

**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. 2019070559

DECISION

This matter was heard by Eric Sawyer, Administrative Law Judge (ALJ), Office of Administrative Hearings, State of California, on December 3, 2019, in Pomona. The record was closed and the matter submitted for decision at the end of the hearing.

Claimant, who was not present, was represented by his mother.¹

Daniel Ibarra, Fair Hearing Specialist, represented the San Gabriel/Pomona Regional Center (service agency).

¹ Titles are used for claimant and his family to protect their privacy.

ISSUES

Shall the service agency provide funding for claimant to attend aquatic therapy at the Rose Bowl Aquatics Center for two 30-minute sessions per week?

Shall the service agency provide funding for claimant to attend hippotherapy for one hour per week through the Leaps & Bounds Pediatric Therapy program?

EVIDENCE RELIED ON

In making this Decision, the ALJ relied on service agency exhibits 1-17; claimant's exhibits A and B; and the testimony of Mr. Ibarra and claimant's mother.

FACTUAL FINDINGS

Parties and Jurisdiction

1. The service agency determines eligibility and provides funding for services to persons with developmental disabilities under the Lanterman Developmental Disabilities Services Act (Lanterman Act), among other entitlement programs. (Welf. & Inst. Code, § 4500 et seq.)

2. Claimant is a six-year-old boy who is a service agency consumer based on his qualifying diagnosis of intellectual disability.

3. Beginning no earlier than February 2019, claimant's mother requested the service agency to provide funding for her son to receive hippotherapy as a form of physical therapy (PT) in addition to the PT he was already receiving from three other

providers. By no later than May 2019, claimant's mother also requested the service agency to provide funding for her son to receive aquatic therapy as another form of PT. (Ex. 16.)

4. On or about June 3, 2019, the service agency issued a Notice of Proposed Action, advising claimant's mother that the service agency denied both of her requests because claimant was already receiving PT and occupational therapy (OT) from three other sources, to achieve goals similar to the requested services, and that the services he currently receives are sufficient to meet his needs. (Ex. 1.)

5. On or about June 21, 2019, a Fair Hearing Request was submitted to the service agency by claimant's mother, which appealed the denial of her service funding requests and demanded a hearing. (Ex. 2.)

6. On August 1, 2019, the parties participated in an informal meeting concerning claimant's Fair Hearing Request. (Ex. 3.)

7. A hearing was timely scheduled, but thereafter continued twice at the request of claimant's mother. In connection with the continuance requests, claimant's mother executed a written waiver of the time limit prescribed by law for holding the hearing and for the ALJ to issue a decision.

Claimant's Background Information

8. Claimant was born with Di George Syndrome, which causes thymus gland and heart defects, and Tetralogy of Fallot, a heart malformation. He has needed heart surgeries to correct the problems associated with his condition. He also has suffered from motor skill impairments as a result of his condition. During his last heart operation in March 2018, claimant suffered a stroke, which deprived his brain of

oxygen, resulting in significant cognitive impairment and increased motor impairment. Claimant became a client of the service agency a few months after suffering his stroke.

9. Claimant lives at home with his mother and two siblings, one of whom is also a service agency consumer.

10. Claimant attends first grade at his local school district, where he receives special education services, including those described below in more detail.

11. Claimant is non-ambulatory and not able to walk, stand, or sit without assistance. He has low neck and trunk support. Claimant requires specialized equipment for mobility, such as leg braces, a stroller, and a wheelchair, and he requires assistance getting around with that equipment. He currently uses a walker for balance. His left side is much weaker than his right side. (Ex. 2.) For these reasons, one goal specified in claimant's individualized program plan (IPP) with the service agency is to "increase his fine and gross motor skills." (Ex. 5, p. 3.)

Claimant's Current Services Relative to Motor Skills

12. A. Claimant's current individualized educational program (IEP) indicates that he receives at school weekly: 50 minutes of PT services; 40 minutes of OT services; and 15 minutes of adapted physical education (APE). (Exs. 10-13.)

B. The goals for claimant's PT services include his taking steps with minimal assistance; improved balance while standing; performing sit-to-stand exercises; improved gross motor coordination; and improved trunk strength. The goals for his APE include better hand-eye coordination of his right arm. (Exs. 10-13.)

13. In addition, claimant receives PT twice per week provided by Rosemary Johnson and Associates Clinic (RJA), funded by Medi-Cal. Those services address

claimant's muscle tone, motor control, strength, balance, and gross motor skills. (Ex. 15.) Medi-Cal also funds claimant to receive OT twice per week by another provider. (Ex. 3.)

14. Claimant also receives PT services provided by California Children's Services (CCS) twice per week, 45 minutes per session, focusing on walking with a cane and transferring out of a wheelchair. CCS also provides claimant OT services, focusing on sitting and dressing. (Exs. 3 & 8-9.)

