

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

**In the Matter of:**

**CLAIMANT**

**vs.**

**CENTRAL VALLEY REGIONAL CENTER, Service Agency**

**Agency Case No. CS0009010**

**OAH No. 2023090274**

**DECISION**

Hearing Officer Coren D. Wong, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter by videoconference on January 18, 2024, from Sacramento, California.

Claimant's mother (Mother) represented Claimant.

Jacqueline Molinet, Fair Hearing & Appeals Specialist, represented the Central Valley Regional Center (CVRC).

Evidence was received, the record closed, and the matter submitted for decision on January 18, 2024. The record was reopened 10 days later to include as Exhibit X an exhibit Claimant offered at fair hearing but was inadvertently not addressed, to allow

CVRC an opportunity to object to the admissibility of Exhibit X, and to allow Claimant to respond to any objection. CVRC did not object to Exhibit X, and it was admitted for all purposes. The record was closed and the matter submitted for decision on January 24, 2024.

## **ISSUE**

Is CVRC required to fund Claimant's Spinal Cord Injury Functional Integrated Therapy (SCI-FIT) training?

## **Background**

1. Claimant is a five-year-old girl found eligible for regional center services and supports in 2020 based on the developmental disability cerebral palsy (CP). Her disability causes major impairments to cognitive and/or social functioning in the areas of communication skills, mobility, self-direction, and self-care.

2. Claimant lives at home with Mother. Her father has not been involved in her care since February 2023. She requires total care for self-care and activities of daily living, most of which Mother provides. She receives all nutrition through a gastrostomy tube.

3. Claimant is non-verbal. She communicates through body movement, facial expression, and vocalizations. Additionally, she is learning to use Tobii Dynavox, assistive technology that allows her to communicate by using eye gaze to control a computer.

4. The Clovis Unified School District (District) provides Claimant special education services. She has private health insurance through United Health Care.

Claimant receives In-Home Supportive Services (IHSS) through the Fresno County Department of Social Services. She also receives assistance from California Children's Services (CCS).

5. CCS is a statewide program that the California Department of Health Care Services (DHCS) manages. It serves people who: (1) are under the age of 21 years; (2) have a qualifying medical condition; (3) are California residents; and (4) meet the income requirements. CCS provides: (1) treatment, orthopedic appliances, and medical equipment; (2) case management assistance to obtain medically necessary care, appliances, and equipment; and (3) a Medical Therapy Program (MTP) which provides physical therapy and/or occupational therapy.

6. CCS's Medical Therapy Unit's (MTU) evaluation of Claimant to determine eligibility for CCS services led to her CP diagnosis. She is eligible for services based on that diagnosis. CCS provides physical therapy and occupational therapy. Fresno County provides 283 hours of IHSS each month. The District provides Claimant a special day kindergarten program, speech therapy, and physical therapy. CVRC provides case management services and funds respite care and music therapy and mileage.

### **Current Individual Program Plan**

7. Mother and Tiffany Young, Claimant's service coordinator with CVRC, met in August 2023 for an annual update to Claimant's Individual Program Plan (IPP). They identified the following goals for Claimant: (1) continuing to live with Mother; (2) learning to get ready for the day without assistance; (3) completing kindergarten and progressing to the first grade; (4) continuing to be supported by Mother; and (5) being able to communicate her wants and needs to Mother. They agreed CVRC would provide the following services and supports to help Claimant accomplish her goals: (1)

funding for 40 hours of respite care each month; (2) funding for music therapy and mileage; (3) funding for diapers until September 30, 2023, the date on which Medi-Cal would provide funding; and (4) case management and monitoring.

## **Transition to the Self-Determination Program**

8. On February 1, 2023, Mother requested that Claimant switch from the Traditional Program for receiving regional center services to the Self-Determination Program (SDP). She hired Cynthia Cox, the chief executive officer of Community Integration Specialists, as Claimant's independent facilitator. Ms. Cox prepared an SDP Centered Plan describing Claimant, some of her likes and dislikes, what is working and not working for her, generic resources, and unmet needs.

