

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

In the Matter of the Fair Hearing Request of:

CLAIMANT,

vs.

EASTERN LOS ANGELES REGIONAL CENTER,

Service Agency.

OAH No. 2020110135

DECISION

Deena R. Ghaly, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on December 21, 2020 and January 19, 2021, via videoconference.

Jacob Romero, Fair Hearing Representative, represented Eastern Los Angeles Regional Center (ELARC or Service Agency).

Claimant's mother (Mother), represented Claimant, who was not present.¹ Mother utilized the services of a certified interpreter to assist with translation between Spanish and English language.

The record was held open until January 20, 2021, for Claimant to submit additional evidence and until January 25, 2021, for the Regional Center to object or otherwise respond to Claimant's post-hearing submission. Claimant timely submitted additional evidence, marked Exhibit C8 for identification. The Regional Center did not object and Exhibit C8 was admitted into evidence. The Regional Center's submission was in the nature of a settlement offer and, as such, is not appropriately included in the record (see Evid. Code § 1152.)

ISSUE

Must the Service Agency, under the Lanterman Developmental Disabilities Services Act (Lanterman Act), fund Claimant's psychological counseling sessions?

FACTUAL FINDINGS

Background

1. Claimant is 23 years old and an eligible consumer of ELARC based on his diagnosis of severe autism. Claimant resides with Mother who is also his conservator.

¹ Claimant's and family members' names are omitted in order to protect their privacy.

2. Claimant is prone to anxiety and can become belligerent and agitated when his anxiety is especially pronounced. The recent public health emergency stemming from the COVID-19 pandemic has exacerbated this situation. Unable to fully grasp why his regular daily activities such as going to his gym have stopped, Claimant has lost control over his behavior more than usual, often lashing out at Mother as a result.

Request for Services

3. In the past, Claimant received psychological counseling through generic resources to help him cope with his anxiety; however, Mother maintained the provider came to believe Claimant needs the services of a counselor especially trained to assist clients with autism. As a result, Mother requested that the Regional Center fund counseling services from one of its vendors, ASD Consultancy, which does provide these specialized services. ASD Consultancy does not accept Claimant's health insurance provider, which is Medi-Cal.

4. In reviewing the request, Claimant's service coordinator at the time, Arturo Castellanos, requested evidence from Mother that she had attempted to find generic resources for Claimant's psychological counseling but was not successful or had found such resources, but their fees would not be covered by Medi-Cal.

5. One of the potential generic resources identified by ELARC was Alma Family Services. In a message to Mother from Mr. Casellano's supervisor, Diane Gudino, dated October 13, 2020, she stated "We did consider ASD Consultancy but since there is a generic resource that can help you, in this case Alma Family Services, that's why your request was denied." (Exh. 20.)

6. ELARC formally denied Claimant's request in a Notice of Proposed Action dated October 13, 2020, which provided in relevant part:

ELARC is hereby providing you with written notice that funding for [Claimant] to receive counseling services from ASD Consultancy, Inc. has been denied

[¶] . . . [¶]

ELARC provided the family with several generic resources for mental health including Alma Family Services who state that they assist with the above-mentioned needs and take [Claimant's] insurance. The family has not utilized generic resources that were utilized to the fullest extent, nor has the family provided any proof that Medi-Cal has denied mental health counseling. Regional [c]enters must exhaust all generic resources prior to consideration of funding as it is the payor of last resort.

(Exh. 1A.)

Claimant's Evidence in Support of Requested Services

7. Claimant, through Mother, introduced several records into evidence, not all of which supported his claim. Regarding Alma Family Services, it is a parent-created community resource that, according to its brochure, offers a number of

"interdisciplinary" counseling services. (See Exh. C4-B.)² Several years ago, Alma Family Services did provide counseling services for Claimant designed to treat his anxiety and increase his capacity to relax. According to a letter dated October 26, 2020 submitted by Claimant, it was Mother's decision to discontinue Claimant's treatment there "because she did not feel [Claimant] needed it." (Exh. C2-E.) Post-hearing, Claimant submitted another letter from Alma Family Services, also dated October 26, 2020. This one states that Claimant had benefitted from treatment there. (Exh C6.) It also states, "Alma Family Services does not have psychologists who specialize in meeting needs of individuals diagnosed with Autism." (*Ibid.*)

8. More recently, Claimant has been attending counseling sessions with Licensed Clinical Social Worker Maricela Madrigal. Claimant introduced a letter from Ms. Madrigal dated November 8, 2019 regarding her recommendations. Ms. Madrigal's letter states in part:

I am currently working with [Claimant], providing him with individual psychotherapy to address reactionary responses. Based on clinical observations, he can benefit from adjunct therapy through ELARC. During individual sessions I have observed that [Claimant] forces himself to speak, i.e. his speech pattern fluctuates between pressured and controlled speech. He has difficulty understanding communication expectation. [Claimant] would benefit from behavioral

² Both parties pre-marked their exhibits with numbers. To distinguish between the two, Claimant's exhibits are identified with a "C" before the number, e.g., C1, C2 etc.

therapy, as well as speech therapy since it will facilitate his progress with managing and processing his anxious and irritable responses during our psychotherapy sessions.

