

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

In the Matter of:

CLAIMANT

vs.

WESTSIDE REGIONAL CENTER,

Service Agency.

OAH No. 2022040459

DECISION

Julie Cabos-Owen, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter by videoconference on June 8, 2022. Candace Hein, Fair Hearing Specialist, represented Westside Regional Center (WRC or Service Agency). Claimant was represented by her mother. (The names of Claimant and her family are omitted to protect their privacy.)

Testimony and documents were received in evidence. The record closed and the matter was submitted for decision on June 8, 2022.

ISSUE

Should WRC be required to fund co-payments for Claimant's applied behavioral analysis (ABA) services?

EVIDENCE

The documentary evidence considered in this case was: Service Agency exhibits 1 - 9. The testimonial evidence considered in this case was that of WRC Fair Hearing Specialist Candace Hein and Claimant's mother.

FACTUAL FINDINGS

1. Claimant is a five-year-old female client of WRC. She qualified for regional center services under a diagnosis of Autism Spectrum Disorder (ASD).
2. Claimant lives at home with her mother, father, and sibling. The family recently moved from California to Texas.
3. Claimant has been receiving ABA services funded by her medical insurance. Claimant's parents were responsible for the co-payments.
4. From September 2021 through November 2021, Claimant received ABA services through Leapz n Boundz. Claimant's parents paid a \$25 co-payment for each session, totaling \$850 after a \$75 discount.

5. From January 2022 through March 2022, Claimant received ABA services through Developmental Pathways. Claimant's parents were billed \$25 co-payments for each session, totaling \$900. They have not yet paid that bill.

6. Claimant's parents requested that WRC fund the co-payments for Claimant's ABA services.

7. On March 3, 2022, WRC sent Claimant a Notice of Proposed Action (NOPA), denying the request for funding of Claimant's ABA co-payments. The NOPA cited Welfare and Institutions Code section 4659.1 and informed Claimant's parents they did not meet the statutory criteria for funding because their family income exceeded 400 percent of the federal poverty level.

8. Claimant's mother filed a Fair Hearing Request to appeal the denial.

9. At the fair hearing, WRC convincingly explained the reasons for its denial of funding. Welfare and Institutions Code section 4659.1 allows regional centers to fund co-payments if, among other things, "the family has an annual gross income which does not exceed 400 percent of the federal poverty level." (Welf. & Inst. Code, § 4659.1, subd. (a)(2).) Claimant's family's 2020 adjusted gross income was \$118,839. In determining whether this income exceeded 400 percent of the federal poverty level, WRC reviewed a 2021 California Department of Health Services chart which specified poverty thresholds based on the number of persons in a household. (Exhibit 7.) For a family of four, a gross income of \$104,800 was 400 percent of the federal poverty level. Since Claimant's family's annual gross income exceeded 400 percent of the federal poverty level, WRC denied the request to fund co-payments.

10. At the fair hearing, WRC further noted, despite a family's income exceeding 400 percent of the federal poverty level, regional centers may still fund co-

payments if "the service or support is necessary to successfully maintain the child at home" and the consumer can establish one of three exemptions: (1) the existence of an extraordinary event which impacts the ability of the parent to care for the consumer or to pay the copayment; (2) the existence of catastrophic loss (such as that from a natural disaster or accident involving major injuries) that temporarily limits the parent's ability to pay and creates a direct economic impact on the family; or (3) significant unreimbursed medical costs of the consumer's care. (Welf. & Inst. Code, § 4659.1, subd. (d).) However, WRC correctly noted Claimant's parents did not assert or demonstrate that the funding of co-payments was necessary to successfully maintain her at home. Furthermore, Claimant's parents did not assert or establish they met any of the three statutory exemptions (i.e., they did not establish any "extraordinary event" or "catastrophic loss" which impacted the family's ability to pay the co-payment, nor did they document significant unreimbursed medical costs of Claimant's care).

11. At the fair hearing, Claimant's mother acknowledged the family's income exceeded 400 percent of the federal poverty level by about \$13,000. However, she asserted "\$13,000 is not a huge amount." She noted the cost of living in Los Angeles was "too high," and the family moved to Texas "because California was too expensive." She further noted "Texas does not have [a similar regional center system] providing for clients," and the family is "not getting any help here in Texas." Claimant's mother asked that WRC reimburse at least some the co-payments "to be of some help."

LEGAL CONCLUSIONS

Jurisdiction and Burden of Proof

1. An administrative hearing to determine the rights and obligations of the parties is available under the Lanterman Developmental Disabilities Services Act (Lanterman Act) to appeal a regional center decision. (Welf. & Inst. Code, §§ 4700-4716.) Claimant timely requested a hearing following the Service Agency's denial of funding, and therefore, jurisdiction for this appeal was established.

2. When a party seeks government benefits or services, she bears the burden of proof. (See, e.g., *Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161 [disability benefits].) Where a change in services is sought, the party seeking the change bears the burden of proving that a change in services is necessary. (Evid. Code, § 500.) The standard of proof in this case is a preponderance of the evidence because no law or statute (including the Lanterman Act) requires otherwise. (Evid. Code, § 115.)

3. In seeking funding for insurance co-payments, Claimant bears the burden of proving by a preponderance of the evidence that the funding is required. Claimant has failed to meet her burden of proving she is entitled to the funding she seeks.

Relevant Provision of the Lanterman Act

4. Welfare and Institutions Code section 4659.1, provides in pertinent part:

(a) If a service or support provided pursuant to a consumer's individual program plan . . . 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).

[¶] . . . [¶]

(d) Notwithstanding paragraph (2) of subdivision (a) . . . , 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.

Determination of Issue

7. Claimant's family's annual gross income exceeds 400 percent of the federal poverty level and is thus at a level ineligible for regional center funding of co-payments. Moreover, Claimant did not establish funding of the co-payments was

necessary to successfully maintain her at home, and she did not meet any of the three statutory exemptions. Consequently, WRC correctly determined it had no statutory authority under which to fund insurance co-payments for Claimant's ABA services.

8. Given the foregoing, WRC's denial of funding for Claimant's ABA co-payments was appropriate.

ORDER

Claimant's appeal is denied. Westside Regional Center's denial of funding for Claimant's ABA co-payments is upheld.

DATE:

JULIE CABOS-OWEN

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.