOTHER'S INCURRED EXPENSES

14. When the parties met for claimant's annual IPP meeting on July 24, 2017, claimant's mother discussed the above described dental problems with Service Coordinator Marcos Orozco. (Ex. 3, p. 4.) Claimant's mother specifically requested funding assistance for claimant's dental work because of the problems created by his cerebral palsy. She also advised Mr. Orozco that Dr. Sarkissian had discovered claimant's wisdom teeth were not aligned and would have to be extracted. She also told Mr. Orozco claimant had gingivitis, which Dr. Sarkissian said would need to be treated. (*Ibid.*) Mr. Orozco told claimant's mother the service agency would consider funding claimant's dental needs, but first she would have to exhaust available generic resources, such as Denti-Cal. (*Ibid.*)

15. On September 6, 2017, Mr. Orozco sent claimant's mother information about

Denti-Cal and a list of dentists who accept Denti-Cal payment. (Ex. 5.) Claimant's mother persuasively testified that she researched all those listed but determined none could serve claimant's dental needs, because those listed were either out-of-business, did not accept Denti-Cal, were located too far from claimant's home, did not use general anesthesia, and/or had waiting lists of one year or longer. (See also ex. D.)

16. Mr. Orozco testified that he received no contact from claimant's mother for many months after their last correspondence in September 2017. Claimant's mother persuasively testified she had a few follow-up conversations after July 2017, but that she did not contact Mr. Orozco again until the following March of 2018. That was because Mr. Orozco told her to not send him information about claimant's dental needs piece-meal, but rather to do all of her research and send him the accumulated information at one time.

17. A. On March 16, 2018, Dr. Sarkissian performed the above-described dental work on claimant, i.e., removing impacted wisdom teeth and treating gingivitis. (Ex. 11.)

B. Dr. Sarkissian's total charge was \$10,830. (*Ibid.*) Although not entirely clear, the preponderance of the evidence indicates Dr. Sarkissian extracted four wisdom teeth, with associated costs of \$9,390.<sup>3</sup> The charges associated with "excising pericoronal gingiva" (i.e., treating the gingivitis) were \$1,440.

C. The dental surgery was performed under general anesthesia administered by Dr. Avery Mittman, at the cost of \$2,700. (*Ibid.*)

D. Claimant's mother has paid the above amounts, totaling \$13,530.

18. On March 25, 2018, claimant's mother sent Mr. Orozco an e-mail, advising him that claimant needed dental work for his impacted wisdom teeth, under general

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<sup>3</sup> Some of the charges in question expressly mention "extraction, erupted tooth;" others come in groups of four, presumably related to four tooth extractions; others (like x-rays and blood concentrate) would be required for tooth extraction.

anesthesia. (Ex. 6.) Her e-mail did not advise Mr. Orozco that the dental work already had been performed. She explained that CHLA would not perform the dental work, because it only does surgery for patients who go to CHLA for regular teeth cleaning. (*Ibid.*) As described above, claimant was no longer taken to CHLA because of their use of physical restraint during teeth cleanings. (*Ibid.*) She also explained that her research showed none of providers Mr. Orozco previously recommended would do the work under the required circumstances. (*Ibid.*) She included a letter from Dr. Sarkissian's office concerning the medical necessity of the work, a treatment plan and list of charges, and evidence that California Childrens Services (CCS) would not provide any funding. (*Ibid.*)

19. Mr. Orozco, laboring under the impression that claimant had not received the contemplated dental work yet, sent an e-mail to claimant's mother on April 11, 2018, in which he provided her with an updated list of dentists who accept Denti-Cal. (Ex. 7.) The next day, claimant's mother responded by email, advising Mr. Orozco that the dental work had been performed the prior month, and that she was requesting reimbursement. (*Ibid.*)

#### SERVICE AGENCY'S REASONS TO DENY REIMBURSEMENT

20. A. Service agency staff question whether the dental work was medically necessary.

B. The information submitted by claimant's mother was reviewed by the service agency's Oral Health Specialist and Physician review team. (Ex. 8.) The review team noted the use of general anesthesia was related to claimant's cerebral palsy. (*Ibid.*) But despite reviewing notes from Dr. Sarkissian's office, the review team concluded "there is no documentation from dentist that other dental treatment is related to developmental disability." (*Ibid.*)

C. Claimant's mother had previously submitted to Mr. Orozco two notes from Dr. Naji Hamoui, an associate dentist at Dr. Sarkissian's office. (Ex. 6, pp. 8-9.) Dr. Hamoui persuasively explained the general anesthesia was required due to claimant's cerebral palsy

(*ibid.*), a point apparently conceded by the review team.

D. In addition, Dr. Hamoui persuasively explained that the gingivitis treatment was directly related to claimant's cerebral palsy, in that his inability to chew and swallow food due to muscle weakness caused by his disorder left him susceptible to gingivitis. (*Ibid.*) The review team did not comment on that dynamic. Therefore, it was established by a preponderance of the evidence that the gingivitis treatment was medically necessitated by claimant's cerebral palsy.

