

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

**In the Matter of:**

**CLAIMANT**

**vs.**

**CENTRAL VALLEY REGIONAL CENTER, Service Agency**

**OAH No. 2022090547**

**DECISION**

Administrative Law Judge Marcie Larson, Office of Administrative Hearings, State of California, heard this matter by video conference on October 13, 2022, from Sacramento, California.

Central Valley Regional Center (CVRC) was represented by Shelley Celaya, Assistant Director of Case Management Services.

Claimant's mother appeared at the hearing and represented claimant.

Evidence was received, the record was closed, and the matter was submitted for decision on October 13, 2022.

## **ISSUE**

Is CVRC required under the Lanterman Developmental Disabilities Services Act (Lanterman Act) to fund Magnetic e-Resonance Therapy (MeRT) treatment provided to claimant by Thomas A. Geraci, D.O.?

## **FACTUAL FINDINGS**

### **Background**

1. Claimant is a nine-year-old client of CVRC who resides with his mother in Merced, California. He qualifies for services from CVRC based on his diagnosis of autism spectrum disorder (ASD). Claimant is nonverbal and communicates using an iPad, by making vocalizations, gestures, pointing and leading by the hand.

2. On September 1, 2021, a planning team consisting of claimant, claimant's mother, and James Vang, CVRC Service Coordinator, conducted an annual Individual Program Plan (IPP) meeting for claimant. The IPP sets forth claimant's annual goals and objectives. Claimant's mother reported claimant's behavior interferes with his "social and emotional wellbeing." These behaviors include daily "tantrums" that consist of screaming, crying, throwing himself on the floor, running away, and escaping. Claimant had also become "more destructive and when upset will throw things, intentionally break things (pull down window blinds) and slam doors." Claimant was aggressive towards his mother and teachers. He also engaged in self-injurious behavior.

Claimant was receiving 16 hours per week of in-home applied behavioral analysis (ABA) services funded by Medi-Cal. These services were provided five days per

week. Claimant also has an Individualized Education Program (IEP) through his school district. He "receives specialized academic instructions, occupational therapy consultation, assistive technology, speech/language services and a behavioral intervention plan."

Claimant's IPP goals included decreasing the "incidents of tantrums, aggression, destruction and self-injurious behaviors." Claimant also planned to "attend school and receive all the necessary services to help him be successful." Claimant's mother did not state she intended to seek additional treatments for claimant to address his ASD or behaviors.

3. On July 13, 2022, claimant's mother emailed Mr. Vang and explained claimant was struggling. She had found treatment for claimant, and she was seeking reimbursement for the costs. She requested information on how to submit a claim. Thereafter, claimant's mother submitted an invoice from Dr. Geraci at "Summit Brain Health." Between June 6 and July 14, 2022, Dr. Geraci administered to claimant MeRT with Quantitative Electroencephalogram (qEEG). The total cost of the treatment was \$11,000. Claimant also requested reimbursement for travel related expenses totaling \$6,250.

4. On August 23, 2022, CVRC denied claimant's request for reimbursement. On September 22, 2022, claimant's mother had an informal meeting with Matthew Bahr, Director of Legal Services for CVRC. During that meeting Mr. Bahr explained that to fund the cost of MeRT with qEEGs, claimant must "exhaust generic resources and the therapy must be evidence based." Mr. Bahr explained the MeRT treatment claimant was given was not approved for the treatment of ASD by the Food and Drug Administration (FDA) and could not be funded by CVRC.

5. On September 23, 2022, CVRC sent claimant a "Notice of Proposed Action" (NOPA) denying his request for reimbursement of costs associated with MeRT treatment. CVRC denied the request because "[t]here is no evidence that supports that MeRT (Magnetic Resonance) Therapy alleviates Autism" and "MeRT is not FDA approved for treating Autism. Regional Centers are prohibited from funding experimental treatments or therapies."

6. Claimant's mother filed a Fair Hearing Request to appeal from CVRC's denial of funding for treatment provided to claimant by Dr. Geraci.

