

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

In the Matter of:

CLAIMANT,

vs.

WESTSIDE REGIONAL CENTER,

Service Agency.

OAH No. 2022050147

DECISION

Jennifer M. Russell, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on June 30, 2022.

Candice Hinds, Fair Hearing Specialist, represented the Westside Regional Center (WRC or service agency). Parents represented Claimant, who was not present. Parents' and Claimant's names are not used to protect their privacy.

Testimony and documents were received in evidence. Pursuant to a June 30, 2022 Post-hearing Order, the record remained open for the service agency's submissions, which were received, marked for identification, and admitted in evidence as Exhibit 6 (Claimant Individual Program Plan Progress Report, dated November 15,

2021), Exhibit 7 (Claimant's Initial Individual Program Plan, dated December 3, 2020), and Exhibit 8 (Current Purchase of Service Approval and Service Authorizations). The record closed and the matter was submitted for decision on July 6, 2022.

ISSUE FOR DETERMINATION

Whether the service agency should reimburse the \$3,000 cost for 30 sessions of Parent-Child Interaction Therapy provided to Claimant and Parents by a non-vendored provider.

FACTUAL FINDINGS

Jurisdictional Matters

1. On April 6, 2022, the service agency informed Parents it denied their request for a refund of \$3,000 they incurred through a non-vendored provider of 30 sessions of Parent-Child Interaction Therapy.
2. On April 11, 2022, Parents filed a Fair Hearing Request.
3. On June 7, 2022, OAH notified the parties of a state level fair hearing by videoconference on June 30, 2022.
4. All jurisdictional requirements are satisfied.

Claimant's Background

5. Claimant is a four-year-old consumer of WRC based on his qualifying diagnoses of Autism and Intellectual Disability (Mild). Claimant resides with Parents

and his older sibling. Claimant attends school in a district where PACE Education provides him with educational services in the Head Start Program in accordance with his Individualized Education Plan.

6. In combination, Claimant's December 3, 2020 Individual Program Plan (IPP), and November 15, 2021 Annual Progress Report establish he presents with deficits in his socialization skills.

Claimant struggles to understand social cues when interacting with his peers. [Mother] indicated that he needs support to initiate interactions with his peers. He does not know how to greet others or invite others to play with him. [Claimant] also requires support to learn to take turns and share with his peers. [Claimant] displays disruptive behaviors that interferes with social participation and can be aggressive towards his peers because he does not know how to request the toy he wants.

(Exh. 6 at p. 4 [A36].)

7. The service agency funds five hours per month of socialization training for Claimant through Leap and Boundz, Inc. The program is intended to train Claimant to, among other things, greet his peers verbally, recognize his peers' emotions, speak in groups, engage in storytelling, and suggest or request preferred activities. Due to the COVID pandemic, Leaps and Boundz initially provided Claimant with virtual socialization training. Claimant's progress was limited. Claimant is now receiving in-person socialization training, which has provided him with opportunities to practice his

socialization skills. Consequently, Mother reported to the service agency Claimant's socialization services "are working much better." (*Id.*)

8. Claimant's IPP further documents he is physically aggressive toward his sibling, whom he pushes, slap, and hit. Claimant has emotional outbursts. He has tantrums accompanied with crying and yelling. He has difficulty transitioning from one activity to another. He breaks household items when he is upset.

9. Kaiser Permanente through its Kaiser Permanente Individual and Family Plan 500111 Platinum Plan Coverage (Kaiser) funds 13 hours per week of Applied Behavior Analysis (ABA) services for Claimant. According to Mother's testimony, the Kaiser-funded ABA services do not include any FloorTime, a developmental intervention, because Kaiser declined funding for FloorTime.

10. Previously, Mother reported to the service agency Claimant's outbursts are less intense, less frequent, and limited to crying and whining. Mother attributed the reduction in Claimant's outburst "to his increase in communication. He now talks more and tries to communicate his wants and needs instead of engaging in tantrums." (Exh. 6 at p. 5 [A37].)

Parents' Request for Funds for Parent-Child Interaction Therapy

11. Parent-Child Interaction Therapy (PCIT) is an empirically-supported, short-term parent training program for children ages two through seven years with disruptive behaviors. A Licensed Mental Health Professional at PACE Education recommended PCIT to Mother because there was a significant increase in Claimant's maladaptive behaviors. A January 19, 2022 letter from PACE Education addressed to "To Whom It May Concern" states PCIT would improve the quality of the didactic relationship between Claimant and Mother, strengthen Claimant's social skills and

reduce his negative behaviors, and provide Mother with excellent skills to manage these behaviors. (Claimant's Exh. 2 [B2].)

