

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

In the Matter of:

CLAIMANT,

vs.

WESTSIDE REGIONAL CENTER,

Service Agency.

OAH No. 2020060145

DECISION

Eileen Cohn, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter on March 4, 2021.

Claimant was represented by Carla Lehmann, Advocate. Claimant's mother (Mother) was present throughout the hearing. A Spanish-language interpreter was duly sworn and made available for Mother. Claimant appeared briefly and was introduced to the participants.

The Westside Regional Center (WRC) was represented by Candace J. Hein, Esq, Fair Hearing Specialist.

Oral and documentary evidence was received. The record remained open for the parties to exchange and submit the most recent Individual Education Program (IEP), assessments and relevant e-mails from the school district, for the parties to submit Closing Briefs. Claimant submitted supplemental Exhibits DDD-WWW, which were marked and admitted. Claimant's Closing Brief was marked for identification only as Exhibit ALJ-1, and the Service Agency's Closing Brief was marked for identification only as Exhibit ALJ-2. The record was closed, and the matter was submitted for decision on April 9, 2021.

ISSUE

The parties stipulated to the following issue:

Whether the WRC is required to fund clinic-based speech and language services to address her oral-motor deficits using a specific methodology referred to as PROMPT.

SUMMARY

Claimant requests clinic-based speech and language services which focus on interventions to address her physical oral-motor deficits which impact her articulation and ability to be understood. The methodology requested, which is referred to as PROMPT, was recommended in the WRC-funded speech and language assessment. Claimant contends she cannot access the school district for these services because the school district does not allow its speech pathologist to perform hands-on services and lacks the specialized training to do so. Claimant's doctors have identified the service as medically necessary, but Claimant cannot access her medical insurance which is Medi-

Cal because the only service providers available use a managed care version of Medi-Cal and she uses fee-for-service medical.

The WRC has denied Claimant's request on the ground that as the payor of last resort it is barred from funding these services which should be provided by the school district or alternatively Medi-Cal. Claimant had never formally requested the school district provide these services in an individual education program or received a rejection from Medi-Cal which would provide the WRC a basis to fund these services at least on a temporary basis, pending the outcome of any dispute.

The services requested are both school-related and medically necessary. As such, Claimant must at a minimum formally request these services from the school district and assert her rights under the law governing special education before the WRC is obligated to fund clinic-based speech services, even on a temporary basis. As such, Claimant's appeal is denied.

EVIDENCE

Claimant presented the testimony of the advocate, Claimant's mother and Claimant's family member, Leticia Chavez. Claimant submitted Exhibits A-VVV. Claimant withdrew Exhibits D, L, P and RR, and the ALJ denied the admission of Exhibits SS, TT, BBB and CCC. The Service Agency presented the testimony of Candace Hein and submitted Exhibits 1-6 which were admitted without objection. Claimant's closing written brief was marked only as Exh. ALJ-1 and WRC's closing written brief was marked only as Exhibit ALJ-2.

SUMMARY

Jurisdictional Matters and Background

1. Claimant is six years, four months of age. She lives with her parents and older brother and has regular contact with her large extended family. She is eligible for Lanterman Act services due to her diagnoses of intellectual disability (ID) secondary to Downs Syndrome. She was initially provided services by the WRC when she participated in the Early Start Program. Those services included speech and language services to address oral-motor deficits, using a methodology which uses tactile jaw support, known as PROMPT, which requires the service provider to use a hands-on approach to manipulate her mouth to improve her articulation. The WRC provided speech therapy services twice weekly with Napa Kids beginning in October 2016 through sometime in 2017 and a day placement with Speech and Language Therapy Center, three times a week, three hours a day in April 2017. (Exh. FFF.)

2. Claimant has a wide range of medical and physical issues. By history she has a heart murmur, gastroesophageal reflux disease (GERD), surgeries for a congenital heart defect and a gastrostomy tube (G-Tube) placement beginning at 23 months. She also has a history of pulling out the G-Tube and choking which requires care to make sure she is sitting up right when eating. She is allergic to dairy products and prone to serious allergic reactions. She is limited to gluten-free products. She has astigmatism in both eyes and strabismus for which she wears eyeglasses. Claimant also requires assistance with toileting, uses diapers throughout the day, and needs them to be changed. (Exh. FFF.)