## **Claimant's Requests for Funding**

### **SCI-FIT TRAINING**

9. On May 23, 2023, Mother sent Ms. Young the following email asking CVRC to fund Claimant's SCI-FIT training:

I was wondering if all or some of Sci-Fit training would be covered by [CVRC]? Right now, I am currently paying out of pocket. They do not accept insurance. She attends training M-F, 2 hours a day, except Thursdays. This would really help me with costs. This program has proven to be so beneficial for [Claimant] in her progress, as she requires a lot of support at this time.

Ms. Young responded the following week explaining, "SCI-fit training can only be covered by cvrc [*sic*] if there is need for it (doctors [*sic*] prescription) and insurance denies the funding."

### **FUNDING TO PURCHASE TREXO**

10. Three months later, Mother asked Ms. Young to provide funding "to cover the cost of a piece of equipment that would be life [*sic*] changing for [Claimant] to be able to walk." She explained, "The Trexo device would help [Claimant] establish that independence in her community and at home." Ms. Young responded by explaining the process for funding was the same for the Trexo as it was for SCI-FIT: "Would need a prescription from her [primary care physician] (nothing [*sic*] that it helps her disability helps), denied funding by medi-cal [*sic*] and private insurance."

### **Evaluation of Claimant's Request for Funding**

11. Ms. Young discussed Claimant's request for funding for SCI-FIT training with her program manager and then Shelley Celaya, CVRC's Assistant Director of Case Management. Because Claimant has not yet completed the transition to the SDP program or finalized an SDP budget, the request was evaluated as a request for funding through the Traditional Program, rather than the SDP.

12. Ms. Celaya was unfamiliar with SCI-FIT training, so she searched the Internet for literature because regional centers are limited to funding services and supports that have been clinically determined to be safe and effective and are not experimental. She could not find any such literature.

13. Ms. Celaya also contacted Tammy Miranda, CVRC's Assistant Director of Clinical Services, and Becky Kawashima, M.D. Dr. Kawashima is board-certified in

pediatrics and serves as a medical consultant to CVRC. Neither Ms. Miranda nor Dr. Kawashima was familiar with SCI-FIT training. Additionally, Dr. Kawashima was unable to find any medical literature or peer-reviews discussing the benefits and efficacy of SCI-FIT training.

14. Ms. Celaya contacted Steve Nava, co-owner and chief operating officer of SCI-FIT Fresno and asked: (1) for any peer-reviewed studies concluding SCI-FIT is a safe and effective therapy for children with CP; (2) the type of assessments administered and how progress is determined; (3) whether their therapy is provided by licensed clinicians; (4) if a physician's or physiatrist's prescription is needed; (5) if services are covered by health insurance; and (6) if he provides clients reports outlining goals and assessing progress towards meeting them.

15. Mr. Nava responded by explaining there are no physical therapists at the Fresno location. All employees have bachelor's degrees in kinesiology or exercise science, and many have other certifications in functional movement. A medical release signed by a physician authorizing the patient to participate in intensive therapy involving loadbearing exercises is required before receiving services. Trainers take Subjective, Objective, Assessment and Plan (SOAP) notes and videos to track all clients' progress. SCI-FIT Fresno does not take health insurance.

16. Regarding peer-reviewed studies of SCI-FIT training, Mr. Nava wrote:

These are all evidence-based research what our program can help benefit children with CP. The National Center on Physical Activity and Disability states that exercise is important in the disabled population for prevention of secondary complications, Weight loss and/or maintenance

Increasing strength and endurance to help in performing activities of daily living (ADLs), Psychological and/or recreational benefits. It also helps prevent loss of muscle mass, helps prevent osteopenia/osteoporosis, helps keep spinal circuits from shutting down, increasing energy and enhance quality of life. 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.

Neuroplasticity is defined as the ability of the brain to form and reorganize synaptic connections, especially in response to learning or experience following injury or Neurological impairment.

