

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

**In the Matter of the Fair Hearing Request of:**

**CLAIMANT**

**vs.**

**SAN GABRIEL/POMONA REGIONAL CENTER,**

**Service Agency.**

**OAH No. 2019020931**

**DECISION**

Howard W. Cohen, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on September 11, 2019, in Pomona, California.

Daniel Ibarra, Fair Hearing Specialist, represented San Gabriel/Pomona Regional Center (SGPRC or Service Agency).

Claimant's mother represented claimant, who was present for portions of the hearing.<sup>1</sup>

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<sup>1</sup> Claimant's and family members' names are omitted in order to protect their privacy.

## **ISSUE**

May the Service Agency discontinue funding insurance copayments for claimant's physical therapy provided through Carrico Pediatric Therapy, Inc.?

## **EVIDENCE RELIED UPON**

*Documents.* Service Agency's exhibits 1 through 15; claimant's exhibits A and B.

*Testimony.* Claimant's mother.

## **FACTUAL FINDINGS**

### **Parties and Jurisdiction**

1. Claimant, a 6-year-old girl, is eligible for services and supports from SGPRC under the Lanterman Developmental Disabilities Services Act (Lanterman Act), based on her diagnoses of moderate intellectual disability and Cerebral Palsy. For the past three years, she has received funding from SGPRC for insurance copayments for physical therapy (PT) services provided by Carrico Pediatric Therapy, Inc. (Carrico).

2. At an Exceptional Service Review Committee (ESR) meeting on January 23, 2019, SGPRC decided to stop funding claimant's insurance copayments for PT services from Carrico.

3. By a letter and notice of proposed action (NOPA) dated February 7, 2019, SGPRC notified claimant's mother of its decision to discontinue funding insurance copayments for claimant's PT services. Sonya Perez, claimant's service coordinator,

wrote in the letter that "ESR determined physical therapy can be provided through generic resources such as public-school programs and insurance." (Ex. 1, p. 1.) The NOPA states that claimant "is currently receiving specialized instruction at [her elementary school] and qualifies to receive 150 minutes of physical therapy served yearly through [her school district]. SG/PRC encourages you to address additional therapy through the IEP process. SG/PRC is available for advocacy at the IEP." (Ex. 1, p. 3.)

4. In the NOPA letter, SGPRC cited, as authority for its funding decision, Welfare and Institutions Code sections 46468, subdivision (a)(8), which provides that regional centers may not supplant funding from agencies serving the general public with public funds. The Service Agency also cited section 4659, subdivisions (a)(1) and (d)(1), and other sections of the Lanterman Act, and its own purchase of service (POS) policy.

5. Claimant's mother filed a Fair Hearing Request dated February 19, 2019, to challenge the proposed discontinuation of funding for insurance copayments for PT.

## **Claimant's Background**

6. Claimant resides at home with her mother, father, and three siblings. Two of claimant's siblings have disabilities; one is blind, one requires feeding with a gastronomy-tube (g-tube). Claimant's father works outside the home; her mother provides 24-hour per day care for claimant.

7. According to claimant's most recent Individual Program Plan (IPP), dated January 14, 2019, claimant has been diagnosed with albinism and Cohen Syndrome, a disabling condition, in addition to her eligible conditions. Claimant is non-ambulatory

and non-verbal. At hearing, she sat in a wheelchair and used a pacifier; her father took her out of the hearing room when her vocalizations became loud. Claimant crawls and can use a walker. She cannot control her bowels and bladder and uses a diaper. She is increasingly able to eat foods orally, though she also uses a g-tube twice each day. She requires assistance to perform all tasks of daily living, including bathing and dressing. Claimant "is receiving occupational therapy and physical therapy services funded by Kaiser twice a week." (Ex. 3, p. 2.) "She participates in all family functions but mother reports that it is often difficult to go out into the community because she is non-ambulatory." (Ex. 3, p. 3.)

## **Relevant IPP Provisions**

8. "Information About Important Areas of [Claimant's] Life Today" is described in Part II of claimant's IPP. In that section, the IEP states that "Mother wants [claimant] to walk independently." (Ex. 3, p. 7.)

9. Goals for claimant related to the previously-described important areas of claimant's life are set forth in "Part III – Desired Outcomes." For instance, the first outcome includes claimant's mother's desire that claimant become able "to walk independently." (Ex. 3, p. 7.)

10. Desired Outcome 6 references funding for generic resources. Oddly, it does not describe a goal related to claimant's needs. Rather, it states that the goal is, "Mother would like assistance for funding a generic resource," noting that claimant's mother will apply for generic resources to meet claimant's needs, and SGPRC "will explore appropriate funding and program resources. If no generic resources available and if SGPRC funds are requested, funding for advocacy services will be according to SGPRC Board approved funding policy." (Ex. 3, pp. 11-12.) This information would

more appropriately describe supports needed and provided than a desired outcome. (See Legal Conclusion 4, below.)

