

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

In the Matter of:

CLAIMANT,

vs.

REGIONAL CENTER of ORANGE COUNTY, Service Agency.

OAH No. 2020070754

DECISION

Glynda B. Gomez, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on September 3, 2020.

Claimant, who was not present, was represented by his mother (Mother).
(Claimant and family members are identified by titles to protect their privacy.)

Regional Center of Orange County (RCOC) was represented by Paula Noden, Fair Hearings Manager.

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

ISSUE

Is RCOC required to reimburse Claimant's parents for co-payments they incurred for Applied Behavior Analysis (ABA) therapy before he was determined to be eligible for services under the Lanterman Developmental Disabilities Services Act¹ (Lanterman Act)?

EVIDENCE

Documentary: Exhibits 1-7.

Testimony: Mother; Sheena Salonga, Early Start Coordinator; Julia Do, Area Supervisor; and Pat Glancy, Intake Manager.

FACTUAL FINDINGS

Parties and Jurisdiction

1. Claimant is a 5 year and 7 months old-boy who is eligible for RCOC services based upon his Autism.

¹ Welfare and Institutions Code section 4500, et seq.

2. Claimant was born on February 12, 2015. Claimant was referred for services under the Early Start program on March 23, 2017 and was made eligible for Early Start services based upon his global delays.²

3. On October 13, 2017, Ms. Salonga, Claimant's Early Start Service Coordinator, made a formal referral to Claimant's local school district for special education services under IDEA. The referral noted that Claimant's Early Start services were "Case Management" and "Children's' Learning Connection -8 hours per week." The referral started the transition process under the IDEA from RCOC-administered services to school district administered services. A joint Individual Family Service Plan (IFSP)/ Individualized Education Program (IEP) meeting was held to transition Claimant. Claimant was found eligible for special education services under IDEA as a student with Autism and Speech and Language Disorder. Claimant transitioned to school district special education services on his third birthday.

4. On October 16, 2017, before his third birthday, Claimant's physician diagnosed him with Autism. The diagnosis was shared with the school district and RCOC. Nevertheless, when Claimant was assessed by RCOC for services under the Lanterman Act before his third birthday, he was found ineligible. At the time, the RCOC determined that "his diagnosis of Autism Spectrum Disorder did not show substantial disability, presenting without significant functional limitations in a minimum of 3 of 5

² Early Start services are authorized by Part C of the Individuals with Disabilities Education Act (IDEA), which is federal law (20 U.S.C. § 1431 et seq.), and the California Early Intervention Services Act (CEISA) (Gov. Code, § 95000 et seq.), which is state law that supplements the IDEA. The regional centers administer Early Start.

major life activities” as required by the eligibility criteria of the Lanterman Act. (Welf. & Inst. Code §4512.)

5. Claimant was notified by letter dated February 9, 2018 that RCOC had found him ineligible for Lanterman Act services. RCOC provided Claimant with all required notices including information on his appeal rights. Claimant did not appeal the eligibility determination within 30 days as required by Welfare and Institutions Code section 4710.5. Therefore, the validity of RCOC’s initial determination of ineligibility is not at issue in this proceeding.

6. According to Claimant’s mother, the ongoing cost of Claimant’s ABA and other medical needs became a hardship for the family. Although Claimant’s mother had hoped to care for him herself at home, she felt compelled to return to full-time employment in order to obtain health insurance benefits and additional income to pay for his services. She reluctantly hired a nanny to care for him during her work hours.

7. During the period of January 22, 2019 to July 30, 2019, before Claimant was eligible for Lanterman Act services, Claimant’s family incurred \$3,745 in insurance co-payments and deductibles for Claimant’s ABA therapy.

8. Claimant’s mother learned through conversations and associations with parents of other special needs children that RCOC provides a vast array of services and supports for eligible consumers. She was told by others that in some circumstances RCOC provides financial assistance with insurance co-payments.

9. After obtaining this information, Claimant’s mother made various inquiries with RCOC staff. RCOC staff advised Claimant’s mother that the time to appeal the determination of ineligibility had passed. However, RCOC staff encouraged Claimant’s mother to request a new review of his eligibility because more than a year

had passed since the determination of ineligibility. During the hearing, Claimant's mother asserted that she would have appealed the RCOC's previous eligibility determination had she known about the range of services available to Claimant under the Lanterman Act. The assertion is credible and consistent with her subsequent conversations with RCOC staff.

