

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

**CLAIMANT,**

**vs.**

**SAN GABRIEL/POMONA REGIONAL CENTER,**

**Service Agency.**

**OAH No. 2022020303**

**DECISION**

Glynda B. Gomez, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter on April 11, 2022, by videoconference.

Daniel Ibarra, Fair Hearing Coordinator, represented the San Gabriel/Pomona Regional Center (Service Agency or SGPRC). Claimant was represented by his mother (Mother) and father (Father). (Titles are used to protect confidentiality).

Oral and documentary evidence was received. The record remained open until the close of business on April 11, 2022 for SGPRC to remove a password and upload Claimant's password protected progress report to Caselines. The progress report was referred to as "Exhibit D" on the record. "Exhibit D" was not uploaded to Caselines on April 11, 2022. The record was closed, and the matter was submitted for decision on April 11, 2022.

On April 20, 2022, ALJ Gomez issued an order re-opening the record for submission of the progress report no later than the close of business on April 25, 2022 by either party. The progress report was received, marked as Exhibit D, and admitted pursuant to the parties' stipulation on the record. The record was re-closed, and the matter was re-submitted for decision on April 25, 2022.

## **ISSUE**

Must the Service Agency fund Claimant's request for DIR/FloorTime therapy (Floortime)?

## **FACTUAL FINDINGS**

### **Jurisdictional Matters**

1. Claimant, a five-year, nine-month-old boy, is eligible for regional center services under the category of Autism. Claimant has additional diagnoses of Attention Deficit Hyperactivity Disorder (ADHD), speech and language delay and fine motor delay. Claimant has requested Floortime, a play-based behavior intervention, in addition to his current school and in-home Applied Behavioral Analysis (ABA) services. Claimant proposed that Holding Hands, an SGPRC vendor, provide Floortime three times per week for two hours each session. SGPRC determined that Claimant's current services and supports meet his needs and Floortime is not necessary at this time. SGPRC issued a Notice of Proposed Action (NOPA) denying Claimant's request for funding. Claimant filed a timely appeal of the denial.

## **Claimant's Evidence**

2. Claimant lives with his parents and younger sibling. He now attends a public school special day kindergarten and is assisted by an aide. During the early months of the Covid-19 Pandemic, Claimant was assigned to on-line classes. Claimant had great difficulty engaging in on-line classes. Claimant's parents placed him in a private school program that provided in-person instruction so that he could attend classes. Claimant returned to public school when in-person classes resumed. During this time there was significant disruption to Claimant's overall program because of school closures and provider staff shortages.

3. Claimant's Individual Program Plan (IPP) dated July 24, 2019 lists five desired outcomes. Relevant here are outcomes 1 and 5. Outcome 1 provides: "Parents would like [Claimant] to improve his verbal communication to sustain a conversation." Outcome 5 provides: "Parents would like [Claimant] to improve in social cues; engage in interactions with peers." (Ex. 3.) Supports and services listed for Outcome 1 include parental encouragement, positive reinforcement and speech therapy. Supports and services listed for Outcome 5 include parental encouragement and provision of activities. ABA therapy and a one-on-one aide are to be provided by private insurance and the school district. Claimant's June 16, 2021 progress IPP, recorded that he made "reasonable progress" on Outcome 1 (verbal communication) and no progress on outcome 5 (social communication/skills).

4. Claimant's speech and language delays are well-documented. Claimant was assessed by Susan Hollar, speech pathologist with Hollar Speech and Language Therapy, in October of 2020. Hollar diagnosed Claimant with pragmatic language disorder and mixed receptive/expressive language disorder consistent with his medical diagnosis of Autism. She recommended that he receive a "social language and play

intervention.” Hollar listed Floortime as an example of the type of intervention she recommended. (Ex. B, p. Z12). Claimant’s physician, Joshua Kallman, M.D., of Children’s Hospital Los Angeles, in a letter dated November 30, 2021, diagnosed Claimant with Autism, ADHD, receptive/expressive language disorder and fine motor skill delays. In the letter, Dr. Kallman recommended that Claimant have a speech and language evaluation and therapy, occupational therapy and evaluation, ABA therapy, an augmentative communication evaluation and Floortime therapy and evaluation. (Ex. A.)