3. Claimant's oral-motor deficits make it difficult for her to eat and to articulate words.

4. On April 24, 2020 the WRC notified Claimant that the day before, the WRC's Purchase of Service (POS) Committee met, reviewed her request for clinic-based speech and language services and denied it. As part of its review it looked at the school district's assessments. The basis of the WRC's denial was its position that the requested services were the responsibility of the school district and documented in the IEP, that the WRC does not fund services where its clients qualify for insurance-based therapies, and the WRC does not have sufficient evidence to make a clinical decision. (Exh. 2(C).)

5. Mother timely filed for fair hearing. After WRC issued its Notice of Proposed Action (NOPA) and Mother filed for fair hearing, the WRC agreed to fund an assessment and the scheduled fair hearing was continued. The WRC did not change its position that it was not responsible for providing speech therapy. WRC contends that the therapy was the responsibility of the school district and Claimant's insurance, fee-for-service Medi-Cal. (Exh. 4.)

6. All jurisdictional requirements have been met for this matter to proceed to fair hearing.

School District-Based Services and Assessments

7. Claimant was made eligible for special education services by her local school district (school district) in June 2018 under the primary category of Intellectual Disability (ID) and secondary category of speech and language impairment (SLI). Through school-based assessments and observations, Claimant's cognitive ability was estimated to be in the low to well below average range, her communications skills limited, and her physical challenges many, including her feedings through a G-Tube and her allergy to gluten, which requires her to be in an environment where gluten is

restricted and she is monitored throughout the day. Claimant also has deficits in adaptive behavior which affect her ability to access her educational program. These deficits have become more pronounced during the Covid-19 Pandemic when she no longer could go to school. (Exh. DDD.) Due to her deficits, Claimant was eventually placed in a nonpublic school (NPS) under contract with the school district, Smart Start, where she receives all her instruction and services. Smart Start is considered the best placement, and least restrictive environment (LRE) for Claimant under the federal Individual with Disabilities Education Act (IDEA) and related state statutes and regulations which govern special education and related services. When attending school, Claimant is supposed to be provided with individual behavior intervention services during her school day, occupational therapy 60 minutes weekly, and speech and language services, 90 minutes weekly.

8. Claimant had initially been provided with 60 minutes a week of school-based speech and language services. In her May 22, 2020 IEP, her school psychologist detailed Claimant's progress from June 2019. Her school-based speech and language provider reported that as of June 2019 she was inconsistent with her communication skills "as her attention and engagement for activities differ by day." (Exh. DDD.)

...When not presented with visual cues, it is challenging for [Claimant] to follow directions, make choices, and participate. Her vocabulary is limited, so it can be challenging to understand what [Claimant] needs. [Claimant] primarily uses single words to label nouns, but does not often use a variety of verbs, adjectives, and pronouns. [Claimant] is able to express herself using 1-2 words when given moderate affective adult cueing.

[Claimant is interested in her peers, but she has challenges reciprocating verbal conversational turns without adult support. [Claimant] has recently increased her use of verbal language and is demonstrating articulation errors. Overall her speech intelligibility is around 50% accurate. She is using a variety of initial sounds, but often the sounds are distorted, omitted or substituted for other sounds. She will omit final consonant sound in CVS and multisyllabic words containing /b, t, d, k, g, ng/. [Claimant] also substitutes sounds, including vowels such as /u/ and consonants /s, l, r, t, d, k, g, ng/. It takes maximum verbal modeling and tactile cues to help [Claimant] produce those sounds. It is also challenging for [Claimant] to answer where, doing what, and complex yes/no questions. [Claimant] often requires questions presented as a choice or with visual cues. Although she can answer questions, she also does not initiate questions on her own unless cued by an adult.

