

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

**In the Matter of:**

**CLAIMANT,**

**vs.**

**KERN REGIONAL CENTER,**

**Service Agency.**

**OAH No. 2022080358**

**PROPOSED DECISION**

Erlinda G. Shrenger, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on October 6, 2022.

Claimant was represented by his grandmother (Grandmother) and his father (Father), who are his co-conservators. Grandmother and Father are collectively referred to as claimant's representatives.

Jimmy Alamillo, Fair Hearing Officer, represented Kern Regional Center (KRC or Service Agency).

Oral and documentary evidence was received. The record closed and the matter was submitted for decision on October 6, 2022.

## **ISSUE**

Should Service Agency be required to provide funding for claimant to receive specialized physical therapy services from Centre for Neuro Skills?

## **EVIDENCE RELIED ON**

Documentary: Service Agency's exhibits A through O.

Testimonial: Leticia Quintero, KRC service coordinator, and Father.

## **FACTUAL FINDINGS**

### **Jurisdictional Matters**

1. Claimant is a 22-year-old conserved male who is eligible for regional center services based on his qualifying diagnoses of "Profound Intellectual Disability and Cerebral Palsy." (Exh. B, p. 2.)

2. On June 10, 2022, Service Agency sent claimant's representatives a Notice of Proposed Action (NOPA), informing them that their funding request for claimant to receive physical therapy with KRC vendor Centre for Neuro Skills (CNS) was denied. The stated reason for the denial was: "Generic resources must be utilized before KRC can provide funding. [Claimant] has insurance that can provide funding for physical therapy with an in-network provider." (Exh. A, p. 2.)

3. On July 18, 2022, claimant's representatives, on behalf of claimant, filed a fair hearing request to appeal Service Agency's denial of their funding request. The fair

hearing request states, in part: “[Claimant] requires TBI [traumatic brain injury] specialized therapy. His progress depends on him going to a facility that has this. CNS is the only physical therapy that includes TBI physical therapy and has the equipment in Bakersfield.” (Exh. A, p. 1.)

4. All jurisdictional requirements were met. This hearing ensued.

## **Claimant’s Background**

5. Claimant’s background and service needs are described in his most recent Individual Program Plan (IPP) dated September 19, 2021. (Exh. B.) Claimant lives at home with Grandmother and Father, who are his primary caregivers.

6. Claimant suffered a traumatic brain injury in 2017 in a motorcycle accident. According to his IPP, claimant “is unable to walk, [and] sits on a manual wheelchair without being able to move it. [Claimant] requires to be sat, taken out of his wheelchair and body adjusted on a needed basis while sitting.” (Exh. B, p. 3.) He requires total care with all self-care tasks, such as tooth brushing, showering, taking medications, feeding, and toileting. He requires supervision at all times to prevent injury or harm. Claimant’s equipment needs include his “[m]anual wheelchair, leg braces, helmet while on lift, special bed (hospital bed), Hoyer lift, [and] incontinent supplies.” (Exh. B, p. 9.)

7. Claimant has insurance coverage for all medical expenses through Medi-Cal managed by Kern Family Health Care (KFHC). (Exh. B, p. 9.)

8. Claimant is unable to use public transportation. Father accompanies claimant to all his medical appointments. The family does not have a vehicle to

transport claimant. (Exh. J, p. A97.) Claimant's transportation for his medical appointments is funded by KFHC.

## **Funding Request for Physical Therapy**

9. Claimant's service coordinator, Leticia Quintero, testified at the hearing. Ms. Quintero has been employed at KRC for over 14 years. Ms. Quintero testified regarding the Service Agency's denial of claimant's funding request for physical therapy services from CNS. Her testimony was straightforward and supported by the documentary evidence.

10. As a service coordinator, Ms. Quintero is required to document, in Client I.D. Notes, all contacts she has with the consumers on her case load and their families. A printout of Ms. Quintero's Client I.D. Notes for claimant was admitted as Exhibit J.