Claimant's Requested Services

15. A. Claimant's physical therapist at RJA, Cristy Zink, recommended that he try aquatic therapy to help decrease his abnormal muscle tone and allow him to move his body better in water without the challenges presented by gravity during land-based PT. She also believed the water would give claimant better motivation and focus during the entire session, which sometimes he lacks during PT in a clinical setting. (Ex. 15.)

B. Claimant's mother paid for claimant to attend two sessions per week of aquatic therapy at the Rose Bowl Aquatics Center (RBAC) for about two months. It cost her about \$110 per week. The aquatic therapy sessions are conducted by a licensed physical therapist in a pool. Claimant's mother reports that the aquatic therapy improved her son's range of motion, core and upper body strength, and coordination. She agrees that because claimant loves the water, he was better focused during aquatic therapy sessions than during his clinic-based PT provided by his school, Medi-Cal, and CCS. (Ex. 14.)

C. RBAC's evaluation report for claimant recommends two sessions per week, for 30 minutes each session, for six months. The proposed goals for the program

include his sitting on a static surface with control, sitting on a dynamic surface with control, and improving bilateral leg coordination and flexibility. (Ex. 14.)

16. A. Claimant's occupational therapist and neurologist through Medi-Cal recommended that he try hippotherapy for better balance and upper body strength. (Ex. 3.)

B. Claimant's mother also paid for claimant to attend hippotherapy for one hour per week at the Leaps & Bounds Pediatric Therapy program (Leaps and Bounds) for about two months. It cost her about \$125 per session. The physical therapist worked with claimant on transferring out of his wheelchair, walking, mounting the horse, and riding. (Ex. 3.) Claimant's mother testified that the hippotherapy improved claimant's core and upper body strength, posture, and body awareness. However, she also conceded in her testimony that the aquatic therapy was more beneficial to claimant than the hippotherapy. (See also ex. 3, p. 3.)

C. Leaps and Bounds recommends claimant attend one session per week for six months, to focus on sitting on a bench while manipulating a toy without loss of balance, and performing sit-to-stands with decreased assistance. (Ex. A.)

17. Claimant's mother requested that claimant's school district, Medi-Cal, and CCS either provide or fund aquatic therapy and hippotherapy. All three declined because their programs do not offer such services or funding. Appealing those denials would be fruitless. (See, e.g., ex. B.)

Service Agency's Purchase of Service Policy

18. The Service Agency's purchase of service (POS) policy covers physical therapy funding. (Ex. 17.) The POS allows the service agency to fund such services if PT

is required to enable a consumer to “make progress in achieving developmental or functional skills;” an assessment by a qualified licensed professional in the therapy service indicates the consumer “would benefit from therapy;” and the consumer is not eligible for the service in question through CCS, insurance, schools, or other resources. (*Id.*, p. 35.)

19. In this case, claimant’s requested services meet the service agency’s POS policy, because it was established that aquatic therapy and hippotherapy would help claimant make progress in his physical development and functional skills; licensed physical therapists in both disciplines have stated in writing that claimant would benefit from these services; and such services and funding have been rejected by CCS, claimant’s school district, and Medi-Cal.

LEGAL CONCLUSIONS

Jurisdiction and Burden of Proof

1. An administrative hearing to determine the rights and obligations of the parties, if any, is available under the Lanterman Act to appeal a contrary regional center decision. (Welf. & Inst. Code, §§ 4700-4716.)² Claimant’s mother requested a hearing to contest the service agency’s decision denying her service funding requests, and therefore jurisdiction for this appeal was established. (Factual Findings 1-7.)

² Undesignated references are to the Welfare and Institutions Code.

2. The standard of proof in this case is the preponderance of the evidence, because no law or statute (including the Lanterman Act) requires otherwise. (Evid. Code, § 115.)

3. When one seeks government benefits or services, the burden of proof is on him. (See, e.g., *Lindsay v. San Diego County Retirement Bd.* (1964) 231 Cal.App.2d 156, 161.) In this case, claimant requests funding the service agency has not before agreed to provide, and therefore claimant has the burden of proving by a preponderance of the evidence that he is entitled to that funding.

The Lanterman Act Generally

4. A. Pursuant to section 4620, the service agency is responsible for providing services and supports for individuals with developmental disabilities.

B. Section 4512, subdivision (b), generally defines services that can be funded under the Lanterman Act to include "specialized 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. . . ." (Emphasis added.)

C. Some of the primary goals identified in the Lanterman Act are to enable clients with disabilities to approximate the pattern of everyday living enjoyed by non-disabled people of the same age and to lead more independent and productive lives in the community. (§§ 4501 & 4750; *Association for Retarded Citizens v. Dept. of Developmental Services* (1985) 38 Cal.3d 384, 388.)