Biofeedback and Closed Chain exercises activity fixes the distal end of the extremity either to the ground or to a device that has a predetermined motion. Utilizing the biofeedback of a closed-chain exercise will help gain a stronger connection. Mind Body connection and visualization when re-training the nervous system, being mentally engaged elicits slightly stronger physical response to exercise. Development Movement Patterns are pattern movements that help develop nervous pathways and

contribute to joint stabilization through loading (rolling, quadruped balance, crawling, kneeling, standing, and walking). These are our four main principles of our program. 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}

Active and passive range of motion Increase stimulation and circulation Help maintain mobility, increase joint flexibility, prevent muscle shortening, Involving visualization for a stronger mind-body connection. Load bearing with feet or knees grounded in a closed chain brings hips through full extension and allows for proper joint alignment Provide biofeedback through the feet or knees by Increase stimulation. Joint stability and circulation in the lower extremities, maintenance of bone density, Positive psychological benefits of standing are main importance for load bearing. Electrical stimulation is used to stimulate peripheral nerves to elicit a muscular contraction and will replace or enhance volitional movement. The differences between FES and NMES is that FES utilizes NMES to perform a sequential pattern to complete a task. Main benefits are prevention of disuse atrophy, increased local blood circulation, Increased nervous system stimulation. Functional exercise and development patterns which



incorporate total body dynamic movement help improve strength, coordination, stability, proprioception, and balance. Functional exercise is used to increase general health and as supplemental movements to achieve a goal (standing, walking) while Developmental Movement Patterns are used to help the neuromuscular system relearn the skills needed for walking. The benefits of Locomotor training/Gait training are the repetitive motion that stimulates the nervous and muscular systems to re-learn walking patterns. Neurons located throughout the CNS, called Central Pattern Generators, are responsible for rhythmic patterns such as walking. The different pieces of equipment we use for gait training/locomotor training are Body Weight Supported Treadmill Training (BWSTT), Over-Ground Walking and Robot-Assisted Locomotor Training.

(Grammar, punctuation, and spelling original.)

## **Notice of Action and Fair Hearing Request**

17. CVRC issued a Notice of Action (NOA) on August 7, 2023, denying Claimant's request for funding for SCI-FIT training through the Traditional Program. The NOA provided the following reasons for the denial:

There is no evidence that SCI-FIT has been proven to be a safe and effective treatment for a child with Cerebral Palsy. Physical and Occupational Therapy is covered by client's Private insurance and Medi-Cal. [Claimant] has physical

therapy services in place that is funded by insurance. SCI Fit is a private program and does not take any insurance plans. Generic resources must be exhausted prior to regional centers funding supports or services.

18. Claimant timely appealed the NOA by requesting a fair hearing. She provided the following reasons for appealing:

There [are] limited therapy services for [Claimant's] needs. [Claimant] only gets MTU therapy; physical therapy one session a month and Occupational therapy once every two months. This is not enough therapy to meet [Claimant's] needs. These therapy appointments are only enough time to update therapists on [Claimant's] progress and maintenance (checking to see if [Claimant's] equipment needs adjusting etc.) Private insurance is not accepted at Valley Children's Therapy department or any outpatient facility due to [Claimant] having CCS. She can only do one or the other. [Claimant] has to stay with CCS so her equipment and other services are covered. [Claimant] needs more therapy to help support her delays. She cannot walk, sit, roll over, or stand. [The] [m]ore therapy she receives the more progress she gains. [Claimant] has made improvements since she started at Sci-fit a year ago. I am requesting CVRC cover the costs at this facility because I have seen the improvements and I've been paying out of pocket for a year now, this would help our family financially.

Other facilities, I have not seen gains like she's making at Sci-fit. Thank you for your time.

19. Claimant initially argued at hearing that her appeal also included her request for funding for Trexo. However, she agreed with CVRC's explanation that it was waiting for information supporting that request before making a decision. Claimant said she was in the process of obtaining the requested information and agreed it was "too early" to appeal that request.

## **Additional Evidence at Hearing**

### **RONALD MARCONI, M.D.'S, TESTIMONY**

20. Ronald Marconi, M.D., is a medical consultant for CVRC. He earned his Bachelor of Science in biology from the State University of New York at Buffalo in 1972. He earned his medical degree from the university's Jacobs School of Medicine and Biomedical Sciences four years later. Dr. Marconi completed a two-year residency at Buffalo General Medical Center and served as chief resident the following year. He is board-certified in family medicine and hospice and palliative medicine.

21. Dr. Marconi has never physically examined or treated Claimant. He reviewed Claimant's file with CVRC and was asked his opinion about the propriety of funding her request for SCI-FIT training. Dr. Marconi described Claimant as "severely impaired" and rated the severity of her impairment a "level 5" on a scale of 1 to 5, with 5 being the most severe.

