

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

In the Matter of the Fair Hearing Request of:

CLAIMANT,

vs.

WESTSIDE REGIONAL CENTER,

Service Agency.

OAH No. 2022070791

DECISION

Carmen D. Snuggs-Spraggins, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on October 14, 2022.

Claimant, who was not present at the hearing, was represented by his mother (Mother). Titles are used instead of names to protect confidentiality. Westside Regional Center (Service Agency) was represented by Ron Lopez, Director's Designee.

Testimony and documents were received in evidence. The record was held open to allow Claimant to submit an Augmentative and Alternative Communication (AAC) evaluation report and Department of Developmental Service (DDS) service codes for

speech and occupational therapy by October 26, 2022, and for Service Agency to submit a response to Claimant's documents and Claimant's most recent Individual Program Plan (IPP) by October 27, 2022.

Claimant timely submitted an AAC & Language and Speech Independent Educational Assessment dated October 4, 2022, Self-Determination Program Service Definitions, and Self-Determination Program Service Codes by Budget Category, which were marked for identification as Exhibits G, H, and I, respectively. Service Agency did not object to Claimant's documents, and submitted Claimant's September 15, 2022 IPP, which was marked as Exhibit 15. Exhibits 15, G, H, and I were admitted into evidence.

The record closed and the matter was submitted for decision on October 27, 2022.

ISSUE

Should the Service Agency approve Claimant's use of his Self-Determination Program budget to fund speech and occupational therapy services?

EVIDENCE RELIED UPON

Service Agency exhibits 1-15; Claimant's Exhibits A-I; testimony of Mother.

Jurisdictional Matters

1. Claimant is a six-year-old boy who lives in the family home with his parents and younger sister who is also a regional center client. Claimant receives

services from Service Agency under the Lanterman Developmental Disabilities Services Act (Welfare and Institutions Code section 4500 et. seq.), referred to as the Lanterman Act, based on his diagnoses of autism spectrum disorder, with cognitive and language impairment. (All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.)

2. On a date not made clear by the record but prior to February 23, 2022, Mother requested Service Agency fund private speech therapy for Claimant. Service Agency conducted a telephonic informal meeting with Mother regarding her request. During the informal meeting, Mother reported Claimant receives 30 minutes of one-on-one speech therapy at school to address his speech challenges. Claimant's family pays for private speech therapy five times per week, because they find the therapy provided by the school to be insufficient.

3. In a letter dated February 23, 2022, Candace Hein, Service Agency's Fair Hearing Specialist, informed Mother that the request for speech therapy funding was denied because under sections 4646.4 and 4659, regional center consumers must use generic resources and supports when appropriate, and school districts and private insurance are generic resources under the statutes. (Ex. 3.) Service Agency offered to assist Claimant with pursuing additional speech therapy from the school district and recommended Claimant request additional speech therapy from his insurance provider.

4. Service Agency denied Claimant's request for funding insurance co-payments for the private speech therapy because Claimant's family did not meet the income requirements set forth in section 4659.1. Claimant's appeal of Service Agency's decision regarding funding insurance co-payments was denied on May 10, 2022, in OAH Case No. 2022020432. (Ex. 13.)

5. On June 27, 2022, Service Agency prepared a Notice of Proposed Action and letter denying Claimant's use of his Self-Determination budget to fund speech and therapy because Service Agency is prohibited from purchasing services that are available from generic resources such as private insurance and/or educational services. Although occupational therapy services were not referenced in the Service Agency's February 23, 2022 letter, the NOPA and letter both indicate Claimant made a request to use his Self-Determination budget to fund occupational therapy services and the request was also denied on the grounds that the services are available from a generic resource. On June 30, 2022, Mother signed and thereafter filed a Request for Fair Hearing.

6. All jurisdictional requirements have been met.

Self-Determination Program

7. The Self-Determination Program (SDP) is an alternative service delivery model designed to provide participants with increased flexibility in purchasing the services and supports necessary to implement their IPP. Program participants are allotted a budgeted amount of money to purchase needed services and supports. The participant's budget amount is based upon the regional center's expenditures during the prior 12 months for supports and services listed in the participant's IPP. The budget may be increased as new needs are identified. The regional center certifies the expenditures used to calculate the participant's budget amount.

8. After the budget is determined, the participant must develop a spending plan to use the available funds to meet the goals and objectives outlined in the IPP. The spending plan cannot exceed the individual budget and must detail how funds will be used to purchase the services and supports identified in the IPP.