(Exh. DDD.)

9. In her IEP dated May 22, 2020, the school district acknowledged the benefit and joy Claimant gets from her peers but her speech and language challenges “hinder her ability to fully participate in her curriculum.” (Exh. DDD.) These challenges were to be addressed by speech and language services directed to her weak receptive and expressive communication and need for support “to reciprocate communication to make requests, label basic concepts, and answer questions related to her curriculum and social activities.” (*Ibid.*) At the time of that IEP, Claimant was receiving 60 minutes

of individual speech and language per week to address her expressive and receptive language skills and pragmatics and demonstrated she could reciprocate communication in a limited way with moderate support, name colors when given two verbal and visual choices, label other items and actions, and verbally express herself mostly in one or two words accompanied by gestures. (Exh. GGG.)

10. With her increased use of verbal language Claimant demonstrated articulation errors and speech intelligibility in the 50 percent range. (Exh. GGG.) The sounds were reported to be “distorted, omitted or substituted for other sounds,” requiring “maximum verbal modeling and tactile cues to help [Claimant] produce those sounds.” (*Ibid.*) Goals were recommended to directly address Claimant’s need to produce appropriate consonants. (*Id.*)

11. The IEP provided Claimant with four speech goals, to advance her ability to use and combine words, to actively participate in the classroom and therapy by taking communicative turns “with peers and adults” and one articulation goal to reduce “final consonant deletions and substitutions by correctly producing age appropriate voiced consonants /b,d, g/ in the final position in routine phrases with minimal cues.” In order to “produce age appropriate sounds in the final position of words.” (Exh. DDD.)

12. Claimant’s May 22, 2020 IEP addressed her fine and gross motor skills, as well as her visual-motor integration, including her low muscle tone, hyper-mobility in her joints and generalized weakness, but not her oral-motor skills.

13. Claimant’s IEP of May 22, 2020, increased her speech and language services from 60 minutes to 90 minutes of individual and group language and speech services weekly at the school.

14. Mother claims she worked hard with the school district to increase speech and language services and that the school-based services are tailored to her curriculum at school, such as expressing colors. However, there is no indication from the May 22, 2020 IEP of a distinction, when it comes to articulation, between the need to improve her expressive skills at school, where she must interact with peers, as well as with teachers and the community. There is also no evidence from the May 22, 2020 IEP that Mother disagreed with the scope of the services and the need for oral-motor work that the school refused to provide. Mother consented to the IEP.

15. On December 4, 2020, the IEP team met again. The team included the parent, the Director of the NPS, the special education teacher, the school district psychologist and was held on Zoom due to the Covid-19 school closure. The purpose of the meeting was to determine Claimant's continued qualification for special education services. Mother did report her concerns about Claimant's low muscle tone and her status of feeding through a G-Tube and her allergies to gluten. Mother reported her concerns with Claimant's behaviors which were consistent with Mother's testimony during the hearing: Claimant loved attending school, organized her backpack each day to attend school, and has had more tantrums at home due to the isolation from school. However, there is no report of any discussion about Claimant's need for additional speech and language services to address her oral-motor deficits. Mother again consented to the May 22, 2020 IEP without changes. (Exh. EEE.)

16. The school district prepared a psycho-educational evaluation report on October 20, 2020 (Exh. FFF.) Claimant's language skills were assessed to be in the below average to well below average range; her vocabulary is severely limited and she is unable to use verbal skills to describe a situation. (*Ibid.*) Teacher observations confirmed Claimant's restricted language: she can "sometimes" make a verbal request

for a desired item, but mostly points, cannot use a sentence with a noun and a verb, and cannot state her name and phone number. (*Id.*) As an intervention to address her ID, the assessor recommended "peer socialization" including increasing Claimant's ability to carry on appropriate conversations with other children." (*Id.*)

