

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

In the Matter of:

CLAIMANTS,

vs.

REGIONAL CENTER OF THE EAST BAY, Service Agency.

OAH Nos. 2019120321/2019120328

DECISION

Administrative Law Judge Juliet E. Cox, State of California, Office of Administrative Hearings, heard this matter on January 9, 2020, in Concord, California.

Claimants' mother advocated for them at the hearing. Claimants attended the hearing briefly but were excused from the majority of the proceeding.

Mary Dugan represented service agency Regional Center of the East Bay (RCEB).

The matter was submitted on January 9, 2020.

ISSUE

Shall RCEB cover copayments for claimants' orthodontia?

FACTUAL FINDINGS

1. Claimants were born in 2007. They are twins, and both are RCEB consumers. Claimants live with their mother.
2. Claimants both need orthodontic treatment.
3. Claimants have health insurance that includes coverage for dental care. This health insurance covers part of the cost of their orthodontic treatment. The remaining cost of this treatment for each claimant, beyond what the insurance covers, is \$135 per month for at least 24 months.
4. A family friend who is not claimants' legal parent or guardian provides claimants' health insurance. The evidence did not establish that this friend is under any obligation to provide for claimants in any way, and did not establish precisely the arrangement by which he has provided for claimants' health insurance coverage.
5. The orthodontic clinic where claimants are receiving treatment would not extend credit to claimants' mother for the copayments described in Finding 3. For this reason, the family friend described in Finding 4 contracted to pay these copayments to the clinic. Claimants' mother testified credibly that she has agreed with her friend that she ultimately will cover these costs, but that she can afford at most \$5 per month right now.

6. Claimants' family presently lives about 40 miles away from the man described in Finding 4 and his family. Nevertheless, this family friend also provides other support for claimants and their mother. When claimants were very young, their friend lived very near to them and their mother, and he saw them frequently. Currently, he visits them about once per week and talks to them daily by telephone. He has attended school meetings about claimants, such as Individualized Education Plan meetings and parent-teacher conferences, with claimants' mother. Claimants think of this family friend as their father, and claimants' mother relies on him as a father figure and male role model for her sons.

7. RCEB and claimants' mother agree that claimants' family's annual gross income, without considering their family friend's income, does not exceed 400 percent of the federal poverty level.

8. RCEB and claimants' mother agree that no other governmental agency, private entity, or individual person is responsible for paying any portion of the costs for claimants' orthodontic treatment.

LEGAL CONCLUSIONS

1. Under certain circumstances, RCEB may pay a consumer's health insurance or health care service plan copayment or deductible, for a service consistent with the consumer's Individual Program Plan. (Welf. & Inst. Code, § 4659.1.) Health and dental care for claimants is such a service, and the matters stated in Finding 2 establish that orthodontic treatment in particular is necessary for claimants.

2. For a minor consumer, RCEB may pay a copayment or deductible if the health insurance coverage from the consumer's "parent, guardian, or caregiver" pays for the remainder of the service at issue. (Welf. & Inst. Code, § 4659.1, subd. (a)(1).) The matters stated in Findings 3, 4, and 6 do not establish that claimants' health insurance coverage is through a parent or guardian. Instead, these matters establish that it is through a caregiver.

3. For a minor consumer, RCEB may pay a copayment or deductible if the "family has an annual gross income that does not exceed 400 percent of the federal poverty level." (Welf. & Inst. Code, § 4659.1, subd. (a)(2).) The matters stated in Finding 7 establish that claimants' family's income is below this limit. Furthermore, because the matters stated in Finding 4 establish that claimants' family friend is a voluntary benefactor rather than their parent or guardian, his income need not factor into the calculation of claimants' family income for this purpose.

4. For a minor consumer, RCEB may pay a copayment or deductible if "no other third party having liability for the cost of the service or support" exists. (Welf. & Inst. Code, § 4659.1, subd. (a)(3).) The matters stated in Finding 8 confirm that no such person or agency exists for claimants.

5. RCEB may pay a copayment or deductible only if RCEB's assistance is "necessary to ensure that the consumer receives the service or support." (Welf. & Inst. Code, § 4659.1, subd. (a).) The matters stated in Finding 5 demonstrate that RCEB's copayment assistance is necessary for claimants' orthodontic care.

ORDER

Claimants' appeal is granted. RCEB shall reimburse claimants' mother for their orthodontic copayments, in the amount of \$135 per claimant for month, continuing for 24 months or until the payment obligation ends, whichever is earlier.

DATE:

JULIET E. COX

Administrative Law Judge

Office of Administrative Hearings

NOTICE

This decision is the final administrative decision in this matter. Both parties are bound by this decision. Either party may appeal this decision to a court of competent jurisdiction within 90 days.