

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

In the Matter of:

CLAIMANT

vs.

GOLDEN GATE REGIONAL CENTER,

Service Agency.

OAH No. 2020090101

DECISION

Administrative Law Judge Regina Brown, State of California, Office of Administrative Hearings, heard this matter remotely on November 13, 2020.

Claimant was represented by his mother at hearing.

Lisa Rosene, Director of Regional Center Services, represented service agency Golden Gate Regional Center.

The matter was submitted for decision on November 13, 2020.

ISSUE

Is Golden Gate Regional Center required to reimburse Claimant for co-payments made for services related to his developmental disability, due to the regional center's delay in submitting his application for Medi-Cal?

FACTUAL FINDINGS

1. Claimant is a five-year-old consumer of Golden Gate Regional Center (GGRC or regional center or service agency), based upon a diagnosis of autism. He lives with his parents.

2. In November 2018, GGRC convened an initial Individual Program Plan (IPP) meeting with Claimant and his newly assigned social worker. During the IPP meeting, they discussed the services to be provided to Claimant and his goals for the next three years. The IPP noted that Claimant would receive respite services.

3. During the IPP meeting, the social worker informed Claimant's mother that she would process Claimant's Medi-Cal Waiver Institutional Deeming application (Medi-Cal application). This type of Medi-Cal provides full and unrestricted Medi-Cal coverage, without a share of cost, for developmentally disabled consumers under the age of 18 years old and the consumer's family income is not taken into consideration to determine eligibility. The social worker told Claimant's mother that in order to process the Medi-Cal application, a respite worker must be identified on the application as associated with a service provided by the regional center. Claimant's mother questioned this because she believed that the social skills group that Claimant

attended was a service paid by GGRC and should qualify for Medi-Cal. However, the social skills group was not considered to be a Medi-Cal billable service.

4. On January 4, 2019, Claimant's mother sent an email to the social worker requesting a status update on the Medi-Cal application. The social worker inquired if Claimant's mother had completed the process for payroll services for a respite worker. Claimant's mother had not found a respite worker. The social worker requested that Claimant's mother inform her when she found a respite worker and completed the process because this was the remaining step before she could submit the Medi-Cal application. On January 20, 2019, Claimant's mother responded that she was having difficulty finding a respite service provider.

5. On February 12, 2019, Claimant's mother informed the social worker that she had completed the payroll process for a respite worker. The social worker requested the vendor number for the respite worker (presumably to be included on the Medi-Cal application).

6. On April 16 and 29, 2019, Claimant's mother sent emails to the social worker requesting an update on the status of the Medi-Cal application. On May 10, 2019, the social worker sent an email to Claimant's mother in response to a request for reauthorization for a social skills class for Claimant; however, she did not provide an update on the Medi-Cal application. Claimant's mother sent another email inquiring about the Medi-Cal application indicating that it should have been completed "9 months ago when [Claimant] turned [three years old]." On May 16, 2019, the social worker sent an email attempting to schedule a meeting with Claimant's mother to discuss the social skills class; again, the social worker did not mention the Medi-Cal application.

7. On May 23, 2019, Claimant's mother complained to the social worker's supervisor about the delay in filing the Medi-Cal application and requested that a new social worker be assigned to the case. She stated that there was a "consistent pattern of delayed correspondence" as the social worker took an average of 30 days to respond to her emails. Claimant's mother also indicated that she had spoken to other families who had similar experiences with this social worker.

8. In June 2019, a new social worker was assigned to Claimant's case and a Medi-Cal application was submitted in June/July 2019.

9. Claimant was approved for Medi-Cal Waiver Institutional Deeming coverage in October 2019, and Medi-Cal made retroactive payments for Claimant's related expenses back to June 2019, approximately four months. Claimant's family did not have to provide income verification for Claimant to be eligible for this type of Medi-Cal coverage.

