

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

vs.

ALTA CALIFORNIA REGIONAL CENTER,

Service Agency.

OAH No. 2018060677

DECISION

This matter was heard before Administrative Law Judge Ed Washington, State of California, Office of Administrative Hearings (OAH), in Sacramento, California, on August 16, 2018.

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

Claimant was present at the hearing and represented by his father.

Oral and documentary evidence was received. At the conclusion of the hearing, the record was held open to allow the parties to file written closing briefs. On September 4, 2018, both claimant and ACRC filed closing briefs. The record closed and the matter was submitted for decision on September 4, 2018.

ISSUE

Is ACRC required to recommence funding of medication management services for claimant from ACRC vendored service provider Turning Point Community Programs?

FACTUAL FINDINGS

1. Claimant is a 45-year-old man eligible for ACRC services based on a diagnosis of Autism Spectrum Disorder. He has also been diagnosed with mild intellectual disability and bipolar disorder. Claimant is unconserved and lives with his parents in a home in Sacramento. Claimant can perform most activities of daily living and performs most independent living skills with minimum reminders. He is ambulatory, drives his own car, and performs all of his personal care needs including dressing and hygiene. Though claimant can communicate his needs and wants verbally, he is often uncomfortable when spoken to by an unfamiliar person and does not initiate social interaction with others.

2. Due to claimant's level of independence, he does not receive In-Home Support Services. He has no desire to move away from his parents and live independently. Claimant receives Supplemental Security Income as a support benefit and receives services from ACRC pursuant to the Lanterman Developmental Disabilities Act. (Welf.& Inst. Code, § 4500 et seq.)¹

3. Claimant's father asserts that he needs anger management services. According to claimant's recent Individual Program Plan (IPP), claimant has difficulty expressing himself, and when that occurs he can become angry and "both verbally and physically aggressive." According to claimant's father, claimant's ex-wife was emotionally abusive to claimant during their marriage, causing him to suffer psychological damage. Claimant's parents have also reported to ACRC that claimant has destroyed property when angry and that they were "very concerned" that, due to claimant's outbursts, it was "a matter of time before [he] hurts himself or someone else."

¹ Unless otherwise indicated, all statutory references are to the California Welfare and Institutions Code.

4. Due to these concerns, ACRC referred claimant to Turning Point Community Programs (Turning Point) for medication management and counseling. Claimant's August 2017 IPP provides that he will receive "counseling for his anger" through July 2018 with "funding from ACRC or his insurance." Through Turning Point, claimant received counseling from Cynthia C. Arnett, M.D., a psychiatrist with whom he developed a strong rapport. ACRC terminated funding for this service on June 18, 2018, and recommended that claimant utilize psychiatric/medication management services through his family's private healthcare plan and insurance provider, Medi-Cal/Kaiser Permanente (Medi-Cal/Kaiser).

5. Medi-Cal/Kaiser is currently funding claimant's psychiatric services and ACRC has arranged for claimant to receive 10 hours of anger management through Passport to Learning. Claimant's July 2018 IPP specifies that he will be "[p]rovided with ACRC funded anger management classes through Passport to Learning, [to] learn effective communication skills and techniques to reduce anger outbursts, through [July 2019]."

6. Eriko Sato works for ACRC and is claimant's assigned service coordinator. Ms. Sato testified that, pursuant to a 2008 IPP meeting, ACRC began funding medication management services through Turning Point in 2008 to stabilize claimant's symptoms and manage his behavior. Medication management service involves a psychiatrist meeting with a patient to assess their symptoms and determine an appropriate course of prescription medication treatment. The psychiatrist will then engage in ongoing follow-up consultation sessions with the patient to determine the effectiveness of the medication treatment plan, and make adjustments as needed. Counseling sessions, commonly referred to as "supportive psychotherapy," are frequently an integral component of medication management. Supportive psychotherapy sessions were provided with claimant's Turning Point medication management services. These services were provided to claimant primarily by Dr. Arnett for several years. The funded service plan initially included both counseling

services and medication management, but was changed to medication management exclusively prior to 2017. As of July 2018, claimant's medication management treatment plan included prescriptions for Zoloft, Wellbutrin XL, Topamax, Motrin, and Prinzide/Zestoretic.

7. Ms. Sato participated in the decision to terminate ACRC funding of Turning Point medication management services for claimant. She testified that she learned claimant's insurance would provide him the medication management services he needs, and was aware that he was receiving both medication management services and counseling through Medi-Cal/Kaiser, as of the day of hearing. Ms. Sato testified that ACRC decided to terminate funding for Turning Point medication management services because there are generic resources available to meet claimant's needs.

8. Melody Zotovich is a client services manager for ACRC. She supervises Ms. Sato, along with 11 other service coordinators. Ms. Zotovich has oversight responsibility for approximately 960 ACRC clients, including claimant. Ms. Zotovich also participated in the decision to terminate ACRC funding of Turning Point services for claimant.

9. Ms. Zotovich testified that when ACRC learned claimant was receiving medication management services through his insurance provider, there was no longer an assessed need for the regional center to fund those services. Ms. Zotovich is familiar with the medication management services Turning Point provided to claimant for several years and believes, based on information obtained from Medi-Cal/Kaiser and claimant's parents, that services through Medi-Cal/Kaiser can fully satisfy claimant's needs as Medi-Cal/Kaiser offers medication management services as well as anger management counseling through its behavioral health plan.

