

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

**In the Matter of:**

**CLAIMANT**

**vs.**

**KERN REGIONAL CENTER, Service Agency**

**OAH No. 2019080359**

**DECISION**

Nana Chin, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter on October 1, 2019, in Ridgecrest, California.

Claimant<sup>1</sup> was represented by his parents. Claimant did not attend the hearing.

Kristine Khuu, Assistant Director of Client Services represented Kern Regional Center (KRC or Service Agency).

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<sup>1</sup> Claimant and his family members are not identified by name to protect their privacy.

The record was held open to allow Claimant to submit additional emails from Claimant's service coordinator. The Service Agency was granted leave until October 11, 2019, to submit any objection to the emails. The emails were received and marked as Exhibit 19. No objection to the emails were received, and Exhibit 19 was admitted into evidence.

Evidence was received, the matter argued, and the case submitted for decision on the hearing date.

### **Issues Presented**

Whether the Service Agency properly terminated funding for copayments to Claimant's vendor (California Psych Care) for the period of January 5, 2018, until June 30, 2019.

Whether the Service Agency should fund for copayments to Claimant's vendor (California Psych Care) from July 1, 2019 until Claimant's next IPP in 2020.

### **Evidence**

Documentary: Exhibits A through I and 1 through 18

Testimonial: Claimant's parents

## **Parties and Jurisdiction**

1. Claimant is a consumer who is eligible for services under the Lanterman Developmental Disabilities Services Act (Lanterman Act) (Welf. & Inst. Code, § 4500 et seq.)<sup>2</sup> based upon a qualifying diagnosis of autism.

2. On June 26, 2019, the Service Agency issued a Notice of Proposed Action (NOPA) denying funding for copayments.

3. Claimant's father submitted a Fair Hearing Request dated July 26, 2019, and the matter was set for hearing on October 1, 2019. Claimant's parents waived Claimant's right to have a final administrative decision rendered within 80 days<sup>3</sup> of the date the Service Agency received the Fair Hearing Request.

4. All jurisdictional requirements have been met.

## **Background**

5. Claimant is a seven-year-old boy who lives with his parents and younger sibling in the family home. Claimant's parents both work full-time on the naval base Federal Employee Program. Their annual gross income from their employment exceeds 400 percent of the federal poverty level.

6. On June 27, 2017, Claimant's initial Individual Program Plan (IPP) meeting was conducted with Claimant's mother and KRC Service Coordinator (SC) Melissa Alles.

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

<sup>3</sup> Section 4712.5, subdivision (a)

7. In the meeting, Claimant's mother reported that Claimant struggled with emotional outbursts and exhibited aggressive behavior daily, resulting in physical injury and property damage. According to the IPP generated from the meeting, it was determined that Claimant would seek behavior intervention services in order to address these behaviors. The services were to be funded by the family's private insurance with the Service Agency agreeing to fund for "the co-pay only which is reviewed every six months." (Exhibit C, p. 29.)

8. California Psych Care (CPC) was selected as the vendor to provide Claimant with behavior intervention services in the form of applied behavioral analysis (ABA) therapy.

9. On March 12, 2018, the annual IPP meeting was conducted with Claimant's mother and SC Alles. The IPP generated from the 2018 (2018 IPP) meeting notes that Claimant had made some progress in areas of disruptive behavior and physical aggression but recommended that he continued behavior intervention services. It was agreed that the Service Agency would provide "funding for the co-pay only which is reviewed every six months." (Exhibit C, p 45.)

10. Claimant's third IPP meeting was held on February 25, 2019. The meeting was attended by Belen Castro-Vega, the new SC assigned to manage Claimant's case, and Claimant's mother. The 2019 IPP does not document that any progress had been made in reducing Claimant's disruptive and physical aggression. In order to address Claimant's emotional outbursts and aggression, Claimant was to continue receiving behavior intervention services. One of the services and supports parties explicitly agreed was to be included in the written IPP was "[c]o-pay funding for ABA per KRC policies and procedures." (Exhibit 13.)

11. On June 3, 2019, SC Castro-Vega notified Claimant's parents by email that the KRC Autism Team had denied authorization for copay assistance.

12. On June 10, 2019, SC Castro-Vega notified Claimant's parents by email that the KRC Autism Team was retroactively denying authorization for copay assistance for services that had been provided beginning March 2018.

