BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT

v.

INLAND REGIONAL CENTER,

Service Agency

OAH No. 2019080428

DECISION

Robert Walker, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter on September 18 and 25, 2019, in San Bernardino, California.

Keri Neal, Consumer Services Representative, Fair Hearings and Legal Affairs, Inland Regional Center, (IRC) represented the regional center.

Claimant's mother represented claimant.

The matter was submitted for decision on September 25, 2019.

ISSUE

Is IRC required to reimburse claimant for certain costs incurred in connection with a trip to The Institutes for the Achievement of Human Potential (IAHP) in Philadelphia, Pennsylvania, during the week of November 26-30, 2018?

SUMMARY

IRC contends there are three reasons claimant is not entitled to reimbursement for medical and therapeutic services.[1] First, IRC is prohibited from authorizing payments retroactively except for certain emergencies. Second, claimant does not need to go outside of California to obtain medical and therapeutic services because her medical and therapeutic needs are being met by her medical providers and insurance in California. Third, the medical and therapeutic services IAHP provides are experimental and not scientifically proven to be effective.

In claimant's Individual Program Plan (IPP), IRC agreed to allow claimant's parents to present documentation to support their claim for reimbursement so long as

[1] The evidence did not show that claimant receives any therapeutic services that are not medical. However, in the Notice of Proposed Action, IRC wrote about "therapy/medical services." And in the hearing, Ms. Neal referred to "medical and therapeutic services" and "medical and therapeutic needs." In this decision, that is the terminology that will be used.

they submitted it by June 30, 2019. Thus, IRC waived the prohibition against authorizing payments retroactively.

Claimant's occupational therapy and physical therapy needs are not being met, but her other medical needs are. Claimant proved that the physical therapy and occupational therapy services being provided in California do not meet her needs. However, this is not a case about IRC's obligation to provide services for a need that is not being met. And claimant failed to prove that occupational therapy and physical therapy services are not available to her.

Claimant failed to prove that the medical and therapeutic services IAHP provides are scientifically proven to be effective and are not experimental. IRC cannot purchase experimental treatments that have not been clinically determined or scientifically proven to be effective.

The claim is denied.

FACTUAL FINDINGS

Background

1. Claimant is a 12-year-old female diagnosed with cerebral palsy, profound intellectual disability, and microcephaly. Claimant lives with her parents. She has adult siblings, but they no longer live in the family home.

2. Claimant receives 220 hours per month of In-Home Supportive Services; claimant's mother is the payee. Claimant does not receive Supplemental Security Income. Claimant receives Medi-Cal for a premium of $12 per month. Claimant receives 40 hours per month of behavioral health therapy, a behavior intervention plan

funded through Medi-Cal. Claimant receives 48 hours per month of preferred provider respite services. Claimant has medical insurance with Inland Empire Health Plan, which is a managed care plan for Medi-Cal. Claimant qualifies for 32 to 40 hours per month of Early and Periodic Screening, Diagnostic and Treatment (EPSDT) services funded by Medi-Care, but the services were terminated on May 24, 2017, because claimant's mother considered the services to be of low quality. Claimant's health insurer provides specialized medical equipment. Fontana Unified School District (FUSD) provides home schooling two hours per day, five days per week. FUSD also provides 180 minutes per year of adaptive physical education, 180 minutes per year of orthopedic services, and 150 minutes per year of vision impairment services.

3. For a few years claimant and her parents have attended IAHP institutes in Philadelphia. The programs have educational components. Many of them also have medical or therapeutic components. Part of the medical components involve testing to assess claimant's progress. Claimant's parents have implemented numerous IAHP programs in the home. The implementation has been costly and time consuming. Claimant's parents have spent thousands of dollars, and they devote numerous hours every day to claimant's programs. They have done these things because they want claimant to have the best and most independent life she can possibly have. They are proud of her, and they love her very much.

4. Within the past two years, claimant has had no convulsions and no respiratory infections. She has become more alert and has learned to use a few words. She expresses happiness and anger. There are other examples of improvements in claimant's condition. Claimant's mother and father are convinced that these improvements, or most of them, are the result of the IAHP programs.

