

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

**In the Matter of:**

**CLAIMANT**

**v.**

**WESTSIDE REGIONAL CENTER, Service Agency.**

**OAH No. 2021030274**

**DECISION**

Administrative Law Judge Barbara O'Hearn, State of California, Office of Administrative Hearings, heard this matter by videoconference and telephone on July 15, 2021.

Claimant was not present; he was represented by his mother.

Fair Hearing Specialist Candace J. Hein represented Westside Regional Center, the service agency.

The matter was submitted for decision on July 15, 2021.

## **ISSUE**

Is claimant entitled to service agency funding under the Lanterman Developmental Disabilities Services Act (Lanterman Act) for counseling services prior to exploring and being denied funding from a generic resource?

## **FACTUAL FINDINGS**

1. Claimant is 10 years old and has been eligible for services from Westside Regional Center (WRC) since 2017, due to autism spectrum disorder. Claimant's mother has been his representative for WRC. Claimant lives with his mother and his younger brother who has special needs and is immunocompromised.

2. During the COVID-19 pandemic shelter-in-place restrictions, claimant and his family essentially were cut off from outside contacts. Claimant began manifesting tics, irritable behavior, and self-slapping actions. Claimant's pediatrician advised claimant's mother that claimant's reactions showed a common stress of the pandemic. Claimant's symptoms became worse in the Fall of 2020, when online school resumed. He needed a therapist, including for his sensory processing disorder.

3. Claimant had a neurology assessment and was recommended for weekly counseling services. Claimant's pediatrician recommended a counselor whom claimant's mother found did not accept new patients. In January 2021, claimant began counseling with a therapist recommended by his occupational therapist. The chosen counselor was not a WRC vendor and not under a contract associated with the Los Angeles County Mental Health Department (DMH).

4. Claimant's mother requested assistance from claimant's service coordinator at WRC. As claimant's mother felt that the service coordinator was not providing adequate support, claimant's mother reached out to the WRC director of clinical services. Claimant subsequently had a newly assigned service coordinator who kept claimant's mother updated.

5. There was no dispute about counseling services being included in claimant's Individual Program Plan (IPP). On February 1, 2021, WRC issued a notice of proposed action to deny funding for specific counseling services. In an attached denial letter, WRC provided additional explanation that the family must explore the generic resource (private insurance) prior to requesting funding. Claimant requested a fair hearing.

6. An informal hearing by telephone between Hein and claimant's mother took place on March 5, 2021. Claimant's mother acknowledged that claimant had private insurance. Hein explained this resource must be pursued before WRC could consider funding counseling services, as regional centers are the payer of last resort.

7. WRC witness Thompson Kelly, Ph.D., the WRC director of clinical services, testified about the process for funding counseling services, confirming the information that Hein provided. A counselor may enter into an independent contract or become vendorized with WRC. Additionally, community sources may be utilized, such as counselors under contract with DMH, or the Venice Family Clinic. Private insurance is another option. Dr. Kelly summarized that regional centers, as service agencies for individuals with a developmental disability, are generally not funders for mental health services.

8. Claimant has private health insurance through his father. The deductible amount reported at hearing by claimant's mother is \$14,000. She submitted the claim to the insurance company for reimbursement of claimant's counseling services about two weeks prior to this hearing. As of the date of hearing, the insurance company had not responded.

9. As explained at hearing by testimony of the WRC fair hearing specialist, WRC may pay a deductible or co-pay amount for services if claimant's family qualifies for such financial benefit. Claimant's mother may apply for WRC payment when documentation is received from the insurance company.

## **LEGAL CONCLUSIONS**

1. Under the Lanterman Act (Welf. & Inst. Code, § 4500 et seq.)<sup>1</sup> the State of California accepts responsibility for persons with developmental disabilities. (§ 4501.) The Department of Developmental Services is the state agency charged with implementing the Lanterman Act. It contracts with regional centers that are charged with the responsibility of providing access to services and supports best suited for individuals with a developmental disability. (§ 4620, subd. (a).)

2. The Lanterman Act directs regional centers to develop and implement an IPP for each individual who is eligible for services, setting forth the services and supports needed by the consumer to meet his or her goals and objectives. (§ 4646 subd. (c).) The determination of which services and supports are necessary is made after analyzing the needs and preferences of the consumer, the range of service

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<sup>1</sup> Statutory references are to the Welfare and Institutions Code.

options available, the effectiveness of each option in meeting the goals of the IPP, and the cost of each option. (§§ 4646, 4646.5 & 4648.)

3. A regional center may, pursuant to vendorization or a contract, purchase services or supports for a consumer that the regional center and consumer, or the consumer's authorized representative, determines will best accomplish all or part of that consumer's IPP. Vendorization or contracting is the process for identification, selection, and utilization of service vendors or contractors, based on the qualifications and other requirements necessary in order to provide the service. (§ 4648, subd. (a)(3)(A).)

4. "Regional center vendor" means an agency, individual, or service provider that a regional center has approved to provide vendored or contracted services or supports. (§ 4659.2, subd. (a)(6).) The matters stated in Finding 3 confirm that claimant does not seek services through a WRC vendor or contractor.

5. While regional centers have a duty to provide a wide array of services to implement the goals and objectives of the IPP, they are also directed by the Legislature to provide services in a cost-effective manner. (§ 4646, subd. (a).) When determining whether to fund a requested service, regional centers must identify and pursue all possible alternative sources of funding, including utilization of generic services when appropriate. (§§ 4659, subd. (a) & 4646.4, subd. (a)(2).)

6. Claimant has the burden of proving by a preponderance of the evidence his eligibility for government-funded services. (See *Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161; Evid. Code, § 500.) Claimant has not met his burden. As shown by the matters stated in Finding 8, claimant did not submit a claim

with the insurance company until about two weeks prior to the hearing and long after the notice of proposed action, with no response as of the hearing date.

7. Cause does not exist for WRC to fund claimant's counseling described in Finding 3, until claimant's private insurance has denied coverage. If and when the claim is denied, claimant may request funding for WRC reimbursement.

### **ORDER**

Claimant's appeal is denied. Claimant is not entitled to WRC funding for his chosen counseling services at this time.

DATE:

BARBARA O'HEARN

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.