

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

In the Matter of:

Claimant,

vs.

Westside Regional Center,

Service Agency.

OAH No. 2022070290

DECISION

Glynda B. Gomez, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter on March, 23, 2023 by videoconference.

Ron Lopez, IDEA (Individuals with Disabilities Education Act) Specialist and Director's designee, represented Westside Regional Center (WRC). Angela Quinones, a WRC staff member, was also present to assist Mr. Lopez.

Claimant's mother (Mother) represented Claimant. Claimant was not present.

A Spanish language interpreter translated the proceedings.

Oral and documentary evidence was received. The record was closed, and the matter was submitted for decision on March 23, 2023.

EVIDENCE RELIED UPON

Testimony: Ron Lopez and Mother; Exhibits: 1-15, 100-101, A, B1-B2, D-F, G1-G2, I-L, M1-M2, N, O1-03, P, and Z.)

SUMMARY

Claimant requests WRC fund individual speech therapy. Claimant receives group speech therapy through his local school district and was recently provided a computer tablet for communication. His medical provider has discontinued speech therapy because Claimant has not shown sufficient progress, but has agreed to conduct a reassessment. WRC has denied his request for funding because it asserts there is no assessed need and generic resources are available to assist him with any existing need. For the reasons set forth below, Claimant's appeal is denied.

FACTUAL FINDINGS

Jurisdiction

1. Claimant is an 18-year-old un-conserved developmentally disabled male eligible for WRC services based upon his diagnosis of Autism and Intellectual Disability (ID) (mild).

2. Claimant requested WRC fund individual speech therapy for him, but WRC declined to do so based upon the availability of generic resources. Claimant filed an appeal. All jurisdictional requirements have been met for this matter to proceed.

Background

3. Claimant lives with his parents and his younger sibling who is also a WRC consumer. He attends a Non-Public School (NPS) transition program where he receives a special education program and related services and supports including group speech therapy 90 minutes per week to address pragmatics and self-advocacy skills related to his academic program. It is expected that Claimant will continue in this or a similar educational program until he reaches age 22. (Testimony of Mother). Claimant received speech therapy from a speech pathologist at Kaiser Permanente through his family medical insurance until December of 2021 when Kaiser discontinued his speech therapy based on his lack of progress. (Testimony of Mother; Ex. 6.) Claimant's family has funded individual speech and language therapy weekly since November of 2022. He was recently provided a computer tablet by his school district as an augmentative communication device, but has not been trained to use it and will need assistance. (Testimony of Mother.)

Claimant's Services and Supports

4. Claimant's Individual Program Plan (IPP) dated June 1, 2022 provides desired outcomes related to (1) continuing to live in the family home, (2) receiving an educational program, (3) managing his frustrations, (4) maintaining his health, and (5) making friends. To address those needs, Claimant receives a variety of services and supports through his Individual Program Plan (IPP) developed with WRC and generic resources including Supplemental Security Income (SSI), In-Home Supportive Services

(IHSS), Kaiser medical insurance and a Free Appropriate Public Education (FAPE) through an Individualized Education Program (IEP) from his local school district. WRC provides social skills training, in-home respite, and service coordination for Claimant. (Ex. 7; testimony of Mother and Lopez.) WRC has also agreed to have its representative attend school district IEP meetings with Claimant's mother. (Testimony of Lopez.)

Medical-based Speech therapy

5. Kaiser provided medical-based speech therapy to Claimant until December of 2021. At that time, Claimant was discharged from speech therapy due to lack of progress. Mother filed an initial appeal on January 11, 2022. Claimant's appeal was withdrawn on January 14, 2022 when Kaiser agreed to conduct an additional speech assessment. (Ex. A.)

6. On February 16, 2022, Claimant's medical record documents a speech evaluation in a note entitled "Video Visit Allied Health in SPEECH THERAPY." (Exs. 01, 02 and 03.) According to Mother's testimony, Exhibits 01, 02 and 03 constitute the documentation of Kaiser's speech therapy evaluation. The evaluation recommends that speech therapy not be provided to Claimant because such services "are not medically indicated due to no significant progress made in therapy and no significant change in function during evaluation." (Ex. 02)

7. According to Kaiser's evaluation, performed by speech-language pathologist Liana Guo, Claimant's "Speech skills are not a concern at this time due to speech intelligibility judged to be at 90%. Intelligibility at times affected by rapid rate of speech/hypophonia particularly over virtual meetings." (Ex. 01.) Concerning Claimant's behavior, she wrote Claimant "[s]its down on request. Looks at adult on

request. Sustained attention to task. Cooperative and appeared to be invested in the evaluation procedures.” (Ex. 01.)

