

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

**In the Matter of:**

**CLAIMANT**

**and**

**INLAND REGIONAL CENTER,**

**Service Agency**

**OAH No. 2021070648**

**DECISION**

Marion J. Vomhof, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter via telephone and video on August 23, 2021, due to the ongoing COVID-19 pandemic.

Claimant's mother represented claimant.

Senait Teweldebrhan, Representative, Fair Hearings and Legal Affairs, represented Inland Regional Center (IRC).

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on August 23, 2021.

## **ISSUE**

Is IRC required to fund additional speech therapy for claimant to supplement what is provided by his school district?

## **FACTUAL FINDINGS**

### **Background**

1. Claimant is a 16-year-old male who is eligible for regional center services based on a diagnosis of mild intellectual disability. On June 2, 2021, IRC served upon claimant's mother a Notice of Proposed Action (NPA) denying her request for speech therapy. As the basis for its decision, IRC stated that claimant is currently receiving speech therapy services through the school district and claimant failed to exhaust generic resources. The letter stated that if claimant's mother believes that claimant needs additional speech therapy hours, IRC recommends she make this request through the local school district.

2. Claimant's mother timely filed a Fair Hearing Request. Claimant is currently receiving 40 minutes of speech therapy services two days per week, through the school district, but his mother feels that the hours provided by the school district are not sufficient to meet his needs.

### **IRC's Evidence**

3. Carolina Castro is a Consumer Services Coordinator (CSC) for IRC. She has been with IRC for 14 years. Ms. Castro holds a bachelor's degree in psychology

and a master's degree in education. Her duties as a CSC include coordinating support services for clients and helping to develop an IPP.

Ms. Castro began working with claimant in June 2021. She assisted claimant's mother in assessing claimant's goals and developing an IPP dated July 28, 2021. Claimant currently receives 150 hours of preferred provider respite services per month from IRC. He receives MediCal, Supplemental Security Income (SSI), and 200 hours per month of in-home supportive services. In addition to the speech therapy provided by the school district, claimant receives applied behavioral analysis (ABA) therapy which is funded by MediCal.

Ms. Castro discussed claimant's mother's request for speech therapy services through IRC with her program manager, Robert Garcia, and the request was reviewed by IRC's clinical team. The request was denied because claimant's mother had not requested additional hours of speech therapy from the school district.

Claimant's mother provided IRC with an April 27, 2021, letter from Aetna Insurance, denying her request for speech therapy services because claimant was receiving these same services through the school district. The letter stated that this decision could be appealed, either by a telephone call or in writing. Ms. Castro has received no documentation to indicate that claimant's mother has appealed the denial. Claimant's mother told Ms. Castro that MediCal had also denied her request for speech therapy. Ms. Castro asked that she provide IRC with a copy of the denial. To date, Ms. Castro has not received this document.

Ms. Castro noted that IRC has not been provided with reports from the school district regarding claimant's speech therapy, and they have not received any records of

previous speech services he received, such as the services he received at Loma Linda University.

4. Angelica Serrano is a program manager at IRC. Her duties are to oversee the CSCs work with outside agencies, to provide aid to CSCs for advocacy and to assist claimants with generic services. She has been in this position for four years and was previously a CSC for 16 years. Ms. Castro's program manager, Robert Garcia, is currently away from the office. Ms. Serrano reviewed claimant's case file, the hearing packet, and Mr. Garcia's June 2, 2021, NPA. She reiterated that the reason for IRC's denial was due to duplication of services because claimant is receiving speech therapy from the school district. She also said that her request was denied because claimant has not exhausted generic resources such as requesting additional hours from the school district, or speech services from her medical insurance Aetna. Per Welfare and Institutions Code section 4644, IRC funds cannot be used to supplant funds from any agency that has a responsibility to provide the services to the public. As payer of last resort, IRC is required to determine if claimant had exhausted all generic resources before considering whether a service may be provided.

