

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

In the Matter of:

CLAIMANT,

vs.

NORTH LOS ANGELES COUNTY REGIONAL CENTER,

Service Agency.

OAH No. 2020060257

DECISION

Administrative Law Judge (ALJ) Chantal M. Sampogna, Office of Administrative Hearings, State of California, heard this matter by videoconference on September 3, 2020.

Stella Dorian and Jimmy Alamillo, Contract Officers, appeared on behalf of the North Los Angeles County Regional Center (NLACRC or Service Agency).

Father¹ appeared on behalf of Claimant, who was not present.

¹ Titles are used to protect claimant and her family's privacy.

Testimonial and documentary evidence were received. The record was closed, and the matter was submitted for decision on September 3, 2020.

ISSUE

Whether Service Agency must continue to provide copay assistance for Claimant's Applied Behavioral Analysis (ABA) services.

EVIDENCE RELIED UPON

1. Documents: Service Agency's exhibits 1, 4, 6, 7, 10, 11, 13-18, 20, and 21; Claimant's exhibits A through D.
2. Testimony: Jennifer Thurm, Consumer Services Supervisor; Father.
3. Service Agency objected to exhibits A through D, raising authentication and relevancy objections. The authentication objections are overruled as the fair hearing is not conducted according to the technical rules of evidence; any relevant evidence must be admitted and parties are not required to formally authenticate any document unless the ALJ determines it is necessary in the interest of justice. (§ 4712, subd. (i).) The ALJ does not find authentication of Exhibits A through D is necessary in the interest of justice. Service Agency's relevancy objections are also overruled. Exhibits A through D are relevant to Father's assertion that Claimant qualifies for an exception provided in section 4649.1. Exhibits A through D are admitted into evidence.

Jurisdiction

1. Claimant is a seven-year-old girl who resides with her father and mother. Claimant is eligible for services under the Lanterman Developmental Disabilities Services Act (Lanterman Act) (Welf. & Inst. Code, § 4500 et seq.)² based on a diagnosis of Autism Spectrum Disorder (ASD). (§ 4512, subd. (a).) She has been a Service Agency consumer for approximately two years.

2. Through Claimant's June 2019 Individualized Program Plan (IPP) Amendment, Service Agency agreed to provide copay assistance of \$40 for ABA services through Center for Autism Related Disorder (CARD) up to five sessions per week, totaling \$200 copay assistance per week, effective April 15, 2019.

3. Service Agency issued a May 20, 2020 Notice of Proposed Action (NOPA) informing Claimant that effective June 30, 2020, Claimant's copayment assistance would terminate because the copay assistance was no longer allowed under the Lanterman Act. Claimant timely requested a fair hearing.

Claimant's Service Needs

4. A. Claimant is ambulatory and verbal, though she has difficulty maintaining conversations and expressing her thoughts. Claimant needs assistance with personal care tasks and hygiene including dressing and undressing and cleaning herself after using the restroom. She lacks safety awareness and requires supervision at all times during the day to prevent harm.

² Statutory references are to the Welfare and Institutions Code, unless otherwise specified.

B. Claimant has significant deficits in social communication across multiple contexts, which impede her social and behavioral development. Claimant engages in repetitive behaviors, such as flapping her hands and pacing. Claimant demonstrates maladaptive behaviors including approximately one tantrum per day, often due to frustration with language limitations, though she can self-calm within five minutes.

C. Mother works as a consultant. Father is not currently employed, but attends to Claimant's needs, as described, throughout the day. Claimant attends school and enjoys books and playing with her cousin and peers. She can play appropriately if approached by other children for a limited time but continues to need to work on her social skills.

5. Claimant's January 10, 2019 Individualized Program Plan (IPP) includes Outcome 1: "Claimant will learn to follow parental directions and when she is denied a desired item without having a tantrum 90 percent accuracy." (Ex. 4, p. 5-6.) Parents agreed to pursue behavioral services through private insurance, and Service Agency agreed to assist with the copay if allowed under the Lanterman Act.

