

**BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA**

**In the Matter of:**

**CLAIMANT,**

**vs.**

**SAN GABRIEL/POMONA REGIONAL CENTER,**

**Service Agency.**

**OAH No. 2019010705**

**DECISION**

Jennifer M. Russell, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in Pomona, California on January 24, 2020.

Daniel Ibarra, Fair Hearing Specialist, represented San Gabriel/Pomona Regional Center (SGPRC or service agency). Claimant's mother (Mother) represented Claimant, who was present at the hearing.<sup>1</sup>

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<sup>1</sup> To preserve confidentiality Claimant and Mother are not identified by name.

The matter was submitted for decision on January 24, 2020. The Administrative Law Judge makes the following Factual Findings, Legal Conclusions, and Order.

## **ISSUES**

1. Whether SGPRC should continue funding 10 hours per month of physical therapy for Claimant.
2. Whether SGPRC should continue funding five hours per month of occupational therapy for Claimant.

## **FACTUAL FINDINGS**

### **Jurisdictional Matters**

1. By Notice of Proposed Action letter dated December 12, 2018, SGPRC informed Mother the service agency was denying funding for Claimant's physical and occupational therapy services.
2. On January 7, 2019, acting on behalf of Claimant, Mother filed a timely Fair Hearing Request. Thereafter, these administrative proceedings ensued.

### **Claimant's Developmental Disabilities, its Effects, and Ameliorative Therapies**

3. As set forth in his most recent Individual Program Plan (IPP), dated November 29, 2018, updated June 29, 2019, Claimant is a four-year-old male consumer of SGPRC due to his qualifying diagnoses of Cerebral Palsy, Epilepsy, and

Profound Intellectual Disability. Claimant resides with his parents and his siblings. Claimant receives specialized academic instruction in his home because his complex medical issues prevent him from attending a classroom program.

4. Claimant presents with chronic respiratory failure, periventricular leukomalacia, visual impairment and Gullian Barre Syndrome, a neurological disorder in which the body's immune system attacks on the nervous system cause ascending paralysis. He breathes through a tracheostomy tube. He feeds via a percutaneous endoscopic gastrostomy or G-tube insertion into his stomach through his abdomen. He is non-ambulatory. He is non-verbal. He requires full support with his personal care and medical care needs. He requires supervision at all times.

5. Claimant's gross motor skills are limited due to significant global hypotonicity. He has been receiving physical therapy at a frequency of two 50-minute sessions per week since April 2015. His most recent physical therapy progress report offered at the administrative hearing, which is dated May 3, 2019, identifies several therapeutic goals including achieving the ability to tolerate supported standing with maximal assistance, the ability to maintain a tall kneeling position, the ability to maintain a modified quadruped position (propped on elbows), the ability to maintain a propped sitting position, and the ability to consistently maintain his arms in a propped sitting position. (Exhibit 11.)

6. Claimant has been receiving occupational therapy at a frequency of one session per week since June 2015. His most recent occupational therapy progress report offered at the administrative hearing, which is dated October 25, 2018, identifies occupational goals of improving Claimant's fine motor skills, trunk strength, and visual-motor skills. (Exhibit 15.)

7. Claimant's physical and occupation therapy services are administered to him at his home where he receives his specialized academic instruction.

## **Funding Claimant's Physical and Occupational Therapies**

8. Mother applied to Kaiser Permanente (Kaiser), Claimant's primary medical provider/insurer, for coverage of Claimant's in-home physical and occupational therapy services. Kaiser denied the application informing Mother it determined Claimant requires long-term therapeutic interventions and its home health therapies are limited to short-term rehabilitation. Mother appealed the denied application. At the time, Claimant was within the Eastern Los Angeles Regional Center (ELARC) catchment area, and ELARC agreed to fund the costs of Claimant's in-home physical and occupational therapy services while the appeal to Kaiser was pending. Claimant and his family subsequently relocated from ELARC's to SGPRC's catchment area, and SGPRC continued funding the costs of Claimant's in-home physical and occupational therapy services pending resolution of Mother's appeal to Kaiser.

9. Between August 2017 and April 2019, Mother was ensnared in Kaiser's bureaucratic internal appeal processes. By letter dated April 24, 2019, Kaiser informed Mother it determined in-home physical and occupational therapy services were not medically necessary for Claimant. Kaiser offered to conduct periodic re-assessments.

