

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

In the Matter of:

CLAIMANT,

vs.

SAN GABRIEL/POMONA REGIONAL CENTER,

Service Agency.

OAH No. 2021030696

DECISION

Glynda B. Gomez, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter on May 20, 2021 by videoconference.

The San Gabriel/Pomona Regional Center (SGPRC) was represented by Daniel Ibarra, Fair Hearing Coordinator.

Claimant's mother (mother) represented Claimant¹.

¹ Claimant's name and gender and mother's name are not referenced to protect the family's privacy.

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on May 20, 2021.

ISSUE

Is the Service Agency prohibited from funding co-payments for Claimant's clinic-based occupational, speech and physical therapy?

SUMMARY

Claimant appeals SGPRC's denial of mother's request for funding of insurance co-payments for speech, occupational and physical therapy. SGPRC contends that Claimant does not qualify for SGPRC co-payment assistance. For the reasons set forth below, Claimant's appeal is granted.

FACTUAL FINDINGS

1. Claimant is a child of approximately four years of age and is eligible for regional center services through SGPRC based upon a diagnosis of autism. Claimant lives with both parents and three siblings. Consistent with autism, Claimant has behavior, communication, sensory, gross motor and social deficits.

2. SGPRC denied Claimant's request for funding of co-payments for clinic-based speech, occupational and physical therapies and issued a Notice of Proposed Action on March 10, 2021. SGPRC asserts that it is prohibited from funding such services. Claimant contends that an exemption from the prohibition should be granted.

3. The annual gross income of Claimant's family is less than 400 percent of the federal poverty guidelines for a family of six. SGPRC funds co-payments for Claimant's Applied Behavior Analysis (ABA) pursuant to Welfare and Institutions Code (Code) section 4659.1.

4. Claimant is eligible for special education services through the local school district. Due to the Covid-19 Pandemic, Claimant's educational program and services are delivered remotely via computer. Claimant receives school-based occupational therapy and speech therapy. Claimant also receives clinic-based speech, occupational and physical therapy through private health insurance.

5. At the time of the hearing, Claimant was in the process of transitioning from occupational and speech therapy funded by SGPRC² to in-network providers paid by private insurance. Claimant requested, but was denied, permission by claimant's insurer, to remain with existing providers for continuity of care. Claimant was not able to find any in-network providers that would accept Medi-Cal to cover the required co-payments within a 25 mile radius of the family home. Consequently, Claimant's family pays approximately \$400 per month in co-payments for Claimant's clinic-based occupational, speech and physical therapies.³

6. Claimant's school-based therapies are provided solely to assist in the provision of a Free Appropriate Public Education (FAPE). School-based therapies have

² A Department of Developmental Services Directive extended Early Start services beyond the age of three for clients that had not transitioned to school district services because of the Covid-19 Pandemic shutdown.

³ SGPRC funds co-payments for Claimant's insurance paid ABA services.

been provided remotely. The manifestations of Claimant's autism make it difficult for Claimant to participate in school-based remote therapies and education. The clinic-based therapies provide the most assistance to Claimant and have been the primary means of ameliorating the effects of Claimant's disability and maintaining Claimant in the family home.

7. Claimant's individual Program Plan (IPP) contains goals to increase vocabulary (Outcome #1); strengthen cognitive skills (Outcome #2); strengthen self-help (Outcome #3); decrease tantrums (Outcome #4); strengthen social skills (Outcome #5), improve receptive language (Outcome #6); transition to an appropriate educational program (Outcome #7); improve sensory processing skills (Outcome #8); and strengthen gross motor skills (Outcome #9). Claimant's clinic-based therapies support these outcomes.

8. Claimant has intensive needs and is one of four children in the family home. Claimant's family provides significant resources to meet those needs, but the extraordinary nature of Claimant's needs and the associated co-payments for therapies have resulted in a financial hardship for the family.

9. SGPRC does not dispute Claimant's need for clinic-based speech, occupational and physical therapy to address the manifestations of autism.

LEGAL CONCLUSIONS

1. The Letterman Development Disabilities Services Act (Lanterman Act) sets forth a regional center's obligations and responsibilities to provide services to individuals with developmental disabilities. As the California Supreme Court explained in *Association for Retarded Citizens v. Department of Developmental Services* (1985)

38 Cal.3d 384, 388, the purpose of the Lanterman Act is twofold: to prevent or minimize the institutionalization of developmentally disabled persons and their dislocation from family and community and to enable them to approximate the pattern of everyday living of nondisabled persons of the same age and to lead more independent and productive lives in the community.

2. In enacting the Lanterman Act, the Legislature accepted responsibility to provide for the needs of developmentally disabled individuals, and recognized that services and supports should be established to meet the needs and choices of each person with developmental disabilities. (Code § 4501.)

3. "Services and Supports for persons with 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 independent, productive, normal lives.

(Code § 4512, subd. (b).)

