

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

In the Matter of:

CLAIMANT

vs.

SOUTH CENTRAL LOS ANGELES REGIONAL CENTER,

Service Agency.

System Tracking No. CS0012514

OAH No. 2024020297

PROPOSED DECISION

Jennifer M. Russell, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on September 10, 2024.

Tami Summerville, Appeals and Governmental Affairs Manager, represented South Central Los Angeles Regional Center (SCLARC or regional center). Authorized Representative Amida Ochoa of Ochoa Consulting, LLC represented Claimant, whose name is not used to protect privacy, and who was not present.

Spanish language interpretation services were provided. Mayra Mungia, Mitra Rouintan, DDS, Cynthia Rivera, and Claimant's mother (Mother) testified. SCLARC's documents marked Exhibit 1 through Exhibit 7 were received in evidence. Claimant's documents marked Claimant Exhibit 2 through Claimant Exhibit 8 were received in evidence. The record closed and the matter was submitted for decision at the conclusion of the hearing.

ISSUES FOR DETERMINATION

1. Whether the service agency should use SCLARC funds to pay the costs of Claimant's orthodontic treatment and care.

2. Whether funds from Claimant's Self-Determination Program's spending plan and budget should be used to pay the costs of Claimant's orthodontic treatment and care.

FACTUAL FINDINGS

Jurisdictional Matters

1. On October 17, 2023, Mother requested SCLARC to fund Claimant's orthodontic treatment and care.

2. By Notice of Proposed Action, dated December 4, 2023, SCLARC denied that funding request. SCLARC informed Mother as follows:

*You are not eligible for your requested level of service
because generic resources such as California State's*

dental plan for residence, can meet identified needs. In addition, services and supports provided must be directly related to addressing the symptoms of needs arising from a developmental disability. After careful review, it has been determined that orthodontic treatment does not meet criteria for being directly supportive of alleviating symptoms associated with a developmental disability.

(Exh. 1 [A11], original emphasis.)

3. On February 8, 2024, on behalf of Claimant, Mother filed an Appeal Request Form requesting a mediation. The matter did not resolve.

4. On May 29, 2024, filed an Appeal Request Change Form requesting a fair hearing.

5. On June 19, 2024, OAH notified the parties of a state-level fair hearing by videoconference scheduled for July 15, 2024, which was subsequently continued to September 10, 2024.

Claimant's Background

6. Claimant is a 16-year-old female consumer of SCLARC based on her qualifying diagnoses of Intellectual Disability—Mild and Autism. Claimant resides with Mother and her two siblings, who are also SCLARC consumers.

7. Claimant's most recent IPP, dated June 10, 2024, provides for, among other things, "Medi-Cal/Health Net to fund for medical & dental services." (Exh. 2 [A47].)

8. In 2023, Claimant became a participant in the Self-Determination Program (SDP). As such, a spending plan and budget was developed for the services and supports needed to implement Claimant's Individual Program Plan (IPP). For the year commencing April 1, 2023 and ending March 31, 2024, Claimant's approved annual budget totaled \$106,395, and \$339 of that budget was designated under the Health and Safety category for "Training and Counseling Services for unpaid caregivers (Code #371)." (Exh. 4 [A66].)

9. Effective April 1, 2024, Claimant entered her second year as an SDP participant. Neither party offered Claimant's approved second year SDP budget and spending plan in evidence.

Claimant's Orthodontic Treatment and Care

10. On June 28, 2023, Claimant's treating orthodontist, who is not identified by name to preserve confidentiality, diagnosed Claimant as presenting with Class III right and left, five millimeter over jet and three millimeter overbite, severe upper and lower crowding with blocked out upper and lower canines, and size discrepancy of upper laterals. (Exh. 5 [A76].) Claimant's treating orthodontist proposed orthodontic treatment plan provides for "Full braces upper and lower, extract upper 2nd premolars and lower 1st premolars, elastics, and interproximal reduction upper and lower, as needed." (*Ibid.*) Treatment includes "Beginning Records (photos, x-rays, impressions), Upper/lower metal braces, Removal of braces, Final Records (photos, e-rays, Impressions), and 1 set of Upper and Lower clear Trutain retainers." (*Ibid.*) The estimated treatment time is 24 to 30 months.

