

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

In the Matter of:

CLAIMANT

v.

VALLEY MOUNTAIN REGIONAL CENTER, Service Agency

OAH No. 2022030929

DECISION

The fair hearing in this matter was heard by Matthew S. Block, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, on May 23, 2022, by videoconference from Sacramento, California.

Valley Mountain Regional Center (VMRC) was represented by Jason Toepel, Compliance Manager.

Claimant's parents represented claimant, who was not present at hearing.

Oral and documentary evidence was received, the record was closed, and the matter was submitted for decision on May 23, 2022.

ISSUE

Is VMRC obligated to pay the insurance copayment for claimant's speech therapy sessions?

FACTUAL FINDINGS

Background

1. Claimant is a nine-year-old boy who is eligible for Regional Center services under the Lanterman Developmental Disabilities Services Act (Lanterman Act), California Welfare and Institutions Code section 4500, et seq., based on a diagnosis of autism. He lives with his two parents and his older sister in Stockton, California.

2. Claimant's former service coordinator at VMRC was Mari Bel Trujillo. On July 7, 2021, Ms. Trujillo held an Individual Program Plan (IPP) meeting with claimant and claimant's mother to review his goals and challenges. The meeting was held remotely due to the COVID-19 pandemic. At the time of the meeting, claimant was not yet verbally communicating his needs and desires. One of claimant's goals is to "increase his communication skills to progress in the areas of friendships, positive behavior, and independence." The IPP noted that claimant's parents could request speech and language services as a medical benefit through insurance.

3. Claimant and his parents are insured through Kaiser Permanente (Kaiser). On October 7, 2021, claimant was assessed by a Kaiser speech therapist, who recommended that claimant attend weekly speech therapy sessions for six months, with progress to be continually reassessed based on his present needs. The insurance

copayment that claimant's parents are required to pay for the speech therapy is \$5 per session.

4. Calleann Sokbour is claimant's current service coordinator and testified at hearing. In early 2022, claimant's parents contacted her about VMRC paying the copayment for the speech therapy sessions. They provided Ms. Sokbour with the documents necessary to process the request, which she then forwarded to the VMRC Insurance Review Committee (Committee) to determine whether VMRC could pay the copayment.

5. Committee member and VMRC Director of Autism Services Melissa Claypool testified at hearing and explained the review process that the committee engages in to determine benefit eligibility. The Committee obtains financial information from client families such as W-2 tax statements and paystubs and compares the information to the federal poverty guidelines. VMRC may only fund insurance copayments if a family's gross annual income is less than 400 percent of the federal poverty level. According to the 2022 federal poverty guidelines, 400 percent of the federal poverty level for a family of four is \$111,000.

6. According to his W-2 tax statement, claimant's father earned a gross income of \$39,843.65 in 2021. According to her W-2 tax statement, claimant's mother earned a gross income of \$84,315.18 in 2021. Therefore, the gross family income in 2021 was \$124,158.83. The Committee informed Ms. Sokbour that VMRC was unable to pay the speech therapy copayment due to their income exceeding the \$111,000 threshold and instructed her to meet with the family to determine if any of three exceptional circumstances might apply to their request. If it were determined that none existed, the Committee instructed Ms. Sokbour to send a Notice of Proposed Action to claimant's parents denying the request.

7. Ms. Sokbour contacted claimant's parents and informed them of the preliminary denial. She also discussed with them the three exceptional circumstances that would enable VMRC to depart from the threshold restriction on payment. Those exceptional circumstances are: (1) an extraordinary event occurred that impacts the ability of the parent or caregiver to pay the copayment; (2) a catastrophic loss occurs that temporarily impacts the parent or caregiver's ability to pay the copayment; or (3) significant unreimbursed costs associated with the child or another child who is a regional center client. Claimant's parents indicated that they did not have any of the exceptional circumstances. However, they did tell Ms. Sokbour that claimant's father recently transitioned from part-time employment to on-call employment, with fewer and more irregular work hours per pay period.

8. Ms. Sokbour drafted a Notice of Proposed Action (Notice), dated February 15, 2022, in which claimant's parents were formally notified that VMRC was denying their request to pay claimant's speech therapy copayment. The Notice stated that the denial was based on the gross family income exceeding 400 percent of the federal poverty level and advised them of the right to request a fair hearing in the matter.

9. Claimant's mother signed a Fair Hearing Request on March 21, 2022, which was subsequently served on VMRC. Claimant's mother also requested an informal meeting to attempt to resolve the matter prior to hearing. That meeting occurred on March 30, 2022. Present at the meeting were claimant's mother, Ms. Sokbour, Mr. Toepel, Ms. Claypool, and VMRC Program Manager Cindy Jimenez.