11. Ms. Quintero testified claimant's current IPP dated September 19, 2021, included a review of claimant's physical therapy services for the previous year. Claimant received physical therapy funded by California Children's Services (CCS), which provides services for eligible individuals up to age 21. The IPP stated: "[Claimant] received physical therapy (PT) services 2-3 times per week, with most current appointment completed last week. Current PT services have ended as California Children Services (CCS) was providing the funding and [Claimant] aged out . . . from that program." (Exh. B, p. 8.)

12. On September 30, 2021, during a telephone call with Ms. Quintero, claimant's representatives requested KRC funding for claimant to receive physical therapy from CNS. Claimant's representatives believed CNS was an appropriate agency to provide therapy services for claimant because they specialize in working with patients with traumatic brain injury. They indicated CNS provides speech, physical,

occupational, cognitive brain, educational and other therapy services. Father contacted CNS and was told CNS does not accept Medi-Cal and that KRC would need to “sponsor” claimant in order for him to receive services from CNS. Ms. Quintero explained that KRC was the last resource of funding for any services, and other sources of funding had to be exhausted first. Ms. Quintero advised claimant’s representatives they needed to seek physical therapy services from a Medi-Cal provider.

13. CNS is not a participating provider with KFHC. In a letter dated December 28, 2021, KFHC notified claimant and his neurologist, Dr. Veedu, that their request for approval of a cognitive rehabilitation consultation with CNS was denied because CNS “is not a participating provider with [KFHC].” (Exh. C.) Ms. Quintero testified that, based on this letter, claimant cannot use CNS as a generic resource for physical therapy because CNS is not a KFHC participating provider.

14. Ms. Quintero testified that she requested claimant’s medical records from Jacobo Physical Therapy (Jacobo). Ms. Quintero received records from Jacobo on February 4, 2022. Jacobo is a participating physical therapy provider with KFHC. Ms. Quintero requested two years of records from Jacobo, from September 1, 2020, to the present. Ms. Quintero requested records from Jacobo because Grandmother had informed her that claimant completed a physical therapy assessment with Jacobo. Ms. Quintero testified Father had also indicated Jacobo was authorized by KFHC to conduct an assessment.

15. Ms. Quintero documented her communication with Grandmother regarding Jacobo in a Client I.D. Note dated November 18, 2021, as follows:

[Grandmother] indicated that an assessment was completed at [Jacobo] Physical Therapy. After assessment they were

told that they couldn't provide physical therapy (PT) because they didn't have the equipment needed to provide services (e.g. lift). [Grandmother] indicated that [claimant] needs PT from a provider that specializes with individuals with Brain Traumatic Injuries (TBI). As most of the PT providers take individuals with mobility issues who are higher functioning than [claimant]. SC [Ms. Quintero] informed [Grandmother] that SC understands why she is requesting PT services with CNS. However, KRC's policies and procedures indicates that community resources need to be exhausted prior to SC submitting POS [Purchase of Service] for KRC to fund for a service.

(Exh. J, p. 5.)

16. Ms. Quintero received two records from Jacobo. One record was Jacobo's Progress Evaluation report signed by the therapist, Graciela Jacobo, RPT, on November 20, 2021. (Exh. E, p. 6.) This Progress Evaluation report contained an Assessment Summary which noted, among other things, that claimant was a 21-year-old male with diagnoses of traumatic brain injury and contracture of the left forearm due to a motorcycle accident in 2017; he has limitation throughout the left side of this body; he is unable to roll side to side independently; his communication was not clear; he arrived in a wheelchair; and he uses a Hoyer lift and standing frame at home. (Exh. E, p. 5.) The Progress Evaluation report included a plan of care of twice weekly therapy, for six weeks. (*Ibid.*)

17. The second record Ms. Quintero received from Jacobo was a Daily Progress Note dated November 11, 2021. (Exh. E, p. 7.). This Daily Progress Note

indicated claimant received 30 minutes of treatment. The Assessment Summary in this Daily Progress Note indicated claimant demonstrates minimal activity with his left forearm; claimant reported minimal improvement of his left arm at the current visit; and "caregiver reports patient [claimant] is able to perform substantial amounts of exercise at home." (Exh. E, p. 7.)