11. Claimant's treating orthodontist did not testify at hearing. However, SCLARC dental consultant Mitra Rouintan, DDS, reviewed Claimant's dental records

and Claimant's treating orthodontist's recommended orthodontic treatment plan. Based on her review, Dr. Rouintan inferred Claimant's treating orthodontist anticipated Claimant will experience difficulty cleaning her teeth if her dental condition is not remediated. Claimant will likely develop cavities and gingivitis. Claimant has already developed herpes lesions in her mouth and her misaligned teeth rub against the lesions and cause Claimant discomfort. Claimant is prescribed Acyclovir to treat her oral herpes.

12. On August 7, 2023, Claimant's treating orthodontist submitted a Treatment Authorization Request (TAR) to the Medi-Cal Dental program for prior authorization of benefits to cover the costs of Claimant's proposed orthodontic treatment and care.

13. While the request for prior authorization was pending, Claimant's treating orthodontist provided Mother with an "Orthodontic Fee Quote," dated October 13, 2023, with the following itemizations: Professional Fee—\$5,675; Other—\$1,000; and Estimated Responsible Party Portion—\$4,675. The Orthodontic Fee Quote provides for an initial payment of \$300 and the balance payable in 30 automatic monthly installments of \$145. (Exh. 5 [A77].)

14. On October 24, 2023, the Medi-Cal Dental program notified Claimant and Claimant's treating orthodontist of its decision denying the TAR. The evidence in the record does not indicate whether Mother, on Claimant's behalf, pursued any administrative appeal of the October 24, 2023 denial, and if so, the outcome of a final administrative decision.

15. On January 9, 2024, Dr. Rouintan referred Claimant to a SCLARC vendored dentist for a second opinion. Mother reportedly informed SCLARC she was

unable to take Claimant to an appointment with the SCLARC vendored dentist. SCLARC has no record of Claimant obtaining a second opinion.

16. Dr. Rouintan additionally suggested Claimant consult a neurologist to determine whether Claimant's orthodontic condition emanates from any of Claimant's qualifying developmental disabilities. No neurologist has informed SCLARC that Claimant's orthodontic condition is caused by or related to either of Claimant's qualifying developmental disabilities.

17. On January 23, 2024, Mother proposed a modification to the Health and Safety budget category of Claimant's first year SDP budget and spending plan to add "Dental Services (Code #367)" to be provided by Claimant's treating orthodontist as a "one time service" payable in the amount of \$6,909.53 during the May 1, 2023 through March 31, 2024 year. (Claim. Exh. 5 [Z20].) SCLARC did not accept or approve the proposed modification.

18. A document titled *Self-Determination Program Service Definitions* contains the following definition of "Dental Services":

Dental services are defined in Title 22, California Code of Regulations, Section 51059 as professional services performed or provided by dentists including diagnosis and treatment of malposed human teeth, of disease or defects of the alveolar process, gums, jaws and associated structures, anesthetics and physical evaluation; consultations; home, office and institutional calls.

All medically necessary dental services for children under age 21 are covered in the state plan pursuant to the EPSDT

[Early and Periodic Screening, Diagnostic, and, Treatment] benefit. Dental services in this waiver are only provided to individuals age [sic] 21 and over and only when the limits of dental services furnished under the approved state plan are exhausted. Dental services in the approved state plan are limited to \$1800 annually or by the amount that is determined medically necessary.

(Claim. Exh. 7 [Z31].)