5. On November 22, 2018, claimant's mother asked IRC to pay $5,400 for claimant and her parents to attend certain programs to be presented by IAHP on November 26-30, 2018. IRC ultimately concluded that $2,920 of that amount was for educational services and materials and that $2,480 was for medical and therapeutic services. IRC arrived at the two figures by assigning various costs to matters that IRC identified as relating to medical and therapeutic services. These matters included, for example, physical examination, neurobehavioral assessment, developmental testing, range of motion and muscle testing, breathing assessment, and speech and language assessment. IRC agreed to reimburse claimant's parents $2,920 for educational services and materials but denied the request to reimburse $2,480 for medical and therapeutic services. Claimant's parents did not present evidence that a greater portion of the costs should be allotted to educational services and materials.

6. By a Notice of Proposed Action (NOPA) dated July 1, 2019, IRC notified claimant's mother that IRC denied the request to reimburse $2,480 for medical and therapeutic services. By a Fair Hearing Request dated July 26, 2019, claimant's mother appealed the denial.

California Children's Services Also Denied a Request to Reimburse

7. Claimant's parents applied to California Children's Services (CCS), also, for reimbursement of the $2,480. CCS denied the request and sent claimant's parents a notice of action (NOA) dated September 9, 2019. The NOA provided "[t]he out-of-state service requested has been determined to be available in the state of California and not to be medically necessary for the treatment of the eligible CCS medical condition."

IRC Invoked an Exception in Order to Pay for Educational Materials

8. Generally, a regional center may not purchase educational services for children 3 to 17. But claimant is home-schooled, and claimant's mother provides some of the instruction. IRC invoked an exception in order to reimburse claimant's parents for the cost of educational services and materials incurred in connection with the IAHP programs.

IRC Waived the Prohibition Against Retroactive Payment

9. A regional center cannot approve a payment for services retroactively except in certain emergency situations. Claimant's mother's November 22, 2018, request for authorization to be reimbursed for payment for services to be provided on November 26-30, 2018, did not give IRC time to authorize payment in advance. So, there was no prior authorization.

10. Nevertheless, IRC ultimately agreed to pay, $2,920 for educational services and materials.

11. Also, at a January 10, 2019, Individual Program Plan (IPP) meeting, IRC agreed to allow claimant's parents to present further documentation through June 30, 2019, to prove that the $2,480 they paid for medical and therapeutic services had not been for experimental services.

12. Thus, IRC waived the prohibition against authorizing payments retroactively.

//

//

Ms. Gonzalez's Testimony

13. Since November 2014, Adelita Gonzalez has been claimant's consumer services coordinator. Ms. Gonzalez testified as follows: The family is trying to reinstate the EPSDT services. Esteban S. Poni, M.D., is claimant's primary care physician. Claimant also sees a gastroenterologist; nutritionist; an ear, nose, and throat specialist; a neurologist; a pulmonologist; and an ophthalmologist. Claimant receives occupational and physical therapy services through CCS.

Claimant's Father's Testimony

14. Claimant's father testified as follows: The family has been in the IAHP program for approximately three years. Before they started the IAHP programs, claimant was in the emergency room constantly; she would stop breathing at night. Since they started the programs, claimant's health has improved; she has not had a seizure in two years. She has better mobility; she no longer is bound to her wheelchair. The program has helped with breathing and oxygenation. Her intelligence improved. She eats nutritious food. She sleeps well; she no longer has sleep apnea.

15. Two years ago, they stopped giving claimant seizure medications. When she was taking them, it was as though she was high on drugs. When they stopped giving them to her, she became more alert and focused, and she stopped being constipated. Claimant's neurologist does not know that they stopped giving claimant the seizure medications.

16. Claimant's father testified that the physical therapy exercises CCS taught claimant's parents are not bad, but they are inadequate. They are very little compared with what claimant's parents have learned through IAHP. The same is true of the occupational therapy training CCS provided. CCS spends only a few minutes per year

with them. Claimant's father testified that, if they had not sought out IAHP, but instead had relied on CCS, claimant would not have made the wonderful progress she has made.