12. Mother requested Kaiser to fund PCIT for Claimant. By letter dated February 17, 2022, Kaiser notified Mother it denied her request stating, in pertinent part, "[I]t is not medically indicated [Claimant] received authorization for PCIT. To determine if it is medically indicated, [Claimant] would need to complete an evaluation in behavioral health. . . The "Benefits" section of your Evidence of Coverage . . . specifies services are covered only if all the following conditions are satisfied: . . . the Services are Medically Necessary[.]" (Claimant Exh. 3 at p. 2 [B4].) The February 17, 2022 letter further notified Mother of her rights to dispute Kaiser's denial with the California Department of Managed Health Care (DMHC), through the Independent Medical Review (IMR) process, or binding arbitration. No evidence establishing Parents invoked their right to dispute the Kaiser denial was offered at hearing.

13. Prior to the Kaiser denial, Claimant and Parents commenced weekly 45-minute PCIT sessions offered through the Boston Child Study Center-Los Angeles in January 2022. After Kaiser's denial, Parents continued the PCIT sessions and paid out of pocket for them. They request the service agency reimburses them for 30 PCIT sessions costing \$3,000.

14. The Director of Young Child Services at the Boston Child Study Center and the psychologist treating Claimant jointly wrote an undated letter to the service agency providing theoretical and empirical justifications for how Claimant and his family benefit from PCIT.

PCIT consists of two phases, a relationship enhancement phase [child directed interaction (CDI)] and a discipline

phase [parent directed interaction (PDI)]. The two phases of PCIT are conducted in weekly [one-hour] sessions and both contain didactic and experiential components. Each phase of treatment begins with a didactic, in which the therapist teaches, models, and role plays the skills with the parents alone. The subsequent sessions begin with a brief check-in with the parents, in which a therapist discusses the homework from the previous week and also reviews learned skills.

In the first phase of treatment (CDI), parents engage in playtime with their children by following their child's lead and utilizing core "do" skills (i.e., behavior descriptions, labeled praises, reflections, imitation). Therapists coach parents to increase the use of these positive skills and to reduce the use of the "avoid skills" (i.e., commands, questions, criticism, sarcasm) during the interactions to enhance the parent-child relationship. Throughout the PDI, families continue to utilize the skills learned in CDI, however the teaching and implementation of effective commands are incorporated to work on child compliance. A script is used to teach caregivers to deliver positive reinforcement in the form of labeled praise contingent on the child's compliance to their demand and a structured timeout sequence contingent on noncompliance. PCIT is data-driven, and therefore, is highly individualized for each family.

PCIT has been shown to improve parent-child relationships, reduce problem behavior, and increase child compliance [citation omitted]. In addition, reductions in child externalizing behaviors in the clinic, home, and school environments as assessed by teacher report, parent report, and behavioral observations [citation omitted] have been noted. Further, gains last for up to 6 years following treatment [citation omitted]. [¶] . . . [¶]

[Claimant] started PCIT in January 2022 given that he exhibited frequent tantrums, rigidity, constant attention seeking behaviors, and sensory issues. He had difficulty verbalizing his emotions and processing feelings as well as asking for help. In addition, he struggled with sharing and would often fight with his brother.

Since beginning PCIT [Claimant] has responded well to praise, so much that he even started to praise his own parents during and outside of session. He also demonstrated more sharing and cooperative behavior with his brother. Further sessions will include emotion-based coaching to assist with emotional regulation. Study measures have indicated a reduction in the level of overall externalizing behaviors.

We administer the Eyberg Child Behavior Inventory (ECBI) every session of PCIT. The ECBI is a 36-item measure assessing the frequency and severity of disruptive

behaviors, as well as the extent to which parents find the behaviors troublesome. [Claimant's] initial ECBI prior to starting PCIT was at: Intensity=112 and after a few months of PCIT sessions, [Claimant's] most recent ECBI on May 25, 2022, Intensity =95 (Intensity refers to the severity of disruptive behaviors). Over the last few months [Claimant] demonstrated a reduction in the severity of this [*sic*] disruptive behaviors.

(Claimant Exh. 4 at pp. 1-3 [B17-B19].)

15. By letter dated April 6, 2022, the service agency denied Parents' reimbursement request stating the following:

PCIT is not a vendored service through Westside Regional Center; WRC has a similar vendored service in "Floor Time" therapy that is available for [Claimant].

The denial to fund service provided by PCIT is based on direction from California's Department of Developmental Services . . . and the Lanterman Act that service providers must be vendored by a regional center before they can fund services. . . . PCIT services are not currently vendored through WRC. Vendored service providers have demonstrated the ability to deliver quality services which may help to meet goals or objectives of the IPP. . . . If you wish, I can direct you to a similar resource which is a vendor of WRC.

(Exh. 2 at p.4 [A16].)

16. By letter dated May 18, 2022, a designee of the service agency's director further informed Mother they reviewed information about PCIT and based on that review determined PCIT derives from ABA therapy. The designee noted Claimant is currently receiving ABA therapy through his private insurance provider and informed Mother the service agency is "required to explore all other generic resources as sources of funding first before using [its] funds to pay for a service. Those resources include private insurance as well as Medi-Cal." (Exh. 3 at p. 2 [A17].)