### **Claimant's Evidence**

7. Claimant's mother testified at hearing. Claimant was diagnosed with ASD when he was three years old. He also suffers from anxiety. Claimant's mother explained that claimant's behavior was dangerous and he could not be left alone because he would hurt himself. He would also run away, so someone had to hold his hand when he was outside to prevent him from running away or into the street. He could not focus and was often agitated. Despite the behavioral services claimant received over the years, there was no improvement in his behavior.

8. In April 2022, claimant's behavior became worse. He refused to go to school. When he did go to school, he ran out of the classroom. Claimant would hurt himself and his teacher. Claimant's mother became depressed and overwhelmed. Around the same time, claimant's mother learned of the MeRT treatment provided by Dr. Geraci. Claimant's mother knew of children with ASD who benefited from the treatment, so she contacted Dr. Geraci about treatment for claimant. Between June and July 2022, claimant had 30 MeRT treatments with Dr. Geraci. Claimant's mother explained that at first, claimant was resistant and would not sit for the treatment.

However, he slowly began to improve. He became calmer, more focused, less agitated, and happier.

Claimant also became social. Claimant's mother was able to take him to the mall and to pick up take-out food for the first time. Claimant now responds to his mother with she calls his name and asks him to perform tasks. He also sleeps through the night, which he was unable to do before the MeRT treatment. Because of claimant's dramatic improvement, claimant's mother cancelled his in-home ABA services.

9. Claimant's mother submitted a letter from Sarah Langley, claimant's Behavior Consultant from March 2018 until September 2022. Ms. Langley explained that after claimant completed the MeRT sessions, she saw a "dramatic reduction in all of [claimant's] behaviors." She explained claimant "no longer showed aggression towards others, was calmer and showed almost no self-injurious behavior on himself. He no longer eloped during sessions and stayed in the designated work area when asked to do so." Claimant also attempted "to use more language and request for items throughout session." Ms. Langley believes the MeRT treatment improved claimant's quality of daily life.

10. Claimant's mother believes the MeRT treatment has saved her son's life. She intends to take him back to Dr. Geraci for additional treatment but needs assistance to pay for the costs she has incurred. She had to charge the cost of the treatment on her credit card, which has been a financial strain. Claimant's mother explained that in July 2021, the law was changed to allow regional centers to pay for nonmedical therapies. She believes with this change to the law, CVRC should fund the MeRT treatment for claimant.

## **LETTERS FROM DR. GERACI**

11. Dr. Geraci provided two letters in support of claimant's request for funding. In an undated letter, Dr. Geraci explained the following regarding MeRT treatment:

MeRT is the next generation transcranial magnetic stimulation (TMS) and has been pioneered by Wave Neuroscience of Newport Beach, CA. It has been under development for 11 years and has been found to be the only effective treatment for ASD. There has yet to be any other true "treatment" for ASD, there has been ABA therapy for years. Multiple diet and vitamin regimens are prescribed for ASD, but again, only MeRT has been found to drop the recipients Childhood Autism Rating Scale (CARS) by an average of 27%. This very significant improvement on the CARS score makes a big difference in both child's and parent's quality of life. Over 8,000 patients with ASD have been safely treated with MeRT over the past 10 years.

Research is ongoing but due to lack of large FDA compliant studies, this treatment is still novel and not widespread. Due to its excellent safety record, the great majority of people with ASD are candidates for treatment.

Dr. Geraci also explained that after 30 sessions of MeRT, claimant's "degree of [ASD] has improved greatly per his mother and his primary instructor."

12. In a September 12, 2022 letter, Dr. Geraci provided additional information regarding MeRT treatment:

Over 10,000 patients have received MeRT for ASD and other disorders. It is made a demonstrable improvement in [claimant's] uncontrollable body movements, self-harm, sleep and attention span. It has yet to be FDA-approved but not considered experimental. It is not administered under the strict guidelines provided by the FDA covering experimental treatments and therapeutic modalities.