10. On May 9, 2018, Ms. Zotovich issued a Notice of Proposed Action, which specifies that thirty days thereafter, ACRC would terminate funding of claimant's Turning Point medication management services because claimant was already receiving medication

management services through Medi-Cal/Kaiser, a generic resource legally responsible for providing any necessary psychiatric services to claimant. She noted that for ACRC to continue to fund medication management services when they were currently being provided through claimant's insurance would not be a cost-effective use of ACRC resources as the funded service would be duplicative.

11. On June 8, 2018, claimant filed a Fair Hearing Request, appealing ACRC's determination and requesting that "ACRC reinstate Turning Point services," because he would like "to retain Turning Point [and psychiatrist Dr. Arnett as claimant's] doctor."

12. Claimant's father testified that he no longer believed the medication management services were necessary. However, he would like ACRC to continue to fund medication management services through Turning Point so claimant can continue to meet with Dr. Arnett to address his anger management issues.

13. Claimant's father testified that Dr. Arnett told him that the only way she can provide medication management or counseling services to claimant is through Turning Point. This is the sole reason claimant and his father want ACRC to continue to fund medication management services through Turning Point, despite these same services being available through Medi-Cal/Kaiser.

14. Claimant's father testified that because Dr. Arnett and his son have developed a good relationship, Dr. Arnett "should wear all the hats." He testified that because claimant frequently has difficulty communicating and "opening up" to others, it has been difficult for claimant to develop a connection with therapists or counselors. He testified that Dr. Arnett has been the sole exception. Claimant's father accompanies claimant during each of his counseling sessions and has observed that the sessions with Dr. Arnett are more effective than counseling sessions claimant has with other therapists.

15. According to claimant's father, claimant's anger management issues have significantly lessened since claimant's divorce in 2011. He feels claimant's connection with

Dr. Arnett has been an instrumental component of this change. He testified that claimant “does not act out in terms of being physically violent, but will get angry and obstinate” at times. Claimant’s father conceded that claimant is receiving medication management services through Medi-Cal/Kaiser. Because claimant’s father prefers that claimant continue to receive services from Dr. Arnett, he has not researched or considered the anger management services available to his son through Medi-Cal/Kaiser’s behavioral health plan.

LEGAL CONCLUSIONS

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 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. The Lanterman Act mandates that a consumer’s IPP be based on his or her individual needs. In providing the services and supports necessary to meet those needs, the regional center must look to the availability of generic resources, avoid duplication of services, and ensure the cost-effective use of public funds.

3. Section 4646, subdivision (a), provides:

It is the intent of the Legislature to ensure that the individual program plan and provision of services and supports by the regional center system is centered on the individual and the

family of the individual with developmental disabilities and takes into account the needs and preferences of the individual and family, where appropriate, as well as promoting community integration, independent, productive, and normal lives, and stable and healthy environments. It is the further intent of the legislature to ensure that the provision of services to consumers and their families be effective in meeting the goals stated in the individual program plan, reflect the preferences and choices of the consumer, and reflect the cost-effective use of public resources.

4. Section 4648, subdivision (a)(8), specifies:

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.

5. Section 4646.4, subdivision (a)(1), (2) and (3), provides:

Effective September 1, 2008, regional centers shall ensure, at the time of development, scheduled review, or modification of a consumer's individual program plan developed pursuant to

Sections 4646 and 4646.5, or of an individualized family service plan pursuant to Section 95020 of the Government Code, the establishment of an internal process. This internal process shall ensure adherence with federal and state law and regulation, and when purchasing services and supports, shall ensure all of the following:

(1) Conformance with the regional center's purchase of service policies, as approved by the department pursuant to subdivision (d) of Section 4434.

(2) Utilization of generic services and supports when appropriate.

(3) Utilization of other services and sources of funding as contained in section 4659.

6. Section 4644, subdivision (b), defines "generic agency" to mean:

Any agency which has a legal responsibility to serve all members of the general public and which is receiving public funds for providing such services.

7. Section 4659, provides in part:

(a) Except as otherwise provided in subdivision (b) or (e), 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 supplemental program.

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

[¶] ... [¶]

(c) Effective July 1, 2009, notwithstanding any provision of the law to the contrary, regional centers shall not purchase any service that would otherwise be available from Medi-Cal, Medicare, the Civilian Health and Medical Program for Uniform Services, In-Home Support Services, California Children's Services, private insurance, or a health care service plan when a consumer or a family meets the criteria for this coverage but chooses not to pursue that coverage ...

8. Medi-Cal/Kaiser is presently the generic resource responsible for providing claimant's mental health services and medication management. Though claimant's father expressed a preference to utilize Turning Point services so claimant may see the psychiatrist he prefers, there was no evidence presented to demonstrate that Medi-Cal/Kaiser cannot meet claimant's current needs. Claimant must first utilize this available resource before ACRC may consider referral to an ACRC funded psychiatrist.

9. Claimant's Service Coordinator, Ms. Sato, is available to assist claimant and his father in coordinating these services to ensure they meet claimant's needs.

ORDER

Claimant's appeal from ACRC's termination of funding for his medication management services through Turning Point is DENIED. ACRC is not required to recommence funding of those services.

DATED: September 17, 2018

ED WASHINGTON

Administrative Law Judge

Office of Administrative Hearings

NOTICE

This is the final administrative decision in this matter. Each party is bound by this decision. An appeal from the decision must be made to a court of competent jurisdiction within 90 days of receipt of the decision. (Welf. & Inst. Code, § 4712.5, subd. (a).)