

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

and

SAN DIEGO REGIONAL CENTER,

Service Agency.

OAH No. 2018061158

DECISION

Adam L. Berg, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter in San Diego, California, on August 7, 2018.

Claimant's father represented claimant.

Ron House, Attorney at Law, represented San Diego Regional Center (SDRC).

The matter was submitted on August 7, 2018.

ISSUE

Is SDRC required to fund additional speech therapy for claimant to supplement what is provided by his school district and private insurance?

FACTUAL FINDINGS

BACKGROUND

1. Claimant is an 11-year-old male who is eligible for regional center services based on a diagnosis of autism spectrum disorder and intellectual disability. On May 24, 2018, SDRC served claimant's father with a Notice of Proposed Action denying his

request for speech therapy. As the basis for its decision, SDRC stated that speech therapy is available through generic resources, including the school district and private insurance.

2. Claimant's father timely filed a Fair Hearing Request. The request stated that claimant receives one hour per week of speech therapy through the school district and private insurance. Claimant requests SDRC to fund additional speech therapy for up to five hours per week until such time that the school district provides additional hours.

### SDRC'S EVIDENCE

3. Kate Kinnamont is a regional manager for SDRC. In that position, she oversees a team of service managers and service coordinators. Ms. Kinnamont holds a master's degree in counseling and human development; she has worked at SDRC since 1999. Ms. Kinnamont testified as to the reasons why SDRC denied claimant's request.

4. Claimant last had an Individual Program Plan (IPP) on November 7, 2016. Since the IPP, claimant no longer lives with his father, but instead resides at a County residential children's center. Claimant last had an Individualized Education Program (IEP) meeting on April 30, 2018. At the time, claimant was attending a public middle school. There, claimant received 27 hours per year of language and speech services, which amounted to approximately one hour per week. In the IEP, it was determined that claimant would transition to placement at a non-public school (NPS). According to the IEP, after claimant was placed at the NPS, a new IEP meeting will be held within 30 to 45 days of enrollment. A psychoeducational assessment and speech/language assessment were deferred until the NPS referral process was complete. It was noted that claimant's father reserved the right to request an assessment at any time.

5. Ms. Kinnamont noted that there has been no speech assessment documenting the type of service and supports claimant requires in this domain. Claimant submitted a letter from Melissa Larson, M.S. CCC-SLP, a licensed speech

pathologist. Ms. Larson has been providing claimant speech services one time per week in the home. She noted that claimant's aggressive behaviors present a risk to himself and others, and therefore he requires in-home speech-language services. Ms. Larson believes that claimant would benefit from speech-language therapy five times per week; however, she noted there are a limited number of providers who provide in-home services. Ms. Kinnamont testified that the letter was insufficient to establish that claimant requires five hours per week of speech therapy. This was because the letter contained no other information, such as test results, as to how Ms. Larson determined the number of hours that would be necessary.

6. Finally, Ms. Kinnamont noted that speech therapy is typically provided by a school district and covered by private insurance. Claimant is required to utilize generic resources before SDRC is authorized to fund a service. She also noted that since speech therapy is considered an educational service, SDRC is prohibited from funding the service unless SDRC determines that service is a primary or critical means for ameliorating the physical, cognitive, or psychosocial effects of claimant's developmental disability, or the service is necessary to enable claimant to remain in his or her home and no alternative service is available to meet his needs. She noted that even if SDRC were to fund speech therapy, SDRC could only pay a provider the Medi-Cal contracted rate, which is substantially lower than what a private insurance company pays providers.

#### CLAIMANT'S EVIDENCE

7. Claimant's father testified that he is only requesting stop-gap funding for speech therapy until claimant's new NPS can conduct an assessment and increase the level of speech services from what claimant previously received at his old school. Claimant's father, who is active duty military, was only able to get his insurance company to cover claimant's speech therapy after he obtained assistance from his congressman. His insurance company will cover speech therapy, potentially up to five

days a week, but the problem is locating a provider who is willing to go to the home. Ms. Larson, who has been providing in-home speech therapy weekly since approximately March 2018, is unable to provide any more sessions because she receives no reimbursement from the insurance company for travelling to a client's house. Claimant's father has not found any other providers who would travel at the insurance company's contract rate. Claimant's father thinks it would be necessary to provide mileage reimbursement for a provider in order to make it financially feasible for a provider to travel to the home.

