

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

In the Matter of:

CLAIMANT

vs.

CENTRAL VALLEY REGIONAL CENTER, Service Agency

OAH No. 2023080794

DDS No. CS0009088

DECISION

Administrative Law Judge Marcie Larson, Office of Administrative Hearings, State of California, heard this matter by video conference on October 2, 2023, from Sacramento, California.

Central Valley Regional Center (CVRC) was represented by Jacqui Molinet, Appeals and Compliance Coordinator for CVRC.

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

Evidence was received, the record closed, and the matter was submitted for decision on October 2, 2023.

ISSUE

Should CVRC be ordered to fund treatment provided to claimant by SCI-FIT therapy (Spinal Cord Injury Functional Integrated Therapy)?

FACTUAL FINDINGS

1. Claimant was born in October 2013. In March 2017, he was diagnosed with Viral Encephalitis resulting in Acute Necrotizing Hemorrhagic Encephalopathy. The infection left him with visual, auditory, speech, feeding and neuromuscular disabilities. In 2017, was made eligible for CVRC services based on his need for services similar to those required by individuals with intellectual disability, referred to as the "5th category." He receives services and supports pursuant to the Lanterman Developmental Disabilities Services Act (Welf. & Inst. Code, § 4500 et seq.).

2. Claimant requires total care for self-care and activities of daily living. At home, he uses a stander, gait trainer, and wheelchair. Claimant is non-verbal. He receives Home Hospital Instruction through Central Unified School District. Claimant has a medical diagnosis of Cerebral Palsy through the California Childrens Services (CCS) Medical Therapy Program (MTP). As a result, he receives physical therapy through the CCS Medical Therapy Unit (MTU), as prescribed by his physician. He is also eligible for Cal-Viva which operates under the Medi-Cal Managed Care program.

3. On September 7, 2022, a planning team consisting of claimant, claimant's mother, and Lara Yakligian, CVRC Service Coordinator, conducted an annual Individual Program Plan (IPP) meeting for claimant. The IPP sets forth the services claimant receives, as well as the annual goals and objectives for claimant. During the meeting,

claimant's mother shared she was paying "out-of-pocket" for weekly sessions at SCI-FIT. She explained that the therapy SCI-FIT provided claimant increases "function, strength, and coordination through different physical therapeutic modalities."

4. In early August 2023, claimant's mother requested CVRC fund the cost of the SCI-FIT treatment, which is \$750 per month. On or about August 16, 2023, CVRC denied claimant's request to fund SCI-FIT. On or about August 18, 2023, claimant's mother appealed the denial and requested a hearing. By letter dated August 29, 2023, Jacqui Molinet, Appeals and Compliance Coordinator for CVRC, confirmed receipt of claimant's appeal.

SCI-FIT Services

5. SCI-FIT specializes in "nontraditional spinal cord injury rehabilitation." SCI-FIT literature explains that the program utilizes "innovative exercise training techniques and specialized equipment for individuals with neurological disorders." SCI-FIT uses "several modalities combined with exercise training principles to increase function, strength, coordination and improved quality of life" Additionally, Steve Nava, Chief Operations Officer and Co-Owner of SCI-FIT explained in an email addressed to Shelley Celaya, Assistant Director of Case Management CVRC, the following information about SCI-FIT:

Our principles of our program challenges the traditional thought of compensation and adaption by focusing on completing activities of daily living (ADLs), maintaining health, and using compensatory equipment. During our Exercise[-]based program it helps overcome and regain function through Neuroplasticity, Mind Body Connection,

biofeedback and closed-chained exercises, developmental movement patterns.

[¶] ... [¶]

Our Five main components of our program are Active and Passive Range of Motion, Load bearing, Functional Electrical Stimulation and Neuromuscular Electrical Stimulation (FES/NMES), Functional Exercises and developmental movement patterns and gait training (locomotor training).

Mr. Nava further explained that SCI-FIT did not have licensed physical therapists working with clients. However, the staff have "Kinesiology degrees or exercise science and many other certifications on functional movement."

6. Claimant's mother explained that since claimant began attending SCI-FIT in July 2022, his mobility and strength have improved. She has not seen the same improvements from the physical therapy he receives through the MTU. Additionally, MTU is short staffed, so claimant only receives physical therapy one time per month. Over the last year claimant's mother had to cancel many of claimant's physical therapy appointments because MTU scheduled them without her input.