13. On June 26, 2019, the Service Agency issued a NOPA proposing to "[d]eny funding for copayment as family's income exceeds the 400% federal poverty level." (Exhibit A, p. 2.) The reason provided for the action was "[p]er W&I Code 4659.1 –family does not qualify for copay funding due to income exceeding the 400% federal poverty level." (*Ibid.*)

### **Service Agency's Contentions**

14. According to the Service Agency, the June 29, 2019 NOPA was issued to: (1) retroactively deny funding for copayments for ABA services CPC provided Claimant from January 5, 2018, until June 30, 2019; and (2) deny future funding for all copayments for ABA services provided by CPC to Claimant after July 1, 2019.

15. The Service Agency appeared to argue: (1) KRC met their statutory obligation to provide adequate notice that they were discontinuing funding for copayments by providing Claimant's parents with the annual cost statement which showed that "there is no current authorization for copayment expenses for ABA services through [CPC] from 1/5/18 – current." (Exhibit I, p. 2.); and (2) Welfare and Institutions Code section 4659.1 "outweighs" the IPP process.

## **Claimant's Contentions**

16. According to Claimant's parents, the Service Agency failed to properly notify them that funding for copayments to CPC for ABA services provided to Claimant from January 5, 2018, until June 30, 2019, had been discontinued.

17. Claimant's parents denied having received the annual cost statements prior to the hearing<sup>4</sup> and that the statements, therefore, did not constitute adequate notice that the Service Agency was denying funding for copayments to CPC.

18. Claimant's parents further argued that the failure of the Service Agency to provide adequate notice prevented them from adjusting their family budget to take into account the copayments to CPC. Claimant's father was verbally informed by CPC's billing department that they currently owe more than \$7,000.<sup>5</sup> Due to difficulties associated with raising Claimant, 14% of the household budget is dedicated solely to Claimant's educational and medical expenses. They argued they could have tried to

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<sup>4</sup> KRC's Exhibit Packet had not been properly delivered to Claimant's parents prior to the hearing.

<sup>5</sup> Neither party submitted any billing statement from CPC detailing the current outstanding charges. Though the Explanation of Benefits (EOBs) from the family's private insurance indicated that the family's share of CPC's billed expenses was \$9,767.52, the EOBs did not specify which uncovered expenses were for copayments for ABA services and which were for other mental health services not authorized by Claimant's IPP. The EOBs also did not account for any charges that CPC may have chosen to waive.

adjust their discretionary income to account for the additional expense of the copayments had they been provided notice. Carrying an outstanding balance with CPC is of major concern to both parents as the debt may affect the security clearances they need for their employment.

19. Claimant's parents have also requested that copayments be continued to funded until Claimant's March 2020 IPP. Claimant's residence was recently affected by two serious earthquakes of 6.4 and 7.1 magnitude, respectively. These earthquakes have impacted the family's finances significantly. In addition to the costs associated with their temporary relocation, they suffered property damage to their home which will need repairs, a loss of goods which will need to be replaced, as well as caused emotional trauma to Claimant and his younger sibling, which has prompted Claimant's parents to seek therapy for both their children.

20. Claimant's mother expressed the concern that, based on Claimant's aggressive behaviors, particularly towards his younger sister, that Claimant requires ABA services in order to maintain him in the home. Their ability to pay for the copayments associated with those services, however, have been deeply impacted by the recent earthquakes.

## **LEGAL CONCLUSIONS**

### **Jurisdiction**

1. Pursuant to section 4710.5, subdivision (a), "Any ... authorized representative of the applicant or recipient, who is dissatisfied with any decision or action of the service agency which he or she believes to be illegal, discriminatory, or not in the recipient's or

applicant's best interests, shall ... be afforded an opportunity for a fair hearing." Claimant timely requested a hearing to appeal the Service Agency's decision to terminate funding for copayments to CPC for ABA services. Jurisdiction in this case is established. (Factual Findings 1 through 4.)

## **Standard of Proof**

2. A regional center seeking to terminate or reduce ongoing funding provided to a consumer has the burden to demonstrate its decision is correct, because the party asserting a claim or making changes generally has the burden of proof in administrative proceedings. (See, e.g., *Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 789, fn. 9.) In this case, the Service Agency unilaterally terminated funding for Claimant's copayments and bears the burden of proving, by a preponderance of the evidence, that its decision is correct.

