

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

In the Matter of:

CLAIMANT,

vs.

SAN GABRIEL/POMONA REGIONAL CENTER,

Service Agency.

OAH No. 2019040741

DECISION

Irina Tentser, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter on July 1, 2019 in POMONA, CA.

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

Mother appeared on behalf of Claimant, who was not present.¹

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¹ Titles are used to protect Claimant's and his family's privacy.

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on July 1, 2019.

ISSUE

Should Service Agency be required to retroactively reimburse private insurance co-payments for Claimant's Physical Therapy, Occupational Therapy, and Speech Services?

EVIDENCE RELIED UPON

Documents: Service Agency Exhibits 1-13.

Testimony: Daniel Ibarra, Fair Hearing Specialist; Jennifer Del Castillo, Manager; and Claimant's mother.

FACTUAL FINDINGS

Background

1. Claimant is a four-year-old boy who is eligible for regional center services under the diagnosis of Autism. He has deficits in the areas of communication, self-care, behavior and social skills. Claimant resides with his biological parents and siblings.

2. Claimant was initially an Early Start Program consumer of the Eastern Los Angeles Regional Center (ELARC). He was referred to ELARC due to concerns regarding Claimant's overall development secondary to Claimant's premature birth. At all relevant times, Claimant was covered medically by Kaiser and the family did not indicate financial hardship.

3. On April 4, 2016, an Early Start Individualized Family Service Plan (IFSP) was completed for Claimant at ELARC. Goals identified in the IFSP were based on gross motor skills and did not include speech, primarily based on Claimant's young age. ELARC informed Claimant's mother at the time of the IFSP that she is required to pursue Kaiser for Occupational Therapy (OT), Physical Therapy (PT), and Speech Therapy (ST) services, if recommended for Claimant, in accordance with Trailer Bill.

4. In February 2017, the family relocated to Whittier. Because of the family's move outside of ELARC's catchment area, ELARC transferred Claimant's case file to SGPRC. In November 2017, Claimant's SGPRC service coordinator attempted to contact Claimant's family to schedule a transitional meeting based on Claimant's turning three years old in May 2018 and resultant transition out of the Early Start program. According to Service Agency notes, a telephone message was left for the family to schedule the transitional meeting in November 2017. According to Claimant's mother, the message was not received. No transitional meeting occurred.

5. In April 2018, SGPRC referred Claimant to Covina Valley Unified School District (SD). Based on the late timing of Service Agency's referral, SD was unable to schedule an assessment of Claimant until the Fall of 2018. Between April 2018 and fall of 2018, SGPRC evaluated Claimant for eligibility under the Lanterman Developmental Disabilities Services Act (Lanterman Act). SGPRC did not make a final decision on Claimant's eligibility for regional center services until reviewing Claimant's September 25, 2018 East San Gabriel Valley Individualized Education Program (IEP).

6. Claimant attends Vincent's Children Center two-and-a-half hours per day, three times per week. Based on his IEP, Claimant qualifies to receive speech and language services 1,625 minutes yearly through SD.

7. On November 21, 2018, an Individual Program Plan (IPP) was completed for Claimant by SGPRC. At that time, parents reported that Claimant seemed to have adapted well to his school setting, and was riding the bus to and from school. They further indicated that Claimant was working on his transition and that Claimant's attention continued to be a concern.

8. Desired outcomes identified in the 2018 IPP included improving Claimant's behavior and communication; maintaining optimal health by attending all medical appointments annually; attending the least restrictive educational program and receiving the supports needed from the school to meet Claimant's IEP goals; completing all aspects of self-care independently, including bathing, dressing, oral hygiene and toileting; socializing appropriately with peers; attending parent conference/workshops pertaining to Claimant's regional center diagnosis; providing parental breaks from Claimant's care and supervision through respite services; increasing safety awareness; and decreasing inappropriate behavior, such as tantrums, yelling, throwing things, hitting self and others.

9. Private medical insurance and SD services were identified as the primary support to be used by the family for meeting Claimant's IPP goals. In addition to the 1,625 minutes of speech and language services for which Claimant was eligible to receive through SD, Claimant's parents reported that he was receiving PT and OT services, one hour per week of each service, both of which were funded by Kaiser.

