

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

In the Matter of:

CLAIMANT,

vs.

SAN GABRIEL/POMONA REGIONAL CENTER,

Service Agency.

OAH No. 2023050511

DDS No. CS0004230

DECISION

Ji-Lan Zang, Administrative Law Judge (ALJ), Office of Administrative Hearings, State of California, heard this matter on September 25, 2023, in Pomona.

Andres Marquez, certified court interpreter, provided language assistance in Spanish.

Daniel Ibarra, Fair Hearing Representative, represented San Gabriel/Pomona Regional Center (SGPRC or Service Agency).

Claimant's mother (Mother) represented claimant. Names are omitted and family titles are used throughout this Decision to protect the privacy of claimant and her family.

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on September 25, 2023.

ISSUE

Should SGPRC reimburse claimant dental treatment expenses in the amount of \$9,000?

EVIDENCE

Documentary: Exhibits 1 through 11.

Testimonial: Mother; claimant's sister (Sister).

FACTUAL FINDINGS

Jurisdictional Matters

1. Claimant is a 37-year-old conserved female who qualifies for regional center services under the category of Severe Intellectual Disability. She lives at home with Mother.

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2. On April 19, 2023, claimant filed a request for a fair hearing appealing SGPRC's denial of her request for reimbursement of her dental expenses in the amount of \$9,000.

Claimant's Individual Program Plan

3. Claimant's most recent individual program plan (IPP), dated April 12, 2021, contains Service Agency's and claimant's agreements, sets forth specific objectives and goals, and identifies the services and supports to achieve them. It also describes claimant's needs and behaviors.

4. As set forth in the IPP, claimant has no restrictions in mobility, but she eats with utensils with spillage. Claimant has no control of her bladder and bowel and must use adult diapers day and night. Claimant is nonverbal and uses gestures, actions, and facial expressions to communicate. Claimant is typically calm and rarely engages in aggressive behavior. Claimant has minimal safety awareness and requires supervision at all times to ensure her safety.

5. Claimant receives Social Security, Medi-Cal, and In Home Support Services benefits.

Claimant's Dental Treatment

6. Regarding claimant's dental health, the 2021 IPP stated, in relevant part:

[Claimant] had a dental appointment at Smile Zone Dental with Dr. Mary Aquino, DDS, in early 2021, but only a visual screening was completed because [claimant] wasn't cooperative and didn't allow for x-rays to be taken.

[Claimant] was referred to the dental clinic at SGPRC, but

upon mother's request/information on [claimant] being uncooperative with the dentist, Dr. Mary Aquino referred [claimant] to Dr. [Elmer] Hilo. [Claimant] is scheduled to be seen on May 14, 2021.

(Ex. 4, pp. A18-19.)

7. According to an email from Dr. Hilo dated April 15, 2022, he examined claimant on May 14, 2021, and determined that claimant must undergo general anesthesia for dental treatments due to her inability to cooperate. (Ex. 10, p. A35.) During this first appointment, Dr. Hilo successfully performed multiple root canals and treated claimant's abscess. At the post-operative visit, Dr. Hilo noted much improvement in claimant's oral health and began to discuss with claimant the possibility of replacing claimant's three missing front teeth. Dr. Hilo wrote:

[Claimant] was interested in this knowing she'll have increased chewing function. She was also aware that replacement of these missing teeth is very costly and the logistics of facilitating these bridges takes extra care especially with sedation involved. She was also aware that we cannot have Denti-Cal pay for sedation because bridges are not a covered benefit. With these stipulations, she understood and signed off on the treatment plan and wanted to move forward even with the complexity of the treatment and financial considerations with sedation costs.

(Ibid.)

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8. Claimant signed the treatment plan with Dr. Hilo in August 2021. However, shortly after, Dr. Hilo had to reiterate the treatment plan and the financing plan to claimant because she showed hesitation regarding the expenses. Dr. Hilo complete the treatment in April 2022 and successfully replaced claimant's three missing front teeth with bridges. Dr. Hilo emphasized in his April 15, 2022 email that these procedures were performed for functional, not esthetic, purposes. He wrote, in relevant part: "We reiterated that. . . it [the dental treatment plan] was always about to replace the missing teeth; I will never prioritize esthetics over function." (Ex. 10, p. A36.)

Claimant's Request for Reimbursement of Dental Expenses

9. On March 15, 2023, during a meeting with her Service Coordinator regarding her annual IPP Progress Report, claimant requested reimbursement of \$9,000 in dental expenses. Mother was present at this IPP Progress Report meeting and explained claimant received dental treatment from Dr. Hilo including crowns, deep cleaning, root canals, fillings, and the three bridges for the missing front teeth. Although Denti-Cal covered some of the expenses, the program did not pay for expenses relating to three bridges, including general anesthesia, which totaled \$9,000.

