

**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. 2020120201

DECISION

Thomas Lucero, Administrative Law Judge (ALJ), Office of Administrative Hearings, State of California, heard this matter by telephone and videoconference on July 13, 2021.

Stella Dorian, Fair Hearings Representative, appeared on behalf of the Service Agency, the North Los Angeles County Regional Center (NLACRC). Steven Figueroa, Educational Advocate, and claimant's father represented claimant. Names of claimant's and his family are omitted to protect privacy.

Testimony and documents were received in evidence. The record was closed, and the matter was submitted for decision at the conclusion of the fair hearing.

STATEMENT OF THE CASE

Claimant has needed significant dental work for over a year. The dental work might have been accomplished earlier, but several unusual circumstances have presented obstacles, including the pandemic and insurance issues. The Service Agency has worked on overcoming the obstacles, but delays have been prolonged, to the point that claimant is suffering from pain and infection.

ISSUES

Whether the Service Agency's so far unsuccessful efforts to overcome unusual obstacles to providing for claimant's health should be considered a failure to follow the Lanterman Act, or whether, rather, claimant must accept consequences of the lack of success following the Service Agency's good faith efforts under the law.

FINDINGS OF FACT

1. Claimant timely sought a fair hearing following the Service Agency's December 18, 2020 Notice of Proposed Action (NOPA), Exhibits 16 and I.
2. Claimant is eligible for Lanterman Act services based on a diagnosis of mild intellectual disability. He has also been diagnosed with ADHD, attention deficit and hyperactivity disorder. Claimant is 29 years old and lives with his father and fiancée. As described below, both father and fiancée were witnesses at the fair hearing.
3. Father's May 20, 2020 email, Exhibit 2, concerns claimant's dental needs, regarding which father contacted dentists on a list of Service Agency vendors.

Claimant's Consumer Services Coordinator (CSC) Jesus (Jesse) Manuel Rivera, Jr, provided father the vendors list. The Service Agency has employed CSC Rivera as a CSC since December 2015. CSC Rivera sent father the vendors list, Exhibits F and 2, page 004, shortly before their May 20, 2020 email exchange. The vendors list gives contact information for over two dozen dental offices in Los Angeles County, including Dr. Bayaz DDS, Inc. (Dr. Bayaz) in Lancaster, Gottschalk & Lee Dental (Dr. Lee) in Tarzana, and Lekavich Dental Corporation (Dr. Lekavich) in Culver City. Father's dealings with the dentists' offices, especially Dr. Lekavich, are described below.

4. Father later contacted one other office, also described below, which was not on the vendors list: Wheeler Dentistry (Dr. Wheeler) in Hesperia, San Bernardino County. Hesperia is outside of the service agency's catchment area, the area in which its vendors must be located. (See Regulation 50501, subdivision (a)(18). Note that this regulation and all regulations cited are sections of the California Code of Regulations, title 17.)

5. Father's May 20, 2020 email, Exhibit 2, page 002, to CSC Rivera reports that he and claimant went to Dr. Lee for treatment, but were turned away because of body weight issues. Father wrote that since Dr. Lee was dealing with the disabled, his conduct was discriminatory and in violation of the Americans with Disabilities Act (ADA), 42 United States Code, section 12101 et seq. Father found that other dentists to whom Dr. Lee referred claimant were not taking new patients, at least not during the pandemic, then raging, affecting many things. Father notes that, with claimant's phobia for dental work, claimant would have to be sedated for treatment and states that he has on claimant's behalf exhausted generic resources.

6. In a second May 20, 2020 email, Exhibit 2, page 001, to CSC Rivera, father wrote that claimant had been experiencing dental problems since January 2020. Father

noted further that Medi-Cal would not pay for the dental work and the full sedation (also called Intravenous (IV) sedation) claimant needed, so that the Service Agency should pay as the provider of last resort. Father was referring to Welfare and Institutions Code section 4659, under which a service agency is the provider of last resort in that it is required to "identify and pursue all possible sources of funding for consumers receiving . . . services," which, if available, must be used before the service agency provides funds.

7. CSC Rivera emailed back to thank father for the May 20, 2020 emails' information and stated that more information would be needed before funding could be provided.

8. In a May 21, 2020 email, Exhibit 3, father wrote CSC Rivera with a list of vendor dental offices he had telephoned or visited. Some were unavailable and most provided only local anesthesia, not the sedation father sought. One dentist said he could provide the sedation, but only if he could work out an arrangement with Dr. Bayaz. Father turned to Dr. Wheeler, who, though not a vendor, would provide sedation. Father concluded: "I would like to know how you want to proceed."

9. Father's May 26, 2020 emailed, Exhibit 4, to CSC Rivera states: "This recaps both myself and [claimant] will proceed with Dr Timothy Lekavich for dental treatment and general anesthesia sedation this is per our conversation today May 26,2020."