E. The extraction of four wisdom teeth is another matter. Dr. Hamoui explained in one note that 3D visual images of claimant's mouth showed his wisdom teeth were impacted (trapped within the bone) and erupting directly towards the roots of his adjacent teeth. However, Dr. Hamoui did not relate the cause of this situation to claimant's cerebral palsy or indicate how claimant's neurological disorder necessitated action different than that taken with someone who does not have cerebral palsy but has impacted wisdom teeth. Many people, with or without a neurological disorder, suffer from impacted wisdom teeth and need them removed. Under these circumstances, it was not established that the removal of claimant's wisdom teeth was medically necessitated by his cerebral palsy.

21. A. The service agency specifically denied the reimbursement request because staff did not believe claimant's mother utilized available generic resources, such as CCS, Denti-Cal, or CHLA.

B. However, the service agency failed to establish this by a preponderance of the evidence. For example, claimant's mother checked all the Denti-Cal providers Mr. Orozco referred her to, and confirmed that none would perform the involved dental service under general anesthesia while accepting Denti-Cal payment.

C. Mr. Orozco's supervisor, Lonetta Johns-Yarleque, testified her research revealed CHLA could have provided the dental work in question to claimant under Denti-Cal. However, her research was limited, and she did not understand that CHLA would not

perform surgery on a person who was not a regular patient. As discussed above, claimant was ineligible for treatment at CHLA because he was no longer a regular patient by 2016.

D. Claimant's mother submitted a convincing letter from Eunice Jee, a dentist with CCS, explaining in great detail how she worked with claimant's mother but was unable to find any CCS provider who would perform the dental work in question. (Ex. A.)

22. A. The service agency also specifically denied the reimbursement request because it contended claimant's mother had not notified staff of the impending dental services performed by Dr. Sarkissian beforehand. The service agency depicts the situation as one where claimant's mother unilaterally obtained dental services from Dr. Sarkissian and requested the service agency to pay for it after-the-fact.

B. However, the service agency's above-described depiction is not exactly what happened. As discussed above, claimant's mother had originally alerted Mr. Orozco to the need for these dental services in July 2017. Mr. Orozco did nothing other than email a list of providers who purportedly accepted Denti-Cal. Those referrals ended up not being helpful. On the one hand, the service agency points to a lack of communication from claimant's mother on this issue from October 2017 until March 2018. On the other hand, claimant's mother persuasively testified that was the result of direction from Mr. Orozco to not contact him about the dental work until she had all the information together.

C. The fact that the dental work had already been performed when claimant's mother recontacted Mr. Orozco in March 2018 is perplexing. During the parties' Informal Meeting in June 2018, claimant's mother advised the service agency representative the long gap was because she had lost faith in Mr. Orozco's ability to help the family. (Ex. 12, p. 3.) During the hearing, claimant's mother lightly touched on the same theme.

23. A. Finally, the service agency points to its Purchase of Service (POS) Guideline on Health Services [Medical/Dental] as another reason to deny the reimbursement request. (Ex. 4.) According to this POS, while the service agency will

consider purchasing specialized health services, it will do so only when “no other source of payment is available.” (*Id.*, p. 1.) Therefore, consumers are expected to utilize generic healthcare services. (*Ibid.*) The service agency also requires the service to be contemplated in a consumer’s IPP and “be medically necessary to alleviate a developmental disability. . . .” (*Id.*, p. 2.) The service also must be reviewed and approved before funding, and payment will only be at the Schedule of Maximum Allowances (SMA) within the Medi-Cal system or a vendor rate. (*Id.*, p. 3.)

B. In this case, claimant’s request meets most of the POS criteria, but not all. For example, claimant’s mother proved there was no other funding source; the service agency failed to prove the contrary. The dental services were contemplated in claimant’s IPP, though the service agency was vague about how it would assist claimant to meet that goal. As discussed above, some of the rendered dental services were medically necessitated by claimant’s developmental disability. However, it is true that the service agency was not allowed to review and approve the precise services before they were rendered. It is also true that the costs charged to claimant’s mother substantially exceed the SMA rate, and Dr. Sarkissian is apparently not a service agency vendor.

## LEGAL CONCLUSIONS

### JURISDICTION AND BURDEN OF PROOF

1. An administrative hearing to determine the rights and obligations of the parties, if any, is available under the Lanterman Act to appeal a contrary regional center decision. (§§ 4700-4716.) Claimant’s mother requested a hearing to contest the service agency’s proposed decision denying her reimbursement request, and therefore jurisdiction for this appeal was established. (Factual Findings 1-7.)

2. The standard of proof in this case is the preponderance of the evidence, because no law or statute (including the Lanterman Act) requires otherwise. (Evid. Code,

§ 115.)

