BEFORE THE

OFFICE OF ADMINISTRATIVE HEARINGS

STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

vs.

WESTSIDE REGIONAL CENTER,

Service Agency.

OAH No. 2022020432

DECISION

Thomas Heller, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter by videoconference on April 26, 2022.

Claimant was represented by his mother. The names of Claimant and his mother are omitted to protect their privacy.

Candace J. Hein, Fair Hearing Specialist, represented Westside Regional Center (WRC).

The parties presented witness testimony and documentary evidence. The record was closed, and the matter was submitted for decision on April 26, 2022.

ISSUE

Whether WRC must pay the health insurance copayments for Claimant's private speech therapy.

EVIDENCE RELIED UPON

Documents: WRC exhibits 1 through 13; Claimant's exhibits A through J.
Testimony: Candace J. Hein; Claimant's mother.

FACTUAL FINDINGS

Background and Procedural History

1. WRC determines eligibility and provides funding for services and supports to persons with developmental disabilities under the Lanterman Developmental Disabilities Services Act (Lanterman Act). (Welf. & Inst. Code, § 4500 et seq. [undesignated statutory references are the Welfare and Institutions Code].)

2. Claimant is a six-year-old boy who receives Lanterman Act services and supports from WRC due to a diagnosis of autism spectrum disorder. He has also been diagnosed with cognitive impairment and associated language impairment. He lives with his parents and his younger sister, who also receives services and supports from WRC.

3. Claimant received services from WRC under the Early Start program until he turned three years old. The Early Start program was established by the California Early Intervention Services Act (Gov. Code, § 95000 et seq.) for children from birth to

two years of age who are born with, or at risk for, developmental delays. After leaving the Early Start program, claimant was found to eligible for Lanterman Act services and supports about 18 months later when he was four and a half years old.

4. Claimant received speech and language therapy through WRC when he was in the Early Start program. He does not currently receive speech and language therapy as a Lanterman Act service and support, but he does receive individual speech therapy at his elementary school. Claimant also receives private speech therapy five times per week due to his mother's belief that the speech therapy at school is inadequate to address Claimant's speech challenges and needs. The family's health insurance covers most of the cost of the private speech therapy, but the family pays an annual deductible and an insurance copayment of $22.50 per session, or $112.50 per week.

5. Claimant's mother asked WRC to pay the insurance copayments for Claimant's private speech therapy. WRC requested information about the family's annual income and determined it exceeded the threshold for WRC to pay the copayments. On February 1, 2022, WRC sent a letter to Claimant's mother denying the request on that basis. Claimant's mother submitted a timely Fair Hearing Request to appeal WRC's decision, and WRC requested that the Office of Administrative Hearings set the matter for hearing.

Hearing

WRC's Case

6. WRC's exhibits include W-2 statements for Claimant's parents showing that the family's annual income in 2021 was $179,104. This amount exceeds 400 percent of the federal poverty level for a family of four, which according to income

tables that WRC presented is either $106,000 or $111,000. Hein testified WRC considered the fact that Claimant has a sibling who is also a regional center client, and WRC deducted $55,280 from the family's annual income to account for that fact when assessing the request for WRC to pay the insurance copayments. Even with that deduction, the family's annual income still exceeds 400 percent of the federal poverty level. WRC declined to pay the copayments based on the family's income information.

CLAIMANT'S CASE

7. Claimant's mother believes WRC should pay the copayments because Claimant was wrongly found ineligible for Lanterman Act services and supports when he turned three years old and aged out of the Early Start program. Claimant's mother testified the eligibility assessments when Claimant turned three years old were deficient, and Claimant experienced significant developmental delays between his exit from the Early Start program and WRC's belated determination that he was eligible for Lanterman Act services and supports when he was four and a half years old. Claimant's mother requests payment of the copayments as compensation for WRC's alleged error.

LEGAL CONCLUSIONS

Legal Standards

1. The Lanterman Act provides services and supports to meet the needs of persons with developmental disabilities, regardless of age or degree of disability. (§ 4501.) "'Developmental disability' means a disability that originates before an individual attains 18 years of age; continues, or can be expected to continue, indefinitely; and constitutes a substantial disability for that individual. . . . [T]his term

shall include intellectual disability, cerebral palsy, epilepsy, and autism. This term shall also include disabling conditions found to be closely related to intellectual disability or to require treatment similar to that required for individuals with an intellectual disability, but shall not include other handicapping conditions that are solely physical in nature." (§ 4512, subd. (a)(1).)

