

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

In the Matter of:

CLAIMANT,

vs.

FRANK D. LANTERMAN REGIONAL CENTER,

Service Agency.

OAH No. 2023010383

DECISION

Glynda B. Gomez, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter on May 2, 2023, by videoconference.

Edward Perez, Hearing Representative, represented the Frank D. Lanterman Regional Center (Service Agency or FDLRC). Claimant was represented by her mother (Mother). (Titles are used to protect confidentiality.)

The matter was submitted for decision on May 2, 2023.

ISSUE

Must FDLRC permit Claimant to use Self-Determination Program budget funds to pay for her health insurance premiums and orthodontic care expenses?

SUMMARY

Claimant seeks to use funds from her Self-Determination Program (SDP) budget to pay her health insurance premiums and orthodontic care. The Service Agency has denied the request and contends that it is the payor of last resort and generic resources are available for Claimant's expenses. For the reasons set forth below, Claimant's appeal is denied.

FACTUAL FINDINGS

1. Claimant is a 9-year-old girl eligible for Regional Center services under the category of Autism Spectrum Disorder (ASD). On October 10, 2022, Claimant requested to use SDP funds for her health insurance premiums and to pay for orthodontic care. On October 28, 2022, the FDLRC sent a Notice of Action to Claimant denying the request (NOA). Claimant filed a timely Notice of Appeal requesting a hearing. All jurisdictional requirements have been met.

2. Claimant is an only child and lives with her mother who provides for her needs. Claimant is insured under an Anthem Blue Cross health insurance policy that has been in place since she was approximately two years old. Mother pays \$380 per month for the policy which pays for all of Claimant's many medical needs including Applied Behavioral Analysis (ABA) without payment of a deductible. Claimant is also

eligible for Medi-Cal insurance because of her developmental disability through "institutional deeming." Claimant's insurance also pays for her dental care and 50 percent of her orthodontic care. Mother pays \$100 per month to Claimant's orthodontist for the deductible on her orthodontic care or pursuant to a private arrangement.

3. Claimant's IPP desired Outcomes include continuing to live at home with her family, participating in typical activities of daily life, regulation of behavior issues and behavior management, obtaining educational services, engaging in community activities/outings and remaining in good physical and dental health.

4. The IPP notes that Claimant's parent will schedule regular medical and dental appointments as necessary and help Claimant maintain good dental hygiene. It also provides that "[p]rivate insurance and institutional Medi-Cal will provide Claimant with access to health care, including consultations with specialists and appropriate medications, as needed." The IPP also provides that the FDLRC service coordinator will monitor health status annually and assist the family with information and/or referrals to appropriate healthcare resources.

5. The SDP Budget is crafted by the Individual Program Plan (IPP) team. The starting point for the SDP budget is the cost of the services and supports for the consumer over the prior 12-month period. The budget may be amended to accommodate additional needs or changed circumstances. In Claimant's case, the SDP budget is \$38,664.48 and includes funding for respite, personal assistant, community integration (music classes, art classes, science classes, chess classes, technology classes and other integrated opportunities, supplies and necessities) and financial management services.

6. Claimant requested that FDLRC allow her to use some of the funds from her SDP budget to pay for her health insurance plan premiums and orthodontia. FDLRC denied the request on the basis that generic resources (Medi-Cal and private insurance) were available to Claimant and that the expenses were the sorts that parents of minor children are expected to provide for their children.

7. According to Claimant's mother, She is not eligible for consideration of any financial hardship and no financial information was provided for any such consideration.

8. Claimant's upper jaw is extremely small and she has been using an orthodontic device (Pendex) which is checked regularly. The device is used to manage orthopedic problems such as insufficient spacing in her mouth, crossed teeth and upper teeth flare which may impact speech clarity. In addition to any available insurance benefits from private insurance, Claimant pays the orthodontist \$100 per month to service the Pendex and related orthodontic needs.

LEGAL CONCLUSIONS

1. The Lanterman Developmental Disabilities Services Act (Lanterman Act) governs this case. (Welf. & Inst. Code, § 4500 et seq.)

2. An administrative hearing to determine the rights and obligations of the parties, if any, is available under the Lanterman Act to appeal a contrary regional center decision. (Welf. & Inst. Code, §§ 4700-4716.) Claimant requested a hearing and therefore jurisdiction for this appeal was established.