Testimony of Mother and Sister

10. At the hearing, Mother testified in Spanish, as she speaks little English. Mother admitted she signed the treatment plan with Dr. Hilo and agreed to pay for the expenses herself. However, she did not ask the Service Agency to pay for claimant's dental expense at the time they were incurred because she was unaware of the benefit. Had she known that the Service Agency could have helped with the dental expenses, she would have applied for it. Mother testified she wished the Service Agency had a brochure, a letter, or some other guiding document that explains all the

benefits to which claimant was entitled. Mother believed claimant's dental procedure constituted, in her words, "an emergency" because as the mother of a child with disability, it was her responsibility to make sure her daughter is not in pain or discomfort. Mother used her credit card to pay for the \$9,000 in dental, of which \$1,000 in remains unpaid. Mother requested the reimbursement in March 2023, about one year after claimant's procedures were completed in April 2022, when she learned from claimant's service coordinator that the Service Agency could help her pay these expenses.

11. At the hearing, Sister testified claimant sought treatment with Dr. Hilo because she required general anesthesia for her dental procedures due to her disability. Sister explained claimant did not have three front teeth and it was hard for claimant to chew food without them. Sister also expressed her belief that claimant's situation was an emergency because the difficulty involved with finding a dentist who would treat patients with disabilities. Sister reported that claimant's Service Coordinator did not inform the family they could ask for the Service Agency to assist in paying for the dental expense until March 2023. Sister stated Mother is not savvy with computers or email, and she "got lost in the system."

LEGAL CONCLUSIONS

Standard and Burden of Proof

1. The burden of proof is on the party seeking government benefits or services. (See, e.g., *Lindsay v. San Diego County Retirement Bd.* (1964) 231 Cal.App.2d 156, 161.) In this case, claimant bears the burden of proving, by a preponderance of the evidence, that

Service Agency is required to reimburse her for \$9,000 in dental expenses that are not covered by Denti-Cal. (Evid. Code, § 115.) Claimant has met her burden.

Applicable Law

2. The Lanterman Developmental Disabilities Services Act (Lanterman Act) (Welf. & Inst. Code, § 4500 et seq.) sets forth a regional center's obligations and responsibilities to provide services to individuals with developmental disabilities. (All further references are to the Welfare & Institutions Code, unless otherwise designated.) As the California Supreme Court explained in *Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 388, the purpose of the Lanterman Act 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." Under the Lanterman Act, regional centers are "charged with providing developmentally disabled persons with 'access to the facilities and services best suited to them throughout their lifetime'" and with determining "the manner in which those services are to be rendered." (*Id.* at p. 389, quoting from § 4620.)

3. To comply with the Lanterman Act, a regional center must provide services and supports that "enable persons with developmental disabilities to approximate the pattern of everyday living available to people without disabilities of the same age." (§ 4501.) The types of services and supports that a regional center must provide are "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 independent, productive, normal lives.” (§ 4512, subd. (b).) The determination of which services and supports the regional center shall provide is 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.” (*Ibid.*) However, regional centers have wide discretion in determining how to implement an IPP. (*Association for Retarded Citizens, supra*, 38 Cal.3d at p. 390.)

4. As set forth in 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.

5. However, a regional center is required to identify and pursue all possible funding sources for its consumers from generic resources, and to secure services from generic sources where possible. Section 4646.4, subdivision (a), provides, in relevant part:

Regional centers shall ensure, at the time of development, scheduled review, or modification of a consumer's individual program plan developed pursuant to Sections 4646 and 4646.5, or of an individualized family service plan pursuant to Section 95020 of the Government Code, the establishment of an internal process. This internal process shall ensure adherence with federal and state law and regulation, and when purchasing services and supports, shall ensure all of the following:

[¶] . . . [¶]

(2) Utilization of generic services and supports when appropriate. . . .

Disposition

6. Claimant requested reimbursement of \$9,000 in dental expenses in March 2023, about one year after the completion of dental procedures to replace her three missing front teeth in April 2022. This is a request for retroactive service authorization. The Lanterman Act does not specifically authorize retroactive service authorization in the fair hearing context. A purchase of service authorization must be obtained in advance from the regional center for all services purchased out of center funds. (Cal. Code Regs., tit. 17, § 50612.) A retroactive authorization is allowed for

emergency services "if services are rendered by a vendored service provider: (A) At a time when authorized personnel of the regional center cannot be reached by the service provider either by telephone or in person (e.g., during the night or on weekends or holidays); (B) Where the service provider, consumer, or the consumer's parent, guardian or conservator, notifies the regional center within five working days following the provision of service; and (C) Where the regional center determines that the service was necessary and appropriate." (Cal. Code Regs., tit. 17, § 50612, subd. (b)(1).)

