

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

In the Matter of:

CLAIMANT,

vs.

NORTH LOS ANGELES COUNTY REGIONAL CENTER,

Service Agency.

OAH No. 2022050295

DECISION

ALJ Harden Sooper, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on July 11, 2022.

Stella Dorian, Fair Hearing Representative, represented North Los Angeles County Regional Center (NLACRC).

Claimant did not attend the hearing. Her mother (Mother) was present and represented claimant. Names are omitted to protect the privacy of claimant and her family.

The ALJ received oral and documentary evidence. The record was held open for claimant to file documents related to her recent change in income by July 13, 2022, and for NLACRC to file objections, if any, by July 15, 2022.

On July 11, 2022, claimant filed the following documents: (1) a paystub for claimant's father (Father) for the period June 19, 2022, through July 2, 2022, marked for identification as Exhibit T; (2) a paystub for Mother for the period May 21, 2022, through June 3, 2022, marked for identification as Exhibit U; (3) a paystub for Mother for the period June 4, 2022, through June 17, 2022, marked for identification as Exhibit V; (4) a paystub for Father for the period May 22, 2022, through June 4, 2022, marked for identification as Exhibit W; and (5) a paystub for Father for the period June 5, 2022, through June 18, 2022, marked for identification as Exhibit X.

On July 12, 2022, claimant filed the following documents: (1) an In-Home Supportive Services (IHSS) earnings statement for the period June 1, 2022, through June 15, 2022, marked for identification as Exhibit Y; (2) an IHSS earnings statement for the period June 16, 2022, through June 30, 2022, marked for identification as Exhibit Z; (3) a 2021 Form W-2 Wage and Tax Statement for Mother, marked for identification as Exhibit AA; and (4) a one-page document entitled, "Overtime Policy," marked for identification as Exhibit BB.

NLACRC filed no objections to Exhibits T through BB. Therefore, Exhibits T through BB are admitted.

The record was closed and the matter was submitted for decision on July 15, 2022.

ISSUE

Is claimant eligible under the Lanterman Developmental Disabilities Services Act (Lanterman Act) to obtain regional center reimbursement for insurance copayments, coinsurance, and/or deductibles paid for her Applied Behavior Analysis (ABA) therapy?

EVIDENCE RELIED UPON

In reaching this decision, the ALJ relied upon NLACRC's exhibits 1 through 11, 13, and 14; claimant's exhibits A through K, M through O, and Q through BB; and the testimony of the following witnesses: Service Coordinator Blanca Verduzco; Consumer Services Supervisor Debbie Rombeau; Board Certified Behavior Analyst (BCBA) Mellisa DeConza, Ph.D.; and Mother.

FACTUAL FINDINGS

Parties and Jurisdiction

1. Claimant is a 10-year-old girl who lives with her parents, two siblings, her great-grandmother, and her great-uncle. She is eligible for regional center services based on her diagnosis of autism.

2. NLACRC is the regional center designated by the Department of Developmental Services to provide funding for services and supports to persons with developmental disabilities under the Lanterman Act. (Welf. & Inst. Code (Code), § 4500 et seq.)

3. On March 30, 2022, NLACRC sent Mother a Notice of Proposed Action finding claimant ineligible for regional center funding of insurance copayments, coinsurance, and deductibles paid for claimant's ABA therapy. The Notice stated claimant's family's income did not meet the criteria for payment assistance and the statutory exemptions to the family income requirements were inapplicable because the family had not experienced an extraordinary or catastrophic event and did have significant unreimbursed medical expenses. (Ex. 9, p. A31–A32.)

4. In a Fair Hearing Request dated April 20, 2022, and received by NLACRC on April 29, 2022, Mother challenged NLACRC's denial of funding for claimant's ABA therapy insurance copayments. (Ex. 1, p. A1.)

5. Following an informal meeting with Mother on May 11, 2022, NLACRC adhered to its determination. NLACRC sent a letter to Mother, dated May 18, 2022, explaining their denial of the requested funding. (Ex. 10, p. A35–A38.) This hearing ensued.

Claimant's Request for Funding

6. Claimant's current Individual Program Plan (IPP), dated August 15, 2019, states, "[claimant]'s parents will coordinate a schedule with Achieve Behavioral Services to utilize behavioral health services." The IPP also states, "Cigna will fund ABA services to family in accordance with the state and federal law." (Ex. 2, p. A7.) The parties do not dispute that claimant needs ABA services or that Achieve Behavioral Services (Achieve) is an appropriate vendor.

7. When the parties drafted the current IPP, Mother was working as a legal secretary. Through Mother's employment, claimant's family had medical insurance coverage administered by Cigna. Mother testified the Cigna policy covered 100

percent of claimant's behavior health services costs, meaning claimant's family did not incur any out-of-pocket costs associated with claimant's ABA therapy.