2. "'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." (§ 4512, subd. (b).) The determination of a person's services and supports "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." (*Ibid.*) Regional centers shall ensure "[u]tilization of generic services when appropriate" (§ 4646.4, subd. (a)(2)), and the provision of resources must "reflect the cost-effective use of public resources" (§ 4646, subd. (a)). The Lanterman Act requires regional centers to control costs so far as possible and to conserve resources that must be shared by many consumers. (See, e.g., §§ 4640.7, subd. (b), 4651, subd. (a), 4659, and 4697.)

3. "If a service or support provided pursuant to a consumer's individual program plan under this division is paid for, in whole or in part, by the health care service plan or health insurance policy of the consumer's parent, guardian, or caregiver, the regional center may, when necessary to ensure that the consumer

receives the service or support, pay any applicable copayment, coinsurance, or deductible associated with the service or support for which the parent, guardian, or caregiver is responsible if all of the following conditions are met: [¶] (1) The consumer is covered by their parent's, guardian's, or caregiver's health care service plan or 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, as provided in subdivision (a) of Section 4659 and Article 2.6 (commencing with Section 4659.10)." (§ 4659.1, subd. (a).)

4. Notwithstanding the above, "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 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 the parents or consumer demonstrate one or more of the following: [¶] (1) The existence of an extraordinary event that impacts the ability of the parent, guardian, or caregiver to meet the care and supervision needs of the child or impacts the ability of the parent, guardian, or caregiver, or adult consumer with a health care service plan or health insurance policy, to pay the copayment, coinsurance, or deductible. [¶] (2) The existence of catastrophic loss that temporarily limits the ability to pay of the parent, guardian, or caregiver, or adult consumer with a health care service plan or health insurance policy and creates a direct economic impact on the family or adult consumer. For purposes of this paragraph, catastrophic loss may include, but is not limited to, natural disasters and accidents involving major injuries to an immediate family member. [¶] (3) Significant unreimbursed medical costs associated with the care

of the consumer or another child who is also a regional center consumer." (§ 4659.1, subd. (d).)

Fair Hearing and Appeal Procedures

5. Disputes about the rights of disabled persons to receive services and supports under the Lanterman Act are decided under its fair hearing and appeal procedures. (§ 4706, subd. (a).) WRC has proposed to deny Claimant's request to pay health insurance copayments, and Claimant has properly exercised his right to an administrative fair hearing to challenge that decision. (See §§ 4700-4716.) As an applicant seeking to establish eligibility for government benefits or services, Claimant has the burden of proof. (See, e.g., *Lindsay v. San Diego County Retirement Bd.* (1964) 231 Cal.App.2d 156, 161.) This burden requires proof by a preponderance of the evidence because no law provides otherwise. (Evid. Code, § 115 ["Except as otherwise provided by law, the burden of proof requires proof by a preponderance of the evidence."].) A preponderance of the evidence means "'evidence that has more convincing force than that opposed to it.' [Citation.]" (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.)

Analysis

6. Claimant did not prove WRC should pay the health insurance copayments for his private speech therapy. The evidence proves Claimant's family has an annual gross income that exceeds 400 percent of the federal poverty level. Where a family's annual income exceeds 400 percent of the federal poverty level, a regional center may pay an insurance copayment for a child's service or support if "the service or support is necessary to successfully maintain the child at home," and the parents or consumer demonstrate an "extraordinary event," "catastrophic loss," or "[s]ignificant

unreimbursed medical costs associated with the care of the consumer or another child who is also a regional center consumer." (§ 4659.1, subd. (d).) No evidence indicates Claimant's private speech therapy is necessary to successfully maintain him at home. Therefore, WRC may not pay the insurance copayments under section 4659.1, subdivision (d).

7. Claimant's mother asserts WRC failed to assess Claimant properly for Lanterman Act eligibility when he turned three years old and no longer qualified for the Early Start program. As a result, he suffered significant developmental delays, and WRC should pay the insurance copayments as compensation for that error. But WRC's alleged error is not a basis for a regional center paying insurance copayments under section 4659.1. Even if it was, Claimant did not present the challenged eligibility assessments or prove they were negligently performed. Therefore, the alleged error is not a basis for granting Claimant's appeal.

ORDER

Claimant's appeal is denied.

DATE:

THOMAS HELLER
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 of receiving notice of the final decision.