4. Appropriate services and supports include diagnosis, evaluation, treatment, physical, occupational and speech therapy, mental health services, protective services, emergency and crisis intervention. The determination of which services and supports are necessary for each consumer shall be made through the IPP process. (Code § 4512, subd. (b).).

5. The Lanterman Act gives regional centers, such as SGPRC, a critical role in the coordination and delivery of services and supports for persons with disabilities. (Code § 4620 et. seq.) It is the intent of the Legislature to ensure that the IPP and provision of services and supports by the regional center system is centered on the individual and the family of the individual with developmental disabilities and takes into account the needs and preferences of the individual and the family, where appropriate, as well as promoting community integration, independent, productive and normal lives, and stable and healthy environments. It is the further intent of the Legislature to ensure that the provision of services to consumers and their families be effective in meeting the goals stated in the IPP, reflect the preferences and choices of the consumer, and reflect the cost-effective use of public resources. (Code § 4646.)

6. Code section 4646.4, subdivision (a) provides:

Regional centers shall ensure, at the time of development, scheduled review, or modification of a consumer's individual program plan developed pursuant to Sections 4646 and 4646.5 or an individualized family service plan pursuant to Section 95020 of the Government Code, the establishment of an internal process. This internal process shall ensure adherence with federal and state law and regulation, and when purchasing services and supports, shall ensure all of the following:

(1) Conformance with the regional center's purchase of service policies, as approved by the department pursuant to subdivision (d) of Section 4434.

(2) Utilization of generic services and supports when appropriate.

(3) Utilization of other services and sources of funding as contained in Section 4659.

(4) Consideration of the family's responsibility for providing similar services and supports for a minor child without disabilities in identifying the consumer's service and support needs as provided in the least restrictive and most appropriate setting. In this determination, regional centers shall take into account the consumer's need for extraordinary care, services, supports and supervision, and the need for timely access to this care.

7. Code section 4659, subdivision (a), provides that the regional center shall identify and pursue all possible sources of funding for consumers receiving regional center services. These sources shall include, but not be limited to governmental, other entities, programs or private entities.

8. Code section 4659, subdivision (b), provides that regional centers may not pay for medical or dental services for a consumer over the age of three unless the regional center is provided with documentation that a health care plan, private insurance, or Medi-Cal denied coverage and the regional center determined that the denial does not have merit.

9. Code section 4659.1, provides that regional centers may only fund co-payments or co-insurance when: (1) the service or support is paid for, in whole or in part, by the health care service plan or health insurance policy of the consumer's

parent; (2) the consumer is covered by his/her parent's health plan or health insurance; (3) the family has an annual gross income that is less than 400% of the federal poverty level; and (4) there is no third party with liability for cost of the service or support.

10. Code section 4659.1, subdivision (c) contains an exception to the prohibition when the service or support is necessary to successfully maintain the consumer at home in the least restrictive setting and the parents or consumer demonstrates one or more of the following:

(1) The existence of an extraordinary event that impacts the ability of the parent, guardian, or caregiver to meet the care and supervision needs of the child or impacts the ability of the parent, guardian, or caregiver, or adult consumer with a health care service plan or health insurance policy, to pay the copayment or co-insurance.

(2) The existence of a catastrophic loss that temporarily limits the ability to pay of the parent, guardian, or caregiver, or adult consumer with a health care service plan or health insurance policy and creates a direct economic impact on the family or adult consumer. For purposes of this paragraph, catastrophic loss may include, but is not limited to, natural disasters and accidents involving major injuries to an immediate family member.

(c) Significant unreimbursed medical costs associated with the care of the consumer or another child who is also a regional center consumer.

11. Claimant has health insurance paid through parental employment, but the insurance has a co-payment which amounts to a sizable monthly payment for the speech, occupational and physical therapy services. Claimant is transitioning to the insurance carrier's in-network providers but the family will remain responsible for the sizable co-payments since no local in-network providers accept Medi-Cal for co-payments. The family gross income is below the threshold set by the legislature for a family of six. As such, Claimant's care and needs require substantial expenditures above and beyond what insurance pays for such care. Additionally, the Covid-19 Pandemic, an extraordinary event, restricted Claimant's access to school-based resources. Claimant has difficulty accessing school-based therapies offered as part of FAPE because the therapies have been provided remotely during the Covid-19 Pandemic. The clinic-based therapies, together with Claimant's ABA services constitute critical and primary means of ameliorating the effects of autism.

12. Claimant meets the requirements for an exemption from the prohibition on regional center funding of co-payments for speech, occupational and physical therapies as Claimant did for the co-payments for ABA services, by reason of factual findings 1 through 9.

ORDER

1. Claimant's appeal is granted.
2. The San Gabriel/Pomona Regional Center shall fund up to \$400 per month in co-payments for Claimant's in-network occupational, speech and physical therapy sessions for twelve months commencing with the effective date of this decision.

3. Claimant shall fully cooperate and comply with the San Gabriel/Pomona Regional Center's accounting protocols and requests for documentation of services provided, insurance coverage and co-payments.

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.