10. With Service Agency forms he completed on June 25, 2020, Exhibits BB, CC, DD, and EE, claimant authorized release of records to the Loma Linda School of Dentistry and the University of California (USC) School of Dentistry.

11. Also, on June 25, 2020, however, as shown in his email of that date, Exhibit 6, father advised CSC Rivera that he and claimant wished to proceed with treatment from Dr. Levatich in October or November.

12. In an August 8, 2020 email, Exhibit 7, CSC Rivera advised father that purchase of dental services for claimant would be approved shortly.

13. An August 10, 2020 addendum, Exhibits E and 8, page 004, to the December 17, 2019 Individual Program Plan (IPP), states: claimant "will receive dental work in the amount of \$3,500 in accordance with Dr. Lekavich's Dental plan; [¶] . . . [¶] Denti-Cal will fund for all eligible services; [¶] . . . [¶] NLACRC will monitor case on a quarterly basis . . . or as needed"

14. In a September 4, 2020 email, Exhibit 9, father advised CSC Rivera that claimant might have a "slight infection" with some pain, for which father gave claimant pain medication. He also asked whether CSC Rivera had sent paperwork Dr. Bayaz had regarding claimant to Dr. Lekavich. As set out below, father later sent the Service Agency a photograph of claimant's mouth showing infection in one tooth and gum inflammation.

15. A September 9, 2020 email, Exhibit 10, page 002, shows: CSC Rivera had sent claimant's records from Dr. Bayaz to Dr. Lekavich; Dr. Lekavich advised father that, because UCLA would not accept claimant's HealthNet coverage, it was preventing claimant's planned treatment at UCLA. As CSC further informed father, Dr. Lekavich said he would examine whether an alternative plan for in-office sedation might work. There was also an issue with when Dr. Lekavich could conduct a "Pre-Op," an examination of claimant before proceeding with surgery.

16. Emails, Exhibit 11, page 001, show: (i) in response to CSC Rivera's October 28, 2020 email asking that father call, father advised that he, claimant, and claimant's fiancée, Ms. Herren, had tested positive for COVID-19, though they were asymptomatic; (ii) on November 3, 2020, father relayed information from Dr. Lekavich, that claimant must test negative for COVID-19 twice before any treatment by Dr. Lekavich, and asked CSC Rivera to inquire what would happen if claimant "starts having pain" or infection.

17. In a set of emails in November 2020, Exhibit 12: (i) father advised CSC Rivera on November 13, that claimant had tested negative for COVID-19 but that Dr. Lekavich was requiring two negative tests before treatment; (ii) father wrote CSC Rivera on November 16: "I am not going to put him [claimant] through another Covid test if Lekavich cannot take the negative we have an issue then regional center can pay for dental work with a dentist that requires one negative."

18. CSC Rivera asked Dr. Lekavich about the two negative COVID-19 tests father had written about. The response in a November 17, 2020 email, Exhibit 13, page 1, was that for dental work with full sedation,

the hospital. . . will require COVID tests 2 days prior to the procedure Maybe that's where he [father] got the number 2?

Our challenge with [claimant] is that due to his medical condition Dr. Lekavich did not clear him to be seen in an office setting with our anesthesiologist and he must be seen in a hospital setting - but he has Healthnet under

MediCal and UCLA does not have a contract with Healthnet under MediCal.

CSC Rivera relayed this information to father and suggested that they work on changing claimant's insurance carrier, to which father responded that the matter should be discussed in an IPP meeting.

19. On November 23, 2020, both claimant and father signed the Service Agency's IPP Agreement Form and IPP Addendum, Exhibits H and 15, which states:

[Claimant] and father . . . are in disagreement with: 1. Dr. Lekavich procedural requirement for dental work completion; and 2. UCLA required COVID-19 negative test within 3 days prior to dental work completion; 3. Required medical insurance change to straight Medi-Cal for UCLA hospital support portion to complete dental work. [¶] Father and [Claimant] in agreement to contact Dr. Lekavich to consult regarding [Claimant's] current dental pain. [¶] Father and [Claimant] decline reconvening meeting within 15 days and will file for Fair Hearing on the matter.

20. In a December 4, 2020 email, Exhibit O, CSC Rivera asked father whether claimant's insurance was an HMO or PPO. Some of the dentists on the Service Agency's vendored list were willing to provide dental treatment under sedation, depending on what type of insurance claimant had.

21. The Service Agency's December 18, 2020 NOPA letter, Exhibits 16 and I, signed by CSC Rivera, states that claimant had not exhausted generic resources:

[D]uring our [November 23, 2020 IPP] meeting, you [father] stated and confirmed that generic resources are still available, as [claimant's] Medi-Cal can be changed at no cost to you or [claimant] from Health Net to LA Care, which the UCLA hospital accepts. Further, in an attempt to alleviate the need for a change from [claimant's] current Health Net insurance, I contacted two other NLACRC-vendored dentist[s] found on the dental list I provided to you on May 4, 2020, which confirmed that they accept Health Net insurance for the requested dental services and further, can provide IV sedation. . . .