6. Claimant's June 17, 2019 IPP Addendum provides that Claimant would receive ABA services through CARD. The service would be funded by parents' private insurance United Healthcare. Parents requested assistance with the \$40 per visit copayment. Because Claimant met the requirements of section 4659.1, namely that the family's 2018 income did not exceed 400 percent of the poverty level, Service Agency agreed to provide the copay assistance identified in Factual Finding 2.

7. In 2020, parents provided Service Agency mother's 2019 W-2 forms to determine Claimant's continued eligibility for the copay assistance. Mother's W-2

forms showed that mother's 2019 income included \$97,994.56 from Force Inc & Subsidiaries, and \$18,585.79 from Syntel Inc., totaling \$116,580.35.

8. Service Agency reviewed the Department of Health and Human Services Poverty Guidelines Annual Update January 17, 2020 (Exhibit 13) which provides that the poverty level for a family of three is \$21,720; 400 percent of the poverty guideline for a family of three is, therefore, \$86,880. The Service Agency reassessed whether Claimant continued to be eligible under the Lanterman Act for Service Agency to provide copay assistance for Claimant's ABA services. Because Claimant's family's income, \$116,580.35, exceeds 400 percent of the poverty guideline, \$86,880, Service Agency determined it could no longer provide Claimant copay assistance.

9. On behalf of Service Agency, on August 11, 2020, Behavior Consultant Lisa DePiro, MA, BCBA, assessed Claimant's service needs and service provision. Ms. DePiro found that to achieve Outcome number one, Claimant continued to need ABA services at 20 hours of direct services per week and 22 hours supervision per month, funded by parents' insurance. Ms. DePiro found these services addressed Claimant's aberrant behaviors and skill deficits, and included a focus on communication goals, such as requesting items, using full sentences, and labeling objects and actions to expand her vocabulary. After reviewing the speech therapy (60 minutes per week) and weekly occupational therapy Claimant receives through her Individualized Education Plan (IEP), Ms. DePiro concluded Claimant receives a comprehensive service package that meets Claimant's needs.

Claimant's Evidence

10. At Claimant's January 2019 IPP meeting, parents stated their hopes and dreams are for Claimant to "improve her speech to better express her needs and wants

verbally. In addition, for her to reach all her IEP academic goals and become more independent to attend to her personal care.” (Ex. 4, p. 1.) These continue to be their hopes and dreams. Father testified that Claimant has made great improvements in her IPP goals since receiving regional services, specifically behavioral and communication improvements.

11. On behalf of Claimant, Father is asking the ALJ find that Claimant meets one of the exceptions provided in section 4659.1. Father is not challenging Claimant’s IPP, but rather is asserting that Claimant requires additional speech and occupational therapy, which parents will fund, to continue her communication and behavioral improvements. The anticipated cost of these additional services through Speech, Language, and Educational Associates (SLEA), is \$270 per week, or \$14,040 per year. Because parents must already meet an \$850 deductible, and, given the Service Agency’s termination of copay assistance, parents must pay \$200 per week copays for Claimant’s ABA services, father argues that these actual ABA copayment costs and the anticipated SLEA speech and occupational therapy costs constitute significant unreimbursed medical costs associated with Claimant’s care. Aside from a passing reference to pandemic-related negative impact, Father provided no corroborating or meaningful evidence of catastrophic loss.

12. In support of Father’s testimony, Father introduced the following evidence, marked as exhibits A through D, respectively.

A. An undated print out of a deductible calculation which included Claimant’s first name, but otherwise failed to identify Claimant by last name or state to which year it applied. The document showed that Claimant’s yearly in network deductible is \$850 and out of pocket maximum is \$3,800.