8. Ms. Guo noted the following concerning the status of Claimant’s speech levels and needs:

[Claimant] presented with profound receptive and expressive language delays. He is less able to ask and answer questions appropriately, demonstrate understanding of age-appropriate vocabulary, use syntactically correct sentences, and participate in conversation. Relative strengths (per parent and treating therapist reports) include writing down his thoughts/ideas. Previously [Claimant] had been discharged from ST [speech therapy] services per 12/28/21 progress report [. . .] Standardized testing today continues to show no significant progress.

[Claimant] continues [to] answer using short utterances but can produce 4-6 word utterances when prompted. Age equivalency from the OWLS II [standardized testing Oral and Written Language Scales-Second Edition] expressive language was lower than the previous evaluation on 8/19/21, due to no periodic repetition provided (as had been done during the evaluations prior). No significant regression in language abilities was reported.

Research of this assessment indicate that episodic speech therapy is not indicated at this time.

[Claimant] can be considered for enrollment in a speech and language based community program (e.g. regional center). This type of program can address functional skills, e.g. working, life skills, etc.

[Claimant] can be re-evaluated in one year in order to assess his progress and make any changes to our recommendations to reflect his more mature age.

(Exs. 01 and 02.)

9. On June 22, 2022, Mother filed a new appeal of Kaiser's most recent denial. On June 27, 2022, Kaiser notified Claimant that due to laws governing medical privacy, his authorization was needed for Mother to act on his behalf because he was an adult. (Exs. G1 and G2.) On July 7, 2022, a second letter was sent to Claimant by Kaiser requesting Claimant sign documentation authorizing Mother to act on his behalf. (Ex. H.) On July 6, 2022 and July 12, 2002, in separate letters to Claimant and Mother, Kaiser acknowledged the appeal. (Exs. I, K and Z). On July 30, 2022, Kaiser again notified Claimant that his grievance concerning speech therapy had been received. (Ex. L.) According to Mother, Claimant's case was closed without her knowledge or consent.

10. On December 14, 2022, Claimant filed an additional appeal with Kaiser concerning the termination of speech therapy. (Ex. 100.) On December 16, 2022, Kaiser notified Mother that it had granted her appeal and would conduct a new evaluation of

Claimant's needs. (Ex. 101.) At the time of hearing, the evaluation had not been completed.

School Services

11. Claimant attends an NPS transition program funded by his local school district. As part of his IEP, Claimant receives one session per week of speech and language therapy in a group setting for 90 minutes to address pragmatics and self-advocacy. (Ex.4.) Mother believes that Claimant needs more help developing language including vocabulary to express himself. (Testimony of Mother.) Mother requested that the school district provide a new speech and language assessment and an assistive technology assessment (Ex.4.) The school district conducted a speech and language assessment on December 15, 2022 in preparation for Claimant's triennial IEP. A report of the assessment dated February 14, 2023 was provided. (Ex. 101.) According to the report, the assessment included standardized assessments (Oral and Written Language Scales-Second Edition (OWLS II), Expressive One-Word Picture Vocabulary Test-4 Spanish Bilingual Edition(EOWPT-4), classroom observations, teacher observations and clinical observations. Mother was not afforded an opportunity to provide input for the assessment. The report states that the assessor was unable to reach Mother and her input would be considered at the triennial IEP meeting. (Ex. 101.) The assessor recommended that Claimant be provided with speech and language services.

12. According to the assessment report, Claimant scored in the Significantly Below Average range on all standardized measures. (Ex. 101.) The assessor noted that Claimant's speech was intelligible 80 percent or more of the time, there was no issue with his voice and that his fluency was not an issue because he did not stutter. (Ex. 101.) The assessor summarized Claimant's areas of need as follows:

[S]elf-advocacy continues to be an area of need. [Claimant] appeared extremely reluctant to speak throughout the assessment, only speaking when directly addressed. Staff shared that [Claimant] does not often initiate communication to ask for assistance, request or share information, share his feelings, and express his wants and needs. Staff are concerned with his ability to advocate for himself when he does not understand something or, in general, when needing assistance. In addition, [Claimant's] present difficulties with higher-level processing skills such as problem-solving, verbal reasoning, sentences and understanding a range of vocabulary terms. As [Claimant] transitions into a vocational-based classroom and community setting, he may benefit from strategies that help to increase his independence (e.g. sequencing, breaking a problem down into smaller parts). Vocabulary and syntax (sentences) may continue to be modeled informally within his classroom and therapy settings.

