

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

**In the Matter of:**

**CLAIMANT**

**vs.**

**KERN REGIONAL CENTER,**

**Service Agency.**

**OAH No. 2019080354**

**DECISION**

This matter was heard by Julie Cabos-Owen, Administrative Law Judge with the Office of Administrative Hearings, on September 25, 2019, in Bakersfield, California. Claimant was represented by her father and authorized representative.<sup>1</sup> Kern Regional Center (Service Agency or KRC) was represented by its Program Manager, Ana Leheny.

---

<sup>1</sup> Names are omitted throughout this Decision to protect the parties' privacy.

Oral and documentary evidence was received, and argument was heard. The record was closed, and the matter was submitted for decision on September 25, 2019.

## **ISSUE**

Should the Service Agency be required to fund hippotherapy for Claimant?

## **EVIDENCE**

Documentary: Service Agency exhibits A-G.

Testimonial: Claimant's father.

## **FACTUAL FINDINGS**

1. Claimant is an eight-year-old female client of KRC who lives with her father. She qualifies for regional center services under a diagnosis of Mild Intellectual Disability. Due to her Mild Intellectual Disability, Claimant needs prompting and assistance with self-care tasks. She also requires constant supervision to ensure her safety.
2. Claimant also has a diagnosis of Down Syndrome. This affects her gross motor development, muscle strength, and balance.
3. Claimant receives special education services through her school district, including speech and language therapy. However, she has never received any occupational therapy (OT) or physical therapy (PT) services through her school district.

4. Claimant's health care is funded through Kern Family Health Care (KFHC). To date, KFHC has not funded any OT or PT services for Claimant.

5. In February 2019, Claimant's pediatrician, Alan F. Dakak, M.D., recommended that Claimant receive hippotherapy, also known as equine therapy, through the MARE Therapeutic Riding Center (MARE),<sup>2</sup> which serves people with special needs and disabilities. During MARE hippotherapy, clients ride horses to gain muscle strength.

6. In February 2019, Claimant's father called Claimant's KRC Service Coordinator (SC) to request KRC funding for the MARE program. The SC told Claimant's father that he would have to first seek funding through Claimant's health insurance provider.

7. Claimant's father sought funding for MARE through KFHC. However, funding was denied because hippotherapy is not a covered benefit. KFHC also noted that hippotherapy "is considered to be a Complementary Alternative Medicine (CAM) Therapy. . . [which are] a group of diverse medical and healthcare systems, practices, and products that are not generally considered to be part of conventional medicine. . . ." (Exhibit D, p. 14.) KFHC determined that the requested therapy was not "an accepted standard of medicine." (*Ibid.*)

8. On March 29, 2019, Claimant's father informed Claimant's SC that KFHC had denied funding for the MARE program. The SC informed Claimant's father that, in order to obtain KRC funding approval, he must provide the following documents for KRC review: the KFHC denial letter; a prescription from Claimant's physician; and

---

<sup>2</sup> MARE is the acronym for "Mastering Abilities Riding Equines."

medical records. The requested documents were provided, along with Claimant's Individualized Education Plan (IEP) from her school district.

9. In his prescription for hippotherapy, Dr. Dakak noted Claimant's diagnoses of "Down Syndrome" and "developmental disorder of motor function." (Exhibit D, p. 16.)

10. Dr. Dakak made no other recommendations for PT or OT.

11. On July 3, 2019, the Service Agency sent Claimant's father a Notice of Proposed Action (NOPA) informing him that it was denying funding for the requested hippotherapy service because the service was "not related to [an] eligible diagnosis." (Exhibit A, p. 6.) As authority for its action, the Service Agency cited Welfare and Institutions Code sections 4646.4 and 4512, subdivision (b).

12. Claimant's father filed a Fair Hearing Request on July 31, 2019, seeking KRC funding for the prescribed hippotherapy. (Exhibit A, p. 5.)

13. At the fair hearing, Claimant's father testified credibly on Claimant's behalf. He asserted that Claimant could benefit from the requested hippotherapy in many ways. Claimant's father pointed out that, due to her Down Syndrome, Claimant has weakness in her muscles and joints, especially her hips. He believes that hippotherapy will increase Claimant's muscle and joint strength, improve her balance, and help her learn how to follow rules.