. . . Lastly, NLACRC remains the payer of last resort, and as you know, Medi-Cal remains as an option to fund [claimant's] requested dental work and IV sedation services.

22. The parties exchanged emails, Exhibit L, on December 30 and 31, 2020.

A. Father's December 30 email states his belief that claimant "is being taken advantage of during this Covid 19 disaster we are in." Father states he had spoken with Wendy Lekavich, from Dr. Lekavich's staff, who said that because of the surging disease and because Dr. Lekavich had heart surgery, Dr. Lekavich was not seeing patients. Father states that claimant had at this point exhausted generic resources, but he was in pain and father "cannot keep drugging him up . . . and ruin his liver" Father discusses Dr. Wheeler and another non-vendored dentist and requests: "that regional center fund dental treatment at this point in time i am done with the shitty ass generic resource list provided to me and [claimant] i am frustrated

that the IPP you developed is not being implemented properly” Father concludes that CSC Rivera should telephone that same day.

B. CSC Rivera’s December 31 email apologizes that he could not call father the day before because COVID-19 “took one of my family members so I was preoccupied with some personal matters.” CSC Rivera thanks father for father’s detailed follow up and explanation of efforts. He concludes: “I . . . empathize with the lack of progress I’m hopeful . . . grievances and requests . . . are addressed within the Fair Hearing so [claimant] can no longer be in pain.”

23. Exhibit OO includes part of an email string. Father’s January 7, 2021 email in the string (included in Exhibit O as well) states that the NOPA from CSC Rivera had inaccuracies. Father wrote that if CSC Rivera did not withdraw certain statements, father would file a 4731 complaint. CSC Rivera wrote back that father was mistaken, father had not exhausted the list of vendored dentists.

24. The parties exchanged several emails, Exhibit K, on January 8, 2021.

A. Father’s email, Exhibit K, page 4, asserts that the NOPA was incorrect and inaccurate and adds that there is “a witness to verify to this none of your letter makes sense” Father repeats that he exhausted the Service Agency’s vendored list. He states that claimant was taking medication and an antibiotic, amoxicillin, prescribed by a dentist who did not accept claimant’s insurance and would not provide sedation. Father concludes that it is “unfair for [claimant] to suffer and take the pills his body will eventually resist and more than likely damage his liver.”

B. In his email, Exhibit K, page 3, CSC Rivera responded to father that statements in the NOPA were accurate based on documentation, such as the email correspondence between them.

C. Father's email, Exhibit K, page 3, responding to CSC Rivera, suggests scheduling an IPP meeting.

D. CSC Rivera emailed back, Exhibit K, page 3, that he appreciated the request for an IPP meeting, but believed matters should wait till a mediation, then scheduled.

E. In an email, Exhibit K, page 1, responding to CSC Rivera, father asked CSC Rivera to schedule an IPP meeting in January 2021 "to discuss the issue of dental treatment and to discuss the failure to implement the IPP November 23, 2020 also the failure to implement the IPP dated December 17, 2019." Father also referred to "the failure to implement . . . the addendum IPP developed on August 10, 2020" He added: "Also per the IPP that was developed how about the regional center provide me the 3500.00 which is stated in the IPP developed on December 17, 2019"

25. Mr. Figueroa also sent father a January 8, 2021 email, Exhibit N, stating he did not understand why the Service Agency did not, as father suggested, vendorize the dentist of claimant's choice, such as Dr. Wheeler. Mr. Figueroa concludes that the Service Agency's delay with respect to claimant's dental treatment "is harming the Client and causing unforgiving pain and suffering." Also on January 8, 2021, father forwarded a copy of Mr. Figueroa's January 8 email to CSC Rivera.

26. The parties exchanged several emails, Exhibit J, on January 13, 2021.

A. Mr. Figueroa's email, Exhibit J, page 5, to Jimmy Alamillo, Contract Officer and a Fair Hearing Representative, stated he was reaching out for resolution: "I understand that [Dr. Lekavich] is not able to do . . . [claimant's dental] work and a list provided to the client's father also cannot do the work as to the unique nature of the client's disability. . . . [Father] has found a dentist that can properly sedate the disabled

student [*sic*] you have to understand were [*sic*] talking about a child [*sic*] in a lot of pain and in need of work think of your child." Mr. Figueroa suggested that Dr. Wheeler be vendorized. He stated further that the issue was both "compliance" and "humanitarian." Mr. Figueroa concluded that they should meet as soon as possible.

B. Father's email, Exhibit J, page 4, to Mr. Alamillo asks whether a resolution might be reached before mediation, adding: "you have two IPPs addendum where regional center offered to fund Dr. Lekavich dental work and the IPPs are not being implemented with respect target dates."

