

**BEFORE THE
DEPARTMENT OF DEVELOPMENTAL SERVICES
STATE OF CALIFORNIA**

In the Matter of the Appeal of:

CLAIMANT

v.

FAR NORTHERN REGIONAL CENTER

OAH No. 2023080662

PROPOSED DECISION

Administrative Law Judge Sean Gavin, a Hearing Officer employed by the Office of Administrative Hearings (OAH), State of California, heard this matter on December 19, 2023, in Redding, California.

Larry Withers, Associate Director of Client Services, represented Far Northern Regional Center (FNRC).

Claimant's mother represented claimant.

Evidence was received, the record closed, and the parties submitted the matter for decision on December 19, 2023.

ISSUE

Should FNRC be required to include funding for claimant's occupational therapy services in his SDP budget?

FACTUAL FINDINGS

Background

1. Claimant is a 14-year-old FNRC consumer based on his qualifying diagnosis of cerebral palsy. He has received services and supports through FNRC since he was approximately nine months old. Currently, he attends ninth grade at Etna High School, part of the Scott Valley Unified School District (School District). He plays on the school basketball team and enjoys computers, photography, and graphic arts. He lives on his family's ranch and helps feed and tend to several farm animals.

2. Claimant is enrolled in the Self-Determination Program (SDP), which provides "an individual budget, increased flexibility and choice, and greater control over decisions, resources, and needed and desired services and supports to implement" claimant's Individual Program Plan (IPP). (Welf. & Inst. Code, § 4685.8, subd. (a).) Various statutes and regulations govern what supports and services FNRC may fund through the SDP.

3. To treat his cerebral palsy, claimant needs occupational therapy (OT). On an unspecified date, claimant's mother requested FNRC include OT services in claimant's SDP budget. On July 18, 2023, FNRC sent a Notice of Action (NOA) denying the request. As explained in the NOA, FNRC denied the request because:

The regional center is considered a payer of last resort and Occupational Therapy must first be accessed through the educational system and insurance such as Medi-Cal and Private Insurance. In the Self Determination Program, "All medically necessary occupational therapy services for children under age 21 are covered in the state plan pursuant to the EPSDT [Early and Periodic Screening, Diagnostic and Treatment] benefit."

4. On August 16, 2023, claimant's mother sent FNRC a Fair Hearing Request appealing the denial. In it, she stated the reason for requesting a fair hearing was:

Our personal insurance does not cover Occupational therapy services. Our son has not been receiving consistent Occupational therapy services through school because the district has not been able to find a consistent occupational therapist for the past 3 years. Occupational services is [*sic*] also not covered by the district during the summer. Our last 3 program specialists we've worked with have advised us to add Occupational Therapy services to our Self-Determination Budget application (which we've been trying to get for almost 2 years now). Being in a rural area, our son [claimant], who suffers from ataxic cerebral palsy, needs to have as much developmental services to help with his motor skill planning and his fine and gross motor skills to function independently as a young adult.

FNRC's Evidence at Hearing

5. Wayne Doerning, FNRC's Associate Director of Client Services for the Northern Region, testified at hearing. He participated in the decision to deny the request to include funding for OT in claimant's SDP budget. He explained FNRC denied the request because it must follow certain Purchase of Service (POS) Guidelines that the Department of Social Services has reviewed and approved. One of those POS Guidelines provides: "Far Northern Regional Center (FNRC) may purchase physical and/or occupational therapy under the following conditions: . . . 2. The service is not available through alternative resources such as, but not limited to, the public schools, California Children's Services (CCS), private insurance, Medi-Cal and/or Medicare."

6. Mr. Doerning explained OT is available for claimant through alternative resources, including his School District and CCS. As a result, the POS Guidelines forbid FNRC from including funding OT services through claimant's SDP.

7. Additionally, FNRC adheres to certain SDP Service Definitions for Medi-Cal services. The SDP Service Definition for OT provides, in relevant part: "All medically necessary occupational therapy services for children under age 21 are covered in the state plan pursuant to the EPSDT benefit. Occupational therapy in this waiver is only provided to individuals age 21 and over and only when the limits of occupational therapy services furnished under the approved state plan are exhausted." Mr. Doerning explained, according to the SDP Service Definition for OT, FNRC cannot provide the service while claimant is younger than 21 years old.

8. Mr. Doerning is aware that claimant's mother applied for CCS in Siskiyou County to fund claimant's OT services. He is further aware that CCS sent a notice of action in which it explained it declined to fund the OT services because it believes

"there is insufficient documentation provided to determine eligibility and/or benefits." FNRC personnel believes if claimant's mother provides updated documentation about claimant's diagnosis, CCS would fund his OT services. FNRC has offered to connect claimant's mother with the Office of Clients' Rights Advocacy for resources about how to pursue funding through CCS.

Claimant's Evidence at Hearing

9. Claimant's mother testified at hearing and submitted several documents into evidence. The documents demonstrate claimant's need for OT services. Claimant's mother noted OT services are essential to her son's ongoing social development and career readiness. Specifically, OT will help improve his dexterity and independence, both of which are important for his interest in computers and graphic design. Additionally, his family ranch includes several gates and latches. OT services will help claimant navigate those features more capably.