We denied your request for home PT/OT for your son . . .  
because our medical record notes and recent evaluation  
supports that PT/OT is not medically needed at this time.  
He does not qualify for PT/OT for care of quadriplegic  
cerebral palsy, global delay, on a ventilator. Medical expert

opinion and committee review say PT/OT is not needed due to :

- Longstanding nature or functional loss.
- Caregiver (mom) is excellent at providing the passive range of motion exercises.
- Equipment is intact, no new equipment is needed.

Kaiser Permanente will provide periodic check-ups to assess for PT/OT needs every 3 months, via an outsourcing agency.

(Exhibit 21.)

10. Mother again appealed Kaiser's determination to deny Claimant's request for physical and occupational therapy services. At the time of the administrative hearing, Kaiser had authorized, but had not yet provided, in-home physical and occupational therapy services for Claimant. A Kaiser physician's Progress Notes, dated November 4, 2019, states, "I recommend that [Claimant] continue to get PT/OT therapy given that he may still have recovery potential, given that he has been improving in terms of strength. He has no need or clinical indication to be enrolled in MD clinic, given that he already has [been] receiving subspecialty therapy support locally." (Exhibit A.) Mother explained, and the service agency does not dispute, Kaiser has authorized only 27 weeks of physical and occupational therapy for Claimant. The frequency of the services within those 27 weeks was not specified.

11. Concurrently with her application to Kaiser, Mother applied to California Children's Services (CCS), the state program providing children up to 21 years old with health care and services. The evidence offered at the administrative hearing

established only that a consultation occurred and the Los Angeles CCS office issued a May 10, 2019 letter stating “Regarding [Claimant’s] Cerebral Palsy meeting MTP criteria according to the neurological evaluations, the pulmonary and even the orthopedic notes, there is still no documentation of Cerebral Palsy that’s found under neither[sic] the MTP regulations 41517.5 or the Neurology regulations 41517.3. There is no evidence of an MTP eligible [diagnosis].” (Exhibit 22.) No other evidence was offered to establish whether and how, if at all, the CCS resolved Claimant’s application for physical and occupational therapy services after issuance of its May 10, 2019 letter.

12. As instructed by the service agency, Mother additionally applied to Claimant’s school district for physical and occupational therapy services. Claimant’s most recent Individualized Education Program (IEP), dated May 3, 2019, provides only for physical therapy consultation in Claimant’s home at a frequency of 30 minutes five times per year. (Exhibit 7.) Claimant’s school district does not provide any direct physical therapy services in homes. The May 3, 2019 IEP does not provide for occupational therapy services.

13. SGPRC’s *Purchase of Service Policy* provides, in pertinent part, the following:

Therapy services and supports include occupational, physical, speech or nutritional therapies that are required to prevent deterioration of a specific condition, or to improve functional skills.

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.

Therapies purchased by the regional center must always relate to the developmental disability, developmental delay, or established risk condition, and to specific Individual Program Plan/Individualized Family Service Plan (IPP/IFSP) objectives. Therapies will be continued until that objective has been met, or when the service becomes available through a generic resource, or when the specialist has determined that, in his or her professional judgment, the individual will no longer benefit from the intervention. Regional center shall not purchase educationally related therapy services after the age of 3.

The length of service, frequency (how often), and amount (at any one time) of therapy are determined on an individual basis taking into account the needs and preferences. These services shall be reviewed at least every six (6) months based on any necessary re-evaluations and/or reports from the service provider, and specify a time-limited course of intervention.

The regional center may purchase therapy services and supports if the following criteria are met:

1. Therapy is required to prevent a specific deterioration (worsening) in a person's condition or to enable him or

her to make progress in achieving developmental or functional skills.

AND

2. An assessment by a qualified licensed professional with a specialty in the therapy service and/or the appropriate regional center specialist has been completed and indicates that the client would benefit from therapy.

AND

3. The child or adult is not eligible for this service through CCS, Medi-Cal, Medicare, public schools, private family insurance, military health insurance or other resources.

(Exhibit 24.)

14. The service agency maintains Claimant does not meet the criteria for physical and occupational therapy services set forth in its *Purchase of Service Policy*. "SGPRC believes [Claimant's] need for occupational and physical therapy can be met through generic resources such as public school programs and private insurance."