9. A Financial Management Services provider (FMS) supports participants in the SDP by helping them pay for the services that they need and contrary to the traditional model, the FMS is the only service provider that is required to be vendored under the SDP. In all other respects, the services and supports that are purchased with regional center funds must comply with the traditional model in that an IPP must be developed using a person-centered planning process. SDP funds can only be used for services approved by the federal Centers for Medicare and Medicaid Services (CMS), and the services must not be available through other funding sources such as schools or Medi-Cal.

10. DDS has provided answers to 'frequently asked questions.' (Ex. 7.) The response to the question of whether a Self-Determination participant can purchase services provided by a generic resource is: "Self-Determination participants must use available generic resources first and cannot purchase or pay for these services through their SDP individual budget." (*Ibid.*) DDS, in a memorandum to regional center executive directors dated January 13, 2022 (Guidance), reiterated the directive that SDP funds can only be used for supports and services that are not available through other funding sources. (Ex. 8.) The Guidance further states: "However, in some cases consumers may require additional goods and services outside what is funded by the individual budget to support their IPP. Enclosure B provides guidance on goods and services that can be funded by the individual budget in the spending plan, as well as what will be handled outside of the individual budget." (Ex. 3, p. A15.) Enclosure B to the Guidance states that community integration supports necessary to implement an IPP are allowed to be included in the budget pursuant to "Federal Waiver Service Code 331." (Ex. 10, p. A21.) Community integration supports "help the participant attain or maintain their maximum level of functioning, interdependence and independence and/or increase and improve self-help, socialization, [and] communication." These

services may include "socialization and community awareness, communication skills, visual, auditory and tactile awareness and perception experiences . . ." (*Ibid.*)

Claimant's IPP

11. As reported in Claimant's September 15, 2022 IPP, Claimant is enrolled in an elementary school within the Los Angeles Unified School District (LAUSD). His generic resources include private insurance through an Anthem Blue Cross preferred provider organization (PPO) health insurance plan, Medi-Cal and LAUSD services. Claimant was determined to be eligible for special education services during the 2019-2020 school year under the eligibility category of other health impairment (OHI) after initially denied services in February 2019.

12. Claimant has delays in cognitive, language and communication, self-care and socialization skills. His speech is not easily understood by others, and he repeats phrases and words from television shows that he has watched. Claimant engages in disruptive behavior daily that interrupts his social interactions, and he is physically aggressive at least once per month. He engages in self-injurious behavior, lacks safety awareness and must be supervised closely to prevent elopement.

13. Claimant's family reported Claimant received in-person speech therapy through the LAUSD for 30 minutes per week, as well as occupational therapy three times per week, for an unspecified duration. Claimant also participates in private speech therapy four times per week.

14. Under "Outcome # 3" (Employment and Community Participation), Claimant's IPP notes that Claimant and his family will purchase the following supports and services through the SDP: education therapy through provider Franklin Education Services; a communication integration coach; a behavior coach with provider To Live

and Play in LA; social skills training; swimming with provider Leaps n Bounds; camps; music class; a sensory swing; and an independent facilitator.

15. The IPP does not indicate that speech or occupational therapy will be funded for Claimant.

Claimant's Evidence

16. Mother reported Claimant was delayed in both speech and motor skills early in his life. Claimant received regional center services under the Early Start Program. The Early Start program was established by the California Early Intervention Services Act (Gov. Code § 95000 et seq.) for children from birth to three years of age who are born with, or at risk for, developmental delays. Speech services were recommended for Claimant when he was approximately one and a half years old. A speech and language progress report prepared on June 6, 2018, indicates Claimant received speech therapy twice per week beginning January 10, 2018.

17. When Claimant was three years old, Service Agency determined Claimant was not eligible for Lanterman Act services. However, when Claimant was four and a half years old, Service Agency reassessed Claimant and found him to be eligible. Claimant did not receive any speech therapy services from age 27 months to three-years-old because Claimant's family could not locate a provider. Mother asserts Service Agency failed to properly assess Claimant, which caused him to suffer significant delay developmental delays.

18. Claimant was evaluated on September 18, 2020, by the Beth Levy, Ph.D., on behalf of Service Agency using telehealth methods for purposes of assessing for continued eligibility for regional center services. In her written report, Dr. Levy noted, among other things, Claimant "did not use many purposeful words" and had difficulty

with transitions. (Ex. E, p. B30.) Dr. Levy reviewed Claimant's IPP, which indicated Claimant had fine motor delays related to manual dexterity, visual motor and visual processing, and that speech and occupational therapy were needed. Dr. Levy suggested Claimant participate in individual and group speech therapy and undergo an occupational therapy assessment focused on sensory processing due to Claimant's difficulty with self-regulation and transition.