10. Claimant's mother further believes her son's current level of OT services is inadequate. He receives OT services through an OT technician twice per month during the school year. The OT technician who treats him serves a large geographic area in Northern California and cannot always honor her appointments with claimant.

11. Claimant's mother also expressed her frustration with the process of securing OT services. She explained the School District does not have the personnel to provide the services. She was surprised CCS denied her request given claimant's confirmed diagnosis and medical history. She does not understand why FNRC will not fund OT services until claimant is 21 years old when he needs them now as a high school student.

Analysis

12. FNRC contends claimant's request to include funding for OT services in his SDP budget must be denied. For the reasons discussed below, FNRC's position is supported by the law.

13. First, when a regional center develops an IPP for a client, it must follow "a process of individualized needs determination." (Welf. & Inst. Code, § 4646, subd. (b).) Among other things, the process of developing an IPP must ensure "utilization of generic resources and supports if appropriate." (*Id.* at § 4646.4, subd. (a)(2).) That is because "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." (*Id.* at § 4648, subd. (a)(8).) Instead, the process of developing an IPP must ensure "utilization of other services and sources of funding," such as "governmental or other entities or programs required to provide or pay the cost of providing services, including Medi-Cal [and] school districts." (*Id.* at §§ 4646.4, subd. (a)(3)(A), 4659, subd. (a)(1).)

14. Claimant's School District is a public agency with a legal responsibility to serve all members of the public. It receives public funds to provide those services. As a result, FNRC cannot fund services that the School District is obligated to provide, such as OT services for claimant.

15. Second, FNRC must follow the laws and regulations that govern SDP funding. As Mr. Doerning explained, pursuant to the SDP Service Definition for OT, FNRC cannot fund OT services for children younger than 21 years old.

16. Claimant's mother credibly explained her genuine frustration with the process and her belief that claimant needs more regular and thorough OT services.

However, there was insufficient evidence at hearing to support her position that FNRC must include funding for OT services in claimant's SDP budget. Therefore, there is no legal basis to grant claimant's appeal.

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. The burden of proof is on the party seeking government benefits or services. (*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 FNRC is required to include funding for OT services in claimant's SDP budget. (Evid. Code, § 115.) Claimant did not meet his burden.

Applicable Statutes and Regulations

2. Under the Lanterman Act (Welf. & Inst. Code, § 4500 et seq.), the State of California accepts responsibility for persons with developmental disabilities and pays for the majority of the "treatment and habilitation services and supports" to enable such persons to live "in the least restrictive environment." (Welf. & Inst. Code, § 4502, subd. (b)(1).) "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 [citations], and to enable them to approximate a pattern of everyday living of nondisabled persons of the same age and to lead more independent and productive lives in the community [citations]." (*Assoc. for Retarded Citizens v. Dept. of Developmental Services* (1985) 38 Cal.3d 384, 388.)

3. To determine how an individual consumer is to be served, regional centers are directed to conduct a planning process that results in an IPP designed to promote as normal a lifestyle as possible. (Welf. & Inst. Code, § 4646; *Assoc. for Retarded Citizens v. Dept. of Developmental Services*, *supra*, 38 Cal.3d at p. 389.) The IPP is developed by an interdisciplinary team and must include participation by the consumer and/or his representative. The regional center must gather information and assessments from a variety of sources, including providers of services or supports. (Welf. & Inst. Code, § 4646.5, subd. (a)(1).)

4. Among other things, the IPP must set forth goals and objectives for the consumer, contain provisions for the acquisition of services (which must be based upon the consumer's developmental needs), contain a statement of time-limited objectives for improving the consumer's situation, and reflect the consumer's particular desires and preferences. (Welf. & Inst. Code, §§ 4646, subds. (a) & (b), 4646.5, subd. (a), 4512, subd. (b), 4648, subd. (a)(6)(E).) The regional center must then "secure services and supports that meet the needs of the consumer" within the context of the IPP. (*Id.* at § 4648, subd. (a)(1).)

5. Self-determination is designed to give the participant greater control over which services and supports best meet their IPP needs, goals, and objectives. (Welf. & Inst. Code, § 4685.8, subd. (b)(2)(B).) One goal of the SDP is to allow participants to innovate to achieve their goals more effectively. (*Id.* at § 4685.8, subd. (b)(2)(G).)

6. The SDP requires a regional center, 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, the effectiveness of each option in meeting the goals specified in

the IPP, and the cost effectiveness of each option. (Welf. & Inst. Code, § 4685.8, subd. (b)(2)(H)(i).)

