

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

In the Matter of the:

CLAIMANT,

vs.

SOUTH CENTRAL LOS ANGELES REGIONAL CENTER,

Service Agency.

OAH Nos. 2022020183 (Primary)

and 2022020534 (Secondary)

DECISION

ALJ Chris Ruiz, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter on April 4, 2022, by videoconference.

Aaron Abramowitz, Attorney at Law, Enright and Ocheltree, LLP, represented South Central Los Angeles Regional Center (RC or SCLARC)

Claimant was represented by her mother (Mother).

Testimony and documents were received as evidence. The record closed and the matter was submitted for decision on April 4, 2022.

ISSUES

1. Shall RC be ordered to fund retroactive “aid-paid pending” benefits from November 26, 2021, through April 4th, 2022, at a rate of \$100 per week for Claimant’s speech therapy (ST) insurance copayments, and \$50 per week for claimant’s occupational therapy (OT) insurance copayments?

2. Shall RC be ordered to continue funding claimant’s insurance copayments for ST and OT, at a rate of \$100 per week, and \$50 per week, respectively?

FACTUAL FINDINGS

Jurisdictional Matters

1. This Claimant is a four-year-old female who is eligible for services due to her diagnosis of autism.

2. On November 19, 2021, RC sent Claimant and Mother two Notice of Proposed Action Letters (NOPA) (Exhibits 1 and 2), which denied claimant’s request for continued funding for ST and OT insurance copayments. The NOPA letters stated Claimant is eligible for Medi-Cal services and Los Angeles School District services, and therefore, claimant must attempt to utilize those generic services before seeking funding from RC. The NOPA letters references Welfare and Institutions Code (Code) sections 4512, subdivisions (b), and 4659, subdivisions (a), (c), and (d).

3. Claimant filed two Fair Hearing Requests (FHR) on December 21, 2021, one for ST and one for OT. In her FHR’s, Claimant requested continued funding for ST and OT insurance copayments, pursuant to Code section 4715. Claimant also

contended that RC's NOPA letters did not provide Claimant with 30 days' notice of RC's intent to terminate funding for ST and OT copayments, as required pursuant to Code section 4710, subdivision (a). Claimant also contended that RC should continue funding for ST and OT copayments because Claimant has made significant progress with her current providers.

Claimant's History with Regional Center

4. Claimant participated in RC's Early Start (ES) program, which provides services for consumers under the age of three. While Claimant was in the ES program, RC began funding Claimant's ST and OT insurance copayments (copayments), which were paid by Mother. Mother's private health insurance pays the providers for Claimant's ST and OT, except for the copayment amounts. For each session of both therapies, Claimant is required to pay a copayment in the amount of \$50. Claimant receives ST twice per week and OT once per week, which results in total copayment amounts of \$100 and \$50, respectively. Claimant's total monthly expense for copayments is approximately \$600.

5. Claimant's ST is provided by Cortica Health Services and her OT is provided by Total Education Solutions.

6. When Claimant had her third birthday, in April 2021, Claimant was deemed eligible for services under the Lanterman Act (Code, § 4500 et seq.), which provides services and supports to individuals with developmental disabilities over the age of three.

7. Claimant's case was transferred from the ES program to RC's Department of Children and Adult Service (DCAS). This transfer occurred on June 8, 2021, approximately two months after claimant's third birthday. Prior to the transfer, the ES

department authorized funding for Claimant's copayments between May 26, 2021, and November 26, 2021. This time was after claimant's third birthday. RC's DCAS department honored this authorization of funding, and has either reimbursed Mother for her copayments, or will reimburse mother for copayments made during this time.

Claimant's Individual Program Plan

8. On July 8, 2021, Candy Rodriguez (Rodriguez), Claimant's Service Coordinator, spoke with Mother via telephone regarding Claimant's Individual Program Plan (IPP). After their telephonic meeting, Rodriguez prepared a 15-page IPP report and mailed it to Claimant and Mother. Rodriguez and her Program Manager, Laschell Miles, both signed the IPP. Mother did not sign the IPP. Rodriguez testified that she did not know why Mother's signature was not requested on the IPP, but she thought it may have been due to the Covid-19 pandemic. RC offered only the initial IPP report into evidence.

