

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

In the Matter of:

CLAIMANT

and

INLAND REGIONAL CENTER, Service Agency

OAH No. 2021100124

DECISION

Adam L. Berg, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter telephonically on November 17, 2021.

Claimant's mother represented claimant.

Keri Neal, Fair Hearings Representative, represented Inland Regional Center (IRC).

Oral and documentary evidence was received. The record was closed, and the matter submitted for decision on November 17, 2021.

ISSUES

Is IRC required to provide retroactive copayment/deductible/coinsurance assistance for Applied Behavioral Analysis (ABA) from July 7, 2020, through January 8, 2021; speech therapy from June 6, 2020, through May 4, 2021; and occupational therapy from June 6, 2020, through May 4, 2021?

FACTUAL FINDINGS

Background

1. Claimant is a seven-year-old boy who qualifies for regional center services based on diagnoses of autism spectrum disorder. Claimant lives at home with his mother and father.

2. On September 1, 2021, IRC served claimant with a Notice of Proposed Action denying his request to provide deductible/copayment/coinsurance assistance (copayment assistance) for ABA, speech therapy, and occupational therapy services incurred prior to May 12, 2021, the date that IRC began funding copayment assistance. As basis for the denial, IRC indicated that it had not received the required documentation needed to assess eligibility until May 12, 2021, and it is prohibited from authorizing services retroactively, except in certain emergency situations.

3. On October 1, 2021, claimant's mother filed a Fair Hearing Request appealing IRC's denial. Following an informal meeting on October 18, 2021, IRC adhered to its determination that it was not authorized to retroactively provide copayment assistance. This hearing followed.

IRC's Evidence

4. Claimant receives health insurance through his father's employer provided by Kaiser Permanente (Kaiser). Like most insurance plans, the insurance plan includes a deductible, which is the amount that the insured must pay out-of-pocket before the insurer will begin to cover cost of medical expenses. The coinsurance is the percentage of the medical costs that the insured has to pay for services once the deductible is met, and the copayment is a fixed amount the insurer requires the insured to pay for covered health services. In certain circumstances, regional centers are permitted to provide copayment/deductible/coinsurance assistance for their consumers.

5. In 2019, IRC authorized copayment assistance for claimant's ABA, speech, and occupational therapies. Claimant's insurance plan renews annually in April. IRC authorized payments from April 1, 2019, through March 31, 2020.

6. An Individual Program Plan (IPP) meeting was held between claimant's mother and IRC Consumer Services Coordinator Vanessa Guzman (née Osuna) on February 5, 2020. During that meeting, claimant's mother requested copayment assistance. As documented in the IPP, it was explained that eligibility verification and approvals must be done annually in advance of the provision of services. A list of documents claimant's mother would need to submit were also provided, which included annual tax information, the application form (ICRC 946), copy of the medical insurance card, summary of benefits from insurance company, and insurance treatment authorizations.

7. On August 26, 2020, claimant's mother forwarded a bill she received from Easter Seals, who is the provider for claimant's ABA, occupational therapy, and speech

therapy. Beginning in June 2020, claimant was being billed directly for speech therapy. After consulting with Behavior Support Technician Julie Brown, who is responsible for assisting consumers with obtaining insurance benefits, Ms. Guzman emailed claimant's mother on September 9, 2020, informing her that she would have to complete IRC's copayment assistance request form to request copayment assistance. Ms. Guzman highlighted in yellow portions on the form that claimant's mother needed to complete and documents she needed to provide, including income verification documents.

8. On September 15, 2020, claimant's mother returned the form with only her signature. She did not provide any of the documentation specified on the form that had been highlighted by Ms. Guzman. Ms. Guzman responded by email the same date, stating claimant's mother needed to complete all the highlighted information and provide the highlighted documentation.

9. On September 18, 2020, claimant's mother provided Ms. Guzman some of the documentation but asked where she could get the treatment authorizations for the three services. Ms. Guzman responded the same date and informed claimant's mother that the treatment authorizations would be the referrals for all three services. Ms. Guzman reiterated that claimant's mother needed to complete the highlighted items in the form, and once that was completed and IRC received the treatment authorizations, IRC could process the request. Ms. Guzman received no further response from claimant's mother.

10. On November 3, 2020, IRC sent claimant a Notice of Proposed Action denying claimant's request for copayment assistance because claimant's mother had not submitted the required documentation. However, due to a typographical error on the envelope, claimant did not actually receive this notice, which IRC was unaware of at the time.

11. On January 20, 2021, Ms. Guzman again emailed claimant's mother the copayment assistance form and checklist of required documentation and requested it be returned within 30 days. Again, Ms. Guzman highlighted portions on the form indicating what documentation claimant's mother needed to submit.

12. An IPP meeting was held on February 4, 2021. At the meeting, claimant's mother requested copayment assistance for ABA from July 20, 2020, through January 8, 2021, the last day claimant had ABA services because he graduated from the program. Claimant's mother also requested copayment assistance for speech and occupational therapy. The IPP document again listed the documentation that claimant's mother needed to submit to IRC to obtain copayment assistance and this needed to be submitted annually in advance of provision of services.