11. Claimant is insured through Kaiser Permanente, which has been paying for twice-weekly one-hour PT sessions at Carrico, other than a copayment of \$20 per session, or \$40 per week. SGPRC has been funding the copayments since claimant began receiving services at Carrico, at the age of three. The IPP description of Outcome 6 continues, "Services for continued assistance with PT co-payments were denied at Exceptional Service Review Committee on 01/23/19. Services for PT co-payments will continue to be re-authorized on a month to month basis, pending NOPA decision." (*Ibid.*)

12. In "Part IV – Progress in Outcomes," the IPP, again oddly, does not describe claimant's progress in reaching her goals. Rather, it provides with respect to Outcome 6, that claimant's mother "continues to be assisted by SGPRC in funding a generic resource." (*Id.* at p. 14.) This would be more appropriate as a description of a support needed or provided than as a description of progress in achieving an outcome. (See Legal Conclusion 4.)

13. Despite the unorthodox description of claimant's desired outcomes and progress toward those outcomes, one may reasonably infer that a desired IPP outcome is increasing claimant's functional mobility, and that a support needed from and provided by SGPRC has been, until now, funding copayments for PT designed to help claimant achieve that outcome. This is evident from the IPP's description of important areas of claimant's life and of claimant's mother's expressed wishes for claimant, and from the fact that SGPRC has funded insurance copayments for PT since claimant was three years old,

## **Carrico's PT Services**

14. Claimant's mother drives claimant 30 minutes each way to Carrico, on Thursdays and Fridays. She testified that the PT at Carrico is individualized and tailored to claimant's needs. Claimant's muscles lack tone, resulting in hypomobility. The PT includes the use of neuromuscular electrical stimulation to educate claimant's muscles to react correctly to stimuli. Patches are placed on various parts of claimant's body, helping her muscles contract properly and providing support that allows to use her muscles. Other techniques and therapies used include balance activities, motor skills, motor control, stair training, and strengthening. (Ex. A.) Claimant's mother testified that, due to the Carrico PT, claimant has made great progress; she is taking independent steps, and her stamina and participation in sessions has improved.

15. Carrico's most recent re-evaluation report for claimant, dated March 14, 2019, substantiates claimant's mother's testimony. It notes that claimant suffers from severe hypomobility, poor strength in her quadriceps, and severe hypotonia. The report states, however, that as a result of her PT claimant has progressed from independently taking three steps to taking 10 steps. She has met three goals (maintaining standing balance for five seconds, safely lowering herself when fatigued after using her walker, and increased endurance on treadmill while holding side handrails for two minutes), shown good progress toward the goal of ascending stairs, and fair progress toward the goal of transitioning herself from floor to standing. The program is now establishing more difficult goals for claimant, and recommends continued therapy because claimant is "[s]howing measureable [*sic*] gains from therapy, as demonstrated by improved strength and functional mobility." (Ex. A, p. 7.)

16. Claimant's mother believes claimant is making progress due to the hands-on training she receives at Carrico and the frequency and duration of the PT

sessions. Claimant's school district used to provide claimant 25 minutes of PT once each week, which claimant's mother believed was insufficient. Now, the school district provides only six 25-minute consultations per school year, for a total of 150 minutes, reviewing what claimant needs in order to navigate the campus in her wheelchair or specialized stroller because she does not walk, in order to safely access the classroom and the playground. There is no hands-on therapy to help claimant develop skills that would enable her to ambulate. SGPRC's offer to help advocate for increased services at claimant's next IEP meeting might be useful, but the evidence does not support a finding that the school district has ever provided or will provide PT services to claimant designed to enable her to increase her mobility at home and in the community.

17. Claimant's family qualifies financially for regional center funding for PT copayments; the family income is below the threshold of 400 percent of the federal poverty level. (Ex. 13.) SGPRC's Purchase of Services Policy for PT suggests that generic sources of funding, such as public school programs, California Children's Services (CCS), Medi-Cal, and private family insurance, might be available to fund PT. Carrico will not accept Medi-Cal for PT. (Ex. 4.) SGPRC asked claimant's mother to find a PT provider, listed on materials provided by Kaiser, that might accept Medi-Cal. Claimant's mother telephoned each provider on the list. Some do not take new clients. Some do not accept Medi-Cal patients. Some were too far from claimant's home. Some offer only occupational therapy, not PT. Some serve only infants under the age of three. None use neuromuscular stimulation, which has been shown to be effective for claimant. Claimant's mother applied to CCS, but claimant's condition is not eligible for CCS funding. (Ex. B.) The service funded by claimant's school district is minimal and inadequate to help claimant achieve her IPP goals.