B. An email string between Father and Norma Colin, an insurance billing representative with SLEA, informing father that were Claimant to begin speech and occupational therapy services with SLEA, the cost would be \$90 twice per week for speech therapy and \$180 per week for occupational therapy, totaling \$270 per week. These services are not covered by insurance. If Claimant chooses to attend these services, they would be in addition to her existing IPP and IEP services.

C. A February 24, 2020 report from the Developmental Behavioral Pediatrics Team at Children's Hospital of Los Angeles (CHLA). The January and February 2020 assessments were conducted at the parents' request. On behalf of the team, Sai Nandini Iyer, MD, concluded Claimant's communication, socialization and behaviors interfere with Claimant's ability to interact with others and recommended that Claimant continue her ABA services and have speech and occupational therapy twice per week.

D. An August 6, 2020 letter from Saraim Kumar, M.D., also with CHLA, recommending Claimant receive speech and language services to address Claimant's challenges with receptive and expressive language skills, and occupational therapy to address Claimant's challenges with adaptive and fine motor skills.

LEGAL CONCLUSIONS

Jurisdiction

1. The Lanterman Act governs this case. An administrative fair hearing to determine the rights and obligations of the parties is available under the Lanterman Act. (§§ 4700-4716.) Claimant is eligible for regional center services based on her diagnosis of ASD. Claimant requested a fair hearing to appeal the Service Agency's

termination of its copayment assistance for ABA services. Jurisdiction was established. (Factual Findings 1 - 4, 7.)

Burden and Standard of Proof

2. The party asserting a claim 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, Service Agency bears the burden of proving, by a preponderance of the evidence, that the Lanterman Act requires Service Agency to cease its payment assistance of Claimant's ABA services. (Evid. Code, §§ 115, 500.)

Regional Center Responsibilities

3. The state is responsible to provide services and supports for developmentally disabled individuals and their families. (§ 4501.) Regional centers are "charged with providing developmentally disabled persons with 'access to the facilities and services best suited to them throughout their lifetime' and with determining "the manner in which those services are to be rendered." (*Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 389, hereafter *ARC*, quoting from § 4620.)

4. A regional center must provide specialized services and supports toward the achievement and maintenance of the consumer's independent, productive, and normal life that allows the consumer to "approximate the pattern of everyday living available to people without disabilities of the same age." (§ 4501.)

5. Regional centers are responsible for conducting a planning process that results in an IPP, which must set forth goals and objectives for the consumer. (§§ 4512, subd. (b), 4646.5, subd. (a).)

6. To achieve the stated objectives of a consumer's IPP, the regional center must secure the consumer with needed services and supports which assist the consumer in achieving the greatest self-sufficiency possible, and with exercising personal choices which allow the consumer to interact with persons without disabilities in positive, meaningful ways. (§ 4648, subd. (a)(1).)

7. Though regional centers have wide discretion in how to implement the IPP, "they have no discretion in determining whether to implement: they must do so." (*ARC*, 38 Cal.3d at p. 390, citing § 4648, subd. (a).)

Service Requirements

8. The services to be provided to any consumer must be individually suited to meet the unique needs of the individual client in question, and within the bounds of the law each consumer's particular needs must be met. (See, e.g., §§ 4500.5, subd. (d), 4501, 4502, 4512, subd. (b), 4640.7, subd. (a), 4646, subds. (a) & (b), 4648, subd. (a)(1) & (a)(2).) The Lanterman Act assigns a priority to services that will maximize the consumer's participation in the community. (§ 4646.5, subd. (a)(2).)

9. Section 4512 provides the following:

A. 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 consumer's achievement and maintenance of an independent, productive, and normal life. (§ 4512, subd. (b).)

B. The IPP team determines a consumer's necessary services and supports on the bases of the consumer's needs and preferences, and must consider a range of service options proposed by IPP participants, the effectiveness of each option in meeting the IPP goals, and the cost-effectiveness of each option. (§ 4512, subd. (b).)

C. Services and supports may include speech and language therapy, occupational therapy, and behavior training and modification programs. (§ 4512, subd. (b).)

