

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

In the Matter of:

CLAIMANT

v.

VALLEY MOUNTAIN REGIONAL CENTER, Service Agency.

OAH No. 2021050481

DECISION

Heather M. Rowan, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter via videoconference on August 19, 2021, from Sacramento, California.

Matthew Bahr, Attorney at Law, represented Valley Mountain Regional Center (VMRC or Regional Center).

Claimant's parents represented claimant.

Oral and documentary evidence was received. The record closed and the matter was submitted for decision on August 19, 2021.

ISSUE

Is VMRC obligated to reimburse claimant's parents \$570 for the copayments they paid in 2020 for claimant's behavioral therapy?

FACTUAL FINDINGS

Background and Reimbursement Request

1. Claimant is a four-year-old boy who is eligible for Regional Center services under the Lanterman Developmental Disabilities Services Act (Lanterman Act), California Welfare and Institutions Code section 4500, et seq., based on his autism diagnosis. He lives with his parents and two brothers, one of whom is also a VMRC client. Claimant was in the Early Start program prior to his third birthday through which he received behavioral services at ABC in Stockton. Claimant's parents described ABC as a preschool setting claimant attended from 8:30 in the morning until 2:30 in the afternoon.

2. On May 15, 2020, when claimant turned three years old, VMRC transferred him from Early Start to a service coordinator in the children's unit. At that point, the family paid for behavioral support through their medical insurance, which paid all but the copayment the family paid.

3. Mari Bel Trujillo is claimant's service coordinator. She testified at hearing. On July 7, 2020, she held an Individual Program Plan (IPP) with claimant's mother to review his goals and challenges. The meeting was held remotely due to the COVID-19 pandemic. One of claimant's goals was "to reduce [his] behaviors." One method of accomplishing this goal is through behavioral services. The IPP noted claimant is

eligible for services through Lodi Unified School District (LUSD), which held a remote Individualized Education Program (IEP) meeting in May 2020.

4. At the IEP meeting, LUSD offered claimant a place at Wagner Elementary, which has a highly structured classroom and a two-to-one staff to student ratio. The program is a full school day five days per week. LUSD also offered claimant "Extended School Year" (ESY) services to provide distance learning over the summer months to help avoid learning loss of the skills claimant learned at ABC. Claimant's mother declined ESY and decided to wait for the school year to start. LUSD offered claimant speech services, occupational therapy, and transportation.

5. Claimant's parents agreed to attempt to obtain behavior services through their insurance and to "exhaust generic resources" for services. Their medical insurance and LUSD are generic resources. ABC was providing claimant's behavioral support in 2020, which his parents' medical insurance paid for in addition to a copayment his parents paid. In July 2020, claimant's mother inquired of Ms. Trujillo whether VMRC would reimburse the family for the amount spent on copayments. Ms. Trujillo explained that to consider the request, VMRC would need supporting documentation.

6. Ms. Trujillo requested claimant's mother provide a behavioral assessment or diagnostic report from claimant's behavioral support provider, ABC, to substantiate the "clinical appropriateness" of the service. She also requested insurance statements and benefit information as well as income information. With this documentation, the planning team would be able to review the appropriateness of VMRC reimbursing for the copayments.

7. Elizabeth Diaz is a Program Manager for the children's team at VMRC. She supervises Ms. Trujillo. Ms. Diaz testified that she received from Ms. Trujillo

claimant's request for reimbursement of the insurance copayments for behavioral services. To reimburse copayments, VMRC must gather the required information and forward the request to a review committee. That committee evaluates the clinical appropriateness of the services, whether it is required under the IPP, whether generic resources are exhausted, and whether the family meets the statutory income requirements for reimbursement.

8. VMRC evaluates the clinical appropriateness of behavioral services by reviewing the assessment. In this case, claimant's mother had concerns about enrolling claimant in LUSD when he was transitioning from the Early Start to the children's program at VMRC. She was also concerned about sending claimant to school in the midst of a pandemic. VMRC requested claimant's behavioral assessment, but did not receive it.

9. Claimant was eligible for the special education classroom at LUSD, but was not accessing that resource. With the behavioral assessment, the review committee could determine whether the behavioral services claimant was receiving were clinically necessary instead of public school. Claimant's behaviors may prevent him from accessing free and appropriate public education, but VMRC had no evidence in the form of a behavioral assessment to substantiate that.

10. By law, to qualify for reimbursement of insurance copayments, one of the factors a family must establish is their income. If the family income does not exceed 400 percent of the federal poverty level, the family may be eligible for reimbursement. VMRC did not receive income verification or insurance benefit information from claimant.

11. The information the review committee had before it was that claimant's IPP identified claimant's need for behavioral services and the family had requested \$570 in reimbursement. At the time VMRC issued the Notice of Proposed Action denying claimant's request for reimbursement of the insurance copayments, there was not sufficient information to substantiate the need and qualification for reimbursement.

12. Prior to hearing, claimant submitted some income and insurance information. Ms. Diaz suggested it was not complete. The information was not submitted at hearing. No behavioral assessment was received, however.