8. In February 2021, Mother contacted NLACRC for assistance with obtaining Medi-Cal coverage for claimant. At the time, Mother was contemplating leaving her employer for a new job, potentially causing the family to change insurance plans. Mother hoped to avoid any future out-of-pocket costs for claimant's ABA therapy by obtaining Medi-Cal coverage for claimant. Due to lapses in NLACRC's communication with Mother, NLACRC did not immediately assist Mother with her application for Medi-Cal coverage.

9. Mother's attempts at obtaining Medi-Cal coverage for claimant have been thus far unsuccessful. Although NLACRC has "institutionally deemed" claimant eligible for Medi-Cal because of claimant's qualifying condition for regional center services, Medi-Cal has yet to authorize coverage. NLACRC has thus far submitted referrals for Medi-Cal coverage on behalf of claimant on August 9, 2021, November 15, 2021, and March 28, 2022. (Ex. 13, p. A140, A143, A148.) On at least one occasion, Medi-Cal sent application materials to an outdated address for claimant. For reasons not disclosed by the evidence, claimant's application for Medi-Cal coverage has not yet been approved.

10. In December 2021, Mother began a new job as a legal secretary for the McKool Smith law firm (McKool Smith). Mother testified claimant's family income decreased after she began working at McKool Smith because she no longer has significant opportunities to work overtime for additional pay. At her prior law firm, Mother earned a significant portion of her income by working overtime hours in a trial support role.

11. Mother's new job also caused claimant's family to change insurance coverage. Through McKool Smith, claimant's family has health insurance coverage administered by BlueCross BlueShield of Texas (BlueCross). The BlueCross plan covers both in-network and out-of-network outpatient behavioral health services. However, for in-network providers, the BlueCross plan requires the insured to pay either a \$25 copayment or 10 percent coinsurance costs. The plan also requires the insured to pay annual deductibles, as follows: for in-network services, \$500 per individual and \$1,000 per family; for out-of-network services, \$1,000 per individual and \$2,000 per family. The plan limits the out-of-pocket costs an individual or family must incur each year, as follows: for in-network services, \$3,500 per individual and \$7,000 per family; for out-of-network services, \$5,250 per individual and \$10,500 per family. (Ex. K, p. B90.) Achieve is an in-network provider for the BlueCross plan.

12. Mother's decreased income and her new insurance plan caused claimant's family significant financial distress. Mother testified the family now lives paycheck to paycheck. In June 2022, the family's expenses exceeded their income by \$234, even without accounting for money owed to Achieve for claimant's ABA therapy. (Ex. Q.) Mother's testimony was corroborated by recent paystubs. (Ex. T–Z.) Mother testified her family's financial difficulties are compounded by the recent addition of two elderly relatives to their family home. Mother's grandmother and 77-year-old great uncle moved into the family home in late 2019 and December 2020, respectively. Mother testified the family incurred significant expenses to build an additional room for her great uncle, who she asserts suffers from undiagnosed autism and requires additional care. Although the family's income includes earnings from Father's job and from IHSS, paid to Mother to take care of her uncle, the income is still inadequate to alleviate the family's financial stress.

13. On February 10, 2022, Mother contacted NLACRC to request regional center funding for claimant's ABA therapy copayments. Mother did so on the advice of another parent; she was previously unaware she could make such a request. Mother corresponded by email with Service Coordinator Blanca Verduzco and provided documentation of her family's income and their expenses related to claimant's ABA therapy. (Ex. 4–6, F–G.)

14. Based on its review of tax documents for 2020 submitted by Mother, NLACRC determined claimant's family income exceeded the level required to qualify for financial assistance with copayments, coinsurance, or deductibles. To qualify, claimant's family's income must not exceed 400 percent of the federal poverty level, as defined by the Department of Health and Human Services. (Ex. 7.) In 2020, claimant's family had a gross income of \$164,103, \$20,915 more than 400 percent of the federal poverty level for a family of six.

15. Based on information provided verbally by Mother in a subsequent conversation with Service Coordinator Verduzco and an informal meeting with Contract Officer Stella Dorian, NLACRC also determined there was no extraordinary or catastrophic event impacting the parents' ability to pay the copayments, coinsurance, or deductibles for claimant's ABA therapy, or significant unreimbursed medical costs associated with the care of claimant.

16. Since December 2021, claimant's family has incurred \$2,393.79 in unreimbursed medical costs associated with claimant's ABA therapy. (Ex. I, J.) The costs include claimant's \$500 annual deductibles for 2021 and for 2022 and the 10 percent coinsurance costs for ABA therapy services incurred after each year's deductible was paid. Mother testified her family cannot afford to pay these costs.

17. Mother requests regional center funding for all out-of-pocket costs associated with claimant's ABA therapy, including the outstanding balance of \$2,393.79 currently owed to Achieve. Dr. DeConza, claimant's ABA therapist, testified claimant will no longer receive ABA therapy through Achieve if claimant's family is unable to pay their outstanding balance owed.