Claimant's Mother's Testimony

17. Claimant's mother testified as follows: Claimant has made significant progress since they implemented the IAHP programs, and that progress is primarily a result of those programs. Claimant's mother reiterated much of claimant's father's testimony. She emphasized the inadequacy of the occupational and physical therapy services they receive from CCS. Each therapist spends 45 minutes with them once a year. She said the only reason they continue to participate in those worthless sessions is that they need the wheelchair CCS provides.

18. Claimant's mother described in great detail the various IAHP programs they have implemented, the enormous costs they have incurred, and the many hours of time they devote to the programs every day.

19. Claimant's mother testified that they know that the IAHP programs "are not strictly medical, but they are working for us." They want claimant to learn to take care of herself. Claimant's mother explained it is their responsibility to do what they can to make sure claimant has the best life she can have.

20. Claimant's mother said that she asked IRC to pay only the cost of the programs. Claimant's parents have not asked for reimbursement of travel expenses, hotel room, and food.

21. Complainant's mother testified, "I know that, sometime in the future, she will be capable of taking care of herself."

Ms. Acuña's Testimony

22. Luciana Acuña testified as follows: She has known claimant's family for over five years. She has volunteered to help with various programs. Ms. Acuña has seen a lot of improvements in claimant's movements. When Ms. Acuña started helping with claimant's programs, claimant would not move her neck, hands, or feet. Now she does move them. Once, Ms. Acuña put claimant in the pool, and claimant used her hand to splash water on Ms. Acuña. Claimant has started eating from a spoon. Ms. Acuña testified that, if claimant is asked whether she likes a particular food, she shakes her head yes or no. Claimant gets mad if her mother does not put her on the toilet when she needs to use the toilet. When Ms. Acuña goes to claimant's house without taking her daughter, claimant looks around trying to find Ms. Acuña's daughter and gets mad. Ms. Acuña has concluded that the exercises have caused the improvements in claimant's behaviors because the improvements started happening after claimant's parents introduced the exercises.

Adequacy of the Services Provided in California

23. Claimant's father and mother both testified that the physical therapy and occupational therapy services CCS provides do not meet claimant's needs. Claimant's mother testified that the occupational therapist spends 45 minutes per year with them and that the physical therapist spends 45 minutes per year with them. She said the only reason they continue to participate in those worthless sessions is that claimant needs the wheelchair CCS provides. Claimant's parents' testimony was credible. The only evidence IRC presented on this point was to elicit, on cross-examination, the parents' acknowledgment that the therapists who meet with them are licensed. Claimant, however, did not prove that physical therapy and occupational therapy services are not available for claimant in California.

24. Claimant failed to prove that her other medical needs are not being met by the services provided in California.

IAHP's Medical and Therapeutic Services Have Not Been Scientifically Proven to be Effective

25. IRC called Borhaan S. Ahmad, M.D., as an expert witness to provide opinion testimony that the medical and therapeutic services IAHP provides are experimental and not evidence-based.

26. In 1981, Dr. Ahmad graduated from Kabul University, Kabul, Afghanistan, with a degree in medicine. From 1988 to 1991, he did a pediatric residency at Akron Children's Hospital and Medical Center in Akron, Ohio. Dr. Ahmad has practiced in the field of pediatric medicine since 1991. From 1996 to the present, he has practiced in the Department of Pediatrics, Loma Linda University Medical Center. From 2002 to the present, he has been a medical consultant to IRC, and from 2007 to the present, he has been a medical consultant to California Medical Services, San Bernardino and Riverside Counties. In Dr. Ahmad's work with IRC, he reviews eligibility issues and conducts assessments.

27. Claimant submitted a few IAHP publications concerning programs claimant's parents have implemented and that IRC identified as having medical or therapeutic components. The publications were marked as Exhibit C. During claimant's November 26-30, 2018, visit to IAHP, there were various assessments concerning changes in her behaviors and abilities. The assessments included physical examination, neurobehavioral assessment, developmental testing, range of motion and muscle testing, breathing assessment, and speech and language assessment. Thus, in part, the reimbursement claimant's parents are seeking relates to IAHP's assessment of the

effectiveness of the programs described in the publications. Part is for training that claimant's parents received concerning the programs they implemented and other IAHP programs that claimant did not prove had been scientifically proven to be effective.