(Ex. 101.)

13. The school district continues to provide group speech and language services 90 minutes per week to Claimant. Additionally, Claimant was recently provided with a computer tablet as an augmentative communication device. Claimant and Mother have not yet been trained on the use of the tablet. Mother does not believe that the tablet will be very useful to Claimant. Mother is in the process of scheduling

an additional IEP meeting. Ron Lopez, WRC's IDEA Specialist, will attend the IEP meeting with Mother.

Private Speech Pathologist

14. Claimant has been receiving individual speech and language therapy since November of 2022 funded by his family. Paola A. Calle, M.A., CCC-SLP, the speech and language pathologist working with Claimant provided a progress report and recommendations dated March 2023. Ms. Calle's therapy focuses on "expressive and receptive language skills, social emotional skills, pragmatic skills, and abstract thinking." Claimant receives speech and language therapy at home. His family has consistently participated in the therapy. Ms. Calle opined that Claimant's Autism presents with "delayed expressive language skills [which] makes it difficult for him to communicate thoughts, needs, and ideas to teachers and peers." In working with Claimant, Ms. Calle uses role playing, computer programs, social language games and direct teaching. She opined that Claimant "is making progress towards his expressive, receptive language and social skills goals, he continues to demonstrate difficulty utilizing these skills in unstructured contexts, as well as generalizing them at home and school. His ability to independently implement language and social skills taught in individual therapy, is not only crucial for his social and academic success, but also for his own safety and well-being in the community." (Ex. P.) She recommended that Claimant continue individual speech and language therapy and a social skills program. (Ex. P.)

15. In terms of his present level of performance, Ms. Calle notes:

[Claimant] demonstrates an increased ability in attending in individual speech and language therapy

sessions. He is able to attend to task for 5-7 minutes for non-preferred activities and 7-10 minutes for preferred activities. When [Claimant] is not attending, he requires moderate auditory and verbal cues to redirect his attention back to task. . . .

[Claimant] is able to engage in 1-2 verbal exchanges with a preferred topic or familiar peer given minimal verbal prompts to provide on-topic comments or questions. Given maximum cues, he is able to extend his conversational exchanges to 3-4. [Claimant] often speaks to his conversational partner/therapist while turning his body away from them. He requires tactile and verbal cues for spatial orientation to face towards his conversational partners while talking to them. . . .

[Claimant] struggles with responding to simple WHO, WHAT, WHERE questions. He frequently does not respond to questions even with maximal cues and encouragement. When offered a choice of 2 options, [Claimant] typically chooses whatever is offered as the second option. This occurs even when he has already been provided with the answer. [Claimant] also does not pose questions using WH words. Typically, he makes a comment with rising inflection to pose a question (Time to go home?). Spontaneous utterances are typically short in length and simple sentence structure. He often misses several words, using 2-3 word

phrases instead. [Claimant] is not consistently using prepositions to describe or to answer WHERE questions. [Claimant's] mother expressed concerns that [Claimant] is not able to express how he feels, both emotionally and physical.

(Ex. P.)

LEGAL CONCLUSIONS

1. The burden of proof is on Claimant in this matter because it is Claimant who seeks to add a service or change the status quo. The party seeking a change to the IPP bears the burden of proof. (See, e.g., *Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 789, fn. 9.) Claimant must prove his case by a preponderance of the evidence. (Evid. Code, § 115.)

2. The Lanterman Act acknowledges the state's responsibility to provide services and supports for developmentally disabled individuals and their families. (Welfare and Institutions Code (Code) § 4501.) The state agency charged with implementing the Lanterman Act, the Department of Developmental Services (DDS), is authorized to contract with regional centers to provide developmentally disabled individuals with access to the services and supports best suited to them throughout their lifetime. (Code, § 4520.)

3. Regional centers must develop and implement IPPs, which shall identify services and supports on the basis of the needs and preferences of the consumer, or where appropriate, the consumer's family, and shall include consideration of the cost-effectiveness of each option. (Code, § 4512, subd. (b); see also Code, §§ 4646, 4646.5,

4647, and 4648.) The Lanterman Act assigns a priority to services that will maximize the consumer's participation in the community. (Code, §4646.5, subd. (a)(2); 4648, subd. (a)(1), (2).)