REQUEST FOR CO-PAY REIMBURSEMENT

10. In late 2018, Claimant's mother requested reimbursement for co-payments made by Claimant's parents to their private health insurer for PT and OT

services, through Carrico Pediatric Therapy, and ST services through D.V. Therapy, provided to Claimant prior to and after the age of three.

11. On January 23, 2019, Claimant's reimbursement request was presented to SGPRC's Exceptional Service Review (ESR). ESR denied the request because PT, OT, and ST are considered educationally-related services. On March 28, 2019, SGPRC notified Claimant's parents by a Notice of Proposed Action (NOPA) that the reimbursement request was denied. Specifically, SGPRC denied the request to reimburse family for co-pays: (1) for ST services provided by D.V. Therapy from May 2, 2017, through May 5, 2018, in the amount of \$705, prior to Claimant turning three years old; (2) for ST services provided by D.V. Therapy from May 21, 2018, through November 26, 2018, in the amount of \$340, after Claimant turned three years old; (3) and PT and OT services provided by Carrico Pediatric Therapy Inc., from August 16, 2018, through November 15, 2018, in the amount of \$255, after Claimant turned three years old.

12. In the NOPA, SGPRC noted that Claimant qualifies to receive speech and language services of 1,625 minutes served yearly through SD. In addition, SGPRC cited the report that Claimant was receiving PT and OT services through Carrico Pediatric Therapy, one hour per week for each service (prior to Claimant graduating from PT), both of which were funded by Kaiser. It was further noted that Claimant continues to receive OT services once a week through Carrico Pediatric Therapy and ST service once a week through D.V. Therapy, both funded by Kaiser.

13. As noted, SGPRC based its denial of the request on its assertion that service agency was a payor of last resort under the Lanterman Act and that PT, OT, and ST are considered to be educationally-related services, citing Welfare and Institutions Code sections 4648, subdivision (a)(8), 4659, subdivision (a), and 4646.4, subdivision (a).

14. On April 5, 2019, Claimant mother filed a fair hearing request (FHR) on behalf of Claimant, in which mother asserted that she was not properly informed of regional center services and asserted that there were times when she was not paying co-pays for Claimant's therapies.

HEARING

15. In addition to the bases for denial of the reimbursement request identified in the NOPA, at hearing, Service Agency asserted that it was not responsible for reimbursement of ST services provided to Claimant prior to the age of three because speech-related goals were not identified as a goal in Claimant's April 4, 2016 and March 1, 2017 IFSPs. As stated in SGPRC's Purchase of Services Policy (PSP) (Exhibit 13, p. 35), "[T]herapies purchased by 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." Claimant's mother agreed that speech-related goals were not identified in Claimant's IFSPs because of his young age at the time.

16. With regards to PT, OT, and ST services provided to Claimant after the age of three, Service Agency pointed to the PSP, which states that "[R]egional center shall not purchase educationally related services after the age of 3." (Exhibit 13, p.35.) As an exception, Service Agency may purchase therapy services and supports if three 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 functioning skills; (2) an assessment by a qualified licensed professional with a specialty in therapy service and/or 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.” (*Id.*)

17. At hearing, based on review the Carrico Pediatric Therapy co-payment invoice log, Service Agency discovered, seemingly for the first time, that SGPRC had erroneously been paying for Claimant’s OT services to the vendor at the same time as Claimant’s family was paying private insurance co-pays for OT services provided by the same vendor. According to Service Agency, the vendor should have notified Service Agency of the double payment, which presumably resulted in increased OT services for Claimant. The erroneous payment for OT services by Service Agency did not, according to SGPRC, relate to and/or provide a basis to reimburse Claimant’s family for private insurance co-payments.

18. Service Agency further asserted that at no time had Claimant’s family identified extraordinary circumstances, such as financial hardship, another regional center service purchase exception for services to Claimant, as a basis for co-payment insurance reimbursement. Claimant’s mother confirmed that the family was not asserting extraordinary circumstances, such as financial hardship in reimbursement for paying private insurance co-payments.

19. With regards to Claimant mother’s frustration at the delay in providing information to SD, thereby delaying the timing of Claimant’s IEP, Service Agency expressed regret and reiterated its commitment to providing timely information to Claimant in the future. Notably, subsequent to the past issues with communication between family and Service Agency, Claimant has been reassigned to another service coordinator. No current communication issues were identified during hearing.