The Service Agency's Position

19. SCLARC maintains Claimant's orthodontic condition is not a defining characteristic of Intellectual Disability or Autism, the two developmental disabilities with which Claimant presents and which render Claimant eligible for services and supports under the Lanterman Developmental Disabilities Services Act (Lanterman Act), Welfare and Institutions Code section 4500, et seq.

20. At hearing, Dr. Rouintan opined, "Orthodontic-related problems can happen to individuals with and without Intellectual Disability or Autism. There is no direct relationship or correlation between Autism or orthodontic deformities. . . . Eighty percent of [the population] has orthodontic issues or problems. [Claimant's] developmental disabilities are not the cause of her orthodontic issues. . . . There is no letter from a neurologist to indicate deformity of the teeth is due to underlying Autism." Dr. Rouintan further opined, "There is no medical necessity in this case. There is no problem with chewing, digestion, sentence formation, articulation, and so on."

21. SCLARC additionally maintains Mother's request for it to fund Claimant's orthodontic treatment and care does not meet funding criteria set forth in the *SCLARC*

Purchase of Service (POS) Funding Standards (Funding Standards), which the Department of Developmental Services approved on October 18, 2010.

22. The *Funding Standards*, in pertinent part, provides the following:

SCLARC shall not fund the general health care needs of its consumers unless special circumstances exist. Parents are generally expected to provide for the medical and health care of their children. SCLARC will assist consumers and families in accessing services through existing health care resources. These resources may include but are not limited to: private health insurance, Medi-Cal, Medicare, CCS [California Children's Services], CHDP/EPSTD [Child Health and Disability Prevention Program/Early and Periodic Screening Diagnostic, and, Treatment], county health care services and fee for service providers. SCLARC shall not fund any medical or related services before existing generic resources for the service are explored. Consumers who are not covered by other generic resources should be referred to county health care facilities for their general medical needs. [¶. . . ¶]

. . . Funding will be considered under the following conditions:

- 1) A consumer demonstrates an exceptional need that is directly related to the consumer's

developmental disability (as defined by regional center eligibility criteria).

2) SCLARC will consider funding services that will be formally **authorized prior** to provision of service. SCLARC will not fund services without such a prior authorization.

3) SCLARC will fund services at applicable Medi-Cal Statewide Maximum Allowance (SMA) rates. In general health care services not funded by Medi-Cal will not be funded by SCLARC.

4) SCLARC shall not purchase experimental treatments, therapeutic services or devices that have not been clinically determined or scientifically proven to be effective or safe for which risks and complications are unknown. [¶. . . ¶]

Medical services which are deemed by the SCLARC physician to be important for determination of consumer's eligibility or which are important for case management may be considered for SCLARC funding when no other resources are available.

Exceptional circumstances creating unusual or extreme needs for health care services will be evaluated for SCLARC funding on an individual basis. The SCLARC physician

should be consulted prior to any decisions on provision of funding for health care services.

It is recommended that most consumers have periodic medical evaluations (usually annually). However, this routine medical care as well as any acute or chronic medical care is expected to be provided by the health care system (e.g., Medi-Cal, Los Angeles County hospitals and public health centers, private insurance, CHDP, etc. and other generic resources). Therefore, these services would not be funded by the regional center. A similar exception exists with regards to dental services. The regional center may consider funding services on an individual basis as outlined earlier.

(Exh. 7, bold italics in original.)

23. Cynthia Rivera is SCLARC's Participant Specialist for Self-Determination. Ms. Rivera's duties and responsibilities include convening budget meetings for SDP participants and providing guidance on requested services and how they should be funded. Ms. Rivera's testimony establishes the *Funding Standards* governing SCLARC's authority to fund consumers' health and dental care needs are applicable to both traditionally funded services and services funded pursuant to an SDP budget and spending plan.