13. On March 4, 2021, claimant's mother sent Ms. Guzman referrals from Kaiser for speech and occupational therapy. Ms. Guzman responded by email the next day and again provided the checklist of documents claimant's mother needed to submit including the copayment assistance application form. She again requested these be submitted within 30 days.

14. On May 12, 2021, claimant's mother responded and provided the required documents. Thereafter, IRC approved copayment assistance for speech and occupational therapy, effective May 12, 2021.

15. Claimant submitted a bill from Easter Seals for \$4,262.83 for ABA, and speech and occupational therapy services from June 6, 2020, through August 3, 2021. IRC has contacted Easter Seals and requested that they forward all bills for services after May 12, 2021, directly to IRC for payment. This has since occurred, and IRC has authorized payment for these dates.

Claimant's Evidence

16. Claimant's mother testified that she attempted to get referrals, but she had difficulty because she is not familiar with Kaiser. She admitted not submitting the requested forms and information, but explained she was overwhelmed with her care responsibilities. She believes everyone "dropped the ball," and she is being "singled out." She is hoping that IRC will provide some assistance for the past payments she is now financially responsible for and at least "meet her half way." Her financial circumstances are such that she needs the help.

LEGAL CONCLUSIONS

Burden of Proof

1. In a proceeding to determine whether regional center should fund certain services, the burden of proof is on the claimant to establish by a preponderance of the evidence that the regional center should fund the requested service. (Evid. Code, § 115.)

Relevant Law and Regulations

2. The Legislature enacted a comprehensive statutory scheme known as the Lanterman Developmental Disabilities Services Act (Lanterman 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.) 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.

3. 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.)

4. 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.

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

6. Welfare and Institutions Code section 4646 requires that the IPP 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.

7. Welfare and Institutions Code section 4646.4, subdivision (a), requires regional centers to establish an internal process that ensures adherence with federal and state law and regulation, and when purchasing services and supports, ensures conformance with the regional center's purchase of service policies.

8. A regional center may pay a copayment, coinsurance, or deductible associated with the health care service plan or health insurance policy for a service or

support provided pursuant to a consumer's individual program plan or individualized family service plan if the family's or consumer's income exceeds 400 percent of the federal poverty level, the service or support is necessary to successfully maintain the child at home or the adult consumer in the least-restrictive setting, and certain conditions are met. (Welf. & Inst. Code, § 4659.1.)

9. California Code of Regulations, title 17, section 50612, provides:

(a) A purchase of service authorization shall be obtained from the regional center for all services purchased out of center funds. . . .

(b) The authorization shall be in advance of the provision of service except as follows:

(1) A retroactive authorization shall be allowed for emergency services if services are rendered by a vendor service provider:

(A) At a time when authorized personnel of the regional center cannot be reached by the service provider either by telephone or in person (e.g., during the night or on weekends or holidays);

(B) Where the service provider, consumer, or the consumer's parent, guardian or conservator, notifies the regional center within five working days following the provision of service; and

(C) Where the regional center determines that the service was necessary and appropriate.

Evaluation

10. Claimant had the burden to show by a preponderance of the evidence that IRC should fund copayment assistance from June 2020 up until it began providing this assistance on May 12, 2021. The ability of a regional center to provide this assistance requires certain conditions be met, including that the consumer's family income cannot exceed a certain threshold. Thus, in order to provide this assistance, IRC requires those seeking to provide certain documentation so IRC can assess eligibility. Claimant previously received copayment assistance in 2019. However, at his IPP meeting in February 2020, claimant's mother was informed that she would have to complete a new application and provide eligibility documentation in order for this assistance to continue through the next year. In August 2020, claimant's mother again inquired about copayment assistance because she had received a bill for the uncovered portions of services provided to claimant. Ms. Guzman provided claimant's mother with the application form and highlighted the documents that were required to be submitted in order to process the request for future copayment assistance. Although claimant's mother provided some information, she did not provide all the required documents, despite Ms. Guzman informing her of such. In January 2021, Ms. Guzman again provided claimant's mother with the application form and list of documents required, requesting she return the form and documents within 30 days, which did not occur. Finally, at the IPP meeting in February 2021, copayment assistance was again discussed. Not until May 12, 2021, did claimant's mother finally submitted the required documents, and IRC approved the request to provide assistance for future payments.

11. Claimant's mother is solely responsible for not completing the forms and providing the required information to IRC, despite having been provided multiple opportunities to do so, as well as being expressly informed that copayment assistance could not be processed until the information was submitted. Claimant's mother's statement that "everyone dropped the ball," is rather inexplicable under the circumstances, given that Ms. Guzman sent multiple emails specifying exactly what information claimant's mother needed to submit. Regardless, IRC is prohibited from providing retroactive reimbursement for services already received, where the services were not approved by the regional center prior to administration of the services. (Cal. Code Regs., tit. 17, § 50612, subd. (b).) Therefore, IRC is barred by law from providing copayment assistance for services incurred prior to May 12, 2021, the date when claimant's mother finally provided the required paperwork and IRC approved her request.

ORDER

Claimant's appeal is denied.

DATE: November 23, 2021

ADAM L. BERG

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.