10. Service coordination includes those activities necessary to implement an IPP, including securing, through purchasing or by obtaining from generic agencies or other resources, services and supports specified in the consumer's IPP. (§ 4647.)

11. A service or support provided by an agency or individual may not be continued unless the consumer, or conservator, is satisfied and the regional center and the consumer, or conservator, agree that planned services and supports have been provided, and reasonable progress toward objectives have been made. (§ 4648, subd. (a)(7).)

Consideration of Costs

12. Although regional centers are mandated to provide a wide range of services to implement the IPP, they must do so in a cost-effective manner, based on the needs and preferences of the consumer, or where appropriate, the consumer's family. (§§ 4512, subd. (b), 4640.7, subd. (b), 4646, subd. (a).)

13. If a needed service or support cannot be obtained from another source, a regional center must fund it. (*ARC, supra*, 38 Cal.3d at p. 390.) Generic resources shall be utilized first. A regional center is the provider of last resort.

14. Section 4659.1, subdivisions (a) and (d) provide the following requirements for copayment support:

(a) If a service or support provided pursuant to a consumer's individual program plan under this division is paid for, in whole or in part, by the . . . health insurance policy of the consumer's parent . . . the regional center may, when necessary to ensure that the consumer receives the service or support, pay any applicable copayment, coinsurance, or deductible . . . if all of the following conditions are met:

(1) The consumer is covered by their parent's . . . health insurance policy.

(2) The family has an annual gross income that does not exceed 400 percent of the federal poverty level.

(3) There is no other third party having liability for the cost of the service or support, as provided in subdivision (a) of Section 4659 and Article 2.6 (commencing with Section 4659.10). ¶ . . .

(d) Notwithstanding paragraph (2) of subdivision (a) . . . a regional center may pay a copayment, coinsurance, or

deductible associated with the . . . health insurance policy for a service or support provided pursuant to a consumer's individual program plan if the family's or consumer's income exceeds 400 percent of the federal poverty level, the service or support is necessary to successfully maintain the child at home or the adult consumer in the least-restrictive setting, and the parents or consumer demonstrate one or more of the following:

(1) The existence of an extraordinary event that impacts the ability of the parent . . . to meet the care and supervision needs of the child or impacts the ability of the parent . . . to pay the copayment, coinsurance, or deductible.

(2) The existence of catastrophic loss that temporarily limits the ability to pay of the parent . . . with a health care service plan or health insurance policy and creates a direct economic impact on the family or adult consumer. For purposes of this paragraph, catastrophic loss may include, but is not limited to, natural disasters and accidents involving major injuries to an immediate family member.

(3) Significant unreimbursed medical costs associated with the care of the consumer or another child who is also a regional center consumer.

Analysis

15. Claimant's ABA services are paid for in part by the parents' health insurance policy. Service Agency established by a preponderance of the evidence that Service Agency no longer has authority under the Lanterman Act to provide copay assistance for Claimant's ABA services because Claimant's family has an annual gross income that exceeds 400 percent of the federal poverty level for a family of three. (Factual Findings 4-12.)

16. Service Agency further established by a preponderance of the evidence that Claimant's family does not meet any of the conditions provided in section 4659.1. Claimant is not experiencing an extraordinary event that impacts the ability of the parents to meet Claimant's needs or impacts the parents' ability to pay the copayment. Claimant's family has not experienced a catastrophic loss that temporarily limits parents' ability to pay that created a direct economic impact on the family.

17. Finally, Claimant's evidence did not establish that the family has experienced significant unreimbursed costs or that the anticipated SLEA costs, which have yet to be incurred, would qualify as existing medical costs associated with Claimant's care. Service Agency established by a preponderance of the evidence that the family has not experienced significant unreimbursed medical costs associated with Claimant's care. Claimant's appeal is denied. (Factual Findings 4-12.)

///

///

ORDER

Claimant's appeal is denied.

DATE:

CHANTAL M. SAMPOGNA

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.