10. Claimant's mother sought reimbursement from GGRC for related expenses in the amount of \$5,178.60, for the period of September 11, 2018 to May 31, 2019. She contends that if the social worker had properly filed the Medi-Cal application in November 2018, then Medi-Cal would have approved the application within 30 days, and coverage would have been retroactive back to September 2018.

11. GGRC denied the request stating that the family had not provided proof that they met the income threshold for co-payments and some of the services were not related to the Claimant's developmental disability. GGRC issued a Notice of Proposed Action on March 2, 2020.

12. Claimant filed a timely fair hearing request stating the following: "... [O]ur former social worker didn't file our Medi-Cal Institution Deeming request on time due to gross negligence and poor work ethics [and] we had to pay \$5,178.60 out of pocket for the period not covered by Medi-Cal 9/11/18-5/31/19."

13. GGRC conducted an informal meeting on September 4, 2020. Claimant's mother reiterated her complaints about the social worker and her belief that the social worker "purposefully avoided helping [Claimant] be deemed eligible for Medi-Cal." She continued to seek reimbursement for co-payments including, Claimant's feeding therapy, social group, occupational therapy, speech therapy, behavior therapy, and physician visits. Claimant's mother agreed that her new social worker was responsive and helpful.

14. At the informal meeting, the GGRC representative assured Claimant's mother that GGRC endeavors to train and support its social workers to be responsive and helpful to consumers and their families. However, he was prohibited from discussing confidential personnel matters with Claimant's mother.¹ It was also explained to Claimant's mother that under the Lanterman Developmental Disabilities Services Act, Welfare and Institutions Code section 4500 et seq.² (Lanterman Act), regional centers can assist with co-payments for services that are associated with consumers under the following specific conditions: (1) the service is paid, in part, by the consumer's or family's health insurance; (2) the family has an annual gross income

¹ Therefore, the social worker's name shall remain confidential in this decision and her name shall be redacted from the exhibits.

² All statutory citations are to the Welfare and Institutions Code.

that does not exceed 400 percent of the poverty level; and (3) there is no third party having liability for the cost of the service or support. (§4659.1, subd. (a); see also GGRC "Payments for Co-Payments, Co-Insurance, or Deductibles GGRC Practices.") Section 4659.1 permits exceptions under narrow circumstances where the family's income exceeds 400 percent of the federal poverty level. GGRC concluded that Claimant's family had not provided the necessary income verification and also failed to establish entitlement to an exception. GGRC again denied the request to reimburse any co-payments.

15. This fair hearing followed.

16. At hearing, GGRC Manager Norman Manglona confirmed that enrollment in the Medi-Cal deeming program does not require that a family provide income verification. However, to qualify for the program, a billable service through GGRC, such as respite, is required. Also, a social worker cannot process the Medi-Cal application with incomplete information, such as required information regarding the respite worker. According to Manglona, GGRC could reconsider paying the co-payments after the family provides income verification that their annual gross income does not exceed 400 percent of the poverty level.

17. Rosene testified at hearing that the social skills group that Claimant attended did not accept Medi-Cal and would be excluded from any reimbursement because the regional center can only cover services directly related to Claimant's qualifying condition. In addition, reimbursements for well-child checkups and other routine doctor's appointments would not be considered directly related to Claimant's qualifying condition. Therefore, other than a \$100 payment to University of California San Francisco which was related to Claimant's condition, any other co-payments to his

medical providers were unrelated and not eligible for reimbursement. GGRC contends that Claimant is seeking reimbursement for expenses normally covered by a generic resource, Medi-Cal, and nothing in the statute or regulations requires GGRC to reimburse expenses normally covered by a generic resource.

18. At hearing, Claimant's mother acknowledged that it took her some time to find a respite worker, but when she did in February 2019, she immediately provided the information to the social worker.

She detailed the expenses sought including: \$200 in co-payments for doctor visits; \$540 for Clinic for Kidz; \$320 for Rocco's social skills group; \$1,617.5 for occupational therapy; \$1,548.77 for speech therapy; and \$952.33 for ABA. She could not recall the reasons for the doctor visits, but she believed that at least one was the result of a "melt down" by Claimant where he cut his face. Again, she claims that if Claimant had already been covered by Medi-Cal, these items would have been fully covered by Medi-Cal, and she would not have incurred any co-payments.

