

**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. 2021070228**

**DECISION**

Nana Chin, Administrative Law Judge, Office of Administrative Hearings (OAH),  
State of California, heard this matter by videoconference on October 14, 2021.

Claimant was represented by his mother (Mother).<sup>1</sup>

Stella Dorian, Fair Hearing Representative, represented the North Los Angeles County Regional Center (Service Agency or NLACRC).

Documents and testimony were received into evidence. The record was held open until October 21, 2021, to allow Mother to submit emails sent to NLACRC regarding Service Agency errors s contained in the June 10, 2020 Annual Progress Report which was admitted as Exhibit 2, or the May 20, 2021 Individual Program Plan, which was admitted as Exhibit 3. The Service Agency was directed to file and serve any response to Claimant's submissions by November 4, 2021.

Mother timely submitted four documents. The documents were marked as follows: (1) the email chain dated July 16, 2018 through August 28, 2018, is marked as Exhibit B; (2) the email chain dated August 27, 2019 through August 28, 2019, is marked as Exhibit C; (3) the May 27, 2021 email was marked as Exhibit D; and (4) a July 9, 2021 email was marked as Exhibit E. The Service Agency filed a response, which was marked as Exhibit23, objecting to the submissions on relevancy grounds.

Exhibit E was admitted into evidence. Exhibits B, C and D were not admitted into evidence because the documents are irrelevant to the issue of reimbursement of

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<sup>1</sup> Family titles are used to protect the privacy of Claimant and his family.

copayments for speech language pathology services and outside the order allowing submission of additional evidence.

On November 4, 2021, the record was closed and the matter submitted.

## **ISSUES<sup>2</sup>**

1. Whether NLARC should reimburse Claimant for copayments for speech language pathology (SLP) services that were provided in 2020.

2. Whether NLARC should reimburse Claimant for copayments for SLP services that were provided in 2021.

## **EVIDENCE RELIED UPON**

NLARC Witnesses: Amy Elise Gandin, Consumer Services Supervisor (CSS); Stella Dorian, Fair Hearing Representative (FHR)

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<sup>2</sup> At the hearing, Mother stated she wanted the Service Agency to provide reimbursement for copays retroactive to the date of Claimant's birth. The request was denied as the Fair Hearing Request limited the request for reimbursement to costs incurred by Claimant in 2020 and 2021.

Claimant Witness: Mother

Documents: Service Exhibits 1-22, and Claimant's Exhibit A<sup>3</sup>-F

## **FACTUAL FINDINGS**

### **Jurisdictional Matters**

1. Claimant is a consumer who qualifies for regional center services under the Lanterman Developmental Disabilities Services Act (Lanterman Act) (Welf. & Inst. Code, § 4500 et seq.)<sup>4</sup> based upon a diagnosis of unspecified intellectual disability (Trisomy 21).

2. On May 20, 2021, Mother requested assistance with copayments required for Claimant's SLP appointments and reimbursement of past copayments made by Claimant's family.

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<sup>3</sup> During the hearing, Mother questioned CSS Gandin about an email chain dated June 25, 2021. The document was marked and admitted as Exhibit A.

<sup>4</sup> Undesignated statutory references are to the Welfare and Institutions Code.

3. On May 26, 2021, the Service Agency informed Mother that the request for "co-pay support" was denied. (Exh. 4, p. 027.) A Notice of Action (NOA) was drafted but was not provided to Claimant.

4. On June 30, 2021, Mother filed a fair hearing request on Claimant's behalf requesting funding for copay support. Mother stated that the reason for the request was:

To secure funding for copay support with claimants [*sic*]  
current SLP in the future and in arrears for 2020, 2021.  
Family meets all qualifications however, NLACRC will only  
reimburse vendors meeting a specific code although there  
is no standard of care policy to support the decision.  
NLACRC will not provide an NOA or a NOPA.

(Exh. 1, p. 011.)

## **Background**

5. Claimant is a six-year-old consumer who lives with her parents and his two siblings in the family home. Father works full-time as a construction worker. Mother was previously a business owner; however, due to the COVID-19 pandemic, the business did not survive and Mother is Claimant's In-Home Supportive Services (IHSS) provider.

6. Claimant attends a private school five days per week. Claimant also receives 40 hours per week of applied behavior analysis (ABA) services at school and at home. Both services are funded through his private health insurance.

### **JUNE 20, 2020 ANNUAL REVIEW**

7. On June 10, 2020, an annual review (Annual Review) of Claimant's Individual Program Plan (IPP) was conducted over the phone due to the COVID-19 pandemic. Mother and Claimant's former service coordinator, Rosy Salazar participated in the call.

8. During the meeting, the IPP team discussed the changes Claimant experienced over the course of the year. The most significant changes were that Claimant was not attending school as it had been closed due to the pandemic, and his ABA services were suspended because Claimant's family did not want providers to come into the home. Though Mother continued to need respite services, those services were also placed on hold.

9. The IPP team also discussed Claimant's challenging behaviors, which included Mother's concerns about Claimant's delayed speech. She relayed that Claimant's speech was that of a 12 to 18-month-old and not understood by others. Though the Annual Review indicates Claimant received language and speech (LAS) services during school hours, there was no indication that Mother reported Claimant was receiving or required speech therapy.