7. Thus, the regulations suggest that retroactive funding is only available when either the service has been preauthorized or in limited emergency situations before such authorization can be obtained. Here, the Service Agency did not preauthorize claimant's dental expenses. Although Mother and Sister contend that claimant's dental procedures constituted an emergency situation, none of the requirements under California Code of Regulations, title 17, section 50612, subdivision (b)(1), were met. Specifically, the replacement of claimant's three missing front teeth occurred over an approximate two-year span, during which time claimant could have reached regional center personnel. The regional center was not notified of the provision of the service within five working days, and there is no evidence the regional center has determined the service was necessary and appropriate. Therefore, claimant's dental expenses cannot be considered as an emergency authorization of retroactive funding.

8. Ordinarily, services are provided to the consumer through the IPP process. (§ 4646.5.) The process of creating an IPP, by its nature, is collaborative. (§ 4646.) The IPP is created after a conference consisting of the consumer and/or his family, service agency representatives, and other appropriate participants. (§§ 4646,

4648.) If the consumer or his parents do not agree with all components of an IPP, they may indicate that disagreement on the plan. (§ 4646, subd. (g).) If the consumer or his parents do "not agree with the plan in whole or in part, he or she shall be sent written notice of the fair hearing rights, as required by Section 4701." (§ 4646, subd. (g).) The issue of retroactive reimbursement must be carefully considered to avoid the circumvention of the IPP process, which is one of the cornerstones of the Lanterman Act. A regional center is required and legally obligated to participate in the decision-making process before a service is implemented or expenses for it incurred. Generally, a family cannot unilaterally incur a service cost without regional center input or authorization and expect to be reimbursed.

9. Yet, the lack of specific statutory authorization is not dispositive of this issue. In the fair hearing context, an ALJ is empowered by statute to resolve "all issues concerning the rights of persons with developmental disabilities to receive services under [the Lanterman Act]." (§ 4706, subd. (a).) That statutory provision may be broad enough to encompass the right to retroactive benefits. However, if the Lanterman Act is to be applied as the Legislature intended, reimbursement should only be available in particular cases where equity requires it. Otherwise, the general requirements for funding services through the IPP process would be superfluous. Thus, based on the general principles articulated in *Association for Retarded Citizens v. Department of Developmental Services*, *supra*, 38 Cal.3d 384, reimbursement should be ordered when the principles of equity apply or when, if not granted, the purposes of the Lanterman Act would be thwarted.

10. A vital principle of equitable relief is detrimental reliance, or as put by the California Supreme Court in the case *Seymour v. Oelrichs* (1909) 156 Cal. 782, 795: "He who by his language or conduct leads another to do what he would not otherwise

have done shall not subject such person to loss or injury by disappointing the expectations upon which he acted.” Here, the Service Agency failed to inform claimant of her right to request funding for the portion of her dental expenses that are not covered by Denti-Cal. Service Agency did not inform claimant of this right until March 2023, after which claimant immediately requested reimbursement of the dental expenses. It is not equitable for Mother to bear the dental expense because the delay in requesting the funding was not based on her intent to frustrate the IPP process, but based on her lack of knowledge regarding the benefits to which claimant was otherwise entitled. As Mother testified, she would have requested the funding through the IPP process had she known at the time that the benefit was available to her.

11. Additionally, it would thwart the purposes of the Lanterman Act to force Mother to bear these costs. First, as the court in *Association for Retarded Citizens v. Department of Developmental Services, supra*, 38 Cal.3d 384, 389 stated, regional centers are charged with providing consumers with access to services. Mother is an unsophisticated consumer who speaks little English and does not know how to use computers. Forcing her to pay these costs incentivizes regional centers to be negligent in their duty to help navigate consumers through a complex system of services and supports. Second, the dental procedures were to replace claimant’s three missing front teeth, which improves her chewing function. As Dr. Hilo emphasized in his letter, the procedure was for functional, not esthetic, purposes. It is a service that allows claimant to live an independent, productive, and healthy life, within the meaning of section 4646, subdivision (a). Furthermore, generic resources have been exhausted pursuant to section 4646.4, subdivision (a), as these are expenses that cannot be covered by Denti-Cal. Under these exceptional circumstances, claimant is entitled to a one-time reimbursement for the \$9,000 in dental expenses.

ORDER

Claimant's appeal is granted. San Gabriel/Pomona Regional Center shall reimburse claimant for dental expenses in the amount of \$9,000.

DATE:

JI-LAN ZANG

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.