20. Claimant mother's testimony at hearing focused on past frustration with prior communication between the family and Service Agency. She testified that it did not pose a financial hardship for family to pay the Kaiser insurance co-payments related to Claimant's services. Claimant's mother expressed her desire that, going forward, all services Claimant may be entitled to as a SGPRC consumer be communicated in a timely manner to the family.

LEGAL CONCLUSIONS

1. Because Claimant seeks a change in the status quo, Claimant has the burden of proving that a change is necessary. (Evid. Code, §§ 115 and 500.) The standard of proof in this case required proof to a preponderance of the evidence, pursuant to Evidence Code section 115, because no other law or statute (including the Lanterman Act) requires otherwise. "Preponderance of the evidence" means evidence which is of greater weight or more convincing than evidence which is offered in opposition to it. (BAJI No. 2.6 (8th ed. 1994.)

2. The California Early Intervention Services Act (EISA) governs this case for Claimant under the age of three. (Gov. Code, § 95000 et seq.) EISA is a statutory scheme designed to provide appropriate early intervention services for infants and toddlers from birth through two years of age, who "have disabilities or are at risk of having disabilities, to enhance their development and to minimize the potential for developmental delays." (Gov. Code, § 95001, subd. (a)(1).)

3. The Lanterman Act governs this case for Claimant after the age of three. (Welf. & Inst. Code, § 4500 et seq.) The Lanterman Act is a comprehensive statutory scheme to provide "[a]n array of services and supports . . . which is sufficiently complete to meet the needs and choices of each person with developmental

disabilities, regardless of age or degree of disability, and at each stage of life to support their integration into the mainstream life of the community.” (Welf. & Inst. Code, § 4501.) The services and supports should “enable persons with developmental disabilities to approximate the pattern of everyday living available to people without disabilities of the same age.” (*Id.*)

4. Under both EISA and the Lanterman Act, the services and supports to be provided to a consumer are determined in the IFSP/IPP process on the basis of the needs and preferences of the consumer and a consideration of a range of service options proposed by the IFSP/IPP participants, the effectiveness of each option in meeting the goals stated in the IFSP/IPP, and the cost-effectiveness of each option. (Welf. & Inst. Code, § 4512, subd. (b); Gov. Code, § 95020, subd. (a).)

5. Pursuant to Welfare and Institutions Code section 4648, subdivision (a)(8), “[R]egional Center funds shall not be used 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.”

6. Welfare and Institutions Code section 4659, subdivision (a), provides, “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 supplementary program.”

7. In addition, Welfare and Institutions code section 4646.4, subdivision (a) states:

Regional centers shall ensure, at the time of development, scheduled review, or modification of a consumer's individual program plan development 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. (4) Consideration of the family's responsibility for providing similar services and supports for a minor child without disabilities in identifying the consumer's service and support needs as provided in the least restrictive and most appropriate setting. In this determination, regional center shall take into account the consumer's need for extraordinary care, services, supports and supervision, and the need for timely access to this care.

8. Based on Factual Findings 6, 15, 18 and 20, and Legal Conclusions 1, 2, 4, and 7, Claimant did not establish by a preponderance of the evidence that Service

Agency should reimburse the family for private insurance co-payments in the amount of \$705 for ST services provided to Claimant prior to the age of three by D.V. Therapy for the period of May 2, 2017 through May 15, 2018. As noted, speech communication was not identified as a goal of Claimant's IFSPs and no exceptions to Service Agency's PSP policy or EISA were presented to justify retroactive reimbursement for the family's private insurance co-payments.

9. Based on Factual Findings 5, 6, 8, 9, 11 through 13, 16, and 18, and Legal Conclusions 1 and 3 through 7, Claimant did not establish through a preponderance of the evidence that Service Agency should reimburse the family for ST services provided by D.V. Therapy from May 21, 2018 through November 26, 2018, in the amount of \$340, after Claimant turned three years old and PT and OT services provided by Carrico Pediatric Therapy Inc., from August 16, 2018 through November 15, 2018, in the amount of \$255, after Claimant turned three years old. Service Agency is a payor of last resort. In this case, Claimant is entitled to speech and language services through his SD and his PT and OT is also covered by the family's private insurance, Kaiser. No extraordinary circumstances were established to justify an exception in this matter.

ORDER

Claimant's appeal is denied. Service Agency is not obligated to reimburse his parents for insurance co-payments made in connection with Claimant's physical, occupational, and speech therapy services.

DATE:

IRINA TENTSER

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.