Dr. Geraci also explained claimant's ASD is "not amenable to any drug therapy" and "ABA is of very little help as he has not demonstrated an attention span long enough to learn from his therapists."

### **TESTIMONY DAVID EASTRIDGE**

13. David Eastridge, a neighbor, and friend of claimant's mother testified at hearing. Mr. Eastridge occasionally watched claimant when he was younger. Mr. Eastridge described the remarkable changes he saw in claimant after he completed the MeRT treatment. He believes additional MeRT treatment will allow claimant to live a better life and urges CVRC to pay for the treatment.

### **CVRC Evidence**

### **OPINIONS OF ROCIO DIETZ**

14. Rocio Dietz, a Behavior Analyst for CVRC, testified at hearing. Ms. Dietz is board-certified Behavioral Analyst. She has over 10 years of experience working with clients with ASD. Ms. Dietz oversees the CVRC ABA program which serves clients with

ASD. She was asked to review whether MeRT was as an evidence-based treatment for ASD. Ms. Dietz prepared case notes regarding her research.

15. Ms. Dietz explained the CVRC utilizes the National Standards Project (NSP) to determine if proposed treatment for a client is an evidence-based treatment. The NSP is an analysis of the interventions available for children and adolescents with ASD. It is the most comprehensive evaluation of educational and behavioral literature for ASD population.

The NSP categorizes interventions into three categories: (1) established, which has "sufficient evidence is available to confidently determine that an intervention produces favorable outcomes for individuals on the autism spectrum;" (2) emerging, which provides that "[although one or more studies suggest that an intervention produces favorable outcomes for individuals with ASD, additional high quality studies must consistently show this outcome before we can draw firm conclusions about intervention effectiveness;" and (3) unestablished treatments, which means that "[t]here is little or no evidence to allow us to draw firm conclusions about intervention effectiveness with individuals with ASD. Additional research may show the intervention to be effective, ineffective, or harmful."

16. Ms. Dietz opined that MeRT is considered an unestablished treatment by the NSP because there is little or no evidence regarding the effectiveness with individuals with ASD. Furthermore, the Autism Science Foundation (Foundation) issued a publication that warned parents of children with ASD about non-evidence-based treatments, including Transcranial Magnetic Stimulation (TMS), which is similar to MeRT. The warning stated:



TMS is a procedure in which magnetic fields are used to stimulate nerve cells in the brain to enhance or reduce certain functions. TMS is currently used to treat mental illnesses, including depression and schizophrenia. The most commonly reported short-term side effects include headaches and scalp discomfort. Therapeutic TMS is relatively new so long-term side effects, if any, are unknown. Investigations into the efficacy of TMS in ASD treatment are currently underway, but presently there is no evidence to support its use.

Ms. Dietz opined, consistent with the Foundation's warning, that currently there is no evidence to support the effectiveness of using MeRT in the treatment of ASD. Additionally, Dr. Geraci did not produce any data to support the use of MeRT on claimant, including pre- and post-MeRT testing.

17. Based on her review of available information, Ms. Dietz opined:

MeRT and TMS is not an evidence-based treatment for ASD. More research needs to be conducted to fully assess the benefits of TMS or MeRT as a treatment for ASD. As research on TMS as a potential treatment for ASD continues to be explored, it is important to keep in mind the risks of "applying such potentially powerful modulatory effects on the brain of a developing child ..." (Oberman, LM., Rotenberg, A., & Pascual-Leone, A. 2015). It is the recommendation of this reviewer for family to look to and access evidence-based treatment per the National

Standards Project (NSP) which provides all of the treatments for ASD that have been approved as evidence-based.

18. As a result of her findings, Ms. Dietz opined CVRC could not fund the MeRT treatment claimant received from Dr. Geraci.

### **TESTIMONY OF BARBARA HURTADO**

19. Barbara Hurtado, Assistant Director of Case Management Services for CVRC in Merced, testified at hearing. Ms. Hurtado has worked for CVRC for 23 years. Ms. Hurtado was involved in the decision to denying claimant's request for funding for MeRT treatment.