17. The psycho-educational report was consistent with the earlier report dated May 22, 2020 which addressed Claimant's speech and language goals and objectives. (Exh. GGG.) Articulation errors were noted: Overall, her speech intelligibility is around 50% accurate. She is using a variety of initial sounds, but often the sounds are distorted, omitted or substituted for other sounds. She will omit final consonant sounds in CVC and multisyllabic words containing /b, t, d, k, g, ng/. [Claimant] also substitutes sounds, including vowels, such as /u/ and consonants /s, l, r, t, d, k, g, ng/. It takes maximum verbal modeling and tactile cues to help [Claimant] produce those sounds." (*Ibid.*)

18. After the May 2020 IEP, Claimant received a limited number of the speech and language services offered by the school district due to a three-month absence followed soon after by the departure of the speech and language therapist. (Exhs. MMM, NNN, PPP and QQQ.) As recently as March 22, 2021, Smart Start was still working on getting a speech therapist to work with Claimant on Zoom. (Exh. SSS.) The triennial school evaluation is pending which will include a speech assessment. Mother consented to the assessment plan on March 22, 2021. (Exh. HHH.)

WRC Funded Speech and Language Evaluation Report

19. On November 16, 2020, Speech 4 Kids' licensed speech and language pathologists Christine Yarin and treating therapist, and Andree James, the Owner/Director prepared a speech and language evaluation report (Yarin Report) for

the WRC for the purpose of providing a “second opinion regarding a diagnosis of Childhood Apraxia of Speech as well as an evaluation of her speech and language skills.” (Exh. Q.) The observations included in the Yarin Report were consistent with what was observed at school: Claimant primarily produced single words, communicates through gestures, single words and “scripted” phrases and can name items with verbal support and clarifying questions. (*Ibid.*)

20. The Yarin Report went into depth about Claimant’s speech articulation and oral-motor skills, an area largely ignored in the school district’s assessments. Claimant presented with a reduced lip strength and coordination and reduced range of motion and strength in her tongue when opposing pressure was applied as well as reduced range of motion and deficits in lingual coordination. Claimant’s jaw was also observed to “slide significantly when producing syllables and words requiring labiofacial movements (lip rounding and retraction) indicating reduced jaw strength and coordination.” (Exh. Q.) Ms. Yarin recommended an intervention which would address her oral-motor deficits.

[Claimant] benefited from tactile jaw support (PROMPT) when producing these movements in order to maintain a symmetrical jaw position. [Claimant] will benefit from a multimodal approach to her speech production and articulation skills including visual and tactile supports through programs such as PROMPT. In addition [Claimant] would benefit from a whole word approach to improve her articulation and speech production, focusing on target words that are relevant, meaningful and motivating to [Claimant] and her life.

(Exh. Q.)

21. On March 22, 2021, after the fair hearing, Mother asked Smart Start to review WRC's speech therapy evaluation and asked them whether it could provide speech therapy with the PROMPT methodology. (Exh. SSS.) Smart Start responded: "PROMPT can sometimes be beneficial, but it is often dependent on how it is used and the relationship the therapist builds with the child, as it involves direct touch around the face." Mother was also told that the speech pathologists at Smart Start did not have the specialized training to use the that method (*Ibid.*) There was no express rejection of Mother's request or any reference to a protocol that would bar Smart Start's speech and language providers from touching Claimant's mouth.

22. On March 22, 2021 Mother consented to the school district's administration of a speech and language assessment by a speech and language pathologist as part of the triennial assessment. The administration of the triennial speech and language assessment has been delayed and was not submitted as evidence in this fair hearing. The next annual IEP is due by May 21, 2021. (Exh. UUU.) An occupational therapy assessment was also part of the triennial assessment but did not address oral-motor deficits and focused instead on visual and bilateral motor coordination and pre-writing skills. (Exhs. III, JJJ and TTT.) As of March 25, 2021, the speech therapy evaluation was not completed. (Exh. UUU.)

