

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

**In the Matter of the Fair Hearing Request of:**

**CLAIMANT,**

**vs.**

**HARBOR REGIONAL CENTER,**

**Service Agency.**

**OAH No. 2023020746**

**DECISION**

Eric Sawyer, Administrative Law Judge (ALJ), Office of Administrative Hearings, State of California, heard this matter on April 25, 2023, by videoconference.

Claimant was represented by his parents, who were assisted by a Spanish language interpreter. The names of claimant and his family are omitted to protect their privacy and maintain confidentiality.

Latrina Fannin, Manager of Rights and Quality Assurance, represented Harbor Regional Center (service agency).

The record was held open for claimant's parents to submit an occupational therapy assessment and a speech therapy assessment, which were timely received,

marked, and admitted as Exhibits C and D, respectively. The record closed and the matter was submitted for decision on April 28, 2023.

## **ISSUES**

1. Shall service agency provide funding for claimant to receive speech therapy?
2. Shall service agency provide funding for claimant to receive occupational therapy?

## **EVIDENCE RELIED ON**

In making this Decision, the ALJ relied on service agency exhibits 2 through 10; claimant exhibits A through D; as well as the testimony of Client Services Manager Donna Magaña, claimant's father, and claimant's mother.

## **FACTUAL FINDINGS**

### **Parties and Jurisdiction**

1. Service agency determines eligibility and provides funding for services and supports to persons with developmental disabilities under the Lanterman Developmental Disabilities Services Act (Lanterman Act), among other entitlement programs. (Welf. & Inst. Code, § 4500 et seq.)
2. Claimant is a four-year-old boy who is a service agency consumer and eligible for services under the Lanterman Act based on his diagnosis of autism spectrum disorder. (Ex. 5.)

3. During a meeting with service agency staff on December 7, 2022, claimant's parents requested funding for claimant to receive occupational therapy (OT) and speech therapy (ST). (Exs. 4-5.)

4. By a letter dated January 4, 2023, service agency advised claimant's parents it had denied their funding request for OT and ST. (Exs. 4-5.)

5. On February 10, 2023, claimant's parents submitted a Fair Hearing Request (FHR), which appealed service agency's service denial. While the FHR only discussed the OT service request, both the ST and OT service requests were discussed during the hearing by both parties. (Exs. 2-3.)

### **Claimant's Relevant Background Information**

6. Claimant lives at home with his parents. He is described as a cheerful and energetic little boy. Claimant is nonverbal, but he can communicate his wants and needs through sounds. (Exs. 4-5, 6-7.)

7. Claimant was observed during the hearing when his mother turned her computer camera toward him. He appeared as described above.

8. Claimant is enrolled with his local school district, and attends an elementary school class Monday through Friday. He receives special education services, including ST two times per week individually and one time per week in a group setting; and specialized academic instruction, five days per week at 180 minutes per day. (Exs. 6-8.)

9. In addition, service agency is providing funding for 30 hours per week of ABA therapy provided by Trumpet Behavioral Health; two cases of diapers per month; and 30 hours per month of self-directed respite. (Ex. 6.)

## **Speech Therapy**

10. When claimant's parents told service agency staff they wanted ST for their son in addition to that provided by his school district, they were urged to seek funding for it through claimant's Medi-Cal insurance. Claimant's parents did so, and claimant was scheduled for an ST evaluation on February 1, 2023, funded by Medi-Cal. (Exs. 6-7.)

11. In December 2022, service agency's consulting Speech & Language Pathologist, Melissa Greener, was asked to review claimant's records concerning the request for additional ST. She observed claimant is receiving ST through his school district and she believed that service was meeting claimant's speech and language needs. She also read claimant's most recent ABA progress report; it appeared to Ms. Greener that claimant's ABA program is addressing his expressive and receptive language skills. (Exs. 4-5, Ex. 8, p. A40.)