C. Mr. Alamillo's email, Exhibit J, pages 2 and 3, in response to father, states that claimant's agreeing to go forward with treatment from Dr. Lekavich would resolve the matter.

D. Father's email, Exhibit J, page 1, in response to Mr. Alamillo, states:

So what your telling [*sic*] me Dr. Lekavich has recovered from heart surgery further I am not changing his insurance around in addition [claimant] has a negative test for Covid so I guess will attempt to resolve at mediation. And last time I spoke and reached out to Dr. Lekavich office he was not taking on patients due to his heart surgery this was discussed with Wendy Lekavich on or about December 30, 2020 i [*sic*] find your email interesting.

E. Mr. Alamillo's email, Exhibit J, pages 1, in response to father, states:

Please do not take my words out of context As you are aware, your son declined dental services from Dr. Lekavich/UCLA prior to December 2020, so Dr. Lekavich's surgery is a new fact not previously found to be the case when NLACRC had first approved your son's request for dental services from Dr. Lekavich/UCLA. ¶ If you do not wish to resolve this matter, then there is no need for you to continue to email me.

27. In a February 5, 2021 letter, Exhibit 17, Mr. Alamillo wrote father and Mr. Figueroa, summarizing communications since May 2020 regarding claimant's planned dental work. He concluded that the Service Agency was following the Lanterman Act:

(1) NLACRC does not purchase any service that would otherwise be made available through [claimant's] Medi-Cal insurance; (2) your disagreement with vendor COVID-19 testing protocols should not prohibit [claimant] from receiving dental services from Dr. Lekavich/UCLA; (3) [claimant's] IPP includes a provision of services from a cost-effective use of an available public resource for his dental service request, specifically Medi-Cal; (4) NLACRC's statutory obligation to meet with you 15 days after November 23, 2020 is not violated; and (5) NLACRC complies with ensuring that NLACRC-vendors and generic service agencies are first and fully utilized and exhausted prior to funding any non-NLACRC vendor to perform [claimant's] requested dental service.

28. The parties agreed to an Interim Mediation Agreement, Exhibit NN, on February 12, 2021. The terms are confidential. They do not affect the facts here.

29. Father's handwritten March 9, 2021 note asking that Dr. Olton complete a Medi-Cal exemption form is Exhibit PP. On March 29, 2021, father signed a form authorizing Dr. Lekavich's releasing claimant's records to Dr. Olton.

30. With an April 21, 2021 fax, Exhibit 18, Dr. Lekavich sent Dr. Olton, Wesley Health Centers, Lancaster, California, copies of notes and x-rays, noting that one of claimant's teeth required extraction, another a root canal by an endodontist, after which claimant would need three hours of hospital dentistry.

31. The parties agreed to a second Interim Mediation Agreement, Exhibit SS, on May 12, 2021. The terms are confidential. They do not affect the facts here.

32. On May 14, 2021, the Department of Health Care Services sent claimant confirmation, Exhibit UU, that, effective June 1, 2021, he was disenrolled from Health Net.

33. On May 26, 2021, father signed a Medi-Cal Choice Form, Exhibit TT, page 10, which he attached to emails to CSC Rivera on June 3, 2021. CSC Rivera advised by email on June 4, 2021, Exhibit TT, page 9, that, to avoid delay, he would forward the form, by mail if necessary, to accomplish the insurance change and would contact Dr. Olton and Dr. Lekavich on further steps toward the planned dental work. Father responded to CSC Rivera in his June 4, 2021 email, Exhibit TT, page 9,

34. A May 27, 2021 email, Exhibit 19, from Susan RomeroLuna, office of Dr. Olton, Wesley Health Centers, Lancaster, California, to CSC Rivera, confirmed that claimant had successfully switched insurance coverage from HealthNet to the "straight

Medi-Cal for UCLA hospital," as mentioned in the November 23, 2020 IPP addendum, Exhibit 15.

35. In emails exchanged on June 17, 2021, Exhibits 20 and LL, CSC Rivera wrote father that waiting a year for an endodontist to perform root canals on claimant was not practicable. Claimant would be in danger of severe infection. Without full sedation, each root canal could be performed in approximately one hour. Father's email, Exhibit KK, stated in response:

The options are inappropriate and ineffective regarding everything per the IPP in August, 2020 regional center needs to fund all dental work which the goals were not met also if endodontist is required for root canal than [sic] regional center should fund a endodontist to complete the root canal with sedation as well. The problem i have when Dr Bayaz submitted a full report which regional and Lekavich have custody of this should of [sic] been discussed as well relating to a endodontist doing a root canal. I think we need to have a IPP to discuss the root canal and endodontist and sedation by a endodontist.

36. There were several communications between the parties on June 25, 2021.

A. Father filed a formal complaint against the Service Agency under Welfare and Institutions Code section 4731 (4731 complaint). A 4731 complaint may be filed on the belief that a right of the consumer "has been abused, punitively withheld, or improperly or unreasonably denied by a regional center" Such a

complaint is addressed to the director of a service agency and is not decided under the rules governing a fair hearing request.