22. Dr. Marconi was not familiar with SCI-FIT training prior to being asked to consult on this matter. He searched medical journals and periodicals for literature on SCI-FIT training. He did not find any peer-reviewed studies analyzing the efficacy or

safety of such training for patients with CP. Nor did he find any studies analyzing the potential risks and complications of the training for such patients.

23. Dr. Marconi talked to several physicians about their willingness to prescribe SCI-FIT training as a form of treatment for patients with CP. None of them were willing to write such a prescription because they did not have sufficient familiarity with such treatment.

24. Dr. Marconi reviewed Claimant's Occupational Therapy MTU Summary & Plan dated September 15, 2022. Her functional status for performing ADLs was initially rated 0 on June 10, 2019, was subsequently rated 0 on April 7, 2022, and was again rated 0 five months later. Claimant's Physical Therapy MTU Summary & Plan dated September 14, 2023, showed an initial rating of her functional status of gross motor skills of 6 on July 10, 2019, a subsequent rating of 11 on September 16, 2022, and a current rating of 11 one year later.

25. Dr. Marconi explained the significance of Claimant's ratings is that she showed no improvement in functional status of performing ADLs between June 10, 2019, and September 15, 2022. Although she showed improvement in functional status of gross motor skills between July 10, 2019, and September 16, 2022, there has been no subsequent improvement.

26. Dr. Marconi reviewed Rebekah Kawashima, M.D.'s, October 19, 2023 Medical Therapy Conference Report. She recommended the following for Claimant: (1) x-rays to monitor hip dysplasia; (2) not being treated by a subspecialist for an MTP-diagnosis; (3) physical therapy – six visits over 12 months for monitoring durable medical equipment, orthotics, gait training, functional mobility, therapeutic exercises, transfer training, home exercise program, and consultation; (4) reevaluation by

occupational therapy in one year; (5) bilateral ankle-foot orthoses, left heel lift, neck brace, bilateral hand splints, and a deep pressure sensory vest; (6) continued use of a manual wheelchair, stander, gait trainer, and back chair; (7) no follow-up with primary care physician for a new referral necessary; (8) weight-bearing as tolerated; and (9) return in one year. Dr. Marconi explained the significance of Dr. Kawashima's recommendations as: (1) she recommended physical therapy every other month for the purpose of monitoring Claimant's equipment and answering Mother's questions; and (2) she did not recommend any additional treatment and, therefore, did not refer Claimant to her primary care physician to pursue any such treatment.

27. Dr. Marconi concluded there was insufficient evidence to recommend that CVRC fund SCI-FIT training for Claimant. He said he would need to see reputable, evidence-based studies concluding such training is a safe and effective form of treatment for CP before he could recommend funding. Dr. Marconi described himself as a strong advocate for disabled patients and said he would love more than anything to recommend funding. However, he explained that CVRC receives federal funding and there are severe penalties for using federal funds to provide unauthorized services and supports.

### **MOTHER'S TESTIMONY**

28. Mother is focused on helping Claimant reach goals that will help improve her quality of life, such as being able to stand, walk, crawl, rollover, and sit. Mother discovered SCI-FIT Fresno, and she has been bringing Claimant there four to five times a week, for two to three hours each visit, since July 20, 2022. She pays out of pocket. Mother described Claimant as making significant progress toward her goals since going to SCI-FIT. Additionally, she explained Claimant "has gained so much massive support in the Sci-Fit community," and they "have become family." Mother described

family and community as "important for [Claimant's] success in reaching functional mobility goals."

29. Mother clarified that she requested funding for SCI-FIT training, not physical therapy. She explained, "This program is an additional program I requested as an exercise program, not a physical therapy program." Additionally, she requested funding in the SDP budget, not through the Traditional Program. The request was made during a telephone call with Ms. Molinet shortly after starting the process to transition to the SDP.

30. Mother reiterated:

I am requesting CVRC to add Sci-Fit training into the SDP budget. We are in the process of certifying the budget. I cannot have a meeting with Financial Management Systems without the certified budget. So, it is pertinent to add Sci-Fit to use the SDP budget as soon as possible so that we can move forward with FMS and have a definitive spending plan. This is what is in alignment with [Claimant's] IPP, PCP, and School IEP goals.