23. On March 29, 2021, Ron Lopez, the WRC's Educational Advocacy Specialist spoke with Mother about the upcoming IEP team meeting planned on or around May 21, 2021. In response to a query from Carla Lehmann, Claimant's Advocate, Mr. Lopez agreed to provide Mother assistance at the IEP team meeting after the school district completes its evaluation and considers the PROMPT recommendation in the WRC evaluation. He advised Mother that the current IEP

recommended speech and language services targeted to Claimant's "educational needs to communicate during school hours but whether or not PROMPT is part of the curriculum "it may not be a needed component or strategy to meet her educational goals at this point." (Exh. VVV.)

24. Mr. Lopez confirmed that the IEP team needs to consider the WRC evaluation as part of its assessment so long as it was provided to the assessor. He emphasized that there was no guarantee the school district will agree to her request. (Exh. VVV.)

25. The evidence established that WRC's funded speech evaluation was timely provided to the school district to be considered in its speech and language assessment.

26. Mother insisted that the school district speech and language services were distinctively school-based, and that Claimant needs clinic-based services. Mother attempted to distinguish the school curriculum from community-based speech. Mother and Claimant's family member, Leticia Chavez, who has worked with special needs children, both testified credibly about their observations of the relationship between Claimant's escalation in behaviors and her inability to clearly express herself and be understood. Mother relayed the circumstance where a family member was getting a haircut and Claimant was frustrated because she could not be understood trying to say she also wanted a haircut.

27. Mother insisted that before she came to the hearing she had pressed Smart Start for PROMPT services and staff declined because Smart Start does not allow its speech and language service providers to touch their students mouths, which is required with PROMPT-type methodologies. However , there is no evidence from

the IEP documents or any other communications that prior to the fair hearing the school district formally denied speech and language services on-site, which addressed Claimant's oral-motor deficits which impact her articulation for any reason, including protocols that bar its speech pathologist from touching a student's mouth. There is no evidence the school district, whose representative is part of the IEP team, formally declined funding clinic-based speech with a speech pathologist who could touch Claimant's mouth. As written, the IEP identified articulation as a goal which given Claimant's oral-motor deficits identified in the WRC assessment requires attention to her oral-motor function by PROMPT or another methodology.

28. Mother clearly was concerned about losing the Smart Start placement, which due to the complexity of Claimant's profile, is the appropriate school placement for Claimant in all other respects. Smart Start can address Claimant's gluten intolerance, behaviors, diaper changes, and provide a positive and engaging social environment with peers. Claimant looked forward to going to Smart Start, so much so, that each day during the Covid-19 Pandemic, when learning has taken place at home instead of at school, Claimant still gets her backpack in the hopes she will be going to the campus.

29. From Mother's testimony it was clear she wanted to follow the example of other parents at Smart Start who accessed outside resources, principally insurance, for clinic-based services and not press the school district for additional services outside the school site. Mother emphasized the school district increased school-based speech and language services to 90 minutes weekly from 60 minutes weekly at her insistence, but there is no evidence the school district rejected any request for speech and language services to address oral-motor deficits which affect Claimant's articulation and ability to communicate.

Individual Program Plan

30. Claimant's last Individual Program Plan (IPP) was held on July 31, 2020 and approved by the WRC and distributed on October 8, 2020 (the 2020 IPP). (Exh. G.) The next IPP is due on or about July 31, 2021. In addition to the formal meeting held on Zoom, Claimant and the WRC had many verbal and written communications throughout the remainder of 2020 about the scope of services and the WRC's position that it was not required or even allowed to fund speech services that should be funded either by the school district or insurance.¹

31. Claimant receives a variety of services from the WRC which the WRC authorized in the 2020 IPP, including behavior intervention services, and funding for diapers. Claimant recently became part of the Self Determination Program (SDP) and her approved services have been included in that budget. (Exh. G.) In her Person-Center Plan (PCP) Claimant emphasized her desire to be fully integrated in the community, to improve her speech and learn how to effectively communicate with others, to make friends her own age, to socialize and play games with peers. Claimant repeated her priority on receiving clinic-centered speech services for which she identified the WRC as the responsible agency. (Exh. M.)