10. At the meeting, claimant's mother again indicated that claimant's father had recently changed jobs, which will result in a reduced family income in 2022. VMRC agreed to conduct a second eligibility review, and claimant's parents agreed to submit

their paystubs for the first 12 weeks of 2022 to see if their income fell below 400 percent of the federal poverty level. They each provided six (bi-weekly) paystubs to the Committee. The earnings varied from paycheck to paycheck for both of claimant's parents, and both parents received bonuses on the paychecks that were received on March 18, 2022.

11. Because the paystubs provided by claimant's parents covered only the first quarter of 2022, the Committee's review and ultimate decision were necessarily based on projections of future earnings. The projections were calculated using four different formulas. The first calculated the weekly average pay for each parent from the first 12 weeks of 2022 and projected it out for 52 weeks. The second disregarded the highest and lowest paycheck for each parent, calculated a weekly average based on the remaining four pay periods, and projected that figure out for 52 weeks. The third calculated the median of the six paystubs for each parent and projected that figure out for 52 weeks. The fourth, which was the one the Committee ultimately used to project the family income, took the lowest gross paycheck from each parent and projected it out for the remaining 40 weeks of the year. The fourth formula resulted in the lowest projected gross annual income. However, the projection was \$114,880.67, still exceeding 400 percent of the federal poverty level. The Committee did not include the bonus amounts from the March 18, 2022 paycheck in its calculation of the projected income.

Claimant's Evidence

12. Claimant's mother and father testified at hearing. They contend that the projections calculated by VMRC are incorrect because they failed to account for the fact that they were both awarded bonuses on their March paychecks, totaling \$4,637.42. They believe the bonus amount should not be used to calculate their

projected earnings because they do not receive bonuses on every paycheck. Claimant's mother also contended that the projections are incorrect because she earned overtime pay in 2021 and during the first three months of 2022, but her employer is now restricting the number of overtime hours an employee may work per month.

Analysis

13. VMRC used four different formulas to determine the projected gross annual income of claimant's family. All revealed a projected gross annual income exceeding \$111,000, which is 400 percent of the federal poverty level. Moreover, the bonuses were not factored into the calculations. Claimant's parents both testified that claimant's father's work hours are fewer and more irregular but did not present sufficient evidence that his change in employment will result in the gross annual income falling below \$111,000. Moreover, they did not demonstrate that any of the three extraordinary circumstances exist which would warrant deviation from the rule. As such, claimant's appeal must be denied.

LEGAL CONCLUSIONS

1. The Lanterman Developmental Disabilities Services Act (Lanterman Act) governs this case. (Welf. & Inst. Code, § 4500 et seq.) An administrative "fair hearing" to determine the rights and obligations of the parties, if any, is available under the Lanterman Act. (Welf. & Inst. Code, sections 4700-4716.) Claimant's mother requested a fair hearing to appeal VMRC's denial of claimant's request to pay the copayment for his speech therapy sessions.

2. In seeking government benefits, the burden of proof is on the person asking for the benefits. (See *Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d

156, 161 (disability benefits).) The burden of proof in this case is a preponderance of the evidence because no applicable law or statute (including the Lanterman Act) requires otherwise. (Evid. Code, § 115.)

3. In enacting the Lanterman Act, the Legislature accepted responsibility to provide for the needs of developmentally disabled individuals and recognized that services and supports should be established to meet the needs and choices of each person with developmental disabilities. (Welf. & Inst. Code, § 4501.)

4. Appropriate services and supports include diagnosis, evaluation, treatment, physical, occupational, and speech therapy, mental health services, protective services, and crisis intervention. The determination of which services or supports are necessary for each consumer shall be made through the IPP process. (Welf. & Inst. Code, § 4512, subd. (b).)

5. Welfare and Institutions Code section 4659.1 provides that regional centers may only fund copayments when: (1) the service or support is paid for, in whole or in part, by the health care service plan or health insurance policy of the consumer's parent; (2) the consumer is covered by his parent's health plan or health insurance; (3) the family has an annual gross income that is less than 400 percent of the federal poverty level; and (4) there is no third party with liability for cost of the service or support.

6. Welfare and Institutions Code section 4659.1, subdivision (d) contains an exception to the prohibition on funding copayments when the service or support is necessary to successfully maintain the consumer at home 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 or co-insurance.
- (2) The existence of a 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.
- (3) Significant unreimbursed medical costs associated with the care of the consumer or another child who is also a regional center consumer.

7. As set forth in the Factual Findings as a whole, claimant's parents failed to establish by a preponderance of the evidence that they have an annual gross family income that is below 400 percent of the federal poverty level.

8. As set forth in the Factual Findings as a whole, claimant's parents failed to establish by a preponderance of the evidence that one of the three exceptions contained in Welfare and Institutions Code section 4659.1, subdivision (d), applies to their family.

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ORDER

Claimant's appeal of the denial of his request that VMRC pay the copayment for his speech therapy sessions is DENIED.

DATE: June 2, 2022

MATTHEW S. BLOCK

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. (Welf. & Inst. Code, § 4712.5, subd. (a).)