12. As a result of claimant's ST evaluation conducted in February 2023, claimant's Medi-Cal insurance has agreed to fund additional ST for him. The ST will be provided by Providence Speech and Hearing Center (Providence). However, the Providence office closest to claimant's home, which his parents selected to provide the service, has a waiting list. It is unknown when claimant will begin his ST there. (Testimony [Test.] of claimant's parents; Exs. A, D.)

## **Occupational Therapy**

13. Claimant's parents advised service agency staff they wanted their son to receive OT because he is a picky eater; constantly explores objects through smell and oral senses; and has weak proprioceptive skills (sense of self-movement, force, and body position). (Exs. 6-7.)

14. When claimant's parents told service agency staff they wanted OT for their son, they were urged to seek funding for it through claimant's Medi-Cal insurance, as well as ask for it to be included in claimant's special education program. However, claimant's parents advised they would do neither because they believed service agency should fund this service. (Test. of Magaña, claimant's father; Exs. 6-7.)

15. In December 2022, service agency's consulting Occupational Therapist, Pam Hellman, was asked to review claimant's records concerning the request for OT. Ms. Hellman concluded claimant's OT needs are being addressed through his ABA program. She concluded there is no clinical indication that claimant requires additional support to address his sensory needs beyond what is provided through his ABA program. She also found no documented sensory concerns in claimant's individualized education program (IEP). (Exs. 4-5, Ex. 8, p. A40.)

16. Claimant's parents later requested Medi-Cal to fund OT for their son. Claimant had an OT evaluation on April 21, 2023, funded by Medi-Cal. The occupational therapist who did the assessment has recommended claimant receive one OT session per week. The family does not know when Medi-Cal will decide if claimant is covered for OT. (Test. of Magaña, claimant's father; Exs. 6-8, C.)

## **Service Policies**

17. Service agency has written policies governing general service requests and specific therapy requests, which have been approved by the Department of Developmental Services (DDS). (Test. of Magaña, claimant's father; Exs. 9-10.)

18. Pertinent to this case, service agency's General Standards Service Policy provides that service requests should not be approved unless or until, in part:

4. After public resources, . . . as well as other sources of funding available, to the individual have been used to the fullest extent possible;

5. When the service is not otherwise available through Medi-Cal, Medicare, . . . In Home Support Services, California Children's Services, private insurance or a health care service plan; . . .

(Ex. 9.)

19. Service agency also has a Therapy Services Policy, which provides, in part, that therapy services for a client may be purchased if the client has been denied or is not eligible for Medi-Cal, California Children's Services, private insurance, or another third-party payer coverage of the service. (Ex. 10.)

### **Claimant's Evidence**

20. Claimant's parents want additional ST for their son for two reasons. First, claimant's parents believe additional ST will prompt him to become verbal. Second, the ST claimant receives at school is only for academics, not his daily life needs. (Test. of claimant's parents.)

21. Claimant's parents want OT for their son because he has sensory deficits, primarily in his fine and gross motor skills, which claimant's father described as weak. Claimant's parents also believe OT can help their son with other facets of his daily living, such as self-care, toileting, or changing his clothes. (Test. of claimant's parents.)

22. Claimant's parents obtained a letter from Trumpet Behavioral Health, in which the ABA provider confirmed that their service is aimed at claimant's behavior, and none of the program can be considered OT. (Ex. B.)

23. While claimant is scheduled to receive ST from Medi-Cal in the future, and he may be funded for OT from Medi-Cal, depending on its recent evaluation, claimant's parents believe service agency should provide interim ST and OT funding until insurance funding begins. Claimant's parents believe the delay in waiting for the insurance process to be completed is causing their son harm and wasting an opportunity to help him at an age where he can most benefit from the services. (Test. of claimant's parents.)

24. Claimant's mother testified ST, OT, and ABA services should be provided by separate licensed providers who specialize in each.

## **LEGAL CONCLUSIONS**

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

1. An administrative hearing to determine the rights and obligations of the parties is available under the Lanterman Act to appeal a contrary regional center decision. (Welf. & Inst. Code, §§ 4700-4716.) An undesignated statutory reference is to the Welfare and Institutions Code. Claimant appealed service agency's denial of his request for OT and PT funding, and therefore jurisdiction exists for this appeal. (Factual Findings 1-5.)