10. The June 10, 2020 IPP progress report identified the following outcomes: (1) Claimant's parents were to provide all the health services and supports using private insurance benefits to meet all of Claimant's medical and behavioral treatment and daily living needs; and (2) respite services were to be the main source from which parents would receive a break from the high level of care and supervision Claimant requires.

11. Though Mother asserts that she did not sign the June 10, 2020 IPP progress report, Mother did not present any evidence to suggest that she had requested any changes to it.

### **MAY 20, 2021 IPP**

12. On May 20, 2021, an IPP meeting was conducted over the phone with Mother, Claimant and Claimant's current service coordinator, Ruby Ruiz.

13. During the meeting, Mother expressed that she wanted Claimant to be fully integrated in a typical school, play sports and be fluent either verbally or with American Sign Language (ASL).

14. Mother reported that Claimant's school had reopened in mid-April 2021. Claimant was attending school five days per week and was again receiving ABA services. Mother also reported Claimant was receiving speech therapy two times per week, which was funded by private insurance. She inquired into whether the Service Agency could assist with retroactive copayment support. SC Ruiz informed Mother that

a consultation would be needed to determine whether the Service Agency required documentation to verify whether Claimant was eligible for copayment support.

15. On July 9, 2021, Mother sent SC Ruiz an email disputing many of the statements that were contained in the IPP about Claimant's level of functioning and requesting that those items be changed. Mother denied that the IPP had been approved or signed as of the date of the hearing.

### **REIMBURSEMENT FOR SPEECH THERAPY**

16. Claimant has been receiving speech therapy two or three times a week with Deborah Oppenheim, a speech and language pathologist. Ms. Oppenheim is a provider within his private health insurance's network and is also vendored by the Service Agency.

17. Mother provided SC Ruiz with a copy of her tax return, a list of all Claimant's speech therapy appointments, evidence that copayments had been paid for each appointment, and the explanation of benefits from the insurance company.

18. On May 26, 2021, SC Ruiz advised Mother that the Service Agency had denied her request for funding of copayments. Mother requested a Notice of Action (NOA). A NOA appears to have been drafted by SC Ruiz but does not appear to have been approved or sent to Claimant.

19. After reviewing Mother's financial documentation., the Service Agency reconsidered its decision. On June 17, 2021, the Service Agency notified mother that it was now in agreement to fund Claimant's copayments for three sessions a week through a vendored service provider, effective May 20, 2021, which is the date the funding request was presented to NLACRC.

20. SC Ruiz and CSS Gandin, however, incorrectly informed Mother that Claimant's family could not receive copay support if Claimant continued to utilize Ms. Oppenheim's services as she was not vendored through the Service Agency, mistakenly provided Mother a list of vendored behavioral service providers to use instead, and informed Mother that the Service Agency does not "do parent reimbursement. . ." (Exh. A.)

21. On July 23, 2021, Service Agency notified Mother that Service Agency could in fact reimburse parents the cost of copayments, on the condition Mother becomes vendored. After completing the vendorization process, the Service Agency agreed to reimburse Mother for any copayments she made after her initial request for copayment support.

22. Mother submitted the paperwork required for vendorization and was ultimately vendored on September 1, 2021. The Service Agency typically makes reimbursements through direct deposit, which requires two cycles or 60 days to become effective. The Service Agency, however, expedited the process and Claimant's family was reimbursed for the past SLP copayments in September 2021.

## **Testimony at Hearing**

### **CSS GANDIN**

23. Amy Elise Gandin is employed by the Service Agency as a Consumer Services Supervisor (CSS). CSS Gandin is familiar with Claimant in that she supervised both Claimant's former service coordinator, Rosie Salazar, and his current service coordinator, Ruby Ruiz.

24. At the hearing, CSS Gandin failed to provide any explanation for: (1) the Service Agency's initial denial of Claimant's request for copayment support for SLP services, (2) the Service Agency's failure to provide Claimant with a NOA; and (3) the Service Agency advising Mother that reimbursement could only be made if Claimant's speech therapist was vendored for copayments. Additionally, when questioned about the inaccuracies in the IPP, Ms. Gandin became very combative with Mother and, at one point, appeared to suggest that any services that were being provided by the Service Agency under the IPP would be terminated.

### **FHR DORIAN**

25. FHR Dorian explained that Claimant was approved for copayment assistance because: (1) Claimant has private health care insurance through Father; (2) Claimant's family was determined to have an annual gross income that did not exceed 400 percent of the poverty level; and (3) there was no other third party who had liability for the supports and services.

26. Prior to the hearing, FHR Dorian reviewed the 2020 Annual Report, the 2021 IPP and the Consumer ID Notes and could not see that Mother had requested copayment assistance prior to the May 2021 IPP meeting. FHR Dorian could not locate any such requests in the Service Agency's records. Pursuant to the Service Agency's Service Standards, which have been approved by the Department of Developmental Services, services and supports must be obtained through the IPP process. (See Exh. 14, p. 060.) As there was no evidence that Claimant's SLP services were authorized before May 20, 2021, the Service Agency is not in agreement to make retroactive reimbursements for copayments made prior to the request for services.