D. Another important component of the Lanterman Act is flexibility to meet unusual or unique circumstances. For example, regional centers are encouraged to employ innovative programs and techniques (§ 4630, subd. (b)); to find innovative and economical ways to achieve goals (§ 4651); to implement procedures that encourage innovative approaches to sharing resources with other agencies (§ 4669.2, subd. (a)(7)); and to utilize innovative service-delivery mechanisms (§ 4685, subd. (c)(3)(A)). Similarly, section 4648, subdivision (a)(2), provides that services and supports “shall be flexible and individually tailored to the consumer and, if appropriate, the consumer’s family.”

5. These mandates of the Lanterman Act generally support claimant’s funding requests. The requested services are specially designed to alleviate the deficits caused by claimant’s developmental disability and to help him become more independent. Being able to ambulate with decreasing assistance and to improve his motor skills would help claimant approximate the daily life of a non-disabled person. Using adapted forms of PT, such as in a pool or on horseback, to help claimant maximize the benefits of his therapy in ways clinical PT cannot reach, is innovative, flexible, and individually tailored to meet claimant’s needs.

Service Agency’s Reasons for Denying the Requested Services

6. A. The service agency cites numerous provisions of the Lanterman Act supporting its argument that it should not fund the requested services because to do so would duplicate the services claimant already receives from three different providers.

B. For example, the service agency cites section 4648, subdivision (a)(8), which stresses that regional centers shall always consider whether generic resources can provide the same funding.

C. Section 4646.4, subdivision (a), similarly requires regional centers to conform to their POS guidelines and utilize available generic resources. The types of other services and sources of funding include governmental agencies or programs, such as Medi-Cal, school districts, and private insurance. (*Ibid.*)

D. In addition, regional centers are required to “identify and pursue all possible sources of funding for consumers receiving regional center services.” (§ 4659, subd. (a).) Moreover, section 4659, subdivision (d)(1), prevents a regional center from purchasing medical services for a consumer three years or older unless provided with documentation that Medi-Cal, private insurance, or health service plans have denied the same request and an appeal would not have merit.

7. However, none of the above statutes ultimately prohibits the requested funding. For example, the service agency has helped claimant’s mother identify and utilize other funding sources, i.e., claimant’s school, CCS, and Medi-Cal. There are no other sources of funding available for the aquatic therapy or the hippotherapy, nor is there a generic substitute. As discussed in detail above, the service agency’s POS policy actually supports the requested funding. Finally, claimant’s mother has requested all available forms of insurance to provide or fund the requested services, but her requests have been rejected and an appeal would not have merit.

Disposition

8. A. The remaining issue addressed by the statutes cited above, directly or indirectly, is cost-effectiveness. Service funding must be cost-effective and efficient;

regional centers are required to control costs as best as possible. (See, e.g., §§ 4512, subd. (b), 4631, subd. (b), 4640.7, subd. (b), & 4646, subd. (a).) Here, both parties may lay claim to arguments promoting cost-effectiveness and efficiency.

B. For example, claimant argues his stroke caused greater physical disabilities, which necessitates increased PT services. He also can argue the PT services funded by the other three providers will be amplified, supplemented, or accentuated by the benefits of PT in the water or on horseback, which clinical PT cannot provide. Such benefits would allow claimant to see greater gains in his clinical PT paid for by others.

C. On the other hand, the service agency argues aquatic therapy and hippotherapy are different forms of the same PT services rendered by three other providers. The service agency argues that adding two more PT providers to this already stacked regimen of PT services, especially in concert with the OT and APE services also being provided, would be a needless duplication of services that is not cost-effective or efficient.

D. In a sense, both parties are right. Claimant's clinical PT has limitations. Those limitations can be addressed by a different form of PT. Here, the weightlessness of the water provides claimant with greater range of motion and reduces his rigid muscle tone. But while hippotherapy has been beneficial, even claimant's mother admits it is not as beneficial as the aquatic therapy. Moreover, the few goals specified in the Leaps and Bounds evaluation report are also the focus of claimant's three clinical PT programs. So, while it makes sense to add a fourth PT program utilizing non-clinical means of addressing claimant's physical deficits, it would be not cost-effective or efficient to duplicate that process by also funding a second non-clinical provider, i.e., the less beneficial hippotherapy. (Factual Findings 1-19.)

9. Finally, RBAC has only recommended six months of aquatic therapy. Since claimant receives PT from three other sources, limiting the requested funding here to no more than six months will not jeopardize claimant, but will maintain cost-effectiveness and efficiency. At the end of the six months, claimant may request the service agency continue the funding, using the progress reports from RBAC as evidence, or reiterate his request for hippotherapy, or for both. However, claimant should retain the burden of proof in such a situation, meaning the service agency should not be required to request termination of the funding at that time or bear the burden of establishing the necessity of doing so. (Factual Findings 1-19; Legal Conclusions 1-8.)

ORDER

The service agency shall provide funding for claimant to attend aquatic therapy at the Rose Bowl Aquatics Center, for two sessions per week, 30 minutes each session, for a period of no more than six months. At the end of that period, the funding shall terminate.

The service agency need not provide funding for hippotherapy at this time.

DATE:

ERIC SAWYER

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.