9. Mother offered multiple Addendums to the IPP, as set forth immediately below.

ST ADDENDUMS AND PURCHASE OF SERVICE

10. A January 12, 2022, Addendum provided services from May 26, 2021, through June 30, 2021. RC agreed to fund the twice weekly copayments for ST, provided by Cortica Health Services, which amounted to \$100 per week. (Exhibit D.)

11. A February 7, 2022, Addendum provided services from July 1, 2021, through August 31, 2021. RC agreed to fund the twice weekly copayments for ST, provided by Cortica Health Services, which amounted to \$100 per week. (Exhibit F.)

12. A January 14, 2022, Addendum provided services from January 6, 2022, through April 29, 2022. RC agreed to fund the twice weekly copayments for ST, provided by Cortica Health Services, which amounted to \$100 per week. (Exhibit E.)

13. Exhibit C is a RC Purchase of Service (POS), dated January 14, 2022, which covered January 6, 2022, through April 29, 2022, and authorized funding for claimant's ST copayments at a rate of \$50 twice per week. The POS Review Committee approved this funding and all necessary RC personnel signed the POS form.

OT ADDENDUM AND PURCHASE OF SERVICE

14. A January 12, 2022, Addendum provided services from May 26, 2021, through June 30, 2021. RC agreed to fund the weekly copayment for OT, provided by Total Education Solutions, which amounted to \$50 per week. (Exhibit G.)

15. On January 19, 2022, RC prepared a Purchase of Service (POS) for services from July 1, 2021, through November 30, 2021, to fund the weekly copayment for OT, provided by Total Education Solutions, which amounted to \$50 per week. (Exhibit H.)

ANALYSIS

16. The "aid-paid-pending" period at issue in this case is from November 26, 2021, through April 4, 2022.

17. Exhibits C through H established that RC adopted the prior promise of ES personnel to fund ST and OT copayments, which began on May 26, 2021, and continued through November 26, 2021. These agreements by RC were confirmed in IPP Addendums and POS documents. Further, RC has already agreed to fund Claimant's copayments for ST from January 6, 2022, to April 29, 2022, which is 25 days

after the instant hearing. Therefore, it was established that RC must fund ST and OT copayments, at a rate of \$100 per week, and \$50 per week, respectively, between November 26, 2021, to April 29, 2022, as continuing services (aid paid pending) while awaiting the instant hearing.

18. From November 26, 2021, to April 4, 2022, there are 18 full weeks. Therefore, the amount of money at issue for the aid-paid-pending issue is \$1,8000 for ST copayments and \$900 for OT copayments, for a total of \$2,700.

Other Findings Re Generic Services

19. Candy Rodriguez (Rodriguez) is claimant's Service Coordinator. Rodriguez testified that RC is presently not funding any services for claimant, other than funding Claimant's copayments. RC has not performed a Speech Assessment or Occupational Therapy assessment.

20. On direct examination, Rodriguez testified that Mother has not submitted anything from LAUSD, nor has she submitted any information regarding her income. However, on cross-examination, Rodriguez acknowledged that in July 2021, Mother told Rodriguez that Claimant was unable to attend school because she could not wear a mask. Additionally, Rodriguez acknowledged that she had not requested any financial information from Mother.

21. In November 2021, Rodriguez inquired with DJ Therapy, Easter Seals, Pediatric Therapy, and Vox Speech Therapy to see if any of these providers, who accept Medi-Cal, were available to provide services to Claimant. Two providers had very long waiting lists and none were available to presently provide services to Claimant. Mother contacted Momentum, a ST provider, and they had a 18-24 month waiting list with 140 names.

22. In December 2021, Mother provided RC with emails from Total Education Solutions (TES), Claimant's OT provider, and Cortica, Claimant's ST provider, both of which do not accept Medi-Cal. (Exhibit A, pages B11-12.)

23. Mother acknowledged that she did not inquire or investigate whether other generic services could provide OT services for claimant because Mother is satisfied with the current provider. RC did not establish that it searched for OT generic resources.

24. In October 2021, Mother contacted LAUSD regarding enrolling Claimant. On October 25, 2021, a Special Education Administrator for Los Angeles Unified School District (LAUSD) emailed Mother and informed her that staff from their Early Childhood Special Education team would be contacting her in the future. On October 22, 2021, Mother requested an Individual Education Plan (IEP) meeting.

25. On December 21, 2021, Mother followed up with LAUSD regarding the IEP meeting. On December 22, 2021, LAUSD responded and stated the necessary personnel was on winter break until January 10, 2022. The record does not contain evidence of any further contact between the parties. (Exhibit A, pages B15-17.) It was established that Mother has attempted to enroll Claimant with LAUSD.