Ms. Serrano did not see previous speech therapy reports in claimant's file. It is helpful for IRC to review these reports to determine claimant's functioning level and capability, and the need for the services being requested. During an Independent Education Plan (IEP) meeting at the school district, goals are reviewed along with services being provided. In this case, claimant is receiving speech therapy, so the speech pathologist should provide a full assessment of claimant's functioning levels, goals, and progress, as well as his behavioral goals. These reports, along with the speech therapist's in-depth report, are used to determine if services requested of the IRC are appropriate and beneficial.

## **Claimant's Evidence**

5. Claimant's mother testified that claimant received speech therapy services provided by students at Loma Linda University for five years. The services were good but claimant was not able to continue when she (his mother) was injured and could no longer drive him. Claimant is currently on a waiting list to go back to Loma Linda but "there are 20 people ahead of him." His mother "has explored options." The initial 30 minutes of speech therapy he was receiving from the school twice a week last year was not enough, so it was raised to 40 minutes, "but that is still not enough time as it is very challenging for (claimant) to make himself understood." Claimant was recently found to have both hearing and vision problems, and because of this, his mother believes he will have more needs in the future.

Claimant's mother has not yet requested additional speech therapy hours from the school district because she is waiting for his next IEP meeting, which will be in September or October. In the meantime, she has asked for an independent evaluation of the audiologist and vision reports, and "the brain function to see (claimant's) capacity to capture information." She explained that claimant has Down syndrome. These results are pending and will be supplied to the school district to help prepare his next IEP.

Claimant's mother acknowledged that she is aware that Ms. Castro is available to assist during the IEP process, and advocate for any services claimant may need. Claimant's mother declined this offer as she said, "so far I don't need to use them as I have been helped by my daughter." She also declined IRC's offer for an educational advocate to assist with any problems she may have in requesting services from the school district. She explained that she denied the offer because she has never experienced any problems dealing with the school district, and "I was able to make

myself understood.” She said, “I just want additional services for (claimant). Having an advocate is not a solution. I know what I need and all I want are more services.”

## **LEGAL CONCLUSIONS**

### **Burden and Standard of Proof**

1. In a proceeding to determine whether an individual is eligible for services, the burden of proof is on the claimant to establish by a preponderance of the evidence that IRC should fund the requested service. (Evid. Code, §§ 115, 500; *McCoy v. Bd. of Retirement* (1986) 183 Cal.App.3d 1044, 1051-1052.)

### **The Lanterman Act**

2. The Legislature enacted a comprehensive statutory scheme known as the Lanterman Developmental Disabilities Services Act (Welf. & Inst. Code, § 4500 et seq.) to provide a pattern of facilities and services sufficiently complete to meet the needs of each person with developmental disabilities, regardless of age or degree of handicap, and at each stage of life. The purpose of the statutory scheme 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. (*Assn. for Retarded Citizens v. Dept. of Developmental Services* (1985) 38 Cal.3d 384, 388.)

3. Welfare and Institutions Code section 4501 outlines the state’s responsibility for persons with developmental disabilities and the state’s duty to establish services for those individuals.

4. The Department of Developmental Services (DDS) is the public agency in California responsible for carrying out the laws related to the care, custody, and treatment of individuals with developmental disabilities under the Lanterman Act. (Welf. & Inst. Code, § 4416.) In order to comply with its statutory mandate, DDS contracts with private non-profit community agencies, known as "regional centers," to provide the developmentally disabled with "access to the services and supports best suited to them throughout their lifetime." (Welf. & Inst. Code, § 4620.)

5. A regional center's responsibilities to its consumers are set forth in Welfare and Institutions Code sections 4640-4659.

6. Welfare and Institutions Code section 4512, subdivision (b) defines "services and supports" as:

[S]pecialized 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. 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 . . . Nothing in this subdivision is intended to expand or authorize a new or different service or support for any consumer unless that service or support is contained in his or her individual program plan.