B. Also, on June 25, 2021, father complained specifically against CSC Rivera. Father's email of that date, Exhibit GG, he designated a "Human Resource Complaint." It is similar to father's simultaneous 4731 complaint, but adds that CSC Rivera:

has not been truthful and has been very misleading with regards to [claimant's] dental treatment also the lack of knowledge CSC coordinator [sic] has shown Mr. Rivera needs to be looked into the way he performs his duties relating to consumers My other concerns is [sic] the emails from Mr. Rivera in June 2021 he has not been honest and not truthful and also misleading As a advocate [sic] and a parent I feel Mr. Rivera needs to be disciplined and appropriate course of action taken against him

C. Father sent CSC Rivera an email, Exhibit JJ, stating: "I am requesting a [sic] addendum IPP to discuss self determination with regards to self determination [sic] with regards to dental work. Look forward too [sic] hearing from you."

D. Ms. Dorian advised father by email, Exhibit HH:

i. The earliest date for claimant's transition to the Service Agency's Self Determination Program (SDP) was August 1, 2021. (Under SDP, consumers are given a budget, with which they may have more control over the purchase of services.)

ii. Ms. Dorian included a link to a website with information about how to participate in an SDP orientation session, which, as Ms. Dorian advised, claimant or father would be required by law to attend before any transition to SDP.

iii. Ms. Dorian offered to arrange a meeting with the SDP supervisor (who testified at the fair hearing, as set out below) to answer father's questions.

iv. Ms. Dorian advised further that the Service Agency would need signed authorizations to communicate with the USC and Loma Linda Schools of Dentistry. Signed authorizations would serve as father's confirmation that it was his wish that the Service Agency communicate with the two dentistry schools regarding claimant.

37. On June 28, 2021, as indicated in Discharge Instructions, Exhibit P, from Antelope Valley Hospital, claimant was diagnosed with an infection in one tooth (infected dental carries) and inflamed gums (acute pulpitis).

38. The parties exchanged emails on June 29, 2021.

A. Ms. Dorian's email, Exhibit Q, advised father (i) Dr. Lekavich "was looking into endodontist options at UCLA"; (ii) Ms. Dorian had asked the Service Agency's Dental Consultant (Darlene Mairo, who testified at the fair hearing as stated below) to assist with locating dentists and endodontists; (iii) Ms. Dorian had asked assistance with referring claimant to the USC or Loma Linda School of Dentistry, though she warned that both had waiting lists; and (iv) Ms. Dorian would advise further regarding SDP.

B. Father's return email, Exhibit Q, stated, "I don't think NLACRC is taking me seriously in response to your email i disagree due to [claimant] being in pain." Father states, as before, that the Service Agency was negligent because of "inappropriate delays i have exhausted and changed my insurance and still nothing has been performed and still [claimant] suffers to this date it seems regional center can care less about the disabled population you serve." Father adds that dental treatment must be done within five business days or he would proceed to the fair hearing "and ask for reimbursement on everything and seek damages against everybody involved and in connection with regional center."

C. Exhibit R is part of a June 29, 2021 email from father to Ms. Dorian which concludes: "I am requesting regional center fund Dr. Wheeler a dentist in Victorville, Ca also i am requesting mileage and reimbursement also i am requesting regional center provide me the 3500.00 for their neglect and I will go to Dr. Wheeler who is willing to do the work."

D. Father's email, Exhibits S and AA, to Contract Officer Dorian, included a photograph of an infected tooth and claimant's inflamed gum. Father sent the photograph to other Service Agency personnel, such as Ruth Janka, as noted below. Also on June 29, 2021, claimant sent Dr. Wheeler an authorization, Exhibit C, for use or release of records on a Service Agency form. Father sent a copy of the authorization to CSC Rivera with a June 30, 2021 email, Exhibit D, which noted that Dr. Wheeler did not accept claimant's insurance, and stated further that the Service Agency: "needs to fund Dr. Wheeler or reimburse me and provide me the money to get all required dental work done and root canal if necessary since regional center has neglected and is negligent in delaying dental treatment."

E. Ruth Janka has supervisory functions at the Service Agency, though her exact duties are not in the evidence. Ms. Janka sent her own email, Exhibit TT, to father, noting continuing efforts to have claimant's dental work scheduled and completed. In response to father's email statement, Exhibit TT, page 3, that he would be amending his 4731 complaint for "punitively withholding services," Ms. Janka wrote, Exhibit T, page 3: "Please be assured that the Center would not punitively withhold a service"

F. Father's responsive email, Exhibit TT, page 1, to Ms. Janka, states: "Jesse Rivera has not done nothing he has neglected [claimant's] health which was harmed relating to dental work." He states further that CSC Rivera "has misled us intentionally admitting at the end he did not know what he was doing as he had never did it before and never told us or [claimant's] representatives involved. Further . . . he didn't know how insurance companies work which impacted and interfered with [claimant's] dental treatment"

39. As shown in Ms. Dorian's July 1, 2021 letter, Exhibit 25, to father and Mr. Figueroa, there was an informal meeting of the parties on June 25, 2021. The letter summarizes matters they discussed, including:

A. Options the Service Agency presented: (i) if claimant could tolerate root canals under local anesthesia, the rest of the planned dental work could be done without delay under full sedation, or (ii) claimant could agree to extractions of two teeth under full sedation. Ms. Dorian noted that father was opposed to extractions, however.