20. Ms. Hurtado explained CVRC is prohibited from funding experimental treatments for clients. Additionally, even if CVRC was authorized to pay for the treatment, requests for funding must be made prior to receiving treatment and must be provided by a vendored provider. Claimant did not make the funding request until after treatment was completed and Dr. Geraci is not a vendored provider.

### **Analysis**

21. When all the evidence is considered, claimant's mother did not demonstrate that the MeRT treatment provided to claimant by Dr. Geraci has been clinically determined or scientifically proven to be effective for the treatment or remediation of claimant's ASD. The letters from Dr. Geraci and documents claimant's mother submitted do not substantiate the treatment by Dr. Geraci constituted evidence-based treatment. Additionally, contrary to claimant's mother's claim, Dr. Geraci, a physician, provided claimant medical treatment. The MeRT does not fall

within the provision of the Lanterman Act that allows regional centers to fund nonmedical therapies, including specialized recreation, art, dance, and music.

22. In contrast, the evidence submitted by CVRC was persuasive that the treatment provided by Dr. Geraci has not been recognized by the NSP as an evidence-based practice for treating an individual with ASD, such that CVRC could fund it under the Lanterman Act. Additionally, CVRC may only fund services provided to a consumer from a vendored or contracted service provider. Dr. Geraci is not vendored nor does he have a contract with CVRC to provide services to regional center clients.

23. Claimant's mother cares deeply for her son. She has a strong desire to obtain the best treatment and services for her son, and she has witnessed improvement in claimant since receiving treatment from Dr. Geraci. Now she is seeking funding for those services provided by Dr. Geraci because the cost has been a financial strain. It is evident that claimant has the support and encouragement of many people, including Mr. Eastridge.

Although claimant's progress since receiving MeRT treatment has given claimant's mother hope for the future, CVRC is prohibited by the Lanterman Act from funding medical treatments that have not been clinically determined or scientifically proven to be effective for the treatment or remediation of developmental disabilities. The legislature enacted this prohibition not only to safeguard taxpayers from the wasteful spending of public funds, but also to protect consumers and their parents from the false hope of therapies that have not been established to meet the claims made by some of their practitioners.

24. There was inadequate support presented at hearing for the effectiveness and safety of the treatment provided to claimant by Dr. Geraci. Consequently, CVRC's denial of funding must be upheld.

## **LEGAL CONCLUSIONS**

1. The Lanterman Developmental Disabilities Services Act (Lanterman Act) governs this case. (Welf. & Inst. Code, § 4500 et seq.) Under the Lanterman Act, regional centers fund services and supports for persons with developmental disabilities. Welfare and Institutions Code section 4512, subdivision (b), defines "services and supports for persons with developmental disabilities," in relevant part, as follows:

[...] specialized services and supports or special adaptations of generic services and supports directed toward the alleviation of a developmental disability or toward the social, personal, physical, or economic habilitation or rehabilitation of an individual with a developmental disability, or toward the achievement and maintenance of an independent, productive, and normal life. The determination of which services and supports are necessary for each consumer shall be made through the individual program plan process. 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 individual program plan participants, the effectiveness of

each option in meeting the goals stated in the individual program plan, and the cost-effectiveness of each option.

2. An administrative “fair hearing” to determine the rights and obligations of the parties, if any, is available under the Lanterman Act. (Welf. & Inst. Code, §§ 4700–4716.) Claimant’s mother requested a fair hearing to appeal CVRC’s denial of her request to fund MeRT treatment for claimant and related travel expenses. The burden is on claimant to establish that the CVRC is obligated to fund the treatment, which is a new benefit. (See *Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161.)