19. Claimant's parents contend that the services offered by LAUSD in Claimant's November 17, 2021 Individualized Education Plan (IEP) are insufficient and do not provide Claimant with a Free Appropriate Public Education (FAPE). They requested LAUSD provide Claimant with funding for a one-on-one private tutor, continued reimbursement for private speech therapy, reimbursement for, and occupational services provided by a non-public agency (NPA), an AAC device evaluation by an NPA, and a one-on-one aide from an NPA, with all services to be provided for an extended school year (ESY). Official notice is taken that ESY services support students with disabilities to maintain social communication or other skills they learn as part of their IEP. Claimant's parents also requested that Claimant receive speech therapy for 120 minutes per week (4 sessions lasting 30 minutes each), occupational therapy for 60 minutes per week (2 sessions lasting 30 minutes each), and a recreational therapy assessment.

20. On March 14, 2022, LAUSD denied the request of Claimant's parents, and noted that at the November 17, 2021 IEP meeting, Claimant was offered placement in an alternative curriculum classroom; 60 minutes per week of language and speech therapy during the regular school year (RSY) and 160 minutes for the ESY; 30 minutes of occupational therapy for the RSY and 30 minutes for the ESY; 60 minutes of the occupational therapy clinic for the RSY and 60 minutes for the ESY; and 1,800 minutes

per week of behavior intervention implementation support services (BII) for the RSY and 1,300 minutes per week for the ESY. LAUSD indicated that it would respond to the parents' request for an AAC assessment separately, but noted a language and speech AAC assessment was conducted for Claimant's November 21, 201 IEP, and the results showed Claimant was most successful using picture exchange and pointing to static pictures. According to LAUSD, Claimant preferred a non-technical communication system and, therefore, LAUSD offered the language and speech services noted above. No evidence was submitted regarding LAUSD's response to Claimant's request for another AAC assessment.

21. Denise Cantori, M.A., CCC-SLP, of Pathways Speech & Language, evaluated Claimant and prepared a Speech & Language Evaluation Report dated May 31, 2022. (Ex. A). Based on her evaluation of Claimant, Ms. Cantori found that Claimant's speech and language skills are below the level expected of a child his age. She concluded Claimant presented with mixed receptive-expressive language and social pragmatic communication disorders. Ms. Cantori recommended Claimant attend a 50-minute speech and language therapy session one to two times per week "to target his expressive, receptive, and pragmatic language skills." (*Id.*, p. B3.) She concluded Claimant's prognosis is "good" if Claimant consistently participates in therapy and that is "carr[ied] over" at school and at home. (*Ibid.*)

22. Mother contends that although Service Agency denied the use of Claimant's SDP budget for speech and occupational therapy services, the DDS' website allows for the purchase of those supports and provides service codes for those services. She is aware of Service Agency clients who receive occupational and speech therapy supports under the SDP. Claimant provided documents from the DDS website

that define speech and occupational therapy services and lists the service codes 372 and 375 for speech and language services and occupational therapy, respectively.

23. Claimant currently receives through LAUSD 30 minutes of occupational therapy and 60 minutes of speech therapy. Mother asserts that the services provided by LAUSD are insufficient because Claimant has “very low” verbal communication skills and needs an AAC device. She further asserted that not every speech therapist uses AAC devices and the therapists available to Claimant through private insurance do not use them. The occupational therapy Claimant receives at school does not include sensory integration. Mother described Claimant’s current speech therapy services as “random” and focused only on vowels and sounds. She contends Claimant needs more services because he not only suffers from apraxia, but he also has low muscle tone and the AAC device is meant to help with that. The speech and occupational therapy services requested by Claimant are not fully covered by private insurance. His family pays for those services that are not covered.

24. Mother believes Claimant needs services provided by an AAC specialist. She acknowledged that a community integration coach might be able to use an AAC device and Claimant’s family would agree to those supports.

25. Cynthia Heryanto, M.S., CCC-SLP, with Community Horizons Speech Therapy, evaluated Claimant on July 25 and September 2, 13, and 26, 2022. Ms. Heryanto’s assessment included a review of Claimant’s records, parent, teacher and school speech-language pathologist interviews, school observations, AAC device analysis and training, and administration of the Dynamic AAC Goals Grid-2 (DAGG II). Ms. Heryanto’s ACC & Language and Speech Independent Educational Assessment dated October 4, 2022, was admitted as Exhibit G. The assessment revealed Claimant communicated with a “limited use of natural speech, gestures, facial expressions,

vocalizations, and behaviors.” (Ex. G, p. B52.) Accordingly, only those very familiar with Claimant can understand him. In Ms. Heryanto’s opinion, because of these factors, Claimant requires access to an AAC system to assist him with, among other things, developing meaningful language and social “closeness,” his ability to interact at school, home, and in the community, and increasing his communicative competence. She recommended a three-month trial of the LAMP Words for Life iPad application for use across all environments, and that the ACC device should be always accessible to Claimant during his school day. Ms. Heryanto further recommended Claimant receive “push-in language and speech services up to 10 hours per school year to provide direct training to classroom staff working with Claimant . . . ” (*Id.* at p. B54.)