32. Claimant requested additional goals to be included in her IPP to address her communication deficits under the label's community participation and integration (improve her speech and learn how to effectively communicate with others), daily

¹ Claimant became a participant in the SDP beginning in August 2020, but there was no material evidence that this changed the focus of the issue of whether the WRC's is required to pay for clinic-based speech services using the PROMPT method.

living skills (start verbally communicating her wants and needs and find ways of communication so people can understand her); and behavioral and social (communicate to her parents when she needs to go to the bathroom and try to go by herself). (Exh. G.) The WRC did not agree to these additional goals.

33. The WRC agreed that the clinic-based speech therapy requested is a medical service but insisted that it does not fund these services for a client who is school-aged and in Claimant's case, has an IEP that provides for speech services. (Ex. GG.)

Claimant's Efforts to Secure Insurance

34. Claimant was referred by her medical doctor to her insurance provider, Medi-Cal, for clinical speech and language therapy to address her oral-motor issues. Claimant has never expressly been denied Medi-Cal coverage for speech and language services. Claimant provided credible testimony, supported by extensive documentation (which was included in numerous admitted exhibits), that she conducted an exhaustive and unsuccessful search for insurance providers who are willing to provide clinic-based speech and language services focused on her oral-motor speech deficits.

35. Claimant has a complex range of medical conditions and has been under the care of the same medical providers for years that are familiar with her profile. Her medical providers will only take fee-for-service Medi-Cal so she cannot switch to managed care Medi-Cal for speech and language services without losing her long-term medical providers. The WRC worked closely with Claimant and Claimant followed the WRC's advice. Mother contacted a variety of speech and language providers, including the University of California, Los Angeles and the Children's Hospital of Los Angeles, Children's Hospital of Long Beach and many clinic-based speech providers,

only to be told that she did not qualify for their services, either because they did not take fee-for-service Medi-Cal, her doctor was not a practitioner at that facility (UCLA), or that their services were more limited, such as stroke.

36. Mother convincingly established that she cannot switch Claimant to managed care-based Medi-Cal due to her fragile medication condition without losing her principal medical providers who only accept fee-for-service Medi-Cal.

LEGAL CONCLUSIONS

1. The Lanterman Developmental Disabilities Services Act (Lanterman Act) governs this case. (Welf. & Inst. Code, (Code), §§ 4500 et seq.) A state level fair hearing to determine the rights and obligations of the parties, if any, is referred to as an appeal of the service agency's decision. Claimant properly and timely requested a fair hearing and therefore jurisdiction for this case was established. (Factual Findings 1-6.)

2. When one seeks government benefits or services, the burden of proof is on him. (*Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161.) 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.) Preponderance of the evidence means evidence that has more convincing force than that opposed to it. (*Glage v. Hawes Firearms Co.* (1990) 226 Cal.App.3d 314, 324.) In this case, claimant has the burden of proving by a preponderance of the evidence that she is entitled to the requested services and funding. (Evid. Code, § 500.) Claimant failed to meet her burden of proof that the WRC is responsible for funding clinic speech therapy as an ongoing or temporary service to address her oral-motor deficits which contribute to her articulation issues.

3. The determination of which services and supports are necessary for each consumer shall be made through the IPP process. (Code § 4512, subd. (b).) 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 IPP participants, the effectiveness of each option in meeting the goals stated in the IPP, and the cost-effectiveness of each option. (Code § 4512, subd. (b).) While a regional center is obligated to secure services and supports to meet the goals of each consumer's IPP, a regional center is not required to meet a consumer's every possible desire but must provide a cost-effective use of public resources. Here, speech services are not part of the IPP, and that service is required to be provided by the school district or Medi-Cal.

4. A regional center is required to secure the services and supports that meet the needs of the consumer, as determined in the consumer's IPP. (Code § 4646, subd. (a)(1).) Code section 4646.5, subdivision (a)(1), provides that the planning process for an IPP shall include, among other things, "[g]athering information and conducting assessments to determine the life goals, capabilities and strengths, preferences, barriers, and concerns or problems of the person with developmental disabilities." Subdivision (a)(1) further provides: "Assessments shall be conducted by qualified individuals and performed in natural environments whenever possible."

