

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of :

CLAIMANT,

vs.

NORTH LOS ANGELES COUNTY REGIONAL
CENTER,

Service Agency.

OAH No. 2018060553

DECISION

Matthew Goldsby, Administrative Law Judge with the Office of Administrative Hearings, heard this matter on September 13, 2018, at Chatsworth, California.

Erin M. Donovan, Attorney at Law, appeared and represented the North Los Angeles County Regional Center (Service Agency).

Claimant's mother¹ appeared and represented claimant.

STATEMENT OF ISSUES

The issue in this matter is whether the Service Agency should be required to fund a dental implant for claimant.

¹ Claimant and his family are not identified by name in order to protect their privacy.

EVIDENCE CONSIDERED

Exhibits: Service Agency's Exhibits 1-19

Testimony: Irwin Weinstein, D.D.S.; Lori Kosor, Consumer Service Coordinator; Carlo de Antonio, M.D.; claimant's mother.

FACTUAL FINDINGS

JURISDICTIONAL AND BACKGROUND FACTS

1. On May 4, 2018, the Service Agency denied claimant's request for funding of a dental implant. The determination was based on the finding that "dental implants are not a medically necessary service, and are known as having a high risk for failure and for infection, and thus, do not constitute an effective or cost-effective service to meet [claimant's] needs." (Ex. 1.) Claimant filed a Request for a Fair Hearing, contesting the "denial of funding for dental implant."

2. Claimant is a consumer of the Service Agency based on a diagnosis of autism. He is 25 years old and lives at a group home, having demonstrated "great improvement in increasing his independent living skills." (Ex. 10.) Claimant has a history of PICA behavior, chewing on inappropriate items without swallowing, and of poor dental hygiene.

3. Claimant's mother was appointed the limited conservator of claimant's person. During an Individual Program Plan (IPP) meeting on March 29, 2018, claimant's mother expressed dissatisfaction with the group home's interaction with claimant when he brushes his teeth. She had requested staff at the group home to provide hand-over-hand assistance when claimant brushes his teeth, but claimant continued to experience tooth decay.

4. A stated goal of the IPP is to support claimant in his pursuit of good health. The assigned case service coordinator referred the mother to a dental consultant for the

Service Agency, and the Service Agency funded the services of an occupational therapist to work with claimant in the use of a water-pik device to improve his oral hygiene. After demonstrating "positive progress," claimant continued to "require direct supervision when using the water-pik device." (Ex. 14.)

REQUESTED SERVICES AND SUPPORTS

5. Claimant's primary treating dentist is Kenneth K. Lee, D.D.S., who has treated claimant for 15 years. Dr. Lee is a vendor of the Service Agency based not only on his skills and qualifications in dentistry, but also on his ability to administer general anesthesia, often required for Service Agency consumers with developmental disabilities. The Service Agency has funded Dr. Lee to perform various dental procedures for claimant, including a crown replacement, regular deep cleaning, multiple root canals, and four extractions due to tooth deterioration, all of which required general anesthesia.

6. Dr. Lee diagnosed a treatment plan for an implant on tooth #18 to replace a missing molar. On June 14, 2018, Dr. Lee provided the following written reasons for the recommended treatment plan as follows:

[Claimant] has opposing teeth and requires this tooth for grinding food and to avoid malocclusion. If he does not receive this treatment he will develop #15 supra eruption² and we will have to remove that tooth at that point the risk of malocclusion, teeth shifting is imminent. [sic] It is my

² Eruption is a process whereby a tooth emerges from the gum and becomes more visible. The tooth opposing any given tooth prevents eruption to the point of increased exposure to decay or tooth loss.

strong opinion that [claimant] will benefit from this implant and is necessary.(Ex. 19.)

7. The services proposed by Dr. Lee are not covered by private insurance or Denti-Cal. Claimant's mother requested the Service Agency to fund the dental implant recommended by Dr. Lee.

SERVICE AGENCY'S REVIEW AND DENIAL

8. Irwin A. Weinstein, B.S., D.D.S., is a dental consultant to the Service Agency. He is a diplomat of the American Board of Oral Surgery and the National Dental Board of Anesthesiology. Dr. Weinstein knows Dr. Lee and testified that he considers Dr. Lee to be "an excellent dentist."

9. Dr. Weinstein reviewed the treatment plan recommended by Dr. Lee, and determined that the procedure was not medically necessary. Because the missing molar is at the end of the lower row of teeth with no resulting gap between teeth,³ Dr. Weinstein does not expect claimant's teeth to shift. Moreover, Claimant is still able to chew and he has not lost any weight resulting from any eating disorder caused by the loss of the molar. Dr. Weinstein does not share Dr. Lee's concern that the tooth directly above the missing molar, which would be tooth #15, will necessary erupt down, testifying, "You can never tell if a tooth will erupt up or down."

10 Nonetheless, Dr. Weinstein opined that the concerns raised by Dr. Lee could be addressed by another procedure. Specifically, to prevent the eruption of tooth #15, Dr. Weinstein would recommend installing a cantilever on the crown of the adjacent tooth #19. The cantilever would extend out from the crown, and block the upper tooth from

³ Presumably, tooth #17, a wisdom tooth on the lower left row of teeth, was among the other teeth that were previously extracted.

erupting down. Dr. Weinstein would recommend funding the cantilever procedure because it is simpler, self-cleaning, and less invasive.