31. Mother explained she is in the process of obtaining a letter from United Health Care denying coverage for Trexo. She is also trying to obtain a prescription and letter of medical necessity from Claimant's primary care physician, Ama Wijegunawardena, M.D. She agreed to provide those documents to CVRC once she receives them.

## **MR. NAVA'S TESTIMONY**

32. Mr. Nava earned a bachelor's degree in kinesiology and movement studies from California State University, Chico, in 2014. He opened SCI-FIT Fresno with three other people five years later. He has no physical therapists on staff, and no physical therapy is provided at his location. All staff members have bachelor's degrees in kinesiology or exercise therapy and provide exercise therapy.

33. Mr. Nava described Claimant as having "made significant improvement" since first coming to SCI-FIT Fresno in July 2022. She still has a lot of work to do, but he is pleased with her progress thus far.

34. Mr. Nava narrated a video showing Claimant's progress. The video showed her progression from having someone support her head in an upright position while she is standing to her doing so on her own. Mr. Nava described Claimant's biggest improvement as understanding what different therapists are trying to teach her, being able to follow instructions, and recognizing who is working with her at any given moment.

35. Prior to hearing, Mr. Nava wrote a letter describing SCI-FIT Fresno's program as follows:

Our program works specifically with spinal cord injuries of all levels along with neurological disorders that affect mobility and we provide an exercise-based therapy. This program works on Active Range of Motion, gait training, Functional exercises/Developmental movement patterns, Functional Electrical Stimulation/Neuromuscular stimulation, and Load Bearing exercises. These are the

necessities [Claimant] who is diagnosed with Cerebral Palsy/Dystonia needs these types of services for better quality of life physically and mentally. We are a private facility so our services are not covered by insurance.

**ROBERT HUNTINGTON, P.T., D.P.T.'S, TESTIMONY**

36. Robert Huntington, P.T., D.P.T., received a Bachelor of Science in exercise science from the University of Toledo in 2017. He received a Doctor of Physical Therapy (D.P.T.) from Rosalind Franklin University three years later. He works as a physical therapist at SCI-FIT Dublin. His caseload includes patients with a variety of developmental disabilities and neurological disorders.

37. Dr. Huntington has not examined or treated Claimant. He became familiar with Claimant when Mother contacted him for documentation supporting Claimant's continued treatment at SCI-FIT Fresno.

38. Dr. Huntington has seen measurable improvement in most of his clients since he began treating them. He explained that the more severe a client's disability, the more difficult it is for him to document or prove the client's progress. However, most have shown progress.

39. Dr. Huntington previously wrote a letter in support of Claimant's continued treatment. He wrote, in part:

It is my professional opinion that activity-based training completed by SCI-FIT Fresno will continue to enhance functional potential for [Claimant]. SCI-FIT Fresno specializes in activity-based rehabilitation that is not offered



anywhere else in the area. Activity-based therapy is a unique style of rehabilitation focusing on targeting activation of muscles of the affected limbs or below the level of lesion. It focuses on recovery rather than compensation to improve independence and quality of life. The core focus of activity-based therapy is high repetition and high intensity treatment sessions. High intensity and high repetition are achieved by several pieces of specialized equipment such as electrical stimulation, whole body vibration and bodyweight supported treadmill training.

#### **MS. COX'S LETTER**

40. Ms. Cox wrote a letter in support of Claimant's request for funding for SCI-FIT training in her SDP budget. Ms. Cox criticized CVRC for insisting on "placing Sci-Fit in the traditional model, despite being well-aware of the ongoing transition to the Self-Determination Program." She proposed funding SCI-FIT training "under the vendor category of Specialized Recreational Therapy."

#### **DR. KAWASHIMA'S LETTER**

41. Dr. Kawashima wrote the following in a letter explaining why CVRC denied funding for SCI-FIT training:

SCIFIT is a for-profit fitness center and their services are not deemed medically necessary as they are not a proven therapy. It is unique in that it is targeting individuals with spinal cord injury, stroke, and neurological disorders. It is not a traditional fitness center but it is staffed with personal

trainers. There are no medical studies that show SCIFIT provides better health outcomes in children with cerebral palsy.