5. Pursuant to Code section 4646.4, subdivision (a), when purchasing services and supports for a consumer, a regional center shall ensure 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. Pursuant to Code section 4659, subdivisions (a)(1) and (2) regional centers are required to identify and pursue all possible sources of funding for consumers receiving regional center services. Such sources of funding include governmental entities or programs required to provide or pay for the cost of providing services, including Medi-Cal, and private entities, to the maximum extent they are liable for the cost of services, aid, insurance, or medical assistance to the consumer.

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

8. Pursuant to section 4659, subdivision (c), "regional centers shall not purchase any service that would otherwise be available from Medi-Cal, . . . private

insurance, or a health care service plan when a consumer or a family meets the criteria of this coverage but chooses not to pursue that coverage.”

9. Pursuant to Code section 4659, subdivision (d)(1), “a regional center shall not purchase medical . . . services for a consumer three years of age or older unless the regional center is provided with documentation of a Medi-Cal, private insurance, or a health care service plan denial and the regional center determines that an appeal by the consumer or family of the denial does not have merit.” Code section 4659, subdivision (d)(1) further provides that regional centers may pay for medical services during the following periods: “(A) While coverage is being pursued, but before a denial is made. [¶] (B) Pending a final administrative decision on the administrative appeal if the family has provided to the regional center a verification that an administrative appeal is being pursued. [¶] (C) Until the commencement of services by Medi-Cal, private insurance, or a health care service plan.” Pursuant to Code section 4659, subdivision (2) when necessary, the consumer or family may receive assistance from the regional center, the Clients' Rights Advocate funded by the department, or the state council in pursuing these appeals.

10. As of 2009, regional centers obligations to fund services that are educational services and the general responsibility of the school district have been restricted pursuant to Code section 4648.5, subdivision (a)(3). Code section 4648.5, subdivision (c) provides and exemption in “extraordinary circumstances” to permit purchase of a service identified in subdivision (a) when the regional center determines that the service is a primary or critical means for ameliorating the physical, cognitive, or psychosocial effects of the consumer's developmental disability, or the service is necessary to enable the consumer to remain in his or her home and no alternative service is available to meet the consumer's needs.

11. Regional centers may provide funding for limited periods of time, pursuant to Code section 4648, subdivision (g) where there are identified gaps in the system of services and supports consumers for whom no provider will provide services and supports contained in his or her individual program plan." the department may provide the services and supports directly.

Determination

12. Claimant presented a complex and frustrating set of circumstances which together have potentially stalled her ability to make progress communicating with her peers and family. She has not received the services promised from the school district due to the absence of the speech pathologist, nor has she been able to access her insurance, Medi-Cal, which distinguishes her from her peers at the school district who have been able to use private insurance for clinic-based speech and language services. Mother has tirelessly pursued services to address Claimant's oral-motor deficits which include a tactile element in the form of the PROMPT methodology, the WRC's evaluation has identified as worthwhile. Understandably, Mother does not accept the WRC's limited role in ameliorating her deficits in the area of speech and language when those deficits also prevent her from communicating with her family.

13. Mother made a compelling case for the need for funding clinic-based speech services so that Claimant can communicate in all environments, not only school. She attempted to distinguish school-based services by its focus on the educational curriculum from services required to access the community. However, that distinction is not supported by the IEP or the clearly delineated and limited role the WRC plays for school-aged clients. Claimant's IEP describes her as a child struggling to communicate with her peers and offers speech goals and services, for her to better communicate with her peers, the same skills she needs to communicate in the

community and with her family. When at the school-site, Claimant spends most of the day surrounded by her peers. The speech services may be geared to the broad curriculum appropriate to her age and deficits, but it is not unique to the school. Her need to articulate is directly related to her ability to communicate to her peers and adults, a skill that should be generalized from the school environment, where she spends the bulk of her weekday time, pre and post-Covid. Her services during Covid-19 were interrupted, but mostly because the school failed to provide a speech and language pathologist to work with her on-line or in person.