18. Ms. Quintero testified claimant's representatives have not provided any documentation indicating Jacobo is unable to provide physical therapy services for claimant due to a lack of equipment, such as a lift. Ms. Quintero reviewed the records provided by Jacobo and saw no indication that Jacobo was unable to provide services for claimant as Grandmother had indicated during their November 18, 2021 telephone call. Ms. Quintero noted Jacobo's records were provided after the date of the telephone call on November 18, 2021, when Grandmother stated Jacobo was unable to provide services for claimant.

19. Ms. Quintero also requested claimant's medical records from Clinica Sierra Vista (CSV). Ms. Quintero received records from CSV on March 28, 2022. The CSV records indicated claimant was referred for occupational therapy services on March 1, 2022. (Exh. F, p. 6.)

20. The CSV records included a KFHC Outpatient Notification Form dated March 25, 2022, which indicated the request of claimant's CSV physician to refer claimant to CNS for a physical therapy evaluation was denied. KFHC denied the request because CNS was a non-participating KFHC provider. The KFHC Outpatient Notification Form explained: "The request for a physical therapy evaluation is reasonable, however, the clinical documentation does not support referral to a NON-PAR [non-participating] provider, when services can be provided by an in-network specialist." (Exh. F, p. 7.) Ms. Quintero testified the KFHC Outpatient Notification Form

indicated that, as of March 2022, a generic resource (KFHC) was available to fund physical therapy services for claimant.

21. On June 9, 2022, Ms. Quintero sent a letter to claimant's representatives, notifying them their funding request for physical therapy services for claimant was denied based on Welfare and Institutions Code sections 4659, subdivision (a), and 4646.4, subdivision (a). (Exh. G.) Sections 4659 and 4646.4, respectively, require regional centers to pursue all possible sources of funding and to use generic services and supports if appropriate. (See Exhs. M, N.) The letter also advised claimant's representatives of their appeal rights. (Exh. G.)

22. Ms. Quintero's Client I.D. Notes document various telephone and email communications with claimant's representatives regarding their contact with Terrio Physical Therapy (Terrio). Terrio is a physical therapy provider within KFHC's participating provider network. Claimant's representatives reported they were told Terrio could not accept claimant as a patient because they did not have the equipment needed to provide his treatment.

A. On September 30, 2021, Father reported that he called Terrio and was told they were unable to provide physical therapy for claimant because "they don't have a lift to pick him up and they work with individuals who are mobile." (Exh. J, p. 1.)

B. On June 13, 2022, Grandmother emailed Ms. Quintero that Kern Medical Center referred claimant to Terrio for physical therapy. Grandmother spoke by telephone with Margaret at Kern Medical Center and told her that claimant had been to Terrio and was not accepted because he needed treatment as a TBI patient. (Exh. J, pp. 60-61.) In the email to Ms. Quintero, Grandmother expressed concern that



claimant had not had any physical therapy since he was denied by Terrio one year and a half ago. (*Ibid.*)

C. On August 9, 2022, during a telephone call with Ms. Quintero, Father "indicated that Terrio Kids PT didn't take [claimant] in for PT services. As when he took [claimant] to Terrio Kids, he didn't make in past the front desk. As receptionist called a PT staff from the back, who saw [claimant] and indicated that they couldn't provide PT services because they didn't have the equipment needed for him." (Exh. J, p. 69.)

D. On August 19, 2022, Ms. Quintero spoke by telephone with Grandmother. Grandmother indicated she called Terrio two times and received the same information. Grandmother indicated claimant's first referral to Terrio was through CCS. For the second referral, Grandmother was told that she had called and cancelled the appointment. Grandmother told Ms. Quintero that "she had called Terrio and cancelled because she was told that they didn't have a Hoyer lift and they didn't have services for Brain Traumatic Injury (BTI) individuals." (Exh. J, p. 71.) Grandmother had recounted this information to Ms. Quintero in an email sent two days earlier on August 17, 2022. (Exh. H.) In the email, Grandmother indicated Terrio informed her they "did not have a record of the first visit [claimant] went there and was denied therapy because they did not have a Hoyer Lift." (*Ibid.*) The email also indicated Grandmother cancelled the second appointment because Terrio did not "upgrade" by obtaining a Hoyer Lift, as they had indicated to Grandmother. (*Ibid.*)

23. On September 21, 2022, Ms. Quintero sent a request to Terrio for claimant's "[m]ost current records for two years." (Exh. I, pp. 2-4.) Ms. Quintero received a fax response from Terrio dated September 22, 2022, which stated, in pertinent part: "This request is being returned, we have no records for patient

[claimant]. He has not been treated at any of our facilities within the past two years.”  
(*Id.*, p. 1.)