Claimant's mother reiterated her view that the social worker was negligent in processing the Medi-Cal application, and the social worker was "abusive" to their family in ignoring her emails. She believes that GGRC failed in its duty to adequately supervise its social workers.

LEGAL CONCLUSIONS

1. The State of California accepts responsibility for persons with developmental disabilities and the Lanterman Act mandates that an "array of services and supports should be established . . . to meet the needs and choices of each person

with developmental disabilities . . . and to support their integration into the mainstream life of the community.” (§ 4501.) Regional centers are charged with the responsibility of carrying out the state’s responsibilities to the developmentally disabled under the Lanterman Act. (§ 4620, subd. (a).)

2. Section 4648 describes the activities for which regional centers are responsible in order to achieve the stated objectives of a consumer’s IPP, including securing needed services and supports. (§ 4648, subd. (a)(3).) Services and supports may include respite, behavioral services and a social skills group. (§ 4512, subd. (b).)

3. Section 4659.1 limits GGRC’s discretion to pay any applicable co-payments for consumer services that are covered, in part, by Claimant’s health insurance, as set forth in Factual Findings 3 through 14, and 16. Claimant’s parents did not provide income verification or seek an exception to satisfy the statutory threshold for GGRC to reimburse the co-payments. Therefore, GGRC is not required to reimburse any co-payments under section 4659.1.

4. Claimant’s mother contends that reimbursement of co-payments is warranted because she relied on GGRC’s social worker to timely file Claimant’s Medi-Cal application; and the failure to do so caused her to incur co-payments for services related to his developmental disability. This is essentially an argument for equitable relief. The requirements for application of the doctrine of equitable estoppel are: “(1) the party to be estopped must be apprised of the facts; (2) he must intend that his conduct shall be acted upon, or must so act that the party asserting the estoppel had a right to believe it was so intended; (3) the other party must be ignorant of the true state of facts; and (4) he must rely upon the conduct to his injury.” (*Fontana*

Paving, Inc. v. Hedley Brothers, Inc. (1995) 38 Cal.App.4th 146, 156-157; *Branson v. Sun-Diamond Growers* (1994) 24 Cal.App.4th 327, 348.)

5. The elements of equitable estoppel are not met in this case. The evidence established that initially, Claimant's mother was involved in the delay in processing the application until she provided information about the respite worker. She was not ignorant of the true state of the facts. The evidence also established that the last email from the social worker was on May 16, 2019; although she did not specifically address the Medi-Cal application. When Claimant's mother requested a new social worker on May 23, 2019, GGRC responded promptly and a new supervisor was assigned in June 2019, who processed the application in June/July 2019, and Claimant was deemed eligible for Medi-Cal in October 2019. It took Medi-Cal approximately four months to process the application after it was submitted by GGRC. Similarly, it took GGRC approximately four months to process the application from the time that Claimant's mother provided the information about the respite provider sometime after February 12, 2019, to when the new social worker submitted the Medi-Cal application. Although Medi-Cal provides reimbursement back to the date of application, there is no legal requirement for GGRC to do so.

6. In conclusion, it is determined that GGRC was in compliance with the Lanterman Act. The evidence did not establish that GGRC engaged in an unreasonable delay in processing the Medi-Cal application; neither did the evidence establish that the social worker had engaged in "abusive" conduct toward Claimant's family with the intent to delay the Medi-Cal application. To the extent that there was any delay, GGRC timely engaged in reasonable efforts to rectify the delay. The evidence did not establish that Claimant is entitled to reimbursement for his co-payments. Therefore, Claimant's request for reimbursement must be denied.

ORDER

The appeal of Claimant is denied.

DATE: November 24, 2020

REGINA BROWN

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.