SCIFIT is not a rehabilitation center although they suggest they offer therapy programs. California has deemed that if a child has a diagnosis of cerebral palsy and meets the eligibility criteria, then they can receive therapy, physical, occupational and rehabilitation equipment/devices at CCS/MTU. The therapist[s] are all licensed and certified. It is an established program from 1927. They can make recommendations for activities to help meet their goals in activities and physical fitness.

To reiterate, SCIFIT is not a medically necessary treatment. It is not rehabilitation. It is unproven to be beneficial to clients with cerebral palsy. Suggestions for activities and exercise can be received through CCS/MTU. In addition, the school provides therapy and activity suggestions. The State is providing many licensed and professional individuals who can provide exercise, activity, recreational and therapy suggestions for these individuals. Is it necessary for the Regional Centers to fund SCIFIT to suggest an exercise routine/program? I don't believe it is.

## **DHCS'S MEMORANDUM**

42. DHCS sent a memorandum on August 24, 2023, to all regional centers reminding them about CCS's Medical Therapy Program (MTP). The memorandum provided:

There is no financial eligibility requirement for CCS MTP, and no financial responsibility on the part of the eligible individual or their family to receive these services.

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.

When Regional Centers provide services to individuals who are suspected to have, or are diagnosed with, a CCS MTP-eligible condition, Regional Centers must refer the potentially eligible individual to a CCS MTP to be evaluated, and if found eligible, receive MTP services there.

Regional Centers are not allowed to purchase [physical therapy, occupational therapy, and medical therapy conference] 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 resources such as Medi-Cal, CCS, or other resources.

## **Analysis**

### **SCI-FIT PROVIDES CLAIMANT PHYSICAL THERAPY**

43. Regardless of how Mr. Nava, Dr. Huntington, or Mother characterize the services SCI-FIT Fresno provides Claimant, it provides her physical therapy. The Physical Therapy Practice Act (Bus. & Prof. Code, § 2600 et seq.) defines “physical therapy” as follows:

Physical therapy means the art and science of physical or corrective rehabilitation or of physical or corrective treatment of any bodily or mental condition of any person by the use of the physical, chemical, and other properties of heat, light, water, electricity, sound, massage, and active, passive, and resistive exercise, and shall include physical therapy evaluation, treatment planning, instruction and consultative services. The practice of physical therapy includes the promotion and maintenance of physical fitness to enhance the bodily movement related health and wellness of individuals through the use of physical therapy interventions.

(Bus. & Prof. Code, § 2620, subd. (a).)

Mr. Nava’s and Dr. Huntington’s correspondence and testimony describing Claimant’s training makes it clear she is being provided physical therapy.

## **CLAIMANT HAS NOT EXHAUSTED ALL GENERIC RESOURCES**

44. CCS MTP and the District already provide Claimant physical therapy. DHCS recognizes CCS MTP as a generic resource and reminds regional centers they cannot provide physical therapy to a consumer with a CCS MTP-eligible condition. Therefore, CVRC cannot fund Claimant's SCI-FIT training.

## **CLAIMANT DID NOT PROVE SCI-FIT'S CLINICAL EFFECTIVENESS**

45. Claimant did not prove SCI-FIT has been clinically determined or scientifically proven to be effective for the treatment or remediation of her disability. Though Mr. Nava, Dr. Huntington, and Mother contend otherwise, none of them is a physician. Nor did they reference any credible medical literature or peer-reviewed articles discussing the benefits and efficacy of SCI-FIT training in the treatment of CP.

46. On the other hand, Drs. Marconi and Kawashima are board-certified physicians. They persuasively explained they did not find any medical literature or peer-reviewed articles discussing the benefits and efficacy of SCI-FIT training in the treatment of CP, as did Ms. Celaya. Though Ms. Celaya is not a physician, she is CVRC's Assistant Director of Case Management and is familiar with different services and supports that have been found effective in treating CP.

## **ISSUES AT FAIR HEARING**

### **Funding Under the Traditional Program vs. the SDP**

47. The persuasive evidence established CVRC considered and then denied Claimant's request for funding for SCI-FIT training under the Traditional Program, not the SDP. Mother and Ms. Cox agreed no SDP budget has been created. Ms. Cox criticized CVRC for "placing Sci-Fit in the traditional model, despite being well-aware

of the ongoing transition to the Self-Determination Program.” It would be premature to consider an appeal from the denial of a request to include funds for SCI-FIT training in Claimant’s SDP budget because CVRC has neither evaluated nor denied any such request.