LEGAL CONCLUSIONS

1. The Lanterman Act governs this case. (§ 4500 et seq.) An administrative “fair hearing” to determine the respective rights and obligations of the consumer and the regional center is available under the Lanterman Act. (§§ 4700-4716.)

2. Claimant requested a fair hearing to appeal Service Agency’s denial of his request to use his SDP budget to purchase speech and occupational therapy services. Because Claimant seeks benefits or services, he bears the burden of proving he is entitled to the benefits or services requested. (See, e.g., *Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 789, fn. 9; *Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161.) Claimant must prove his case by a preponderance of the evidence. (Evid. Code, § 115.)

3. The Lanterman Act acknowledges the state’s responsibility to provide services and supports for developmentally disabled individuals and their families. (§

4501.) DDS, the state agency charged with implementing the Lanterman Act, 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. (§ 4520.)

4. Regional centers are responsible for conducting a planning process that results in an IPP. Among other things, the IPP must set forth goals and objectives for the consumer, contain provisions for the acquisition of services based upon the consumer's developmental needs and the effectiveness of the services selected to assist the consumer in achieving the agreed-upon goals, contain a statement of time-limited objectives for improving the consumer's situation, and reflect the consumer's particular desires and preferences. (§§ 4646, subd. (a)(1), (2), and (4), 4646.5, subd. (a), 4512, subd. (b), 4648, subd. (a)(6)(E).)

5. Although regional centers are mandated to provide a wide range of services to facilitate implementation of an IPP, they must do so in a cost-effective manner. (§§ 4640.7, subd. (b), 4646, subd. (a).) A regional center is not required to provide all of the services that a consumer may require but is required to "find innovative and economical methods of achieving the objectives" of the IPP. (§ 4651.)

6. Regional centers are specifically directed not to fund duplicate services that are available through another publicly funded agency or some other "generic resource." Regional centers are required to "identify and pursue all possible sources of funding[.]" (§ 4659, subd. (a).) The IPP process "shall ensure . . . [u]tilization of generic services and supports when appropriate." (§ 4646.4, subd. (a)(2).) But if no generic agency will fund a service specified in a consumer's IPP, the regional center must itself fund the service in order to meet the goals set forth in the IPP; thus, regional centers are considered payers of last resort. (§ 4648, subd. (a)(1); see also, e.g., § 4659.)

Analysis

7. There is no dispute that Claimant requires speech and occupational therapy. However, Claimant's IPP does not include an agreement that Service Agency will fund those services, although it does mention that Claimant is able to, and does, utilize generic services and supports for those services. Claimant's argument that DDS authorizes the purchase of speech and occupational therapy supports and services through the SDP, and he should be allowed to use his SDP budget to secure these services, is rejected. DDS expressly states in its Guidance that SDP participants must use available generic resources first and cannot purchase or pay for the services through their SDP individual budget. Claimant's argument that LAUSD will not provide speech and language services via an AAC device is contradicted by LAUSD's May 14, 2022 letter that indicates that it conducted an AAC assessment in November 2021 and Claimant thereafter indicated a preference to use a non-tech AAC communications system. Claimant did not present evidence of LAUSD's response to his most recent request for an AAC evaluation. In addition, Claimant's contention that none of the providers available through his private insurance use AAC devices is unsupported and unpersuasive.

8. Claimant's needs for additional speech and occupational therapy, if established, other than services available from generic sources (i.e, AAC assisted services), must first be addressed through the IPP process. No IPP meeting to assess Claimant's needs in this regard has been convened, nor was Ms. Heryanto's report available to Service Agency in denying Claimant's funding request. The next regularly-scheduled IPP meeting for Claimant will take place about 10 months from now. Mother may request an earlier IPP meeting to address the issue raised here. In the meantime, it is recommended that Claimant's family avail themselves of Service

Agency's offer to assist with securing additional speech and occupational therapy through LAUSD.

9. Claimant failed to establish by a preponderance of the evidence that the Lanterman Act requires Service Agency to approve Claimant's use of his Self-Determination Program budget to fund speech and occupational therapy.

ORDER

Claimant's appeal is denied.

DATE:

CARMEN D. SNUGGS-SPRAGGINS
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.