14. Mother has not exhausted her efforts to secure appropriate oral-motor speech and language interventions for Claimant from the school district. During the hearing she described Smart Starts rejection of her entreaties to include an oral-motor component to speech and language services. She described the school-based protocols which bar speech pathologists from touching students' mouths as the basis of their rejection, which are part of PROMPT or similar methodologies. However, there was no evidence from the IEP, which was updated in December 2020, that Mother disagreed with the IEP or that the school district denied oral-motor speech services. In fact, it was only after the hearing that Mother asked Smart Start in writing to review the WRC's assessment and comment about PROMPT. The response provided was not an outright rejection of PROMPT, but a concern that PROMPT would not necessarily be effective if Claimant did not have a positive relationship with the pathologist.

15. Mother spoke of Smart Start as the provider of services. As an NPS under contract with the school district, Smart Start provides the placement and services for Claimant. However, the school district is a member of the IEP team and is responsible for offering appropriate placement and services. There is no evidence Mother made a formal written request to the school district for oral-motor speech and language

interventions, on-site or through clinic-based services, which the school district rejected. At the time of the hearing, the school-district had not completed its own speech and language assessment in preparation for the 2021 IEP, nor had it conducted its 2021 IEP.

16. Mother has claimed that the clinic-based speech and language services are medically necessary, and according to her doctor they are, but from the IEP they are also necessary for Claimant to meet her speech and language goals and have access to her education.

17. Claimant has not been formally rejected from Medi-Cal clinic-based services, but nonetheless her access to these services have been restricted by the technicalities and limits of her coverage. Mother would prefer not to press the school district and do what other parents have done and use her insurance to access clinic-based speech for oral-motor interventions directed at her articulation. However, despite Mother's tireless efforts to secure Medi-Cal services, she cannot access Medi-Cal unless she abandons the fee-for-service Medi-Cal and Claimant's long-term medical providers which provide critical oversight to her medical care. The trade-off in Mother's estimation is too great.

18. The law clearly limits the WRC's role as the primary source of funding for a school-aged client and one that on the surface has access to insurance, Medi-Cal. Claimant contends that the WRC should fund the services while she is pursuing coverage, as provided by Code section 4659 above. However, Claimant has elected, for good reason, a type of Medi-Cal coverage where the services are unavailable, services she says she has been exploring for years. This is not a temporary situation as contemplated by the statute and is not appropriate where the school district is the primary provider of speech and language services.

19. This dispute presents unique circumstances where the WRC can play a limited role if Claimant's Mother presses the school district for oral-motor speech and language services, such as PROMPT, or another appropriate methodology which directly addresses Claimant's physical barriers to articulation, the school district disagrees, and Mother exercises her rights under the governing special education law. There could be a circumstance in the future where the WRC is required to fund these services, even on an interim basis, but based on the evidence presented, Mother must first exercise rights to secure these services from the school district.

20. The WRC's role with regard to any pending Medi-Cal services is less clear because Medi-Cal never rejected the services. Mother convincingly established that Medi-Cal fee-for-service clinic speech is not currently available but could not establish when, if anytime, such service would become available. This decision does not reach the issue of whether Medi-Cal services have been effectively denied for the purpose of determining the WRC's funding obligations, because the oral-motor speech services may be labelled medically necessary but are also appropriately part of school-based speech and language services, which Mother has not exhausted. As such, despite the trade-off Mother has to make for selecting insurance coverage for her medically-fragile child it remains Mother's obligation to keep searching for Medi-Cal services, and keep up with changes in what Claimant's providers will accept as insurance. Mother should notify the WRC of any rejection of her requests to Medi-Cal.

21. Claimant's appeal is denied. Under the evidence presented, the school district remains the primary source of funding for oral-motor speech and language services at this time and the WRC is not currently obligated to fund oral-motor speech and language services.

22. All admitted and relevant evidence has been considered in this decision.

ORDER

Claimant's appeal is denied.

DATE:

EILEEN COHN

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.