

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

In the Matter of:

CLAIMANT,

vs.

HARBOR REGIONAL CENTER,

Service Agency.

DDS No. CS0009024

OAH No. 2023080799

PROPOSED DECISION

Chris Ruiz, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter in person on January 5, 2024, at the Harbor Regional Center in Torrance, California.

Letrina Fannin, Manager of Rights and Quality Assurance, represented Harbor Regional Center (RC or Regional Center).

Claimant was represented by his Father and Mother (collectively, Parents). Titles are used to protect the family's privacy.

Testimony and documents were received in evidence. The record closed and the matter was submitted for decision on January 5, 2024.

ISSUE

Should RC be ordered to provide funding, through claimant's Self Determination Plan (SDP) budget, to purchase daily supplements used by claimant, as recommended by his psychiatrist Isabel Puri (Puri), M.D.?

EVIDENCE RELIED ON

Offered by RC: RC's exhibits 1-9; Testimony of Katy Grancidos and Ahoo Sahba

Offered by Claimant: Testimony of Father and Mother

FACTUAL FINDINGS

Jurisdictional Matters

1. Claimant is a 22-year-old male who is eligible for RC services based on a diagnosis of autism spectrum disorder (ASD). Claimant's parents are his conservators.
2. On July 17, 2023, RC issued a Notice of Action which denied claimant's request to utilize his SDP budget funds to purchase daily supplements for claimant. RC denied claimant's request because RC concluded the daily supplements do not treat claimant's ASD and because the supplements are viewed as experimental within the medical community.

3. On August 14, 2023, claimant filed an appeal of RC's denial of his request to use funds from his SDP budget to purchase the daily supplements.

4. All jurisdictional requirements have been met.

Claimant's Background and Evidence

5. In 2017, claimant started seeing Isabel Puri (Puri), M.D., a psychiatrist. Parents described Puri as being more willing to consider alternative treatment methods for claimant. Prior to 2017, claimant was prescribed medications by psychiatrists, which parents testified had a negative impact on claimant's mental health.

6. A note from Puri, dated October 9, 2023, states claimant uses the following supplements: CBD Oil, Focus Mate, Gaba Soothe, Inositol Powder, Lithium Orotate, Calcium Magnesium Zinc, NAC, Neuro Serene, and Valerian Root. Puri's note also states claimant is prescribed the following medications: Rexulti and Asenapine Sublingual Tablets.

7. Puri's note states the daily supplements are intended to treat claimant's anxiety, and to improve claimant's attention, ability to sleep, and general mood.

8. Claimant's parents have funded the expense of claimant's supplements since approximately 2017. Parents' testimony established these supplements have positively assisted claimant with his behavior and anxiety. Claimant's parents are very pleased with Puri's treatment of claimant, which they described as much better than the treatment claimant received prior to 2017.

9. Father and Mother contend claimant's supplements are not experimental because claimant has successfully used them over an extended period of time.

10. Claimant previously requested Medi-Cal health insurance cover the expense of his daily supplements. Medi-Cal denied claimant's request because the supplements are available "over-the-counter," and Medi-Cal does not fund or reimburse payments for over-the-counter medication.

11. Claimant did not offer any medical evidence or testimony, other than Puri's note discussed above. While the daily supplements are recommended by Puri to reduce claimant's anxiety and improve his mental health, no evidence was offered to establish that the daily supplements are recommended by Puri to treat claimant's diagnosis with ASD.

12. Father stated claimant was unable to financially afford to pay Puri for the income she would lose if forced "to close her practice for the day" to testify.

RC's Evidence

13. Katy Grancidos (Grancidos) is the Manager of claimant's Service Coordinator. Grancidos testified RC's multidisciplinary team considered claimant's request to use his SDP funds to purchase the daily supplements detailed in Factual Finding 5. Grancidos testified that none of the daily supplements used by claimant are approved by the Food and Drug Administration.