(Exhibit 1.)

15. A preponderance of the evidence offered at the administrative hearing establishes the available generic resources for funding Claimant's physical and occupational therapy services are limited. After a protracted review process, Kaiser ultimately approved only 27 weeks of physical and occupational therapy services for Claimant. No such services are forthcoming from CCS or from Claimant's school district, which has offered only five consultation sessions. (See Factual Findings 8



through 12.) Under these circumstances, the service agency's contention Claimant does not meet the funding criteria of its *Purchase of Service Policy* is rejected.

## **LEGAL CONCLUSIONS**

1. Under the Lanterman Developmental Disabilities Services Act (Lanterman Act) regional centers, including SGPRC, play a critical role in the coordination and delivery of treatment and habilitation services and supports for persons with disabilities. (Welf. & Inst. Code, § 4620 et seq.) Regional centers, including SGPRC, are responsible for ensuring the provision of treatment and habilitation services and supports to individuals with disabilities and their families are effective meeting stated IPP goals. Regional centers, including SGPRC, are additionally responsible for the cost-effective use of public resources. (Welf. & Inst. Code, §§ 4646, 4646.5, 4647, and 4648.)

2. To those ends, the Lanterman Act specifically obligates regional centers, including SGPRC, to purchase services and supports in conformity with purchase of service policies approved by the Department of Developmental Services. (Welf. & Inst. Code, § 4646.4, subd. (a)(1).) Regional centers, including SGPRC, must ensure "[u]tilization of generic services and supports when appropriate." (Welf. & Inst. Code, § 4646, subd. (a)(2).) Regional centers, including SGPRC, must identify and pursue all possible sources of funding for consumers receiving regional center services. Those sources include, but are not limited to, "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 supplementary program." (Welf. & Inst. Code, § 4659, subd. (a)(1).)

3. Claimant presents with Cerebral Palsy, Epilepsy, and Profound Intellectual Disability. His complex medical issues substantially restrict him to his home. (Factual Findings 3 and 4.) Consequently, the therapies, including physical and occupational therapies, required to ameliorate the effects of Claimant's developmental disabilities are required to be administered to him in his home. (Factual Findings 5, 6, and 7.) Kaiser has authorized, but has yet to provide, 27 weeks of physical and occupational therapy services to Claimant. (Factual Finding 10.) While Claimant's school district offers physical therapy consultation to Claimant, it does not offer the actual or direct physical therapy service to Claimant. Claimant's school district has offered no occupational therapy service for Claimant. (Factual Finding 12.) To date, CCS has offered no physical or occupational therapy services to Claimant. (Factual Finding 11.)

4. As the party asserting a claim for services and supports under the Lanterman Act, Claimant bears the burden of establishing by a preponderance of evidence his entitlement to the services and supports. (*Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161 [disability benefits]; *Greatoroex v. Board of Admin.* (1979) 91 Cal. App.3d 54, 57 [retirement benefits]). Claimant has met his burden.

5. Claimant has established by a preponderance of the evidence that he has exhausted the available generic resources for funding the physical and occupational therapy services he needs. Kaiser is the only viable generic resource available to Claimant. Kaiser's funding for Claimant's physical and occupational therapy services are, however, for a limited duration of 27 weeks when in actuality Claimant's need for those therapies is, as of the time of the administrative hearing, without any such temporal limitation. Simply put, Kaiser funding alone is inadequate to pay for the total costs of the physical and occupational therapy services required to meet Claimant's

needs. Therefore, consistent with its *Purchase of Service Policy*, SGPRC is required to fund the difference between the costs of the physical and occupational therapy services Kaiser provides to Claimant and the costs of the physical and occupational therapy services necessary to ameliorate the effects of Claimant's developmental disability, and should continue such funding as determined through properly convened IPP meetings.

### **ORDER**

1. Claimant's appeal is granted.
2. San Gabriel Pomona Regional Center shall continue funding 10 hours per month of physical therapy for Claimant in accordance with Legal Conclusion 5.
3. San Gabriel Pomona Regional Center shall continue funding five hours per month of occupational therapy for Claimant in accordance with Legal Conclusion 5.

DATE:

JENNIFER M. RUSSELL  
Administrative Law Judge  
Office of Administrative Hearings

### **NOTICE**

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