7. SCI-FIT has not completed a formal treatment plan for claimant and has not indicated how many sessions he needs and for how long he should attend. However, claimant's mother would like for claimant to be able to attend more than the current schedule of two sessions per week.

CVRC Denial

8. Lindsey Eggers works as the Program Manager in CVRC's Fresno Office. Ms. Eggers explained that claimant was assessed for physical therapy services through MTU. His physical therapy services are paid for through CCS. Claimant's "Physical Therapy MTU Summary and Plan" dated March 29, 2023, indicates that between January 31, and March 29, 2023, claimant attended seven physical therapy appointments at MTU and cancelled nine appointments. His CCS physical therapy assessment and treatment plan dated April 7, 2023, recommends he receive physical therapy services one time per month for nine months.

9. Ms. Eggers explained that, per the directive of the California Department of Health Care Services, CVRC may not purchase physical therapy services provided by CCS. The California Department of Health Care Services sent a letter to Regional Centers dated August 24, 2023, concerning services provided by CCS. The letter explains that:

[REDACTED] ... [REDACTED]

CCS MTP is considered a 'generic resource.' Generic resources are services that are provided by other agencies that have a legal responsibility to fund them. Regional centers cannot pay for services for which another agency, such as Medi-Cal or the CCS program, has responsibility.

[REDACTED] ... [REDACTED]

Regional Centers are not allowed to purchase PT, OT, and MTC services for CCS MTP eligible individuals. Regional

Centers' service coordination must include those activities necessary to implement an individual program plan, including, but not limited to, obtaining services and supports from generic agencies such as Medi-Cal, CCS, or other resources.

10. Ms. Celaya testified at hearing that she considered claimant's request for reimbursement. As part of her review, she asked Ronald Marconi, M.D., a medical consultant for CVRC to provide an opinion regarding the treatment provided by SCI-FIT. Dr. Marconi wrote a letter dated September 25, 2023, in which he explained that he found no "scientific evidence of studies showing benefits of SCI-FIT therapy over physician ordered and monitored conventional" occupational therapy, speech therapy, and physical therapy. He also opined that the "lack of controlled studies that show time frames without measurable improvement by SCI-FIT therapy" supported his opinion that CVRC may not fund SCI-FIT services.

11. Ms. Celaya considered the information provided by claimant's mother, the directive from the California Department of Health Services, and the opinions of Dr. Marconi. She made the decision to deny claimant's request for funding for SCI-FIT because CVRC may not purchase experimental treatments that have not been clinically determined to be effective or safe. Additionally, claimant receives physical therapy through CCS MTU. CVRC may not pay for services provided by another agency.

Analysis

12. When all the evidence is considered, claimant's mother did not demonstrate that the treatment provided to claimant by SCI-FIT has been clinically determined or scientifically proven to be effective for the treatment or remediation of

claimant's disability. Additionally, claimant receives physical therapy services through CCS MTU. As a result, CVRC is prohibited from paying for those services.

13. Claimant's mother clearly wants the best for her son and sees progress through the treatment he received at SCI-FIT. But CVRC is prohibited by the Lanterman Act from funding therapies 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. There was inadequate support presented at hearing for the effectiveness of the treatment provided by SCI-FIT. 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, section 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 sections 4700–4716.) Claimant's mother requested a fair hearing to appeal CVRC's denial of her request to fund treatment by SCI-FIT. 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 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.

[¶] ... [¶]

(8) Regional center funds 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.

[¶] ... [¶]

(16) Notwithstanding any other provision of law or regulation to the contrary, 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.

4. Welfare and Institutions Code section 4659, provides in relevant part:

(a) Except as otherwise provided in subdivision (b) or (e), the 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, the Civilian Health and Medical Program for Uniform Services, school districts, and federal supplemental security income and the state supplementary program.

[¶] ... [¶]

5. Claimant's mother did not establish that the treatment provided to claimant by SCI-FIT has been clinically determined or scientifically proven to be effective for the treatment or remediation of claimant's disability. Consequently, under Welfare and Institutions Code section 4648, subdivision (a)(16), CVRC may not fund the requested treatment.

6. 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 developmental disabilities funded through CCS. If claimant's mother does not believe the services are meeting claimant's needs, she has the option to contact those entities to seek additional assistance for claimant.

7. 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 SCI-FIT. 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 services provided to claimant by SCI-FIT under the Lanterman Act is SUSTAINED.

DATE: October 4, 2023

MARCIE LARSON

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.