LEGAL CONCLUSIONS

1. Individuals who disagree with regional center determinations, such as in the instant case, may appeal the determination through a fair hearing process. (Code §§ 4700-4716, and Cal. Code Regs., tit. 17, §§ 50900-50964).

2. The Lanterman Act (Code, § 4500 et seq.) provides services and supports to individuals with developmental disabilities.

3. The standard of proof in this case is the preponderance of the evidence because no law or statute (including the Lanterman Act) requires otherwise. (Evid. Code, § 115.) The party asserting a claim generally has the burden of proof in administrative proceedings. (See, e.g., *Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 789, fn. 9.) In this case, RC bears the burden of proof regarding its desire to discontinue funding for ST and OT copayments for Claimant.

The “aid-paid pending” benefits from November 26, 2021, through April 4th, 2022,

4. Welfare and Institutions Code (Code) section 4715 provides, in pertinent part, that if a request for a hearing is postmarked or received by the service agency no later than 10 days after receipt of the notice of the proposed action. . . services that are being provided pursuant to a recipient’s individual program plan shall be continued during the appeal procedure up to and including the 10th day after receipt of the final decision of the hearing officer.

5. RC did not contend Claimant’s FHR’s were not filed within 10 days after receipt of the NOPA’s.

6. Regional center contended the funding for claimant’s ST and OT copayments from May 26, 2021, to November 25, 2021, was authorized by personnel the ES Program personnel, and that RC, as administrators of the Lanterman Act, are not required to provide “aid-paid-pending” benefits, while awaiting the instant hearing, because Claimant’s services were not provided pursuant to an IPP.

7. However, RC agreed to fund ST and OT copayments in IPP Addendums, for much of the time between November 26, 2021, and April 4, 2022, as set forth in Factual Findings 9-18. RC did not establish any reason for not funding any part of this time period which was not specifically covered by an IPP addendum. Therefore, it was established that RC should have continued funding ST and OT copayments, at a rate of \$100 per week and \$50 per week, respectively, from November 26, 2021, through April 4, 2022.

Continued Funding for ST and OT Copayments After April 4, 2022

8. RC contended that Claimant is eligible for Medi-Cal services, and Los Angeles School District services, and therefore, Claimant must attempt to utilize those generic services before seeking funding from RC. RC's NOPA letters references Code sections 4512, subdivisions (b), and 4659, subdivisions (a), (c), and (d).

9. Section 4646.5 defines the content of the planning process for the Individual Program Plan (IPP). It must include a statement of goals based on the consumer's needs and time limited objectives for implementing the goals. The goals and objectives should maximize opportunities for the consumer to develop relationships, be part of community life and to develop competencies to help accomplish the goals. The IPP process must also include a schedule of the type and amount of services and supports to be purchased by the regional center or obtained from generic agencies or other resources in order to achieve the IPP goals and the identification of the providers of services.

10. Section 4646, subdivision (a), states:

It is the intent of the Legislature to ensure that the individual program plan and provision of services and supports by the regional center system is centered on the individual and the family of the individual. . . . 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 individual program, reflect the preferences and choices of the consumer, *and reflect the cost-effective use of public resources.* (Emphasis added.)

11. Code Section 4648 describes what the regional center must do in order to achieve the stated objectives of the IPP. In securing the needed services and supports for a consumer the regional center must find services that are flexible and individually tailored to the consumer. By vendorization or contract the service agency may purchase services from any individual or agency the regional center and consumer determines will best accomplish all or any part of the IPP. Section 4648, subdivision (a)(8), prohibits the use of regional center funds "to supplant the budget of any agency which has a legal responsibility to serve all members of the general public and is receiving public funds for providing those services." These are commonly referred to as "generic resources." However, subdivision (g) provides that, where there are identified gaps in the system of services and supports, the department may provide the services directly.

12. Services provided must be cost effective (§ 4512, subdivision (b)), and the regional centers must control costs so far as possible, and to otherwise conserve resources that must be shared by many consumers. (*See, e.g.,* §§ 4640.7(b), 4651(a),

4659, and 4697.) However, section 4659 specifies that it shall not be construed to impose an additional liability on the parents of children with developmental disabilities, nor to restrict eligibility for or deny services to a consumer who is unable to pay.