11. At the hearing, Dr. Weinstein testified that a dental implant would pose a risk to claimant because he would be required to undergo general anesthesia at three different stages of the procedure. Moreover, as a patient with developmental disabilities, claimant was more prone, in Dr. Weinstein's opinion, to complications relating to infection from lack of care.

12. Carlo De Antonio, M.D., FAAP, is the Director of Clinical Services for the Service Agency. He reviewed the treatment plan recommended by Dr. Lee and discussed the request for services with Dr. Weinstein. He did not discuss the treatment plan with Dr. Lee. At the hearing, Dr. De Antonio testified that he concurred with Dr. Weinstein's opinion that the proposed dental implant was not medically necessary and posed undue risk to claimant.

13. Dr. Weinstein and Dr. De Antonio generally referred to anecdotal cases of other unidentified consumers who suffered infections or complication relating to dental implants. Dr. De Antonio acknowledged that dental implants are commonly used in the practice of dentistry, and that no warning, alert, or recall has been issued by any regulatory agency, such as the United States Food and Drug Administration or the Dental Board of California.

LEGAL CONCLUSIONS

1. The Lanterman Developmental Disabilities Services Act (Lanterman Act) governs the Service Agency's obligations and responsibilities to provide services to individuals with developmental disabilities. (Welf. & Inst. Code, § 4500 et seq.) The Lanterman Act requires a regional center to provide services and supports that "enable persons with developmental disabilities to approximate the pattern of everyday living available to people without disabilities of the same age." (Welf. & Inst. Code, § 4501.)

2. "Services and supports for persons with developmental disabilities" is defined at Welfare and Institutions Code section 4512, subdivision (b), as follows:

Specialized 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, and 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. Services and supports listed in the individual program plan may include, but are not limited to, diagnosis, evaluation, treatment, personal care, . . . [and] specialized medical and dental care . . .

3. The individual program plan process must include a review of the general health status of the consumer, including "medical, dental, and mental health needs," when agreed to by the consumer and his authorized representative. (Welf. & Inst. Code, § 4646.5, subd. (a)(6).)

4. Claimant bears the burden of proof as the party seeking government benefits or services. (*Lindsay v. San Diego County Retirement Bd.* (1964) 231 Cal.App.2d 156.) The standard of proof in this case is the preponderance of the evidence. (Evid. Code, § 115.)

5. In this case, the weight of the evidence established that claimant has substantial dental issues caused by his developmental disability, manifested by PICA behaviors and his inability to maintain a ritual of proper hygiene. His condition has led to tooth decay and, ultimately, the loss of four teeth due to extraction.

6. Claimant presented a credible opinion from his primary treating dentist that a dental implant is medically necessary. Dr. Lee is recognized by the Service Agency to be an authorized vendor and an excellent dentist, and none of the reasons cited Dr. Lee relate to cosmetic or non-medical objectives. On the contrary, all of the reasons cited by the treating dentist are directed toward the prevention of future dental complications, including malocclusion and the potential eruption of the tooth above the missing molar. Claimant's history of substantial dental issues is forceful evidence that preventative measures are more likely to benefit claimant than the reliance on nature to maintain the status of his dental well-being.

7. The Service Agency did not present convincing evidence that the procedure was either medically unnecessary or posed a "high risk for failure and for infection," the two reasons cited for the denial of the request. Dr. Weinstein acknowledged that he would recommend the funding to implement the cantilever procedure that he recommended, essentially admitting that the procedure was sufficiently necessary to warrant remedial services. The mere fact that there is a difference of medical opinion concerning the desirability of one particular medical procedure over another does not establish that the determination to use one of the procedures is negligent. (*Clemens v. Regents of University*

of California (1970) 8 Cal.App.3d 1, 13.) It follows that this difference in opinion does not necessarily establish that Dr. Lee's proposed treatment would be less effective than Dr. Weinstein's proposed treatment at achieving the goals of claimant's IPP to have good health.

8. Moreover, neither Dr. Weinstein nor Dr. De Antonio described any facts to support their opinions that the procedure posed a "high risk." Although there is an inherent risk in any procedure requiring anesthesia, claimant has demonstrated that the risk is not high, having tolerated general anesthesia for numerous past dental procedures authorized by the Service Agency, including root canals and deep cleaning. Other than generalized anecdotal references of other consumers, there was no competent scientific evidence of increased risk of infection. The law does not accord to an expert's opinion the same degree of credence or integrity as it does the data underlying the opinion. (*County of Sacramento v. Workers' Comp. Appeals Bd. (Brooks)* (2013) 215 Cal.App.4th 785, *as modified* (May 1, 2013).) Without evidence of the specific circumstances of the unidentified consumers who suffered complications, and other contributing causes to those alleged complications, the facts supporting the experts' opinions of risk are given little credence or integrity.

9. The preponderance of the evidence established that claimant needs the proposed dental implants to approximate the pattern of everyday living available to people without disabilities of the same age and no generic funding source is available.

ORDER

Claimant's appeal is granted. The Service Agency shall fund a dental implant for claimant.

DATED:

MATTHEW GOLDSBY

Administrative Law Judge

Office of Administrative Hearings

NOTICE

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