4. The IPP is to be prepared jointly by the planning team, and any services purchased or otherwise obtained by agreement between the regional center representative and the consumer or, where appropriate, the parents, legal guardian, or conservator. (Code, § 4646, subd. (d).) The planning team, which determines the content of the IPP and the services to be utilized, is made up of the individual with developmental disabilities, their parents, guardian, conservator, or authorized representative, one or more regional center representatives, including the designated service coordinator, and any person, including service providers, invited by the consumer. (Code, § 4512, subd. (j).)

5. Among other things, the IPP must set forth goals and objectives for the client, contain provisions for the acquisition of services (which must be provided based upon the client's developmental needs), contain a statement of time-limited objectives for improving the client's situation, and reflect the client's particular desires and preferences. (Code, §§ 4646; 4646.5, subd. (a)(1), (2) and (4); 4512, subd. (b); and 4648, subd. (a)(6)(E).) The planning process includes the gathering of information about the consumer and conducting assessments to determine the life goals, capabilities and strengths, preferences, barriers, and concerns or problems of the person with developmental disabilities. Assessments shall be conducted by qualified individuals. Information shall be taken from the consumer, his or her parents and other family members, his or her friends, advocates, providers of services and supports, and other agencies. (Code, § 4646.5, subd. (a)(1).)

6. Code section 4646.4, subdivision (a), provides, in part, that regional centers shall ensure, at the time of development, scheduled review, or modification of a consumer's IPP developed pursuant to Sections 4646 and 4646.5, or of an individualized family service plan pursuant to Section 95020 of the Government Code, the establishment of an internal process. This internal process shall ensure adherence with federal and state law and regulation, and when purchasing services and supports, shall ensure all of the following: (1) Conformance with the regional center's purchase of service policies, as approved by the department pursuant to subdivision (d) of Section 4434; (2) Utilization of generic services and supports when appropriate; (3) Utilization of other services and sources of funding as contained in Section 4659.

7. Although regional centers are mandated to provide a wide range of services to facilitate implementation of the IPP, they must do so in a cost-effective manner. (Code, §§ 4640.7, subd. (b), 4646, subd. (a).) A regional center is not required to provide all the services that a client may require but is required to "find innovative and economical methods of achieving the objectives" of the IPP. (Code, § 4651.) Regional centers are specifically directed not to fund duplicate services that are available through another publicly funded agency.

8. Code section 4659, subdivision (a), states: "Except as otherwise provided in subdivision (b) or (c), the regional center shall identify and pursue all possible sources of funding for consumers receiving regional center services." Also, Code section 4648, subdivision (a)(8), states: "Regional center funds shall not be used to supplant the budget of any agency that has a legal responsibility to serve all members of the general public and is receiving public funds for providing those services."

9. Here, Claimant seeks funding from WRC for individual speech therapy. Claimant has been discharged from speech therapy by his medical provider/insurer

based upon his lack of progress. Kaiser has determined that there was no continued medical need for speech therapy as Claimant's intelligibility was adequate and he made no progress developing additional language skills. The Kaiser assessor recommended a community-based language program and referenced WRC as a potential provider.

10. The local school district, not WRC, is primarily responsible for Claimant's educational program including language development because Claimant remains eligible for a school-based program and is enrolled in an NPS school-based program. The school district remains primarily responsible for providing his educational program and meeting his language development needs until he is no longer eligible for school district services. Currently, Claimant receives speech and language services and a language-based program from his school district. Once Claimant becomes too old for school-based educational programs, WRC may become the primary provider of any day program (including independent living skills) or work program that is provided for in his IPP. However, at this time generic resources such as the local school district and Claimant's medical provider remain primarily responsible for meeting speech and language needs. WRC is the payor of last resort and the law requires that generic resources such as medical insurance and the school district be exhausted before regional center funds are used.

11. Currently, WRC is providing the appropriate supports as the payor of last resort. WRC agreed to provide a representative to attend Claimant's IEP meeting to discuss his needs. Kaiser, another generic funding source, has agreed to conduct a new speech therapy assessment to determine whether speech therapy is medically necessary or indicated for Claimant.

12. After consideration of all evidence considered, the preponderance of the evidence establishes that WRC is not required to fund Claimant's individual speech and language therapy at this time.

ORDER

Claimant's appeal is denied.

DATE:

/S/

GLYNDA B. GOMEZ

Administrative Law Judge

Office of Administrative Hearings

NOTICE

This is the final administrative decision. Each party is bound by this decision. Either party may request a reconsideration pursuant to subdivision (b) of Welfare and Institutions Code section 4713 within 15 days of receiving the decision, or appeal the decision to a court of competent jurisdiction within 180 days of receiving the final decision.