24. Ms. Rivera is familiar with Claimant's case. Ms. Rivera informed Mother that Claimant's first year SDP budget would not provide for dental services "because [Claimant] must use generic resources—Dental-Cal first and other available generic resources." When Mother proposed modifying Claimant's first year SDP budget to add

"Dental Services (Code #367)," Ms. Riveria explained to Mother that Claimant "didn't meet criteria for exception" since Claimant was not over 21 years old and Claimant had not exhausted generic resources. Ms. Riveria further informed Mother that SCLARC is a payor of last resort.

25. Mayra Mungia is a SCLARC Program Manager familiar with Claimant's case. At hearing, Ms. Mungia explained Mother's request for the service agency to fund the costs of Claimant's orthodontic treatment and care does not meet funding criteria. because Claimant's "request falls under the realm of parental responsibility." Ms. Mungia further noted generic resources may be available to Claimant.

Mother's Testimony

26. At hearing, Mother testified Claimant's orthodontist recommended braces for Claimant "for her physical appearance and dental hygiene." Mother additionally testified Claimant's misaligned teeth "affects how she chews and her diet." Mother "had to make various modifications with [Claimant's] diet," which is "restricted because of the texture of food." Mother further testified Claimant's orthodontic condition has "affected her self-esteem and participation in the community."

27. Mother testified, "I can't pay for treatment because I'm a single mother of three children with special needs. . . . I'm the only one responsible. . . . My only income at the moment is from IHSS [In-Home Supportive Services]. My wages are minimum."

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LEGAL CONCLUSIONS

Burden and Standard of Proof

1. As the party asserting a claim for services and supports under the Lanterman Act), Claimant bears the burden of establishing by a preponderance of the evidence her entitlement to the requested services and supports. (*Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161 [disability benefit]; *Greatoroex v. Board of Administration* (1979) 91 Cal.App.3d 54, 57 [retirement benefits]).

2. "Preponderance of the evidence" means evidence that has more convincing force than that opposed to it. (See *Glage v. Hawes Firearms Company* (1990) 226 Cal.App.3d 314, 324.) "[T]he sole focus of the legal definition of 'preponderance' in the phrase 'preponderance of the evidence' is on the *quality* of the evidence. The *quantity* of evidence presented by each side is irrelevant." (*Id.* at 324-325, original italics.) In meeting the burden of proof by a preponderance of the evidence, Claimant "must produce substantial evidence, contradicted or uncontradicted, which supports the finding." (*In re Shelley J.* (1998) 68 Cal.App.4th 322, 329.)

Applicable Law

3. Under the Lanterman Act, developmentally disabled persons have a statutory right to treatment and habilitation services and supports. (Welf. & Inst. Code, §§ 4502, 4620, & 4646-4648; *Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 389.) The Lanterman Act mandates an "array of services and supports should be established . . . to meet the needs and

choices of each person with developmental disabilities . . . and to support their integration into the mainstream of life in the community.” (Welf. & Inst. Code, § 4501.)

4. Regional centers play a critical role in the coordination and delivery of treatment and habilitation services and supports for persons with developmental disabilities. (Welf. & Inst. Code, § 4620 et seq.) Regional centers are responsible for securing needed services and supports, as determined in a consumer’s IPP, in conformance with Department-approved purchase of service policies to reflect the cost-effective use of public resources. (Welf. & Inst. Code, §§ 4646, 4646.4, 4646.5, 4647, & 4648.)

5. Regional centers are authorized to deliver treatment and habilitation services and supports to consumers and their families participating in SDP. (Welf. & Inst. Code, § 4685.8.) Participants develop a spending plan and budget for the services and supports needed to implement their IPP. Regional centers review the spending plan and budget for compliance with pertinent state and federal law, to ensure the services and supports are eligible for federal financial participation, and to verify providers are qualified. (*Id.*)

6. Notably, SDP “shall only fund services and supports . . . that the federal Centers for Medicare and Medicaid Services determines [*sic*] eligible for federal financial participation.” (Welf. & Inst. Code, § 4685.8, subd. (c)(6).) Participants in SDP are to “utilize the services and supports available within the Self-Determination Program only when generic services and supports are not available.” (Welf. & Inst. Code, § 4685.8, subd. (d)(3)(B).)