28. In Exhibit C, at pages 1 through 5, there are three IAHP publications concerning the use of a mask to increase blood flow and oxygen delivery to the brain. Exhibit C, page 1, is entitled The Rules of Masking. Exhibit C, pages 2 through 4, are entitled Oxygen Enrichment Protocol, Phase I. Exhibit C, page 5, is entitled Oxygen Enrichment Program; Modified Masking System. At Exhibit C, page 2, IAHP says the purpose of the protocol is "[t]o increase blood flow and oxygen delivery to the brain in order to improve brain function and promote neuroplasticity." Dr. Ahmad testified that neuroplasticity has to do with the ability of the brain to compensate for a reduction in function in one part of the brain. In some circumstances, another part of the brain may be able to take over the performance of that function. He said he had never heard of scientific evidence that oxygen enrichment would improve brain function or promote neuroplasticity. At Exhibit C, page 3, IAHP says, "Specifically, masking tends to reduce seizure frequency, rigidity, and lung infections." Dr. Ahmad testified he had never heard of scientific evidence that oxygen enrichment would reduce seizure frequency, rigidity, or lung infections. Dr. Ahmad observed that, at Exhibit C, page 5, IAHP's description of the "procedure" for the program is characterized as a "Research Project." Dr. Ahmad emphasized that the Oxygen Enrichment Program is an experimental treatment that has not been scientifically proved to be effective. Dr. Ahmad testified that IAHP's Oxygen Enrichment Protocol is not a recognized treatment for cerebral palsy or intellectual disability and that there is no scientific research that demonstrates that it is effective.

29. Exhibit C, pages 11 and 12, is an IAHP publication entitled Patterning Program Checklist. Patterning is performed on a patterning table. It involves moving a child's limbs in set, rhythmic movements – e.g. flexing an arm at the same time as flexing the opposite leg or flexing an arm at the same time as flexing the same leg. Adults actually move the limbs. Dr. Ahmad testified that scientific evidence does not support patterning as a medical treatment. He said neurologists, experts in cerebral palsy, and experts in intellectual disability generally do not accept patterning as scientifically proven to be effective. He testified that, in part, his opinion is based on an article by the American Academy of Pediatrics (AAP) entitled The Treatment of Neurologically Impaired Children Using Patterning (1999) published in "Pediatrics" http:/pediatrics.aappublications.org/content/104/5/1149. The AAP concluded that the IAHP's patterning treatment is based on an outmoded and oversimplified theory of brain development. The effectiveness of the treatment is not supported by evidence-based medicine, and the treatment is unwarranted. Dr. Ahmad testified that the AAP study was reviewed and updated in 2010 and that, on the basis of past and current analyses, studies, and reports, the AAP again concluded that patterning treatment continues to offer no special merit, and that the claims of its advocates remain unproven.

30. Exhibit C, pages 23 through 26, is an IAHP publication entitled The Floor as a Way of Life. At page 23, IAHP says, "The Laws of the floor: A child must be on the floor all day. He can be prone, crawl, creep. He cannot be supine, sit up, roll." Dr. Ahmad testified he had never heard of scientific evidence that would support this as a treatment for cerebral palsy or intellectual disability.

31. Exhibit C, pages 28 through 37, is an IAHP publication entitled The Medullary Reflex Program. Adults assist a child in learning to roll down an elevated,

padded panel, which is referred to as "the padded hill," onto a padded landing area. IAHP says that as a child rolls down the padded hill, he will feel fear, followed quickly by excitement, followed quickly by exultation. This will help the child develop the integrative, vestibular, and kinesthetic areas of the brain. Dr. Ahmad testified that this is not a generally accepted medical treatment.

32. Claimant offered no evidence in support of the proposition that the IAHP programs are scientifically proven to be effective.

33. Many things may have contributed to the progress claimant has made. She has matured and had more experiences in life. Her parents stopped giving her the seizure medications. That may or may not have been a wise thing to do; nevertheless, it may have contributed to her progress. FUSD provides home schooling two hours per day, five days per week, 180 minutes per year of adaptive physical education, 180 minutes per year of orthopedic services, and 150 minutes per year of vision impairment services.