8. Claimant's father agreed with SDRC that claimant's behavior issues make it difficult to transport him to a speech therapist's office. In-home service is really the only option until speech therapy can be provided in the school setting. Claimant's father understands that at the IEP meeting he agreed to defer a speech-language assessment until after claimant was placed and enrolled at the NPS. However, he felt it was critical to first get claimant placed in a new school. Claimant will enroll in the new NPS in September. Claimant's father reiterated that he is only looking for coverage until such time that claimant begins to receive therapy in school.

## 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 by a preponderance of the evidence that IRC should fund the requested service. (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. (*Assn. for Retarded Citizens v. Dept. of Developmental Services* (1985) 38 Cal.3d 384, 388.)

3. 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.

4. The 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. 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.

6. A regional center's responsibilities to its consumers are set forth in Welfare and Institutions Code sections 4640-4659.

7. 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.

8. Welfare and Institutions Code section 4659, subdivision (c), provides that regional centers shall not purchase any service that would otherwise be available from Medi-Cal, private insurance, or a health care service plan when a consumer or a family meets the criteria of this coverage but chooses not to pursue that coverage.

9. Welfare and Institutions Code section 4434, subdivision (d), provides that DDS shall review new or amended purchase-of-service policies prior to implementation by the regional center to ensure compliance with statute and regulation. DDS shall take appropriate and necessary steps to prevent regional centers from utilizing a policy or guideline that violates any provision of the Lanterman Act or any regulation adopted thereunder.

10. Welfare and Institutions Code section 4646.4, subdivision (a), requires regional centers to establish an internal process that ensures adherence with federal and state law and regulation, and when purchasing services and supports, ensures conformance with the regional center's purchase of service policies.

11. 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).)

12. 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.)

13. The regional center is prevented from funding "educational services" for children under the age of 17, although an exemption may be granted on an individual basis in "extraordinary circumstances" when the regional center determines that the service is "a primary or critical means for ameliorating the physical, cognitive, or psychosocial effects of the consumer's developmental disability, or the service is

necessary to enable the consumer to remain in his or her home and no alternative service is available to meet the consumer's needs." (Welf. & Inst. Code, § 4648.5.)

## EVALUATION

14. Claimant failed to meet his burden of establishing that SDRC is required to fund additional speech therapy. In this case, the issue is really not the funding of the service, because claimant's insurance company has agreed to fund the service, theoretically up to the hours claimant has requested. However, the problem is that because of claimant's behavior issues, there is significant risk and logistical problems with transporting claimant to a provider's office. This necessitates the provider having to travel to claimant, but it has proven difficult to find a provider who is willing to do this without extra reimbursement.

Under the Lanterman Act, SDRC "must adhere to federal and state laws and regulations" and must purchase services and supports pursuant to the purchase of service policies. (Welf. & Inst. Code, § 4646.4, subd. (a).) Even if SDRC were to fund speech-language therapy, it is required by law to reimburse the vendor at the Medi-Cal contracted rate, which is less than what claimant's private insurance company pays. Thus, merely funding speech-language therapy would not accomplish claimant's desire to actually receive this service. SDRC would have to offer other financial incentives to a provider, such as mileage reimbursement, in order to actually obtain a provider who would travel to claimant multiple times per week. However, as SDRC is limited to reimbursement at a rate set by DDS, SDRC is prohibited by law from reimbursing a provider for travel expenses.

Claimant's father's testimony was credible, heartfelt, and sincere. It is clear that he only wants the best treatment for his son, and he believes that speech-language therapy will improve the quality of his life. Although Ms. Larson authored a letter in which she stated claimant would benefit from five hours per week of therapy, there was insufficient



evidence establishing the reasons to justify her conclusion. Once claimant undergoes speech-language testing at his new school, there should be a clearer picture of what services would be best for claimant. However, SDRC correctly notes that speech-language therapy is an “educational service” that regional center may not fund absent extraordinary circumstances not identified here. (Welf. & Inst. Code, § 4648.5.) Because the amount of speech-language therapy provided by the school has not yet been challenged, it is premature to find that claimant has exhausted his generic resources. (Welf.& Inst. Code, § 4646.4.) For the reasons, SDRC is simply not authorized under the Lanterman Act to fund speech therapy at this time.

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## ORDER

Claimant’s appeal from SDRC’s determination that it will not fund additional speech therapy is denied.

DATED: August 20, 2018

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ADAM L. BERG

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.**