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7. Services and supports for persons with developmental disabilities are defined as "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 live." (Welf. & Inst. Code, § 4512, subd. (b).) Services and supports listed in a consumer's IPP may include, among other things, "specialized medical and dental care." (*Id.*)

8. With respect to the purchase of medical or dental services, Welfare and Institutions Code section 4659 provides, in pertinent part, the following:

(c) Effective July 1, 2009, notwithstanding any other law or regulation, regional centers 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. . . .

(d)(1) Effective July 2009, notwithstanding any other law or regulation, a regional center shall not purchase medical or dental services for a consumer three years or age or older 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. . . . Regional centers may pay for medical or dental services during the following periods:

(A) While coverage is being pursued, but before a denial is made.

(B) Pending a final administrative decision on the administrative appeal if the family has provided to the regional center a verification that an administrative appeal is being pursued.

(C) Until the commencement of services by Medi-Cal, private insurance, or a health care service plan.

Discussion

9. Claimant presents with qualifying diagnoses for Intellectual Disability and Autism. Claimant's orthodontic conditions are not generally known or established characteristics of either Intellectual Disability or Autism. There is no evidence that any qualified medical professional determined Claimant's orthodontic conditions are related to, or a consequence of, Claimant's Intellectual Disability or Autism. There is no evidence Claimant presents with "special circumstances" or "an exceptional need" to distinguish her orthodontic condition from that of 80 percent of the population requiring orthodontic treatment and care. Consistent with this conclusion, Claimant's IPP includes no funding for specialized dental care services. Rather, Claimant's IPP provides for generic supports: "Medi-Cal/Health Net to fund for medical & dental services."

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10. As Claimant's orthodontic condition is not a defining characteristic of, or directly related to, either of her qualifying developmental disabilities, Claimant's parent is generally expected to provide for Claimant's dental care, with includes orthodontic treatment and care.

11. On Claimant's behalf, Mother applied to the Medi-Cal Dental Program for prior authorization of benefits to cover the cost of Claimant's proposed orthodontic treatment and care. The Medi-Cal Program denied the TAR. There is no evidence, however, that Mother has pursued any administrative appeal of that denial, and if so, the outcome of a final administrative decision. Additionally, there is no evidence Mother has exhausted other generic resources, including EPSDT, California Children's Services, or a health care service plan.

12. Without any evidence establishing Claimant's exhaustion of all available generic resources, the Lanterman Act does not authorize SCLARC funds for payment of Claimant's dental services as a "traditionally funded service." As a participant in SDP, the Lanterman Act similarly requires Claimant to use the services and supports available within SDP only when generic services and supports are not available.

13. Claimant has not met her burden of establishing by a preponderance of the evidence the Lanterman Act authorizes the use of SCLARC funds to pay the costs of Claimant's orthodontic treatment and care.

14. Claimant has not met her burden establishing by a preponderance of the evidence the Lanterman Act authorizes expenditures from Claimant's Self-Determination Program's spending plan and budget to pay the costs of Claimant's orthodontic treatment and care.

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ORDER

Claimant's appeal is denied.

DATE:

JENNIFER M. RUSSELL

Administrative Law Judge

Office of Administrative Hearings

BEFORE THE
DEPARTMENT OF DEVELOPMENTAL SERVICES
STATE OF CALIFORNIA

In the Matter of:

Claimant

OAH Case No. 2024020297

Vs.

DECISION BY THE DIRECTOR

South Central Los Angeles Regional Center

Respondent.

ORDER OF DECISION

On September 19, 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 submit an application for reconsideration to DDS pursuant to Welfare and Institutions Code section 4713, subdivision (b), within 15 days of receiving this 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 October 8, 2024.

Original signed by:

Pete Cervinka, Acting Director