### **Request for Funding to Purchase Trexo**

48. Claimant’s request for funding to purchase Trexo is beyond the jurisdiction of fair hearing. Ms. Young is awaiting documentation needed to decide the request. Mother said she is in the process of obtaining such documentation and will provide it upon receipt. CVRC has not denied Claimant’s request. There is nothing to decide regarding the request at fair hearing.

## **LEGAL CONCLUSIONS**

### **Applicable Burden/Standard of Proof**

1. Claimant has the burden of proving CVRC is required to fund her request for SCI-FIT training. (*In re Conservatorship of Hume* (2006) 140 Cal.App.4th 1385, 1388 [the law has “a built-in bias in favor of the status quo,” and the party asking a court to do something has the burden “to present evidence sufficient to overcome the state of affairs that would exist if the court did nothing”].) The applicable standard of proof is preponderance of the evidence. (Evid. Code, § 115.) This evidentiary standard requires Claimant to produce evidence of such weight that, when balanced against evidence to the contrary, is more persuasive. (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.) In other words, Claimant must prove it is more likely than not she is entitled to regional center funding to purchase SCI-FIT training. (*Lillian F. v. Super. Ct.* (1984) 160 Cal.App.3d 314, 320.)

## Applicable Law

### JURISDICTION OF FAIR HEARING

2. A consumer dissatisfied with her regional center's denial of her request to fund the purchase of a service or support may appeal the denial and have her request decided at a fair hearing. (Welf. & Inst. Code, § 4710.5, subd. (a).) "The request for . . . a fair hearing . . . shall be stated in writing on the appeal request form prescribed by the [Department of Developmental Services]." (*Id.*, subd. (b).) In her written appeal, Claimant identified only CVRC's denial of her request to fund SCI-FIT training. Therefore, her request for funding for Trexo is beyond the jurisdiction of this fair hearing.

3. 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]." (*Assn. for Retarded Citizens v. Dept. of Developmental Services* (1985) 38 Cal.3d 384, 388.)

4. 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; *Assn. for Retarded Citizens v. Dept. of Developmental Services*, *supra*, 38 Cal.3d at p. 389.)

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, §§ 4512, subd. (b); 4646, subds. (a) & (d); 4646.5, subd. (a)(1)–(3), (5); & 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. (Welf. & Inst. Code, § 4648, subd. (a)(1).)

5. Regional centers are mandated to provide a wide range of services to facilitate implementation of a consumer's IPP but must do so in a cost-effective manner. (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.” (Welf. & Inst. Code, § 4659, subd. (a).) This includes any government assistance or private insurance for which the consumer may qualify. (*Id.*, subd. (a)(1), (2).) They are prohibited from using funds “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.” (Welf. & Inst. Code, § 4648, subd. (a)(8).) This prohibition is often referred to as “supplanting generic resources.”

6. But regional centers are not required to provide all services a consumer requests. They “shall not purchase any service that would otherwise be available from Medi-Cal, Medicare, the Civilian Health and Medical Program for Uniform Services, In-Home Support Services, California Children's Services, 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.” (Welf. & Inst. Code, § 4659, subd. (c).) “[A] regional center shall not purchase medical . . . services for a consumer . . . unless the



regional center is provided with documentation of a Medi-Cal, private insurance, or a health care service plan denial and the regional center determines that an appeal by the consumer or family of the denial does not have merit.” (*Id.*, subd. (d)(1).) Regional centers may 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.” (Welf. & Inst. Code, § 4648, subd. (a)(16).)

## **Conclusion**

7. CVRC is prohibited from funding Claimant’s SCI-FIT training because such training constitutes physical therapy, and CCS MTP and the District provide her physical therapy. Additionally, SCI-FIT has not been clinically determined or scientifically proven to be effective for the treatment or remediation of Claimant’s disability. Therefore, her request for funding for SCI-FIT training must be denied.

## **ORDER**

Claimant’s appeal from Central Valley Regional Center’s August 7, 2023 Notice of Action denying her request for funding for Spinal Cord Injury Functional Integrated Therapy training is DENIED. CRVC is not required to fund her training.

DATE: February 1, 2024

COREN D. WONG

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 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.