5. According to Claimant’s parents, he receives speech and language therapy in an individual and group setting at school, but has not shown any progress. School assessments and Individualized Education Programs (IEPs) were not offered in evidence. Claimant was not able to access or participate in clinic-based speech or occupational therapy because of his behavior and attention issues. He receives in-home and school based Applied Behavioral Analysis (ABA) services through private insurance and the school district and has a one-on-one aide at school. Parents considered Claimant’s in-home and school- based ABA to be inconsistent. Claimant’s parents believe that his social communication will improve with Floortime. From their research, Parents believe that the child-focused, relationship building aspects of Floortime methodology, which contrast with the rote training of ABA, are better suited to Claimant’s social communication deficits although ABA adequately addresses his behavior needs.

6. Claimant has benefitted from the ABA services that he has received. His parents believe that the ABA services have been effective in reducing some of his aggressive behaviors and elopement. The ABA services have behavior and social communication goals. The behavior goals target elopement, mouthing objects, unsafe behaviors and aggression. The social communication goals include responding to

greetings, responding to yes/no questions, imitating simple song movements, sit and attending to structured tabletop activities, joining in or playing alongside peers, responding to his name, identifying 8 emotions, identifying 10 actions, responding to “wh” questions, appropriately gaining others’ attention, imitating fine motor actions, identifying and categorizing objects, and using and responding to prepositions.

7. The July 2021 ABA progress report notes staffing changes, lack of services, changes in medication and educational settings as possible barriers to progress and specifies that Claimant regressed in skills and increased in maladaptive behaviors. According to his parents, Claimant regressed in toileting and now requires a diaper for urination. The report notes parental involvement as a strength in Claimant’s program.

8. The December 2021 ABA progress report listed a number of significant changes and barriers to service delivery that occurred during the 2021 year. Among those were: February 2021 two week absence of the therapist; March 2021 new therapist; June 2021 therapist resignation and reduction in service hours; July 2021 new therapist; August 2021 change of session times and reduction of session duration; November 2021 therapist resignation/ temporary reduction in hours and December 2021 new clinical supervisor. Claimant is currently authorized for 135 hours of direct service per month, supervision of 14 hours per month and two hours per month of parent consultation. In-home direct services are scheduled for two hours on Tuesdays, Wednesdays and Fridays and three hours on Thursdays after school in the afternoons. The December 2021 progress report shows Claimant making progress on his goals and meeting some of them after his program became more consistent.

## **SGPRC's Denial**

9. The Service Agency's Intensive Services Review Team (ISRT) denied Claimant's request after receiving input from the Autism Services Review Team. Deborah Lagenbacher, Ph.D., on behalf of the Autism Services Review Team, made the following recommendation:

This child is being well serviced with several h/w of ABA services, preschool. ST,OT, APE. The family has changed vendors several times, according to the ABA report. At this time I would not recommend adding another services [sic], as he is actively engaged in services all day. After he has completed his ABA program, possible consideration for FT, if needed. (Ex. 6.)

10. SGPRC did not provide any expert testimony or reports to support or otherwise elaborate upon Dr. Lagenbacher's conclusion nor was there any indication that Dr. Lagenbacher had met or observed Claimant. Claimant's father, a physician, and his mother, a nurse practitioner, have both received training in pediatrics although neither specializes in pediatrics. Each parent gave thoughtful and well-reasoned testimony about Claimant's struggles. Floortime is not covered by Claimant's insurance.

11. SGPRC has offered to have a Board-Certified Behavior Analyst (BCBA) observe Claimant and make additional recommendations, but Claimant declined the offer. Claimant reasoned that a BCBA is an expert in ABA and not trained in Floortime and therefore, would not be able to offer insight into Claimant's need for Floortime. Parents concerns are not unfounded. However, additional input from a BCBA as well as

a Floortime assessment would be appropriate to give the IPP team a complete picture of Claimant's needs and the tools available to address those needs.

## **LEGAL CONCLUSIONS**

1. Under the Lanterman Act, an administrative "fair hearing" is available to determine the rights and obligations of the parties. (Welfare and Institutions Code (Code), § 4710.5.) Claimant requested a fair hearing to appeal the Service Agency's denial of funding for Floortime. Jurisdiction in this case was thus established.

2. 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.) A consumer seeking to obtain funding for a new service has the burden to demonstrate that the funding should be provided, because the party asserting a claim or making changes 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, Claimant bears the burden of proof regarding his funding requests.