14. Ahoo Sahba (Sahba), M.D., is a general pediatrician who does consulting work for RC. Sahba reviewed claimant's file and testified that ASD is a developmental disability, as compared to a mental health issue. Sahba also testified that the daily supplements prescribed by Puri were not prescribed to treat claimant's ASD. Sahba opined the daily supplements were prescribed by Puri to treat claimant's mental health, as indicated on Puri's note (Exhibit 8.) Sahba further opined that these supplements are not generally prescribed in the medical community to treat ASD, and

that no evidence-based research supports the conclusion that these supplements are effective at treating persons with ASD. Therefore, Sahba opined the supplements are viewed as experimental within the medical community.

15. Parents disagreed with Sahba's opinion because the supplements have had a positive effect on claimant's behavior. However, Sahba's testimony established that claimant's daily supplements are considered experimental, for the treatment of ASD, within the medical community. Further, according to Puri's note, the supplements were not recommended to treat claimant's ASD.

16. RC's "General Standards" state that RC will not fund any form of program therapies, drugs or special services which are considered by recognized professionals to be experimental.

LEGAL CONCLUSIONS

1. Pursuant to Welfare and Institutions Code (Code) sections 4700 through 4716, and California Code of Regulations (CCR), title 17, sections 50900 through 50964, individuals who disagree with a regional center's determination, such as in this case, may appeal the determination through a fair hearing process. All further references are to title 17 of the CCR.

2. Pursuant to Evidence Code section 115, since claimant seeks to establish a new service, namely funding for his daily supplements, claimant bears the burden of establishing that RC's decision to deny funding is incorrect.

3. The contours of the Self Determination Program (Program), under which claimant's SDP was developed, are stated in Code section 4685.8. The purpose of the

Program is to provide regional center consumers (also referred to as participants) and their families, with an individual annual budget, increased flexibility and choice, and greater control over decisions, resources, and needed and desired services and supports to implement the participant's Individual Program Plan. However, the Program does not state that regional centers may disregard the Lanterman Act, which begins at Code section 4400. The Program "shall only fund services and supports . . . that the federal Centers for Medicare and Medicaid Services determines are eligible for federal financial participation." (Code, § 4685.8, subd. (c)(6).)

4. Welfare and Institutions Code (Code) section 4648, subdivision (a)(17), states:

Notwithstanding any other law or regulation, 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, 2009.00, the Lanterman Act provides services and supports to individuals with developmental disabilities.

5. Claimant's Father and Mother presented as capable advocates for claimant. They have tried different medical treatment to find how to best care for claimant. The use of daily supplements is helping claimant with his behavior and general mental health. The question in this matter is whether RC is obligated or authorized, under the law, to fund claimant's daily supplements.

6. The only medical evidence presented established that the daily supplements used by claimant are experimental. Father contended the supplements are no longer experimental as to claimant because the supplements have had a positive impact on claimant's mental health and behavior. However, claimant's individual experience does not demonstrate the supplements have "been clinically determined or scientifically proven to be effective or safe" as Code section 4648, subdivision (a)(17), requires. That an experimental treatment works for a particular person does not make the treatment non-experimental. Thus, the supplements must be considered experimental under the statute because their use to treat ASD is not a generally accepted medical practice.

7. For all the reasons stated above, RC's decision to deny funding for claimant's daily supplements must be upheld at this time.

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ORDER

Harbor Regional Center's decision to deny claimant's request to use funds from his Self Determination Plan budget to purchase daily supplements is upheld. Claimant's appeal of RC's determination is denied.

Date:

CHRIS RUIZ

Administrative Law Judge

Office of Administrative Hearings

BEFORE THE
DEPARTMENT OF DEVELOPMENTAL SERVICES
STATE OF CALIFORNIA

In the Matter of:

Claimant

OAH Case No. 2023080799

Vs.

DECISION BY THE DIRECTOR

Harbor Regional Center

Respondent.

ORDER OF DECISION

On January 22, 2024, an Administrative Law Judge (ALJ) at the Office of Administrative Hearings (OAH) issued a Proposed Decision in this matter.

The Department of Developmental Services (DDS) takes the following action on the attached Proposed Decision of the ALJ:

The Proposed Decision is adopted by DDS as its Decision in this matter. The Order of Decision, together with the Proposed Decision, constitute the Decision in this matter.

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.

IT IS SO ORDERED on this day February 22, 2024

Original signed by

Nancy Bargmann, Director