B. SDP, which however did not become available to consumers until June 7, 2021. CSC Rivera was scheduling a meeting to discuss SDP in early July 2021,

but in any event the Service Agency anticipated that transition to SDP could not be accomplished before August 2021.

C. The letter mentions other "alternative solutions which include":

referral to USC and Loma Linda Schools of Dentistry.

Furthermore, it is my understanding that Dr. Lekavich's office has reached out to UCLA's Endodontics Department and requested assistance. On June 29, 2021, subsequent to the informal meeting, you notified me you had identified a dentist in Victorville; Dr. Wheeler, who was able to perform the dental services under anesthesia. You requested that NLACRC pay you \$3500.00 in order for you to seek treatment from your dentist of choice. As noted in my e-mail communication to you, NLACRC will review your request and notify you of available mechanisms to pay for dental services. As discussed above, one available option is SDP.

40. Ms. Dorian followed up with a July 6, 2021 letter, Exhibit 26, responding to father.

A. Ms. Dorian quotes from father's June 29, 2021 email to her:

Because of the failure to complete the required dental treatment with Lekavich i seeked [*sic*] out Dentist Dr Wheeler a dentist in Victorville . . . [who] does sedation and the required dental work and root canal needed and extractions if necessary. Dr Wheeler exam and xrays are

\$144.00 also i [sic] am requesting regional center fund Dr. Wheeler . . . also i am requesting mileage and reimbursement also i am requesting regional center provide me the 3500.00 for their neglect and i will go to Dr. Wheeler who is willing to do the work.

B. On July 1, 2021, father had forwarded Dr. Wheeler's email stating that the office was not a Medi-Call provider and would charge at the usual and customary rates approved by multiple insurance carriers. The fees were projected at "well over \$12,000"

C. Ms. Dorian proceeds to explain that, under the Lanterman Act, the Service Agency could not contract with a non-vendor such as Dr. Wheeler.

41. The Service Agency follows service standards, which were approved by the Department of Developmental Services on November 16, 2018 and set out in Exhibit 24. "All purchase of service (POS) requests will be subject to the center's internal process, which ensures adherence with federal and state laws and regulations, and ensures," among other things, "[u]tilization of generic services and supports prior to expending regional center funds, as appropriate." as stated in Exhibit 24, page 12.

42. Exhibit W includes claimant's dental records, which CSC Rivera sent to Dr. Wheeler, and correspondence.

A. Exhibit W, page 11, is a letter from Dr. Wheeler's office confirming receipt of the records.

B. Father's email, Exhibit W, page 10, to CSC Rivera, states: (i) claimant had an appointment with Dr. Wheeler the next day, July 2, 2021; (ii) Dr.

Wheeler did not accept claimant's insurance; and "all this prolong delay [*sic*] from regional center is why [claimant] needs extensive work and being on medication will ruin his body."

43. The Service Agency has employed Arshalous Garlanian for eight and a half years. Previously a contracting supervisor and quality assurance specialist, Ms. Garlanian has been the Community Services Manager for the past year. Her June 29, 2021 email, Exhibit 27, shows, as Ms. Garlanian testified, that she checked whether Dr. Wheeler was vendored with Inland Regional Center (IRC), which as a courtesy could enable NLACRC to fund Dr. Wheeler's services indirectly. But IRC's return June 29, 2021 email responded that Dr. Wheeler was not vendored there.

44. A treatment proposal for claimant from Dr. Wheeler, Exhibit 40, lists several crowns, two teeth extractions, and sedation, among other things, the total charges for which are \$12,215, and states: "The fees in this proposal are valid until 08-01-21. After that, fees may increase."

45. During the pandemic, in mid-2020, few dentists were seeing patients. It was difficult to find any dentist to perform a root canal, for instance. Darlene Mairo, who has been a registered dental assistant (RDA) for 30 years, a dental consultant for the Service Agency for the past 14 years, pointed out that even elective surgeries, among other medical procedures, were not being performed because of the pandemic.

46. Exhibits A and B are prescriptions and refill prescriptions for antibiotics and pain medication for claimant. Father recalled that the night before the fair hearing, July 12, 2021, claimant complained of severe pain and had been unable to sleep. Father believes that the pain is extreme, which he rated 10 on a scale of 1 (mild) to 10.