13. Although regional centers are mandated to provide a wide range of services to facilitate implementation of the IPP, they must do so in a cost-effective manner (§ 4640.7, subdivision (b), § 4646, subdivision (a)). A regional center is specifically directed not to fund duplicate services that are available through another publicly funded agency. This directive is often referred to as “supplanting generic resources.” Where a service is available elsewhere, the regional center is required to “. . . identify and pursue all possible sources of funding. . . .” (§ 4659, subdivision (a)). However, if a service specified in a client’s IPP is not provided by a generic agency, the regional center must fill the gap (i.e., fund the service) in order to meet the goals set forth in the IPP (§ 4648, subdivision (a)(1); *Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 390)). In general, a Claimant must cooperate in attempting to utilize the generic resource (Medi-Cal, County Mental Health, private insurance) before seeking services from the Service Agency.

14. Code section 4659, subdivision (a) states that a regional center shall identify and pursue all possible sources of funding for consumers receiving regional center services. The plain language of this subdivision indicates that the regional center must take the lead in determining whether generic resources are available. Mother has cooperated with RC’s requests. Mother unsuccessfully searched for available ST providers who accept Medi-Cal. Mother has made attempts to schedule Claimant’s IEP meeting with LAUSD. After Mother’s most recent contact with LAUSD,

RC did not ask Mother to follow-up with LAUSD regarding the IEP meeting. Since it was established that there are no currently available generic resources which can provide Claimant's ST, and RC had not established a reason for discontinuing paying Claimant's ST insurance copayments, RC must continue to fund those payments until such time as a generic resource becomes available and Mother chooses not to utilize said resource. To be clear, getting on a waiting list for a generic source does not absolve the RC of its obligations to fund services. That is, if Claimant is required to be on a waiting list for six months to obtain ST or OT, the RC must continue to support the current services until a smooth transition can be had.

15. With respect to OT, Mother testified that she did not search for generic providers for OT because she does not want to utilize any other OT provider, as set forth in Factual Findings 23. On the other hand, RC did not establish that there is a presently available generic OT provider willing to provide services to Claimant. If a generic provider is not presently available, then Mother's desire is not relevant. Therefore, it is fair to require RC to continue funding OT copayments until such time as Mother declines to utilize an available generic provider. Mother has thus far been cooperative with RC. While Mother has not followed up with LAUSD for a few months, RC did not ask her to follow-up.

16. Code section 4659, subdivision (c), states, in pertinent part, regional centers shall not purchase any service that would otherwise be available from Medi-Cal, Medicare, the Civilian Health and Medical Program for Uniform Services, In-Home Support Services, California Children's Services, 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.

17. Code section 4659, subdivision (d), states, in pertinent part, a regional center shall not purchase medical or dental services for a consumer three years of age or older 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. Mother provided RC with documentation that Claimant's ST and OT providers do not accept Medi-Cal. RC did not ask mother to obtain any other documentation from Medi-Cal. It is not clear from the evidence presented what would be gained from a Medi-Cal letter denying payments to Claimant's ST and OT providers, when those providers have already informed Mother and RC that they do not accept Medi-Cal.

18. RC also contended that Claimant has not complied with Code section 4659.1, which permits the RC to fund insurance copayments if certain conditions are met. However, RC did not rely on this Code section in the two NOPA letters, which stated RC's reasons for denying Claimant's request for continued funding of ST and OT copayments. Allowing RC to raise this argument, for the first time, at hearing is prejudicial and unfair to Claimant. Claimant was not asked to provide any financial information (one of the considerations) to RC.

ORDER

1. Claimant's appeal from Regional Centers denial of "aid-paid-pending" benefits and continued funding for speech therapy and occupational therapy insurance copayments is granted, as follows.

2. Regional Center shall fund Claimant's speech therapy and occupational therapy insurance copayments, at a rate of \$100 per week and \$50 per week, respectively, from November 26, 2021, through April 4, 2022.

3. Claimant's appeal regarding continued funding for speech therapy insurance copayments, at a rate of \$100 per week, is granted.

4. Claimant's appeal regarding continue funding for occupational therapy insurance copayments, at a rate of \$50 per week, is granted.

5. Nothing in this Decision or Order prevents Regional Center from identifying and pursuing possible sources of generic funding for Claimant.

6. Nothing in this Decision or Order relieves Claimant of her obligation to continue cooperating with reasonable RC requests for information or assistance.

DATE:

CHRIS RUIZ

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.