17. At hearing, the service agency's Autism and Behavior Specialist, Jessica Haro, BCBA, opined PCIT is similar to, but not the same as Floortime. Ms. Haro admitted having no clinical-based experience with PCIT. Her knowledge about PCIT was limited to information contained in the undated letter excerpted in Factual Finding 13. Consequently, Ms. Haro's opinion is accorded minimal weight.

18. Mother acknowledged both ABA and PCIT help a child to grow but maintains PCIT provides her with techniques to help Claimant that ABA does not provide. Mother testified, "ABA has parent training but *all* of PCIT is about parent training. During ABA, a parent must be present in the home but is not necessarily a part of the sessions." Mother described how during PCIT sessions Parents, Claimant, and his sibling participate in relationship enhancement exercises known by the acronym PRIDE (Praise behavior, Reflect with speech, Imitate through play, Describe behavior, Enjoy time together). A psychologist provides real-time, simultaneous coaching, guidance, and analysis to Parents. Mother testified a combination of ABA and PCIT has been beneficial for Claimant's development. The service agency did not refute Mother's testimony.

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. As the party asserting a claim for services and supports under the Lanterman Act, Claimant bears the burden of establishing by a preponderance of evidence his entitlement to the services and supports. (*Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161 [disability benefit]; *Greatoroex v. Board of Admin.* (1979) 91 Cal. App.3d 54, 57 [retirement benefits]).

Applicable Law

2. Under the Lanterman Developmental Disabilities Services Act (Lanterman Act) the service agency plays a critical role in the coordination and delivery of treatment and habilitation services and supports for persons with disabilities. (Welf. & Inst. Code, § 4620 et seq.) The service agency, for example, is responsible for ensuring the provision of treatment and habilitation services and supports to individuals with developmental disabilities and their family are effective meeting stated IPP goals.

3. The service agency is additionally responsible for the cost-effective use of public resources. (Welf. & Inst. Code, §§ 4646, 4646.5, 4647, and 4648.) The service agency must ensure “[u]tilization of generic services and supports when appropriate.” (Welf. & Inst. Code, § 4646, subd. (a)(2).) The service agency must identify and pursue all possible sources of funding for consumers receiving Lanterman Act services and supports. Those sources include, but are not limited to, “Governmental or other entities or programs required to provide or pay the cost of providing services, including Medi-Cal, Medicare, the Civilian Health and Medical Program for Uniform

Services, school districts, and federal supplemental security income and the state supplementary program.” (Welf. & Inst. Code, § 4659, subd. (a)(1).)

4. The Lanterman Act requires the service agency to pursue vendorization or contracting to purchase services and supports from individuals or agencies deemed appropriate to best accomplish all or part of the goals of an IPP. (Welf. & Inst. Code, § 4648, subd. (a)(3).) “Vendorization or contracting is the process for the identification, selection, and utilization of service vendors or contractors, based on the qualifications and other requirements necessary in order to provide the service.” (*Id.*)

Discussion

5. Assuming PCIT is a necessary and appropriate intervention to remediate Claimant’s maladaptive behaviors, the Lanterman Act requires the service agency to identify and pursue all possible sources of funding. (Legal Conclusion 3.) The evidence offered at hearing does not establish whether Parents have exhausted their right to dispute Kaiser’s denial to fund PCIT. (Factual Finding 12.)

6. The Lanterman Act further requires a properly vendored individual or entity to provide a needed service or support to Claimant. (Legal Conclusion 4.) The Boston Child Study Center-Los Angeles is not vendored to provide PCIT to the service agency’s consumers, including Claimant and his Parents. Consequently, the Lanterman Act precludes the service agency from, directly or indirectly, funding any service or support provided to its consumers through The Boston Child Study Center-Los Angeles. Reimbursing Parents’ out-of-pocket expenditure totaling \$3,000 for PCIT they obtained from the Boston Child Study Center-Los Angeles is therefore prohibited.

7. Based on Factual Findings 11 through 18 and Legal Conclusions 1 through 6, cause does not exist for WRC to refund Parents’ out-of-pocket costs

totaling \$3,000 for PCIT provided since January 2022 through the Boston Child Study Center-Los Angeles, a non-vendored provider.

ORDER

1. Claimant's appeal is denied.
2. Westside Regional Center shall not reimburse the cost of 30 sessions of Parent Child Interaction Therapy totaling \$3,000 provided to Claimant and Parents through the Boston Child Study Center-Los Angeles, a non-vendored provider, since January 2022.
3. Westside Regional Center is not precluded from funding PCIT in the future for Claimant and Parents through the Boston Child Study Center-Los Angeles should that entity becomes a vendorized provider for such services.

DATE:

JENNIFER M. RUSSELL
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.