Claimant's fiancée, Nicole Herren fair hearing testimony corroborated that claimant has trouble sleeping because of pain.

47. Claimant's closing argument cited a decision from 2018 between a claimant and the Frank D. Lanterman Regional Center, OAH number 2017050777. The issue in that matter was whether the service agency should "reimburse . . . for dental work done on claimant at the usual and customary rate . . . or at the Medi-Cal rate," which was about half the usual and customary rate. The order was for reimbursement at the lower, Medi-Cal rate. The citation is puzzling because the decision was against the claimant. It seems that claimant interprets the decision to mean that he is allowed to have dental work by any dentist of his choosing and must be reimbursed by the service agency. The decision is not binding here, in any event, and may be considered to have only some persuasive value.

PRINCIPLES OF LAW

1. The party asserting a claim in administrative proceedings generally has the burden of proof. (*Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 160-161 ["the burden of proving . . . [disputed] conditions is on the petitioner".]) Under Evidence Code sections 115 and 500, Claimant bears the burden of proving his claims by a preponderance of the evidence.

Pertinent Policies under the Lanterman Act

2. Welfare and Institutions Code section 4512, subdivision (b), states in part:

"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 social, personal, physical, or economic habilitation or rehabilitation of an individual with a developmental disability, or toward the achievement and maintenance of an independent, productive, and normal life. The determination of which services and supports are necessary for each consumer shall be made through the individual program plan process. 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 individual program plan participants, the effectiveness of each option in meeting the goals stated in the individual program plan, and the cost-effectiveness of each option. . . . This subdivision does not expand or authorize a new or different service or support for any consumer unless that service or support is contained in the consumer's individual program plan.

3. Certain pertinent Lanterman Act policies are set out in Welfare and Institutions Code section 4646, subdivision (a). They include respect for the "needs and preferences" of the family and the developmentally disabled individual; promoting community integration; and ensuring that IPP's are effective in meeting stated goals without undue expense.

4. Statutory law requires that service agencies cooperate with consumers and their families as appropriate in the care of the developmentally disabled. Welfare and Institutions Code section 4646, subdivision (d), makes consensus crucial, in that IPP's should reflect agreement between the developmentally disabled individual, including the family as appropriate, and the service agency in the purchase of services

5. Under Welfare and Institutions Code section 4646, subdivision (a)(1), the Service Agency must ensure conformance with its POS policies, which are subject to approval by the Department of Developmental Services.

Funding

6. Welfare and Institutions Code section 4648, subdivision (a)(3), provides:

In order to achieve the stated objectives of a consumer's individual program plan, the regional center shall conduct activities, including, but not limited to, all of the following:

(a) Securing needed services and supports. [¶] . . . [¶]

(3) A regional center may, pursuant to vendorization or a contract, purchase services or supports for a consumer from an individual or agency that the regional center and consumer or, if appropriate, the consumer's parents, legal guardian, or conservator, or authorized representatives, determines will best accomplish all or part of that consumer's program plan.

7. Regulation 50602, subdivision (o), provides that a service provider is a person or entity "vendored to provide services to regional center consumers."

8. Consumers and their families may use vouchers provided by a service agency for specific services, but not dental treatment. Under Regulation 54355, subdivision (a), a service agency may “offer vouchers . . . [for] diaper/nutritional supplements, day care, nursing, respite, and/or transportation services.”

9. Under Welfare and Institutions Code section 4659, a service agency is the provider of last resort in that it must “identify and pursue all possible sources of funding for consumers receiving . . . services,” including, under subdivision (a)(1), Medi-Cal,” all of which sources, if available, must be used before the service agency’s funds.

ANALYSIS

1. The Service Agency advised claimant that it could not fund Dr. Wheeler’s dental services because he is not vendored or under contract. If the Service Agency were to fund Dr. Wheeler’s services in these circumstances, it would be acting contrary to Welfare and Institutions Code section 4648, subdivision (a)(3).

2. Under Regulation 54355, (a), vouchers are available for certain services, like transportation. Absent an emergency, or alternative arrangements under SDP, however, the Service Agency may not fund services performed by a non-vendored dentist.

3. But a more fundamental problem with claimant’s position is that it is premature. Service Agency personnel, particularly CSC Rivera, have worked to put Dr. Lekavich’s treatment plan into action. They have been frustrated by a series of unexpected obstacles and circumstances beyond their control.

4. The parties' communications are set out in extensive detail in the Findings of Fact above because they demonstrate that the Service Agency continued to work to accomplish claimant's dental work up to the time of the fair hearing. In email correspondence and in his consistent fair hearing testimony, father singled out CSC Rivera's efforts for the harshest criticism, saying, for instance, that CSC Rivera had done nothing for claimant and that he did not understand what he was doing. But the comments are rhetoric, not based on facts.