7. “Self-determination” means “a voluntary delivery system consisting of a defined and comprehensive mix of services and supports, selected and directed by a participant through person-centered planning, in order to meet the objectives in their IPP.” Welf. & Inst. Code, § 4685.8, subd. (c)(6).) “The Self-Determination Program shall only fund services and supports . . . that the federal Centers for Medicare and Medicaid Services determines are eligible for federal financial participation.” (*Ibid.*)

8. “Individual Budget” means the amount of regional center purchase-of-service funding available to the participant to purchase services and supports necessary to implement the IPP. (Welf. & Inst. Code, § 4685.8, subd. (c)(3).) The regional center can adjust the individual budget if it determines it is necessary due to a change in circumstances, needs, or resources that would result in an increase or decrease in purchase of service expenditures or if the IPP team identifies a prior unmet need that was not addressed in the IPP. (*Id.* at § 4685.8, subd. (m)(1)(A)(ii).)

9. The SDP requires participants to “only purchase services and supports necessary to implement their IPP.” (Welf. & Inst. Code, § 4685.8, subd. (d)(3)(C).) 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.” (*Id.* at § 4685.8, subd. (d)(3)(B).)

10. Regional centers are mandated to provide a wide range of services to facilitate implementation of a consumer’s IPP but must do so cost-effectively. (Welf. & Inst. Code, §§ 4640.7, subd. (b), 4646, subd. (a).) They must “identify and pursue all possible sources of funding for consumers receiving regional center services,”

including "governmental or other entities or programs required to provide or pay the cost of providing services, including Medi-Cal [and] school districts." (*Id.* at §§ 4646.4, subd. (a)(3)(A), 4659, subd. (a)(1).) "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." (*Id.* at § 4648, subd. (a)(8).)

Conclusion

11. As explained above, claimant's OT services must be provided by other resources, such as the School District or Medi-Cal. Further, FNRC cannot provide OT services to claimant until he is 21 years old. Therefore, claimant did not meet his burden to prove that FNRC must include funding for his OT services in his SDP budget.

ORDER

Claimant's appeal from Far Northern Regional Center's July 18, 2023 Notice of Action proposing to deny claimant's request to include funding for occupational therapy services in his SDP budget is DENIED.

DATE: December 28, 2023

SEAN GAVIN

Administrative Law Judge

Office of Administrative Hearings

BEFORE THE
DEPARTMENT OF DEVELOPMENTAL SERVICES
STATE OF CALIFORNIA

In the Matter of:

Claimant,

OAH Case No. 2023080662

vs.

DECISION AND ORDER BY THE DIRECTOR

Far Northern Regional Center,

Respondent.

ORDER OF DECISION

On December 28, 2023, an Administrative Law Judge (ALJ) at the Office of Administrative Hearings (OAH) issued a Proposed Decision in this matter.

For the reasons explained below, the attached Proposed Decision is rejected. Instead, the Department holds as follows:

1. Given the unique circumstances of this case, with claimant receiving inconsistent and minimum Occupational Therapy (OT) services from his school district over the course of approximately three years, Far Northern Regional Center (FNRC) shall fund the OT service specified in claimant's Individual Program Plan (IPP) for a total of either 180 calendar days from the date of this Order, or until such time as Siskiyou County's California Children's Services (CCS) program makes a final determination on whether to approve or deny/cancel claimant's renewed or amended application for OT services, including resolution of any appeal on such final determination, whichever is later. (See Welf. & Inst. Code, §4646.4, subds. (a)(2)(C) and (a)(3)(B).

2. Claimant's Self-Determination Program (SDP) budget may fund services and supports that the federal Centers for Medicare and Medicaid Services (CMS) determines are eligible for federal financial participation (FFP). (See Welf. & Inst. Code, § 4685.8, subd. (c)(6). OT is a service that has been determined by CMS to be eligible for FFP. While CMS requires age limits for some services, including OT, for the purposes of the State seeking FFP, eligibility for Med-Cal, and therefore FFP, is not required for SDP participants (See Welf. & Inst. Code, § 4685.8, subd. (e).) Given the unavailability of OT services from other generic resources in FNRC's catchment area, claimant is permitted to include OT services in his SDP Budget and claimant's SDP budget funds may be used to purchase OT services. OT Services are necessary to implement claimant's IPP.

3. FNRC shall assist claimant and his family or authorized representative to complete the application process to CCS for OT services, including assisting claimant on providing any required medical reports and documentation to support the application process.

4. FNRC shall connect claimant and/or any of claimant's representatives with the Office of Clients' Rights Advocacy (OCRA) for assistance regarding how to pursue OT service funding consistent with their Individual Education Plan or through CCS. (See Welf. & Inst. Code, § 4659, subd. (d)(2).)

5. FNRC shall provide a written update to the Department within 90 calendar days of this Order. The update shall include the progress of FNRC in assisting claimant on completing the OT service application to CCS, whether FNRC referred claimant to OCRA for assistance regarding how to pursue OT service funding through CCS, and whether CCS has communicated with either claimant or FNRC on the status of the OT service application.

This is the final administrative Decision. Each party is bound by this Decision. Either party may request a reconsideration pursuant to Welfare and Institutions Code section 4713, subdivision (b), 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.

Attached is a fact sheet with information about what to do and expect after you receive this decision, and where to get help.

ORDER

Claimant's appeal is granted. The Proposed Decision to deny claimant's request to include OT services in his SDP budget is rejected.

IT IS SO ORDERED on this day January 26, 2024

Original Signed by
Nancy Bargmann, Director