3. The standard of proof in this case is the preponderance of the evidence because no law or statute (including the Lanterman Act) requires otherwise. (Evid. Code, § 115.) A consumer seeking to obtain funding for a new service has the burden to demonstrate that the funding should be provided, because the party asserting a claim or making changes has the burden of proof in administrative proceedings. (See, e.g., *Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 789, fn. 9.) In this case, Service Agency bears the burden of proof regarding its denial of the request because the service had been previously funded.

4. Under the Lanterman Act, the State of California accepts responsibility for persons with developmental disabilities. The purpose of the statutory scheme is twofold: to prevent or minimize the institutionalization of developmentally disabled persons and their dislocation from family and community, and to enable them to approximate the pattern of everyday living of nondisabled persons of the same age and to lead more independent and productive lives in the community. (*Assn. for Retarded Citizens v. Dept. of Developmental Services* (1985) 38 Cal.3d 384, 388.) The Lanterman Act mandates that an “array of services and supports” should be established to meet the needs and choices of each person with developmental disabilities. and to support their integration into the mainstream life of the community. (Welf. & Inst. Code, § 4501.)

5. The Department of Developmental Services (DDS) is the public agency in California responsible for carrying out the laws related to the care, custody and treatment of individuals with developmental disabilities under the Lanterman Act. (Welf. & Inst. Code, § 4416.) In order to comply with its statutory mandate, DDS contracts with private non-profit community agencies, known as regional centers, to

provide the developmentally disabled with "access to the services and supports best suited to them." (Welf. & Inst. Code, § 4620.)

6. A consumer's needs and goals, and the services and supports to address them are determined through the IPP process, described in Welfare and Institutions Code section 4512, subdivision (b), which states in part:

"Services and supports for persons with developmental disabilities" means 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.

7. Use of the IPP process to determine the services to meet the needs of a consumer is referenced in Code section 4646, subdivision (a):

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, where 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.

8. When purchasing services and supports, regional centers shall (1) ensure they have conformed with their purchase of service policies; (2) utilize generic services when appropriate; and (3) utilize other sources of funding as listed in Code section 4659. (Welf. & Inst. Code, § 4646.4, subd. (a).) Service Agency is also required to consider generic resources and the family's responsibility for providing services and supports when considering the purchase of regional center supports and services for its consumers. (Welf. & Inst. Code, § 4646.4.)

9. Welfare and Institutions Code, section 4646.4, subdivision (a)(4), requires regional centers to consider a family's responsibility for providing "similar services and supports for a minor child without disabilities"

10. Welfare and Institutions Code section 4648, subdivision (a)(8), prohibits regional centers from supplanting the budget of any other agency which may provide the funding in question.

The Self-Determination Program

11. Code section 4685.8, subdivision (a), provides: The department shall implement a statewide Self-Determination Program. The Self-Determination Program shall be available in every regional center catchment area to provide participants and their families, within an individual budget, increased flexibility and choice, and greater control over decisions, resources, and needed and desired services and supports to implement their IPP.

12. The SDP specifically obligates the participant to “utilize the services and supports available within the Self-Determination Program only when generic services and supports are not available.” (Welf. & Inst. Code, § 4685.8, subd. (d)(3)(B)3.)

13. The SDP requires participants to “only purchase services and supports necessary to implement his or her IPP” (Welf. & Inst. Code, § 4685.8, subd. (d)(3)(C).)

14. When a consumer is in the SDP, the IPP team is to develop the plan, utilizing the person-centered planning process. (Welf. & Inst. Code, § 4685.8, subd. (k).)

15. Code section 4685.8 (b)(2)(H)(i) requires the IPP team, when developing the individual budget to “determine the services, supports and goods necessary for each consumer based on the needs and preferences of the consumer, and when appropriate the consumer’s family, and the effectiveness of each option in meeting the goals specified in the IPP, and the cost effectiveness of each option.”

Disposition

16. Claimant is not entitled to use funds from the SDP budget for payment of health insurance premiums or orthodontic care. Health insurance premiums and orthodontic care for a minor child fall within the responsibility of Claimant's parents just as they would for a child without developmental disabilities. Additionally, generic resources including Claimant's private health insurance and Medi-Cal are available to pay those expenses. As such, the expenses would not be included in an IPP, were not included in Claimant's SDP budget, and may not be funded from SDP funds.

ORDER

Claimant's appeal is denied.

DATE:

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.