3. Under the Lanterman Act, the State of California accepts responsibility for persons with developmental disabilities. 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.) The Lanterman Act mandates that an array of services and supports should be established

to meet the needs and choices of each person with developmental disabilities and to support their integration into the mainstream life of the community. (Code, § 4501.)

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. (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." (Code, § 4620.)

5. A consumer's needs and goals, and the services and supports to address them determined through the IPP process, are described generally in Code section 4512, subdivision (b), which states in part:

"Services and supports for persons with developmental disabilities" means specialized 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 an independent, productive, and normal life. 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.

6. Use of the IPP process to determine the services to meet the needs of a consumer is referenced in Code section 4646, subdivision (a):

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 with developmental disabilities and takes into account the needs and preferences of the individual and the family, where appropriate, as well as promoting community integration, independent, productive, and normal lives, and stable and healthy environments. 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 plan, reflect the preferences and choices of the consumer, and reflect the cost-effective use of public resources.

7. Several portions of the Lanterman Act address the need for regional centers to identify sources for funding and services, such as the language in Code section 4659, subdivision (a), that the regional center "shall identify and pursue all possible sources of funding," including governmental programs such as Medi-Cal and

school districts, and private entities such as insurance.” (*Id.*, subdivision (a)(1) and (2).) Code section 4659, subdivision (c), states a regional center shall not purchase any service available from Medi-Cal, private insurance, or other identified sources and under Code section 4648, subdivision (a)(8):

Regional center funds shall not be used to supplant the budget of any agency which has the legal responsibility to serve all members of the general public and is receiving public funds for providing those services.

8. When purchasing services and supports, regional centers shall (1) ensure they have conformed with their purchase of service policies; (2) utilize generic services when appropriate; and (3) utilize other sources of funding as listed in Code section 4659. (Code, § 4646.4, subd. (a).) SGPRC 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. (Code, § 4646.4.)

9. Code section 4648 requires regional centers to ensure that services and supports assist individuals with developmental disabilities in achieving the greatest self-sufficiency possible and to secure services and supports that meet the needs of the consumer, as determined by the IPP. Services and supports shall be flexible and individually tailored to the consumer. This section also requires regional centers to be fiscally responsible.

10. Claimant demonstrated that for much of 2021 he had difficulties receiving the ABA services that were assigned to him. Once he began receiving the services regularly at school and at home, in conjunction with other school-based

services, he made progress on his behavior and social communication goals, meeting some of the goals as of December 2021.

11. Claimant has the burden to prove by a preponderance of the evidence that the Service Agency's denial of his request was erroneous. Claimant is receiving an array of services, primarily from generic resources (i.e. insurance and school district) which leave little room in his schedule. Claimant has not demonstrated that the addition of Floortime to his ABA services, is needed or appropriate. Claimant is making progress in his generic-resource funded ABA program. Claimant has not met his burden to establish that SGPRC should fund Floortime, a potentially duplicative service, not covered by generic resources, in addition to or in place of ABA. SGPRC is mandated to ensure the effective and efficient use of public resources and detect and prevent waste and abuse in the utilization of public funds. (Code, § 4620.3, subdivision (b).) As such, without further evidence of the utility of Floortime, there is insufficient evidence funding would be cost-effective,

12. At this time, there is insufficient evidence that Claimant requires Floortime or that Floortime would benefit Claimant to order that SGPRC fund the service. Claimant should be closely monitored to ensure that he continues to progress and that the appropriate interventions are in place. To that end, additional input from a BCBA and an assessment for Floortime with written reports should be obtained and reviewed prior to an IPP meeting. The IPP meeting should be held no later than six months from the date of this decision to evaluate recommendations from the BCBA and the Floortime assessment and address any additional services or supports that Claimant may require. Parents are to share any school assessments and IEPs with the IPP team.

## **ORDER**

1. Claimant's appeal of San Gabriel/Pomona Regional Center's decision to deny Claimant's request for funding of Floortime is denied.
2. SGPRC shall fund a Floortime assessment with a written report.
3. SGPRC shall fund a BCBA observation of Claimant at home and in school with a written report
4. A progress IPP meeting shall be held no later than six months from the date of this decision to discuss Claimant's progress, the written reports and the need for Floortime.
5. Claimant shall provide the most recent school assessments and IPPs to the San Gabriel/Pomona Regional Center for review at the IPP meeting.

DATE:

GLYNDA B. GOMEZ  
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.