34. No doubt the extensive time claimant's mother has spent with claimant every day engaged in implementing the IAHP programs has contributed immensely to claimant's progress. But there is no scientific evidence that being engaged in other activities would not have produced a similar result, i.e., there is no scientific evidence that the IAHP recommendations made any difference.

35. Complainant submitted a progress report by Dr. Poni. The report outlines 12 clinical changes claimant experienced in the 12 months before August 15, 2019. The report does not concern Dr. Poni's observations; it concerns things claimant's parents reported to him. At the end of the report, Dr. Poni lists seven physical activity programs in which claimant is engaged. All seven are IAHP programs. However, Dr.

Poni does not identify them as such; he merely lists them. Also, he does not address causation, i.e., he does not say whether the physical activities contributed to the clinical changes.

36. The IAHP programs are experimental treatments or therapeutic services that have not been clinically determined or scientifically proven to be effective.

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. Claimant has the burden of proof. (Evid. Code, §§ 115 & 500.) Claimant is seeking an order requiring the regional center to provide a service or support that is not provided for in claimant's IPP and that is not currently being provided.

2. The standard of proof is proof by a preponderance of the evidence. (Evid. Code, § 115.)

Overview of a Regional Center's Obligation to Provide Services

3. The Lanterman Developmental Disabilities Services Act, Welfare and Institutions Code section 4500, et seq. (Lanterman Act), is an entitlement act. People who qualify under it are entitled to services and supports. (*Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384.)

4. The purpose of the statutory scheme is twofold: to prevent or minimize the institutionalization of developmentally disabled persons and their dislocation from family and community and to enable them to approximate the pattern of everyday living of nondisabled persons of the same age and to lead more independent and

productive lives in the community. (*Association for Retarded Citizens*, *supra*, 38 Cal.3d, at p. 388.)

5. Persons with developmental disabilities have "a right to dignity, privacy, and humane care," and services and supports, when possible, should be provided in natural community settings. (Welf. & Inst. Code, § 4502, subd. (b).) Persons with developmental disabilities have "a right to make choices in their own lives" concerning "where and with whom they live." (Welf. & Inst. Code, § 4502, subd. (j).)

6. Regional centers should assist "persons with developmental disabilities and their families in securing those services and supports . . . [that] maximize opportunities and choices for living, working, learning, and recreating in the community." (Welf. & Inst. Code, § 4640.7, subd. (a).) Regional centers should assist "individuals with developmental disabilities in achieving the greatest self-sufficiency possible and in exercising personal choices." (Welf. & Inst. Code, § 4648, subd. (a)(1).)

7. In *Williams v. Macomber* (1990) 226 Cal.App.3d 225, 232-233), the court of appeal addressed the Lanterman Act and said:

> In order for the state to carry out many of its responsibilities as established in this division, the Act directs the State Department of Developmental Services to contract with "appropriate private nonprofit corporations for the establishment of a "network of regional centers." (§§ 4620, 4621.) Regional centers are authorized to "[p]urchase . . . needed services . . . which regional center determines will best" satisfy the client's needs. (§ 4648.) The Act declares: "It is the intent of the Legislature to encourage

regional centers to find innovative and economical methods" of serving their clients. (§ 4651.) The Act directs that: "A regional center shall investigate every appropriate and economically feasible alternative for care of a developmentally disabled person available within the region." (§ 4652.)

[¶] . . . [¶]

[T]he Regional Center's reliance on a fixed policy is inconsistent with the Act's stated purpose of providing services "sufficiently complete to meet the needs of each person with developmental disabilities." (§ 4501.) The Act clearly contemplates that the services to be provided each client will be selected "on an individual basis." (*Association for Retarded Citizens v. Department of Developmental Services, supra*, 38 Cal.3d 384, 388.)

A primary purpose of the Act is "to prevent or minimize the institutionalization of developmentally disabled persons and their dislocation from family." (*Association for Retarded Citizens v. Department of Developmental Services*, *supra*, 38 Cal.3d 384, 388.) In strong terms, the Act declares: "The Legislature places a high priority on providing opportunities for children with developmental disabilities to live with their families" requiring the state to "give a very high priority to the development and expansion of programs designed to assist families in caring for their children at home." (§ 4685, subd. (a).) In language directly

applicable to the present case, section 4685, subdivision (b), states that "regional centers shall consider every possible way to assist families in maintaining their children at home, when living at home will be in the best interest of the child." (§ 4685, subd. (b).)