7. Welfare and Institutions Code section 4646 requires that the Individual Program Plan and the provision of the services and supports be centered on the individual with developmental disabilities and take into account the needs and preferences of the individual and the family. Further, the provisions of services must be effective in meeting the IPP goals, reflect the preferences and choices of the consumer, and reflect the cost-effective use of public resources.

8. Welfare and Institutions Code section 4644, subdivision (a), states, ". . . In no case, shall regional center funds be used to supplant funds budgeted by any agency which has a responsibility to provide prevention services to the general public."

9. Welfare and Institutions Code section 4434, subdivision (d), provides that DDS shall review new or amended purchase-of-service policies prior to implementation by the regional center to ensure compliance with statute and regulation. DDS shall take appropriate and necessary steps to prevent regional centers from utilizing a policy or guideline that violates any provision of the Lanterman Act or any regulation adopted thereunder.

10. In implementing IPPs, regional centers are required to first consider services and supports in natural community, home, work, and recreational settings. (Welf. & Inst. Code, § 4648, subd. (a)(2).) Services and supports shall be flexible and



individually tailored to the consumer and, where appropriate, his or her family. (*Ibid.*) A regional center may, pursuant to vendorization or a contract, purchase services or supports for a consumer in order to best accomplish all or any part of the IPP. (Welf. & Inst. Code, § 4648, subd. (a)(3).)

11. The regional center is also required to consider generic resources and the family's responsibility for providing services and supports when considering the purchase of regional center supports and services for its consumers. (Welf. & Inst. Code, § 4646.4.)

12. The regional center is prevented from funding "educational services" for children under the age of 17, although an exemption may be granted on an individual basis in "extraordinary circumstances" when the regional center determines that the service is "a primary or critical means for ameliorating the physical, cognitive, or psychosocial effects of the consumer's developmental disability, or the service is necessary to enable the consumer to remain in his or her home and no alternative service is available to meet the consumer's needs." (Welf. & Inst. Code, § 4648.5.)

13. Welfare and Institutions Code section 4659, subdivision (a), requires that regional centers "shall identify and pursue all possible sources of funding for consumers receiving regional center services. These sources shall include, but not be limited to, both of the following: (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."

Subdivision (c) provides that regional centers shall not purchase any service that would otherwise be available from Medi-Cal, private insurance, or a health care service plan when a consumer or a family meets the criteria of this coverage but chooses not to pursue that coverage.

Subdivision (d) states, "(1) . . . notwithstanding any other law or regulation, a regional center shall not purchase medical or dental services for a consumer . . . unless the regional center is provided with documentation of a Medi-Cal, private insurance, or a health care service plan denial and the regional center determines that an appeal by the consumer or family of the denial does not have merit.

14. IRC Purchase of Service (POS) Policy 1.2.4 (a) states:

The regional center may purchase incidental medical or dental services after private and generic sources have been exhausted and will consider using the most cost effective services first. All requests must be accompanied by a copy of the denial from Medi-Cal or the consumer's health/medical private insurance.

## **Evaluation**

15. Claimant failed to meet his burden of establishing that IRC is required to fund additional speech therapy. Claimant currently receives speech therapy through the school district and IRC is prohibited from using funds to supplant the budget of an agency that has a legal responsibility to provide the service.

The school district previously increased claimant's speech therapy services, and claimant's mother has "never experienced any problems dealing with the school

district,” but she has not yet requested additional speech therapy from the district. She has not appealed the Aetna denial nor has she appealed the denial she testified she received from MediCal. As the speech therapy provided by the school district has not yet been challenged, it is premature to find that claimant has exhausted her generic resources. (Welf.& Inst. Code, § 4646.4.) For these reasons, IRC is simply not authorized under the Lanterman Act to fund additional speech therapy.

### **ORDER**

Claimant’s appeal from IRC’s determination that it will not fund additional speech therapy is denied.

DATE: September 7, 2021

MARION J. VOMHOF

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.