(Exh. C2-D.)

9. Claimant also introduced a letter from a mental health provider at another facility, the ROADS Community Care Clinic, which stated, without further explanation, “[Claimant] would benefit from services from Regional Center that are proportionate to the needs of his diagnosis of Autism.” (Exh. C2-F.) An additional submission, dated August 31, 2020, from an organization called Progressive Resources indicated that, while it had staff who worked with autistic patients to help them cope with anxiety, it did not have a staff member with the specific title of “psychiatric therapist” as apparently Mother had requested. (See Exh. C3-B.) Progressive Resources was among the generic resources recommended by ELARC. Its communication indicates that its staff was capable of assisting Claimant though it does not address whether it is a Medi-Cal provider.

10. Exhibit C5-A is a brochure from ASD Consultancy, a practice of mental health providers specializing in the mental health needs of clients on the autism spectrum. The professional backgrounds of the staff members working there appear to be particularly focused on, and tailored to, those clients. The services provided, including family and individual sessions, parent training, and crisis intervention also seem tailored to Claimant’s needs.

11. Mother testified at the administrative hearing. She stated that Respondent emerged from sessions at places like Alma Family Services and with Ms. Madrigal more frustrated and upset than when he went in. He felt misunderstood and

unsupported, the very opposite of the relief he and Mother were seeking. Moreover, without some professional intervention, Claimant takes his frustrations out on the one person he must rely upon the most, Mother.

Discussion

12. The information provided by Claimant, particularly Mother's testimony, established his need for treatment for his anxiety. However, that need does not appear to be in dispute. The issue is whether there are mental health professionals experienced and skilled with the particular needs of clients on the autism spectrum who accept Medi-Cal. While certain providers, including Alma Family Services and Ms. Margolis, may not have had the required capacity to help Claimant, and ASD Consultancy may, it does not logically follow that there are no other appropriate providers. In fact, Claimant's own evidence established that, for instance, Progressive Resources may have the right staff to assist Claimant. Mother required a professional with a particular title, "psychiatric therapist," that Progressive Resources does not use. "Psychiatric therapist" is not an immediately recognizable title and Mother did not establish that it is of any particular significance in finding appropriate care for Claimant. The rest of Mother's submissions do not support her position that generic resources appropriate to help her son do not exist.

LEGAL CONCLUSIONS

1. The state agency charged with implementing the Lanterman Act, the Department of Developmental Services (DDS), is authorized to contract with regional centers to provide developmentally disabled individuals with access to the services

and supports best suited to them throughout their lifetime. (Welf. & Inst. Code, § 4520.)³

2. Although regional centers are mandated to provide a wide range of services to facilitate implementation of the IPP, they must do so in a cost-effective manner. (§§ 4640.7, subd. (b), 4646, subd. (a).) A regional center is not required to provide all of the services that a client may require but is required to “find innovative and economical methods of achieving [Claimant’s] objectives.” (§ 4651.) Regional centers are specifically directed not to fund duplicate services that are available through another publicly funded agency or “generic resource.” Regional centers are required to “. . . identify and pursue all possible sources of funding. . . .” (§ 4659, subd. (a).)

3. An administrative “fair hearing” to determine the respective rights and obligations of the consumer and the regional center is available under the Lanterman Act. (§§ 4700-4716.) Because Claimant seeks benefits or services, he bears the burden of proof. (See, e.g., *Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 789, fn. 9; *Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161.) Claimant must prove his case by a preponderance of the evidence. (Evid. Code, § 115.) Claimant has not met this burden.

4. Claimant clearly requires psychological counseling. However, this is not in dispute. The issue is whether there are any generic resources available to meet this need. Claimant has not established with the requisite degree of proof that no generic resources are available.

³ Further statutory references are to the Welfare and Institutions Code.

ORDER

Claimant's appeal is denied.

DATE:

DEENA R. GHALY

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.