The Lanterman Act "grants the developmentally disabled person the right to be provided at state expense with only such services as are consistent with its purpose." (*Association for Retarded Citizens v. Department of Developmental Services, supra*, 38 Cal.3d 384, 393.) As noted previously, a primary purpose of the Act is to "minimize the institutionalization of developmentally disabled persons and their dislocation from family."

8. The Act provides examples of services and supports that should be considered.

"Services and supports for persons with developmental disabilities" means 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. The 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. Services and supports listed in the individual program plan may include, but are not limited to, diagnosis, evaluation, treatment, personal care, day care, domiciliary care, special living arrangements, physical, occupational, and speech therapy, training, education, supported and sheltered employment, mental health services, recreation, counseling of the individual with a developmental disability and of his or her family, protective and other social and sociolegal services, information and referral services, follow-along services, adaptive equipment and supplies, advocacy assistance, including self-advocacy training, facilitation and peer advocates, assessment, assistance in locating a home, child care, behavior training and behavior modification programs, camping, community integration services, community support, daily living skills training, emergency and crisis intervention, facilitating circles of support, habilitation, homemaker services, infant stimulation programs, paid roommates, paid neighbors, respite, short-term out-of-home care, social skills training, specialized

> medical and dental care, supported living arrangements, technical and financial assistance, travel training, training for parents of children with developmental disabilities, training for parents with developmental disabilities, vouchers, and transportation services necessary to ensure delivery of services to persons with developmental disabilities. (Welf. & Inst. Code, § 4512, subd. (b).)

Requirement that Regional Centers Be Cost Conscious

9. While the Lanterman Act emphasizes the services and supports to which consumers are entitled, the act also requires regional centers to be cost conscious.

10. It is the intent of the Legislature to ensure that the provision of services to consumers and their families be effective in meeting the goals stated in the individual program plan, reflect the preferences and choices of the consumer, and reflect the cost-effective use of public resources. (Welf. & Inst. Code, § 4646, subd. (a).)

11. When selecting a provider of consumer services and supports, the regional center, the consumer, or where appropriate, his or her parents, legal guardian, conservator, or authorized representative shall consider, "the cost of providing services or supports of comparable quality by different providers, if available." (Welf. & Inst. Code, § 4648, subd. (a)(6)(D).)

12. The Lanterman Act requires regional centers to do a number of things to conserve state resources. For example, it requires regional centers to "recognize and build on . . . existing community resources." (Welf. & Inst. Code, § 4685, subd. (b).)

13. None of these provisions concerning cost-effectiveness detracts from the fact that eligible consumers are entitled to the services and supports provided for in the Lanterman Act. These provisions concerning cost-effectiveness do teach us, however, that cost-effectiveness is an appropriate concern in choosing how services and supports will be provided. There is a tension between the requirement that services and supports be cost effective and the proposition that entitlement is determined by what is needed to implement a consumer's IPP. The cost-effectiveness of a particular service or support must be measured against the extent to which it will advance the goal specified in the IPP, and consideration must be given to alternative means of advancing the goals.

IRC Invoked an Exception in Order to Pay for Educational Materials

14. A regional center's authority to purchase educational services for children 3 to 17 has been suspended. (Health & Saf. Code, § 4648.5, subd. (a)(3).)

15. In this case, IRC found there were grounds to invoke an exception pursuant to Health and Safety Code section 4648.5, subdivision (c), and IRC has reimbursed claimant's parents $2,920 for educational services and materials.

IRC Waived the Prohibition Against Retroactive Authorization

16. California Code of Regulations, title 17, section 50612, subdivision (b), requires that a purchase of service authorization be obtained in advance of the provision of a service except in specified circumstances that are not applicable in this case.

17. IRC ultimately agreed to pay $2,920 for educational services and materials. Also, at a January 10, 2019, Individual Program Plan (IPP) meeting, IRC

agreed to allow claimant's parents to present further documentation through June 30, 2019. Thus, IRC waived the prohibition against authorizing payments retroactively.