Claimant's Evidence

13. Claimant's parents testified on his behalf. His mother explained she works outside the home and was working 16 hours per day during much of 2020. Claimant's father stayed home with claimant and his two brothers, one of whom is also eligible for Regional Center services. In March 2020, public schools closed due to the pandemic. Claimant's father assisted his two brothers with remote learning.

14. Claimant continued to attend ABC in person for about two months to ease his transition after his third birthday. When one of his teacher's tested positive for COVID-19, however, claimant's parents kept him home. His parents are requesting reimbursement for copayments made between claimant's third birthday and when he stopped attending ABC. In total, they are requesting \$570, which has been a hardship for them to pay.

15. Because of the on-going health threat, claimant's parents kept their children home. Enrolling claimant in LUSD was not practical because schools were offering school online and claimant's father could not support all three boys'

education simultaneously. Additionally, claimant's age, behaviors, and ability to engage with online learning led them to keep claimant at home and not enroll him in LUSD after he left ABC. At that point, claimant's parents did not seek out additional behavioral resources because of the pandemic.

16. Claimant's mother believes she sent VMRC some of the requested information. She is willing to obtain a behavioral assessment from ABC if needed.

PRINCIPLES OF LAW

17. Under the Lanterman Act, the State of California accepts responsibility for persons with developmental disabilities. (Welf. & Inst. Code, § 4501.) In seeking government benefits, the burden of proof is on the person asking for the benefits. (See, *Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161 (disability benefits).) The standard of proof in this case is a preponderance of the evidence, because no applicable law or statute (including the Lanterman Act) requires otherwise. (Evid. Code, § 115.)

18. Welfare and Institutions Code section 4659.1 governs payments for services or supports that are necessary to effectuate the consumer's IPP and are paid for in part by private health insurance. In pertinent part, section 4659.1 states:

(a) If a service or support provided pursuant to a consumer's individual program plan under this division is paid for, in whole or in part, by the health care service plan or health insurance policy of the consumer's parent, guardian, or caregiver, the regional center may, when necessary to ensure that the consumer receives the service

or support, pay any applicable copayment, coinsurance, or deductible associated with the service or support for which the parent, guardian, or caregiver is responsible if all of the following conditions are met:

(1) The consumer is covered by their parent's, guardian's, or caregiver's health care service plan or health insurance policy.

(2) The family has an annual gross income that does not exceed 400 percent of the federal poverty level.

(3) There is no other third party having liability for the cost of the service or support, as provided in subdivision (a) of Section 4659 and Article 2.6 (commencing with Section 4659.10).

[¶] . . . [¶]

19. Welfare and Institutions Code section 4659, subdivision (a), referred to above, requires the regional centers to "identify and pursue" all sources of funding, including:

(1) Governmental or other entities or programs required to provide or pay the cost of providing services, including Medi-Cal, Medicare, the Civilian Health and Medical Program for Uniform Services, school districts, and federal supplemental security income and the state supplementary program.

(2) Private entities, to the maximum extent they are liable for the cost of services, aid, insurance, or medical assistance to the consumer.

ANALYSIS

20. The Lanterman Act governs the funds and services regional centers are obligated to provide. Regional centers may provide only those services identified in a consumer's IPP. Once the service is identified, the regional center must determine if it is necessary and if funding is appropriate.

21. Here, claimant requests reimbursement of insurance copayments for approximately two months of behavioral supports. Claimant's IPP has identified behaviors that may be addressed through behavioral supports. The regional center must determine if generic or governmental resources are available to fund the necessary support.

22. Claimant became eligible to enroll in LUSD when he turned three years old and aged out of Early Start. He had an IEP with LUSD, and a special education class was identified for him. There is no evidence that LUSD completed a behavioral assessment. It is possible that LUSD could fund behavioral support. Because of the pandemic, however, claimant's parents did not enroll him in public school.

23. Another generic resource is claimant's medical insurance. The insurance paid for behavioral support for about two months after he turned three years old. Claimant's parents paid the copayment. Claimant's parents are not seeking the full cost of behavioral support. They request reimbursement for their copayments.

24. To qualify for copayment reimbursement, claimant must establish his family income does not exceed 400 percent of the federal poverty level and no generic or government resource is available to fund the service. At the time of the Regional Center's Notice of Proposed Action by which it denied claimant's request for reimbursement, claimant had not submitted income information for VMRC's review. Additionally, claimant did not submit a behavioral assessment from ABC that could establish that even though LUSD is a government resource, it was not appropriate for claimant to access behavioral services virtually, as LUSD offered.

25. Without this information, VMRC denied claimant's request. Claimant's mother stated she has already submitted income information and she was willing to obtain a behavioral assessment as requested. That information will allow VMRC to conduct a complete review. Until that point, the request for reimbursement must be denied.

LEGAL CONCLUSION

Claimant did not establish by a preponderance of the evidence that VMRC must reimburse his parents for insurance copayments amount because the required information was not presented to VMRC.

ORDER

Claimant's request for reimbursement of copayments is denied without prejudice.¹

DATE: August 25, 2021

HEATHER M. ROWAN

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. (Welf. & Inst. Code, § 4712.5, subd. (a).)

¹ "Without prejudice" means a party is not barred from future appeals if the required information is provided to VMRC and VMRC denies the request again.