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. In a proceeding to determine whether an individual is eligible for regional center funding, the burden of proof is on the claimant to establish by a preponderance of the evidence he or she meets the proper criteria. (Evid. Code, §§ 115; 500.) A preponderance of the evidence means evidence that has more convincing force than that opposed to it. (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.)

Applicable Law

2. The Legislature enacted a comprehensive statutory scheme known as the Lanterman Act (Code, § 4500 et seq.) to provide a pattern of facilities and services sufficiently complete to meet the needs of each person with developmental disabilities, regardless of age or degree of handicap, and at each stage of life. 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. (*Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 388.)

3. A regional center may pay any applicable copayment, coinsurance, or deductible for a service or support provided by a regional center consumer's IPP and paid for, in whole or in part, by the consumer's health insurance policy, under the following conditions:

(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).

(Code, § 4659.1, subd. (a).)

4. If a consumer's family's income exceeds 400 percent of the federal poverty level, a regional center may pay insurance costs for a service or support authorized by a claimant's IPP if the service or support is necessary to successfully maintain the child at home and one or more of the following conditions are met:

(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.

(Code, § 4659.1, subd. (d).)

Claimant's Eligibility for Funding

5. To be eligible to receive reimbursement for her insurance co-pays and other insurance-related expenses incurred to pay for her ABA therapy, claimant's family must show they meet the requirements of Code section 4659.1, subdivision (a) or fall within the exemptions set forth in Code section 4659.1, subdivision (d). As set forth below, at this time claimant has not proven she falls within the confines of subdivisions (a) or (d) of Code section 4659.1.

CODE SECTION 4659.1, SUBDIVISION (A)

6. Claimant established by a preponderance of evidence she is covered by her parent's health insurance policy and no third party has liability for costs associated with claimant's ABA therapy. Although claimant may be eligible for Medi-Cal coverage, she is not yet covered and it is unknown when, if ever, she will receive such coverage. (Factual Findings 8–9.)

7. However, claimant did not establish by a preponderance of evidence her family's gross income is below 400 percent of the federal poverty level. Claimant's family's 2020 gross income exceeded 400 percent of the federal poverty level. (Factual Finding 14.) Mother contends the family's income may fall below that threshold based on her reduced income after changing jobs. The ALJ did not have sufficient information to assess whether claimant's family's income now falls below 400 percent of the federal poverty level based on the few paystubs filed by Mother after the hearing. From the documentation claimant provided to NLACRC before the hearing, claimant is ineligible for regional center funding of ABA therapy copayments, coinsurance, and deductibles under Code section 4659.1, subdivision (a).

CODE SECTION 4659.1, SUBDIVISION (D)

8. Claimant established by a preponderance of evidence ABA therapy services are necessary for her family to successfully maintain her at home. Claimant's need for ABA therapy services is undisputed. Claimant's IPP calls for her to receive such services. Mother testified claimant needs ABA therapy and NLACRC offered no evidence to the contrary. (Factual Finding 6.)

9. Claimant did not establish by a preponderance of evidence the existence of an extraordinary event impacting her family's ability to pay ABA therapy

copayments, coinsurance, and deductibles. Claimant's family faces financial hardship because the family's income decreased and health insurance costs increased upon Mother's employment change in December 2021. (Factual Finding 11.) In addition, Mother's great uncle moved into the family home in 2020, causing additional financial strain on the family. (Factual Finding 12.) However, evidence of financial hardship alone is insufficient to establish the existence of an extraordinary event. Claimant is therefore ineligible for regional center funding of ABA therapy copayments, coinsurance, and deductibles under Code section 4659.1, subdivision (d)(1).

10. Claimant did not establish by a preponderance of evidence her family suffered a catastrophic loss, as described by Code section 4659.1, subdivision (d)(2). Mother conceded her family did not suffer such a loss. Claimant is therefore ineligible for regional center funding of ABA therapy copayments, coinsurance, and deductibles under Code section 4659.1, subdivision (d)(2).

11. Claimant did not establish by a preponderance of evidence her family incurred significant unreimbursed medical costs associated with claimant's care. Between December 2021 and May 2022, claimant's family incurred \$2,393.79 in unreimbursed costs related to claimant's ABA therapy services. (Factual Finding 16.) Going forward, claimant's family is responsible for up to \$3,500 per year in out-of-pocket costs related to claimant's ABA therapy. (Factual Finding 11.) Claimant presented insufficient evidence of her family's 2021 and 2022 income to establish whether the medical costs incurred are significant. Claimant is therefore ineligible for regional center funding of ABA therapy copayments, coinsurance, and deductibles under Code section 4659.1, subdivision (d)(3).

ORDER

Claimant's appeal is denied. North Los Angeles County Regional Center's denial of funding for claimant's copayments, coinsurance, and deductibles for ABA therapy services is upheld.

This decision does not preclude claimant from presenting further evidence of her family's current income to the regional center, so that the regional center can re-assess claimant's eligibility for funding under Welfare and Institutions Code section 4659.1.

DATE:

HARDEN SOOPER

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.