24. Ms. Quintero researched KFHC’s website for physical therapy providers within the zip code for claimant’s residence. Ms. Quintero printed a list of providers specializing in physical medicine and rehabilitation. (Exh. K.) Ms. Quintero found 10 providers within 20 miles of claimant’s residence.

25. Throughout her various communications with claimant’s representatives, Ms. Quintero reminded them that KRC must comply with the Lanterman Act and KRC is the last resource of funding for any services, and that all community resources need to be exhausted.

26. KRC’s Purchase of Service (POS) Guidelines for 2022 were presented. (Exh. L.) Ms. Quintero testified Service Agency relies on the POS Guidelines to determine whether it can fund for a service requested by a consumer or their family. Ms. Quintero testified Service Agency’s denial of funding for claimant’s physical therapy services is supported by the POS Guidelines.

27. The POS Guidelines for “Therapy Services” states, in part: “Therapy services include occupational, sensory-motor, physical, speech, music, nutritional, psychotherapeutic services and other therapies that are provided by a licensed therapist and are required to prevent deterioration of a specific dysfunction or to improve the functional level of a client. [¶] In most cases, the need for therapy is met by public school programs, California Children’s Services, Medi-Cal, private insurance or other resources.” (Exh. L, p. 78.)

28. Under the POS Guidelines, KRC may purchase therapy services for a client only if certain criteria are met. One of the criteria is: “The client has been denied or is

not eligible for Medi-Cal, California Children's Services, private insurance or another third-party payer coverage." (Exh. L, p. 78.)

## **Father's Testimony**

29. Father testified at the hearing that Jacobo and Terrio both declined to provide services for claimant because they did not have the proper equipment. Claimant is in a wheelchair and needs to be lifted from the wheelchair to be placed on a mat or table for treatment. Jacobo and Terrio declined to do that.

30. Father believes claimant requires specialized therapy. He testified Jacobo and Terrio deal with mobile patients whose bodies have been damaged. He testified claimant's body is fine but he suffers from brain injury, and specialized therapy is needed to re-program his brain. Father believes CNS is an appropriate therapy provider for claimant because they specialize in treating brain injury and stroke patients. He reported that several doctors, including neurologists, recommended physical therapy with CNS for claimant. (See Exh. J, p. 69.)

31. Father testified claimant was not born handicapped; his current condition resulted from an accident. Father feels improving claimant's quality of life is his main job as claimant's father. Father believes claimant's life would improve with services provided by CNS. Father testified claimant shows a lot of promise, and he has made gains in his body movement and speech, a little every day. Father testified he provides claimant with "Dad physical therapy," which he described as working on claimant's arms and legs when he is in bed. Father noted he is not a professional physical therapist.

32. Father admitted he has no documentation that claimant requires "specialized" physical therapy as he requests. Father explained that regular physical

therapy works with the body, while “specialized” physical therapy is treatment for patients with brain injury, like claimant. Regular physical therapy does not have the equipment necessary for working with claimant. Claimant is not mobile and cannot move himself from his wheelchair to, for example, a table or mat. Father testified claimant is not currently receiving any physical therapy services.

## **LEGAL CONCLUSIONS**

### **Jurisdiction and Burden of Proof**

1. The Lanterman Developmental Disabilities Services Act (Lanterman Act) governs this case. (Welf. & Inst. Code, §§ 4500 et seq.) (All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.) A state level fair hearing to determine the rights and obligations of the parties, if any, is referred to as an appeal of the service agency's decision. Claimant’s representatives, on behalf of claimant, timely requested a fair hearing and jurisdiction for this case was established. (Factual Findings 1-4.)

2. When one seeks government benefits or services, the burden of proof is on him. (*Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161.) 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.) Preponderance of the evidence means evidence that has more convincing force than that opposed to it. (*Glage v. Hawes Firearms Co.* (1990) 226 Cal.App.3d 314, 324.)