Adequacy of the Services Provided in California

18. A regional center cannot provide services or supports if some other agency is providing them or has an obligation to provide them and has not refused to do so.

> Regional center funds shall not be used to supplant the budget of an agency that has a legal responsibility to serve all members of the general public and is receiving public funds for providing those services. (Welf. & Inst. Code § 4648, subd. (a)(8).)

19. Claimant's father and mother both testified that the physical therapy and occupational therapy services CCS provides do not meet claimant's needs. Claimant's mother testified that the occupational therapist spends 45 minutes per year with them and that the physical therapist spends 45 minutes per year with them. Their testimony was credible, and there was no evidence that contradicted it. But this case is not about whether IRC, as the provider of last resort, is obligated to provide physical therapy and occupational therapy services. Claimant did not offer evidence that claimant had exhausted all reasonable possibilities of obtaining physical therapy and occupational therapy services that would meet her needs.

20. Claimant failed to prove that her other medical needs are not being met by the services provided in California.

IAHP's Medical and Therapeutic Services Have Not Been Scientifically Proven to be Effective

21. The medical and therapeutic services IAHP provides are experimental and not scientifically proven to be effective, and IRC cannot pay for experimental services.

> Notwithstanding any other law or regulation . . . regional centers shall not purchase experimental treatments, therapeutic services, or devices that have not been clinically determined or scientifically proven to be effective . . . . Experimental treatments or therapeutic services include experimental medical or nutritional therapy when the use of the product for that purpose is not a general physician practice. (Welf. & Inst. Code, § 4648, subd. (a)(16).)

22. Claimant's parents have implemented a number of IAHP programs, and at least part of the reimbursement they seek is for funds spent for assessing the effectiveness of those programs. Part is for training that claimant's parents received concerning the programs they implemented and other IAHP programs that claimant did not prove had been scientifically proven to be effective. Dr. Ahmad testified that the medical and therapeutic services IAHP provides are experimental and not evidence-based. Claimant offered no evidence to rebut that testimony.

23. Dr. Ahmad testified he had never heard of scientific evidence that oxygen enrichment would reduce seizure frequency, rigidity, or lung infections. Dr. Ahmad observed that, at Exhibit C, page 5, IAHP's description of the "procedure" for the oxygen enrichment program is characterized as a "Research Project." Dr. Ahmad emphasized that the program concerns an experimental treatment that has not been

scientifically proved to be effective. Dr. Ahmad testified that IAHP's oxygen enrichment protocol in not a recognized treatment for cerebral palsy or intellectual disability and that there is no scientific research that demonstrates that it is effective.

24. Dr. Ahmad testified that scientific evidence does not support patterning as a medical treatment. He said neurologists, experts in cerebral palsy, and experts in intellectual disability generally do not accept patterning as scientifically proved to be effective. Dr. Ahmad testified that, in part, his opinion is based on an article by the American Academy of Pediatrics (AAP) entitled The Treatment of Neurologically Impaired Children Using Patterning. The AAP concluded that the IAHP's patterning treatment is based on an outmoded and oversimplified theory of brain development. The effectiveness of the treatment is not supported by evidence-based medicine, and the treatment is unwarranted.

25. Dr. Ahmad testified he had never heard of scientific evidence that would support keeping a child on the floor as a treatment for cerebral palsy or intellectual disability. He testified that teaching a child to roll down a panel is not a generally accepted medical treatment.

26. Many things may have contributed to the progress claimant has made. She has matured and had more experiences in life. Her parents stopped giving her the seizure medications. FUSD provides home schooling, adaptive physical education, orthopedic services, and vision impairment services. No doubt the extensive time claimant's mother has spent with claimant every day engaged in implementing the IAHP programs has contributed immensely to claimant's progress. But the IAHP programs are experimental treatments or therapeutic services that have not been clinically determined or scientifically proven to be effective.

Accordingly, claimant did not meet her burden, and the appeal must be denied.

ORDER

Claimant's appeal of IRC's decision not to fund $2,480 for IAHP medical and therapeutic services is denied.

DATE: October 9, 2019

ROBERT WALKER
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.