18. Claimant's mother wants claimant to become mobile, and not remain wheelchair bound or bedridden the rest of her life. She believes effective PT services must be provided now, before claimant gets older or heavier and always has to rely on someone to move her.

## **DISCUSSION**

### **Jurisdiction and Burden of Proof**

1. The Lanterman Act governs this case. (Welf. & Inst. Code, § 4500 et seq.)<sup>2</sup> An administrative "fair hearing" to determine the respective rights and obligations of the consumer and the regional center is available under the Lanterman Act. (§§ 4700-4716.) Claimant requested a fair hearing to appeal the Service Agency's decision to discontinue funding for insurance copayments for claimant's PT with Carrico. Jurisdiction in this case was thus established. (Factual Findings 1-4.)

2. In administrative proceedings, the party asserting the affirmative generally has the burden of proof. (See *McCoy v. Board of Retirement* (1986) 183 Cal.App.3d 1044, 1051-1052; *Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 789, fn. 9; *Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161.) A service agency seeking to discontinue funding a service previously approved has the burden to demonstrate that its proposed decision is correct. SGPRC has proposed to discontinue funding for claimant's copayments. (Factual Findings 2, 3.) The burden is, therefore, on SGPRC, which must prove its case by a preponderance of the evidence. (Evid. Code, § 115.)

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<sup>2</sup> Further statutory references are to the Welfare and Institutions Code.



## **The Lanterman Act**

3. The Lanterman Act acknowledges the state's responsibility to provide services and supports for developmentally disabled individuals and their families. (§ 4501.) The state agency charged with implementing the Lanterman Act, the Department of Developmental Services (DDS), is authorized to contract with regional centers to provide developmentally disabled individuals with access to the services and supports best suited to them throughout their lifetime. (§ 4520.)

4. Regional centers are responsible for conducting a planning process that results in an IPP. Among other things, the IPP must set forth goals and objectives for the client, contain provisions for the acquisition of services based upon the client's developmental needs and the effectiveness of the services selected to assist the consumer in achieving the agreed-upon goals, contain a statement of time-limited objectives for improving the client's situation, and reflect the client's particular desires and preferences. (§§ 4512, subd. (b), 4646, subd. (a)(1), (2), and (4), 4646.5, subd. (a), 4648, subd. (a)(6)(E).)

5. Although regional centers are mandated to provide a wide range of services to facilitate implementation of the IPP, they must do so in a cost-effective manner. (§§ 4640.7, subd. (b), 4646, subd. (a).) A regional center is not required to provide all of the services that a client may require but is required to "find innovative and economical methods of achieving the objectives" of the IPP. (§ 4651.) Regional centers are specifically directed not to fund duplicate services that are available through another publicly funded agency or "generic resource." Regional centers are required to "identify and pursue all possible sources of funding. . . ." (§ 4659, subd. (a).) The IPP process "shall ensure . . . [u]tilization of generic services and supports when appropriate." (§ 4646.4, subd. (a)(2).) But if a service specified in a client's IPP is not

provided by a generic agency, the regional center must fund the service in order to meet the goals set forth in the IPP. (§ 4648, subd. (a)(1); see also, e.g., § 4659.)

## **Services for Claimant**

6. The Lanterman Act defines “services and supports” to include physical therapy. (§ 4512, subd. (b).)

7. The Service Agency decided to cease funding insurance copayments for PT based on the purported availability of generic sources of funding, primarily claimant’s school district and Medi-Cal. (Factual Findings 2, 3, 9, & 10.)

8. The Service Agency did not establish, however, that those generic sources of funding are available to claimant, or that providers they fund can offer claimant effective therapy to help her reach her IPP objectives, or that Carrico’s services duplicate those offered by those providers. The school district once offered claimant minimal PT services; now it offers only consultations, limited to achieving school-specific goals. Those services do not come close to approaching claimant’s goals of functional mobility, which Carrico tailors its program to help her achieve. Other providers refuse to accept Medi-Cal or are otherwise unavailable to or inaccessible by claimant.

9. In view of the absence of generic sources of funding, either for copayments for a Kaiser-insured program or for payment for another program entirely, funding copayments for PT at Carrico is a felicitous, appropriate, and cost-effective means for SGPRC to effectuate the objectives of claimant’s IPP and the Lanterman Act.

## **LEGAL CONCLUSION**

Cause was not established to permit the Service Agency to discontinue funding insurance copayments for claimant's PT through Carrico Pediatric Therapy, Inc.

## **ORDER**

Claimant's appeal is granted.

DATE:

HOWARD W. COHEN

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.