3. In this case, claimant seeks funding from KRC for physical therapy services provided by CNS, his family’s preferred provider. Therefore, claimant has the

burden of proving by a preponderance of the evidence he is entitled to the requested funding. (See Evid. Code, § 500.)

## **Legal Principles**

4. A regional center is required to secure the services and supports that meet the needs of the consumer, as determined in the consumer's IPP. (§ 4646, subd. (a)(1).) The determination of which services and supports are necessary for each consumer shall be made through the IPP process. (§ 4512, subd. (b).) The determination shall be made on the basis of the needs and preferences of the consumer or, when appropriate, the consumer's family, and shall include consideration of a range of service options proposed by IPP participants, the effectiveness of each option in meeting the goals stated in the IPP, and the cost-effectiveness of each option. (*Ibid.*)

5. When purchasing services and supports for a consumer, a regional center shall ensure the following: (1) conformance with the regional center's purchase of service policies, as approved by the Department of Developmental Services pursuant to section 4434, subdivision (d); (2) use of generic services and supports when appropriate; (3) use of other services and sources of funding as contained in section 4659; and (4) consideration of a family's responsibility for providing similar services and supports for a minor child without disabilities. (§ 4646.4, subd. (a).)

6. 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." (§ 4648, subd. (a)(8).)

7. Regional centers are required to identify and pursue all possible sources of funding for consumers receiving regional center services. Such sources of funding

include governmental entities or programs required to provide or pay for the cost of providing services, such as Medi-Cal, and private entities, to the extent they are liable for the cost of services, aid, insurance, or medical assistance to the consumer. (§ 4659, subd. (a)(1), (2).)

8. Pursuant to section 4659, subdivision (c), "regional centers shall not purchase any service that would otherwise be available from Medi-Cal, . . . private insurance, or a health care service plan when a consumer or a family meets the criteria of this coverage but chooses not to pursue that coverage."

9. Pursuant to section 4659, subdivision (d)(1), "a regional center shall not purchase medical . . . services for a consumer three years of age or older unless the regional center is provided with documentation of a Medi-Cal, private insurance, or a health care service plan denial and the regional center determines that an appeal by the consumer or family of the denial does not have merit."

10. Section 4659, subdivision (d)(1) further provides that regional centers may pay for medical services only during the following periods: "(A) While coverage is being pursued, but before a denial is made. [¶] (B) Pending a final administrative decision on the administrative appeal if the family has provided to the regional center a verification that an administrative appeal is being pursued. [¶] (C) Until the commencement of services by Medi-Cal, private insurance, or a health care service plan."

## **Analysis**

11. Service Agency properly denied the funding request for claimant to receive physical therapy services from CNS. Claimant has medical insurance through Medi-Cal managed by KFHC that is available to cover physical therapy services. KFHC

has not denied coverage for all physical therapy services; it has only denied coverage for services by CNS, a non-participating provider, based on the absence of clinical documentation supporting a referral to a non-participating provider. (Factual Finding 20.) Under the POS Guidelines, Service Agency may not purchase physical therapy services for claimant because there has been no denial of the service by Medi-Cal/KFHC. KFHC has recognized the requested therapy services can be provided by an in-network provider.

12. Claimant's representatives assert that claimant has not been accepted by physical therapy providers due to a lack of equipment, such as a lift. Claimant's representatives presented no documentation to corroborate their assertion. Medical records provided to Ms. Quintero contain no indication that services could not be provided due to a lack of equipment. Claimant's representatives also assert that claimant requires physical therapy from a provider, like CNS, that specializes in working with brain injury patients. No medical documentation was presented to support this assertion. The medical records presented showed that claimant has previously received "regular" physical therapy, for example, from Jacobo. Prior to age 21, claimant also received physical therapy funded by CCS.

13. Based on the foregoing, the preponderance of the evidence established that Service Agency properly denied claimant's funding request for physical therapy service provided by CNS.

## **ORDER**

Claimant's appeal is denied. Kern Regional Center is not required to provide funding for claimant to receive specialized physical therapy services from Centre for Neuro Skills.

DATE:

ERLINDA G. SHRENGER

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.