3. Welfare and Institutions Code section 4646, subdivision (a) provides:

It is the intent of the Legislature to ensure that the individual program plan and provision of services and supports by the regional center system is centered on the individual and the family of the individual with developmental disabilities and takes into account the needs and preferences of the individual and the family, if appropriate, as well as promoting community integration, independent, productive, and normal lives, and stable and healthy environments. It is the further intent of the Legislature to ensure that the provision of services to consumers and their families be effective in meeting the goals stated in the individual program plan, reflect the preferences and choices of the consumer, and reflect the cost-effective use of public resources.

4. Welfare and Institutions Code section 4648, imposes limits on the services and supports that regional centers may fund, and, in relevant part, provides:

In order to achieve the stated objectives of a consumer's individual program plan, the regional center shall conduct activities, including, but not limited to, all of the following:

a) Securing needed services and supports.

(1) It is the intent of the Legislature that services and supports assist individuals with developmental disabilities to achieve the greatest self-sufficiency possible and to exercise personal choices. The regional center shall secure services and supports that meet the needs of the consumer, as determined in the consumer's individual program plan, and within the context of the individual program plan, the planning team shall give highest preference to those services and supports that would allow minors with developmental disabilities to live with their families, adult persons with developmental disabilities to live as independently as possible in the community, and that allow all consumers to interact with persons without disabilities in positive, meaningful ways.

(2) In implementing individual program plans, regional centers, through the planning team, shall first consider services and supports in natural community, home, work, and recreational settings. Services and supports shall be

flexible and individually tailored to the consumer and, if appropriate, the consumer's family.

(3) A regional center may, pursuant to vendorization or a contract, purchase services or supports for a consumer from any individual or agency that the regional center and consumer or, when appropriate, his or her parents, legal guardian, or conservator, or authorized representatives, determines will best accomplish all or any part of that consumer's program plan.

[¶] ... [¶]

(8) Regional center funds shall not be used to supplant the budget of an agency that has a legal responsibility to serve all members of the general public and is receiving public funds for providing those services.

[¶] ... [¶]

(17) Notwithstanding any other law or regulation, effective July 1, 2009, regional centers shall not purchase experimental treatments, therapeutic services, or devices that have not been clinically determined or scientifically proven to be effective or safe or for which risks and complications are unknown. Experimental treatments or therapeutic services include experimental medical or nutritional therapy when the use of the product for that purpose is not a general physician practice. For regional

center consumers receiving these services as part of their individual program plan (IPP) or individualized family service plan (IFSP) on July 1, 2009, this prohibition shall apply on August 1, 2009.

5. Claimant's mother did not establish that the treatment provided to claimant by Dr. Geraci has been clinically determined or scientifically proven to be effective for the treatment or remediation of claimant's ASD. Consequently, under Welfare and Institutions Code section 4648, subdivision (a)(17), CVRC may not fund the requested treatment.

6. CVRC may only fund services by vendored or contracted service providers. (See Welf. & Inst. Code, § 4648, subd. (a)(3)(A).) Dr. Geraci is not vendored and does not have a contract with CVRC to provide services to regional center clients.

7. CVRC "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." (Welf. & Inst. Code, § 4648, subd. (a)(8).) Claimant receives services for his ASD funded through Medi-Cal and his school district. If claimant's mother does not believe the services are meeting claimant's needs, she has the option to contact these entities to seek additional assistance for claimant.

8. When all the evidence is considered, claimant's mother did not establish that CVRC should be ordered to fund the treatment provided to claimant by Dr. Geraci. The request for funding from CVRC must therefore be denied.



## **ORDER**

Claimant's appeal is DENIED. Central Valley Regional Center's denial of funding for treatment provided to claimant by Dr. Geraci under the Lanterman Act is SUSTAINED.

DATE: October 21, 2022

MARCIE LARSON

Administrative Law Judge

Office of Administrative Hearings

## **NOTICE**

**This is the final administrative decision in this matter. Each party is bound by this decision. An appeal from the decision must be made to a court of competent jurisdiction within 90 days of receipt of the decision. (Welf. & Inst. Code, § 4712.5, subd. (a).)**