2. 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.) This standard is met when the party bearing the burden of proof presents evidence that has more convincing force than that opposed to it. (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.)

3. When one seeks government benefits or services, the burden of proof is on him. (See, e.g., *Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161 [disability benefits].) In this case, claimant bears the burden of proving by a preponderance of the evidence that he is entitled to OT and ST funding.

### **Applicable Provisions of the Lanterman Act**

4. When purchasing services and supports, regional centers must ensure conformance with its purchase of service policies, as approved by DDS pursuant to section 4434, subdivision (b), and utilize generic services and supports when appropriate. (§ 4646.4, subd. (a).)

5. The creation of purchase of service best practices, and requirement for regional centers to adhere to them, are intended to provide more uniformity and consistency in the administrative practices and services of regional centers throughout the state, promote appropriateness of services, maximize efficiency of funding, address the state budget deficit, ensure consistency with Lanterman Act values, maintain the entitlement to services, and improve cost-effectiveness. (§ 4620.3, subd. (a).) DDS shall ensure proper implementation of those best practices. (*Id.*, subd. (d).)

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6. Section 4659, subdivision (a), provides, in part:

[T]he regional center shall identify and pursue all possible sources of funding for consumers receiving regional center services. These sources shall include, but not be limited to, both of the following:

(1) Governmental or other entities or programs required to provide or pay the cost of providing services, including Medi-Cal, Medicare, . . . [and] school districts. . . .

(2) Private entities, to the maximum extent they are liable for the cost of services, aid, insurance, or medical assistance to the consumer.

7. Section 4659, subdivision (c), provides, in part:

[R]egional centers shall not purchase any service that would otherwise be available from Medi-Cal, Medicare, . . . 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. . . .

8. Section 4659, subdivision (d)(1), provides that a regional center may purchase medical or dental services for a consumer three years of age or older if the regional center is provided with documentation showing Medi-Cal, private insurance, or a health care service plan has denied the service and the regional center determines that an appeal by the consumer or family of the denial does not have merit. If so, regional centers may pay for medical or dental services, while coverage is being

pursued, but before a denial is made; 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; or until the commencement of services by Medi-Cal, private insurance, or a health care service plan. (*Ibid.*)

## **Disposition**

9. The above provisions of the Lanterman Act make clear that a regional center must follow its service policies, when applicable, and must not provide funding for any service that can be funded by public or private insurance.

10. In this case, service agency has general and specific service policies requiring it to pursue other sources of funding, such as insurance, before providing its own funding. Those policies were approved by DDS. Moreover, section 4659, subdivisions (a) and (c), clearly prohibit service agency from providing OT and ST funding if insurance will provide it.

11. Claimant's Medi-Cal insurance has already agreed to fund additional ST for him. A decision from Medi-Cal concerning OT will be made soon. Moreover, claimant's parents have not requested OT from their local school district. Although such service would be related to academics, it likely would include fine and gross motor skills, such as using scissors, writing and erasing with a pencil, etc. Unless and until claimant's parents have reasonably exhausted these generic resources, service agency is prohibited from funding OT.

12. Claimant's parents argue service agency nonetheless should provide ST and OT funding during the period of waiting for Providence to provide the ST and Medi-Cal to decide whether it will fund the OT. However, section 4659, subdivision (d), expressly provides for such gap coverage only when medical or dental services are

involved. That part of the statute clearly signals the Legislature did not intend gap funding for services other than medical or dental while a consumer or his family are waiting for a generic resource to decide whether to provide funding.

13. Based on the above, claimant failed to meet his burden of establishing by a preponderance of the evidence that he is entitled to ST or OT funding provided by service agency. (Factual Findings 1-24; Legal Conclusions 1-12.)

### **ORDER**

Service agency shall not provide funding for claimant to receive speech therapy.

Service agency shall not provide funding for claimant to receive occupational therapy.

DATE:

ERIC SAWYER

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.