### **MOTHER'S TESTIMONY**

27. Mother expressed her frustration with the Service Agency. Mother asserts that she had repeatedly asked for speech language services but claims that they had been "misled" by CSS Gandin.

28. Mother also expressed her frustration about the errors contained in Claimant's 2021 IPP in that it did not accurately portray Claimant. Though Mother sent SC Salazar an email listing some of these errors, she has not received an updated IPP. (Exh. (E).) Mother also claimed that the ID Notes were inaccurate but failed explain how they were inaccurate. Mother, however, did admit that she had not requested copayment reimbursement for SLP services prior to the May 2021 IPP.

## LEGAL CONCLUSIONS

### Jurisdiction

1. The Lanterman Act governs this case. (§ 4500 et seq.) An administrative "fair hearing" to determine the rights and obligations of the parties is available under the Lanterman Act. (§§ 4700-4716.)

2. Pursuant to section 4710.5, subdivision (a), "Any ... authorized representative of the applicant or recipient, who is dissatisfied with any decision or action of the service agency which he or she believes to be illegal, discriminatory, or not in the recipient's or applicant's best interests, shall . . . be afforded an opportunity for a fair hearing." Claimant requested a hearing and, therefore, jurisdiction for this appeal was established. (Factual Findings 1-4.)

3. An essential part of a fair hearing is "adequate notice" to a consumer of a regional center's proposed action. Section 4710, subdivision (b), states "[a]dequate notice shall be sent to the recipient and the authorized representative, if any, by certified mail no more than five working days after the agency makes a decision without the mutual consent of the recipient or authorized representative, if any, to deny the initiation of a service or support requested for inclusion in the individual program plan." "Adequate notice" is defined as "a written notice" which must include, information regarding "[t]he action the service agency proposes to take," "the reason or reasons for that action," "the specific law, regulation, or policy supporting the action" and information regarding the

consumer's appeal rights. (§ 4701.) No explanation was provided for the Service Agency's failure to timely comply with their obligations under the statute provide Claimant with a NOA denying his request for copayment support.

## **Standard and Burden of Proof**

4. The standard of proof in this case is the preponderance of the evidence because no law or statute (including the Lanterman Act) requires otherwise. (See Evid. Code, §§ 115, 500.) The burden of proof is on the person whose request for government benefits or services has been denied. (See, e.g., *Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161 (disability benefits).) As the party seeking funding for a previously unfunded service, the burden of proof in this matter is on the Claimant. Claimant has not met his burden of proof.

## **Applicable Law**

5. In enacting the Lanterman Act, the Legislature accepted its 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. (§ 4501.) The Lanterman Act gives regional centers, such as NLARC, a critical role in the coordination and delivery of services and supports for persons with disabilities. (§ 4620, et seq.) Regional centers are responsible for developing and implementing IPPs, for taking into account consumer needs and

preferences, and for ensuring service cost-effectiveness. (§§ 4640.7, 4646, 4646.5, 4647, and 4648.)

6. The consumer's needs are determined through the IPP process. (§ 4646.) "Individual program plans shall be prepared jointly by the planning team. Decisions concerning the consumer's goals, objectives, and services and supports that will be included in the consumer's [IPP] and purchased by the regional center or obtained from generic agencies shall be made by agreement between the regional center representative and the consumer or, where appropriate, the parents, legal guardian, conservator, or authorized representative at the program plan meeting." (§4646, subd. (b).)

7. "If a service or support provided pursuant to a consumer's individual program plan . . . is paid for, in whole or in part, by the . . . health insurance policy of the consumer's parent, . . . the regional center may, when necessary to ensure that the consumer receives the service or support, pay any applicable copayment. . . associated with the service or support for which the parent . . . is responsible if all of the following conditions are met: [¶] The consumer is covered by his or her parent's, . . . 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." (§ 4659.1.)

## **Analysis**

8. In this instance, there was no evidence Claimant requested copayment support for SLP services prior to the May 25, 2021 IPP. In addition, Claimant presented no evidence which would indicate that the Service Agency was aware Claimant was receiving speech therapy services before that date or that Claimant would have qualified, either financially or on another basis, for copayment services prior to May 25, 2021.

9. Though the Service Agency failed to comply with its obligations to provide Claimant with a NOA and failed to provide Mother with correct information on the process of receiving reimbursement, there is no indication the Service Agency's deficiencies resulted in any delay in Claimant receiving reimbursement for the SLP copayment. Upon discovering their error, the Service Agency expedited Mother's vendorization and payment.

## **ORDER**

1. Claimant's appeal of NLARC's denial of his request for reimbursement for copayments for SLP services that were provided in 2020 is denied.

2. Claimant's appeal of NLARC's denial of his request for reimbursement for copayments for SLP services that were provided from January 1, 2021 until May 20, 2021, is denied.

3. Claimant's request for reimbursement for copayments for 2021 SLP services after May 20, 2021, was granted prior to hearing, making that request moot.

DATE:

NANA CHIN

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.