14. Dr. Dakak submitted a letter, dated August 26, 2019, supporting Claimant's use of hippotherapy. The letter states:

[Claimant] is an 8 year old female presenting with [D]own  
[S]yndrome and developmental delay. We referred

[Claimant] to receive Equine Therapy/Hippotherapy in February of this year expecting it to improve her balance and coordination, strength and motor functions as well as other skills. Hippotherapy is used for therapeutic and/or rehabilitative purposes. It improves the patient[']s ability to keep balance as the horse moves. This motion stimulates muscles and joints improving the patient[']s strength and motor functions. Not only does Hippotherapy assist with physical advancement, it also helps the patient with the confidence and self-control to better communicate and interact with others. Overall we feel [Claimant] will continue to benefit from utilizing Hippotherapy as it is improving her quality of life. She will have better control and function of her body as well as gain social skills.

(Exhibit D, p. 17.)

15. Claimant was evaluated by Judy Hilburn, an Occupational Therapist at MARE. Ms. Hilburn submitted a letter, dated August 26, 2019, stating:

[Claimant] shows deficits in areas of proprioception, body schema, position in space, and strength and balance. Also, lacking is her gross-motor and fine-motor development. [Claimant] is hyperactive and easily distracted. She shows decreased understanding of appropriate behavior, such as respect for authority and "house" rules.

[OT] services offered through Mare Riding Center will address these areas of deficit. [Claimant] will have to adhere to authority of the Therapist and Instructor for the course of her attendance at MARE. She will benefit from the horse's natural gait and structured curriculum as her balance, strength, and motor development grow. The Occupational Therapist will draw out specific goals for [Claimant], such as "[Claimant] will stand on one leg with good form for 2 seconds," and "she will jump in place, 3 inches high." These are ways to measure improvement in balance and strength. We believe [Claimant] will benefit from this service through regular attendance in the program.

(Exhibit D, p. 18.)

16. To date, Claimant has received no PT or OT services from any source.

17. At the fair hearing, the Service Agency pointed out that Claimant's qualifying diagnosis is Mild Intellectual Disability. The Service Agency's maintains that Claimant's motor challenges stem from her Down Syndrome, not her regional center eligible condition of Mild Intellectual Disability, and that KRC may only fund for services that address her regional center eligible condition. The Service Agency also argued that there may be therapeutic services such as OT to address Claimant's motor challenges and that these services are available through generic resources such as the school district.

## LEGAL CONCLUSIONS

1. Claimant's appeal of the Service Agency's denial of funding for hippotherapy is denied. (Factual Findings 1 through 17; Legal Conclusions 2 through 6.)

2. An administrative hearing to determine the rights and obligations of the parties is available under the Lanterman Developmental Disabilities Services Act (Lanterman Act) to appeal a contrary regional center decision. (Welf. & Inst. Code, §§ 4700-4716.) Claimant timely requested a hearing following the Service Agency's denial of funding for hippotherapy, and therefore, jurisdiction for this appeal was established.

3. When a party seeks government benefits or services, she bears the burden of proof. (See, e.g., *Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161 [disability benefits].) In a case where a party is seeking funding for services not previously provided or approved by a regional center, that party bears the burden of proof. The standard of proof in this case is the preponderance of the evidence, because no law or statute (including the Lanterman Act) requires otherwise. (See, Evid. Code, § 115.) In seeking funding for hippotherapy, Claimant bears the burden of proving by a preponderance of the evidence that the funding is necessary to meet her needs. Claimant has failed to meet her burden.

4. Welfare and Institutions Code section 4512, subdivision (b), provides, in part:

[T]he 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. . . .

5. Welfare and Institutions Code section 4646.4 provides:

(a) Effective September 1, 2008, regional centers shall ensure, at the time of development, scheduled review, or modification of a consumer's individual program plan developed pursuant to Sections 4646 and 4646.5 . . . , 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 centers shall take into account the consumer's need for extraordinary care, services, supports and supervision, and the need for timely access to this care. . . .

6. KRC accurately noted that its funding authority is limited to addressing eligible developmental disabilities. In this case, although the hippotherapy may help Claimant's muscle strength, she did not establish the service was necessary to specifically address the deficits arising from her regional center qualifying diagnosis, i.e., Mild Intellectual Disability. Moreover, Claimant has not utilized other generic resources to address her muscle weakness, such as obtaining OT through her school district. Given the foregoing, the Service Agency's denial of funding for hippotherapy was appropriate.

## **ORDER**

Claimant's appeal is denied. Kern Regional Center's denial of funding for hippotherapy is upheld.

DATE:

JULIE CABOS-OWEN

Administrative Law Judge

Office of Administrative Hearing

## **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.