10. Mother requested a new review of Claimant's case and RCOC agreed to conduct a review. Claimant's intake was completed on November 25, 2019. After review, Claimant was determined eligible for regional center services as a consumer diagnosed with Autism, which was then a substantially disabling condition for him, based upon the Lanterman Act eligibility criteria.

11. On April 1, 2020, Claimant was made eligible for Medi-Cal through the Department of Developmental Services (DDS) waiver program and was relieved of insurance co-payments. The coverage was made retroactive to his Lanterman Act eligibility effective date. Claimant's mother requested that the Medi-Cal waiver and his Lanterman Act eligibility be made retroactive to February of 2018 when Claimant was previously denied eligibility. RCOC refused to do so and advised Claimant's mother that there was no flexibility on the eligibility date.

12. On June 2, 2020, RCOC notified Claimant's parents that based upon their income level, insurance co-payment assistance was not available to Claimant from RCOC and likely would not have been available in 2018 or 2019, if the income had been similar. Co-payment assistance is phased out at a certain level of income. The threshold level of income was established to be lower than that of Claimant's family. The details and exact level of phase out was not established by the evidence.

LEGAL CONCLUSIONS

1. The Lanterman Act governs this case. An administrative “fair hearing” to determine the rights and obligations of the parties, if any, is available under the Lanterman Act. (Welf & Inst. Code, §§ 4700-4716.) Claimant requested a fair hearing to appeal RCOC’s denial of reimbursement for insurance co-payments for the period between Claimant’s exit from Early Start at age three and when he was found eligible for Lanterman Act services.

2. The burden is on Claimant to establish by a preponderance of the evidence that RCOC is obligated to reimburse his family for payments made before he was found eligible for Lanterman Act services. (*Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161; Evid. Code, §§ 115, 500.) “Preponderance of the evidence means evidence that has more convincing force than that opposed to it. [Citations] . . . [T]he sole focus of the legal definition of ‘preponderance’ in the phrase ‘preponderance of the evidence’ is the quality of the evidence. The quantity of the evidence presented by each side is irrelevant.” (*Glage v. Hawes Firearms Co.* (1990) 226 Cal.App.3d 314, 324-325.)

3. RCOC may only provide Lanterman Act services to the narrowly tailored group of individuals who are eligible under the Lanterman Act. There is no legal authority for RCOC to pay for services before a consumer has been determined eligible. The Lanterman Act provides for assessment, eligibility determination, development of an Individual Program Plan (IPP) and provision of services and supports designed to achieve goals and desired outcomes established by the IPP team following determination of eligibility. (Welf & Inst. Code, §§ 4700-4716.)

4. Claimant asserts that RCOC's original determination was erroneous and therefore Claimant should be reimbursed for expenditures that were made on his behalf that may have been paid by RCOC had he been found eligible for Lanterman Act services upon exit from Early Start. The accuracy of RCOC's initial determination is not at issue in this proceeding. When Claimant chose not to appeal the initial determination of ineligibility, he waived his rights to challenge it. Those rights are not revived in this proceeding. (Welf & Inst. Code, §4512.)

5. It was established that upon review, a year later, Respondent met the Lanterman Act criteria with a diagnosis of Autism which was substantially disabling to him and is entitled to services on the effective date of that determination.

6. Claimant asserts that at the time that he was determined ineligible, his family was not aware of the array of services and supports that were available under the Lanterman Act and would have appealed RCOC's determination had they been aware of all services and supports. Claimant's assertion is consistent with his mother's subsequent conversations with RCOC staff and her decision to have Claimant's eligibility reviewed again the following year. However, this does not change the fact that Claimant was not eligible for services until February 9, 2020. The Lanterman Act does not authorize the RCOC to provide services or supports to individuals, unless and until, they meet the very specific and narrowly tailored eligibility criteria set forth in Welfare and Institutions Code section 4512. Accordingly, Claimant's appeal must be denied.

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ORDER

Claimant's appeal is denied.

DATE:

GLYNDA B. GOMEZ

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.