## **Applicable Law**

3. In enacting the Lanterman Act, the Legislature accepted its responsibility to provide for the needs of developmentally disabled individuals and recognized that services and supports should be established to meet the needs and choices of each person with developmental disabilities. (§ 4501.) The Lanterman Act gives regional centers a critical role in the coordination and delivery of services and supports for persons with disabilities. (§ 4620, et seq.)

4. The consumer's needs are determined through the IPP process. (§ 4646.) "Individual program plans shall be prepared jointly by the planning team. Decisions concerning the consumer's goals, objectives, and services and supports that will be included in the consumer's [IPP] and purchased by the regional center or obtained



from generic agencies shall be made by agreement between the regional center representative and the consumer or, where appropriate, the parents, legal guardian, conservator, or authorized representative at the program plan meeting.” (§ 4646, subd. (b).)

5. Although regional centers are mandated to provide a wide range of services to facilitate the implementation of the IPP, they must do so in a cost effective manner. (§§ 4512, subd. (b) and 4646, subd. (a)) Regional centers are required to identify and pursue all possible sources of funding for its consumers and to secure services from generic sources where possible. (§§ 4647, subd. (a), and 4646.5, subd. (a)(4)).

6. If the family’s or consumer’s income is more than 400 percent of the federal poverty level, regional center funds may be used to pay any copayments associated with a service or support provided in a consumer’s IPP only if one of three exceptions exists: 1) the existence of an extraordinary event which impacts the ability of the parent to pay the copayment; 2) the existence of catastrophic loss (such as from a natural disaster or accident involving major injuries) that temporarily limits the parent’s ability to pay and creates a direct economic impact on the family; or, 3) the existence of significant unreimbursed medical costs of the consumer’s care. (§ 4659.1, subd. (c).)

7. Pursuant to Section 4710, subdivision (b), when the Service Agency makes a decision without the mutual consent of the consumer or their authorized representative to reduce, terminate, or change services set forth in an IPP, they are required to provide “[a]dequate notice shall be sent to the recipient and the authorized representative, if any, by certified mail no more than five working days after

the agency makes a decision without the mutual consent of the recipient or authorized representative, if any, to deny the initiation of a service or support requested for inclusion in the [IPP]." "Adequate notice" is defined as "a written notice" which must include, information regarding "[t]he action the service agency proposes to take," "the reason or reasons for that action," "the specific law, regulation, or policy supporting the action" and information regarding the consumer's appeal rights. (§ 4701.)

### **Copayments for the Period from January 5, 2018, until June 30, 2019.**

8. An essential part of a fair hearing is "adequate notice" to a consumer of a regional center's proposed action. Here, the Service Agency argued that the Statement of Services Provided was adequate notice that they were discontinuing funding for copayments to CPC. There was no evidence submitted to indicate that these statements are ordinarily mailed to consumers, who was responsible for mailing these statements, or that that these statements had been, in fact, mailed to Claimant. Additionally, the statements provide very little information and do not comply with the requirements set forth in section 4701 in that they do not explain that copay funding has been terminated, the reason for terminating such funding, the law or policy for supporting its action or provide any information regarding Claimant's appeal rights. Consequently, KRC failed to provide Claimant with his due process right of adequate notice.

9. The Service Agency has therefore failed to establish that its decision to terminate copayment funding from January 5, 2018, until June 30, 2019, was correct.

## **Copayments for the Period from July 1, 2019 until Claimant's next IPP in 2020**

10. At hearing, Claimant's parents admitted that their joint annual gross income from their employment was in excess of the 400% of the federal poverty level. It was, however, established that their ability to pay for the copayments for Claimant's ABA services had been temporarily limited by the recent earthquakes. It was further established that continued ABA services were necessary to maintain Claimant in the home.

11. Based on these factors, the family falls within the exception contained within section 4659.1 subdivision (c), and Claimant's request for funding of insurance copayments from July 1, 2019 until Claimant's next IPP in 2020 is granted.

### **ORDER**

Claimant's appeal is granted. The Service Agency shall provide funding for copayments to Claimant's vendor (California Psych Care) for the period of January 5, 2018, until Claimant's next IPP in 2020.

DATE:

NANA CHIN

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.