5. Father's demeanor at the fair hearing was for the most part restrained and appropriate to legal proceedings such as these. Father's testimony was sincere. It is fair to conclude father did not intend to exaggerate or mislead, even as he did not retreat from the position he took in the most recent correspondence described above. His testimony was, nevertheless, exaggerated to some degree. This is particularly true with respect to CSC Rivera.

6. It is not the case, as father wrote to Service Agency personnel, that CSC Rivera was doing nothing for claimant or did not know what he was doing. For example, CSC Rivera wrote to inquire whether claimant's insurance was an HMO or PPO. Father misunderstood the question's import, that the answer could impact whether there were more dentists on the vendored list than father realized who could perform the dental work claimant sought. As it turned out, CSC Rivera had indeed found that there were two more dentists who might help claimant. Father continued to insist that he had exhausted the vendored list long before. Father was mistaken. CSC Rivera was trying to help him and claimant and was doing so from an informed position and with a good understanding of the insurance issues.

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7. The insurance issues are notable in another way. When in 2020 the Service Agency was working on arranging for claimant's dental care, it discovered that because he required full sedation, hospital care would be needed. Such hospital care was available from UCLA, but claimant's insurance could not be used at that hospital. CSC Rivera set about overcoming this obstacle by changing claimant's insurance temporarily, from HealthNet to straight Medi-Cal, with a plan to change it back once a hospital stay was paid for. Farther advised that he would not allow a change in claimant's insurance. Father relented and the insurance was changed through CSC Rivera's efforts. CSC Rivera and the Service Agency understood the problem and solved it with a measure of creativity and flexibility.

8. Likewise notable is that CSC Rivera was not the sole Service Agency employee working to help claimant. As Ms. Dorian wrote father, other personnel of the Service Agency were recruited to help in the efforts on claimant's behalf, among them, Ms. Mairo, the RDA. Service Agency personnel also did not hesitate to ask for outside help as well. The correspondence shows that CSC Rivera, as the lead in attempts to accomplish claimant's dental treatment, was in contact by telephone and email with dental office personnel, not only Dr. Lekavich and his office staff, but also Dr. Wheeler's office and staff, among others.

9. The communications between the parties demonstrate that father is a passionate advocate for his son, the claimant. But as already noted, the communications also demonstrate that the Service Agency did what it could to help claimant and provide him with appropriate dental work. Father's passion is commendable, but his rhetoric is not a basis for a decision here.

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10. It is highly regrettable that claimant's dental work was delayed. That delay has been prolonged, as father characterized it in correspondence at one point recently. But the evidence indicates that the delay is attributable to unusual obstacles. On father's instructions, which the Service Agency was at pains to follow, a dentist had to be located who would use full sedation. Finding such a dentist caused delay. When a solution was found, sedation at UCLA hospital, the Service Agency learned that an insurance issue was yet another obstacle. That obstacle was overcome in the end, but of course not without delay. Father made efforts, alongside Service Agency personnel, to overcome obstacles. But to some extent he also hindered efforts. He believed that he had checked on every dentist on the vendored list, when he had not.

11. Father then became increasingly frustrated with the Service Agency's efforts. Frustration is understandable, considering that the efforts started more than a year ago and still have produced no concrete results to relieve claimant's dental travails. But as a result of frustration, father hindered efforts further with unworkable proposals. The Service Agency could not, as father proposed, simply surrender to father \$3,500, the total charge that Dr. Lekavich proposed for claimant's dental plan. It could not do so under the Lanterman Act even if father were to spend the money on Dr. Wheeler's services. As already noted, there is no legal basis for the Service Agency thus indirectly to pay for services from a non-vendored provider such as Dr. Wheeler.

12. Father's frustration also led to his 4731 complaint. Laying a basis for that complaint has appeared to be the focus of father's attention most recently. Such a complaint is not resolved by a fair hearing, as it is directed to someone other than an ALJ at a fair hearing. By means of the 4731 complaint, father may establish that the Service Agency has acted somehow unfairly. No such conclusion is appropriate on the facts presented at the fair hearing. The Service Agency has with some persistence

overcome obstacles that have prevented bringing claimant's dental treatment plans to a conclusion. It has failed so far. But the failure is not unfairness or some other violation of the Lanterman Act or the law in general.

CONCLUSIONS OF LAW

The Service Agency made substantial efforts to overcome unusual obstacles in the way of claimant's dental work. There were, for instance, few dentists who work with full sedation and even fewer who were treating patients during the worst of the COVID-19 pandemic in 2020 and early 2021. The Service Agency' has been unsuccessful so far in setting up the right circumstances for the accomplishment of claimant's dental work, with adverse consequences to his health. But any failures by the Service Agency were not attributable to a failure to follow the Lanterman Act. Its good faith efforts under the law have so far been defeated by practicalities beyond the control of Service Agency personnel, who worked up to the time of the fair hearing to cooperate with and help claimant. Their efforts should be allowed to continue.

ORDER

Claimant's appeal is denied.

DATE:

THOMAS LUCERO
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.