3. When one seeks government benefits or services, the burden of proof is on him. (See, e.g., *Lindsay v. San Diego County Retirement Bd.* (1964) 231 Cal.App.2d 156, 161.) In this case, claimant's mother requests funding the service agency has not before agreed to provide, i.e., reimbursement for the costs of dental work rendered to claimant in the amount of \$13,530, and therefore claimant has the burden of proving by a preponderance of the evidence that he is entitled to that funding.

#### THE REIMBURSEMENT REQUEST

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

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

5. A. "Individual program plans shall be prepared jointly by the planning team. Decisions concerning the consumer's . . . services and supports that will be . . . purchased by the regional center or obtained from generic agencies shall be made by agreement between the regional center representative and the consumer or . . . parents. . . ." (§ 4646, subd. (d).)

B. Section 4646.4, subdivision (a), requires regional centers to conform to their POS guidelines, utilize available generic resources, and consider a family's responsibility for providing similar services to a minor child without disabilities. Similarly, under section 4659, subdivision (c), regional centers may not "purchase any service that would otherwise be available from Medi-Cal . . . [or CCS] . . . when a consumer or a family meets the criteria of this coverage but chooses not to pursue that coverage." More specifically, section 4659,

subdivision (d)(1), prevents a regional center from purchasing dental services for a consumer three years or older unless provided with documentation that Medi-Cal, private insurance, or health service plans have denied the same request and an appeal would not have merit.

6. A. In this case, the above mandates of the Lanterman Act have mixed application.

B. In the sense that claimant's dental work required general anesthesia due to his cerebral palsy, the work can be considered specialized dental care within the meaning of section 4512, subdivision (b).

C. Pursuant to regulation 50612, the service agency did not specifically authorize the dental work before it was performed; but, well before the work was done, claimant's service coordinator told claimant's mother the service could be funded if generic resources were not available, which turned out to be the case. Pursuant to regulation 57332, the charges are well beyond the SMA rate, though it is also clear that a dentist who does not accept Denti-Cal as payment will not charge at the SMA rate for this kind of work.

D. Pursuant to section 4646, subdivision (d), claimant's IPP team discussed these exact dental services in July 2017, well before the services were rendered, though there was a vague conclusion about what to do if no generic funding source was found.

E. Pursuant to section 4646.4, subdivision (a), the service agency's POS on dental services generally frowns on this kind of reimbursement request, though much of the POS criteria is met in this case. Also, claimant's mother diligently searched for generic funding sources, but found that none were available. The service agency could not find one either. Finally, claimant's mother should be responsible for funding the removal of claimant's wisdom teeth, an expense usually borne by the family of a typical child. But she should not have to pay for expenses caused by claimant's cerebral palsy, because the family of a minor child without disabilities would not be expected to incur gingivitis

treatment costs or the need for general anesthesia during dental work.

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

8. A. In this case, the equities weigh in favor of claimant's mother to an extent. She advised claimant's service coordinator about the need for dental services during the IPP process; the information provided to her by the service agency was not helpful, in that no generic resource was available and the service agency had no other solution for claimant's unique dental needs. Moreover, the service coordinator gave claimant's mother confusing directions about providing him all the dental information after she concluded her research, which tended to delay her report to him about the actual services performed. The service agency agrees general anesthesia was required by claimant's cerebral palsy; it did not provide a material dispute concerning whether the gingivitis work was medically necessitated by the cerebral palsy.

B. On the other hand, the remaining equities weigh in favor of the service

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<sup>4</sup> Prior OAH decisions pertaining to other consumers are only advisory, not binding.

agency. For example, after admittedly being told to do so, claimant's mother inexplicably failed to report back to claimant's service coordinator after she completed her research and before the dental expenses were performed. This was a complete break-down of the IPP process. In addition, the dental work related to extracting claimant's wisdom teeth was not proven to relate to his cerebral palsy, and therefore should not be reimbursable. As discussed in great detail above, the mandates of the Lanterman Act have mixed application to this case, meaning less than full reimbursement will not thwart the purposes of the Lanterman Act.

C. Under these unique circumstances, the best way to resolve this case is to grant reimbursement where the mandates of the Lanterman Act will be upheld, and deny it where it would be contrary to the Lanterman Act. Such a process also will fairly track the weight of the equities. In this case, that means claimant's mother should be reimbursed only for the dental work medically necessitated by claimant's cerebral palsy, i.e., the gingivitis treatment and the general anesthesia. Those costs total \$4,140. (Factual Findings 1-23; Legal Conclusions 1-7.)

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## ORDER

Claimant's appeal is granted, in part, and denied, in part. The Eastern Los Angeles Regional Center shall forthwith reimburse claimant's mother in the amount of \$4,140 for some of claimant's dental work involved in this case.

DATED:

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ERIC SAWYER,  
Administrative Law Judge  
Office of Administrative Hearings

## NOTICE

This is the final administrative decision; both parties are bound by this decision. Either party may appeal this decision to a court of competent jurisdiction within 90 days.