BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT

and

VALLEY MOUNTAIN REGIONAL CENTER, Service Agency.

DDS No. CS0013599

OAH No. 2024030966

DECISION

Mary Agnes Matyszewski, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on June 24, 2024, by videoconference and telephone.

Claimant's father and mother represented claimant, who was not present.

Jason Toepel, Compliance Officer, Valley Mountain Regional Center (VMRC), represented the service agency.

The hearing was translated by a Spanish language interpreter. Oral and documentary evidence was received. The record was closed, and the matter was submitted for decision on June 24, 2024.

ISSUE

Is VMRC required to fund claimant's request for vision therapy?

FACTUAL FINDINGS

Jurisdictional Matters

1. Claimant, a six-year-old male, is eligible for regional center services based on his diagnosis of autism. In 2020, he was also diagnosed with right intermittent exotropia (exotropia is a form of strabismus, which refers to eye misalignment, where one or both eyes turn outward, away from the nose). In 2023 claimant was diagnosed with alternating exotropia and nearsightedness (myopia). He originally wore glasses to treat his condition, but began receiving vision therapy in September 2023. Claimant requested that VMRC fund his vision therapy.

2. On March 5, 2024, VMRC issued a Notice of Action to claimant advising it was denying his request. VMRC asserted it can only fund services related to the developmental disability, and the vision therapy and myopia that the requested therapy would treat is not related to, nor the result of, claimant's developmental disability. VMRC cited Welfare and Institutions Code sections 4512, subdivision (b), 4646, subdivisions (a) and (b), and 4646.5, subdivision (a), in support of its position. VMRC's Position Statement further asserted that vision therapy is an experimental treatment which cannot be funded.

3. On March 18, 2024, VMRC received claimant's Appeals Tracking Details setting forth the arguments in support of his request. Claimant asserted that on March 11, 2020, he was diagnosed with "Intermittent Exotropia of Right Eye" for which he was

later prescribed glasses. The appeal detailed the many falls claimant has suffered, that eventually his glasses were removed, and that he began vision therapy, which improved his peripheral vision and depth perception.

4. Thereafter, this hearing followed.

Evidence Introduced at Hearing

5. VMRC Clinical Director Claire Lazaro, VMRC Consumer Services Coordinator (CSC) Mireya Gonzalez, and claimant's parents all testified in this hearing, and various documents were introduced. The factual findings are based on their testimony and those exhibits.

6. Director Lazaro testified about articles she relied on in support of her position that the vision therapy claimant seeks is experimental and cannot be funded by VMRC. Director Lazzaro also explained that regional centers may only fund services and supports that address the developmental disability, and vision therapy is not associated with treating a developmental disability. Autism and exotropia are not linked, so the service claimant seeks is not related to his developmental disability, so cannot be funded on this basis, as well. The articles Director Lazaro reviewed are referenced below.

7. A July 26, 2017, article entitled, "Vision Training Not Proven to Make Vision Sharper," published by the American Academy of Ophthalmology, noted that there is no scientific evidence that vision training, also known as vision therapy, works. The article stated that the American Academy of Ophthalmology joined with other groups in 2014 to issue the following statement about vision therapy:

> Currently, there is no adequate scientific evidence to support the view that subtle eye or visual problems cause learning disabilities. Furthermore, the evidence does not support the concept that vision therapy or tinted lenses or filters are effective, directly or indirectly, in the treatment of learning disabilities. Thus, the claim that vision therapy improves visual efficiency cannot be substantiated.

The article further noted there was no proof or scientific evidence that vision therapy works, although eye exercises "may be helpful" for convergence insufficiency, which occurs when the eyes do not work together when a person tries to focus on a nearby object. Nothing in the article referenced vision therapy as being a treatment for autism or any other qualifying developmental disability.

8. A 2020 article published in the Journal of Current Ophthalmology documented a comprehensive review of the current non-surgical management methods to treat intermittent exotropia. The article concluded:

> Evidence of the efficacy of non-surgical management options for [intermittent exotropia] is not compelling. More comprehensive randomized controlled trial studies are required to evaluate the effectiveness of these procedures and detect the most effective strategy.

Nothing in the article referenced vision therapy as being a treatment for autism or any other qualifying developmental disability.

9. A Boston Children's Hospital publication described vision therapy and noted it is "very much an emerging field. There's still a lot of controversy around it,

especially in regard to its role in helping children with learning disabilities. Vision therapy is not endorsed as an effective or scientifically validated therapy by ophthalmologists or pediatricians." (Underline in original.) The article further stated that Boston Children's Hospital "is one of the few pediatric hospitals in the country to venture into the field of vision therapy." The article noted some of the successes staff have observed, and described the circumstances where the therapy may be prescribed, none of which were for qualifying developmental disabilities. In the section titled "Research," the article stated:

> Though vision therapy is not a new treatment, many questions remain about what benefits it offers, and when and how it should be used. There has been a good deal of disagreement among professionals about its validity, and solid research findings are hard to come by.

The article then noted an exception, a study funded by the National Eye Institute and published in the Archives of Ophthalmology journal. In that study, researchers working at nine sites around the country held randomized, double-blind clinical trials using different types of vision therapy as the primary treatment for convergence insufficiency in children. At the end of the study, researchers found that office-based vision therapy was successful in 75 percent of the patients studied in comparison to the two at-home therapies, which were successful in approximately 40 percent of the patients studied. Nothing in this study or in the article referenced vision therapy as being a treatment for autism or any other qualifying developmental disability. Although the article was undated, it contained a reference to Boston Children's Hospital being named to the 2023-2024 Honor Roll of the "Best Children's Hospitals" in the country, so presumably the article was written during this time frame.

10. A publication by the American Association for Pediatric Ophthalmology and Strabismus noted there are three main types of vision therapy: behavioral/perceptual vision therapy (eye exercises), vision therapy to treat myopia, and orthoptic vision therapy (eye exercises done in an optometrist's office). The publication stated that "behavioral vision therapy has not been proven by science to work," that "[s]cientific studies have shown that low-power 'training glasses' are not very helpful," that "vision therapy has not been shown by science to improve how well children with learning disabilities do with learning and schooling," and that "[t]here is no evidence the vision therapy slows the progression of myopia or helps myopia get better." The article recommended that if vision therapy is prescribed, one should "[g]et a second opinion from an ophthalmologist who has experience in the care of children. . . . if vision therapy is being prescribed in a child with learning problems, you may ask whoever is recommending this treatment for the scientific information that shows how it helps with learning problems." Nothing in the article referenced vision therapy as being a treatment for autism or any qualifying developmental disability.

11. Director Lazaro also referenced an Evidence Pyramid which was a diagram setting forth the hierarchy of the different types of evidence used when conducting studies and the different levels of review studies undergo. The higher the study is on the pyramid, the stronger the evidence in support of that study and the better the quality of that study. As noted, lower quality studies consist of case reports, expert opinions, and editorials, whereas higher quality studies consist, in ascending order, of randomized controlled trials, meta-analysis systemic review, and clinical practice guidelines. Director Lazaro explained that this pyramid is used by professionals to evaluate studies and she used it in support of her finding that vision therapy has not risen to the level required to be a scientifically proven therapy. She explained that her review of the literature demonstrated that vision therapy is not an

evidence-based practice intervention, and there are not enough studies to prove its efficacy. The available literature shows mixed results regarding its efficacy, and it has not been endorsed by pediatricians, ophthalmologists, or medical organizations.

12. CSC Gonzalez testified about the initial Individual Program Plan (IPP) meeting held at claimant's home on October 13, 2023. The IPP documented "Explore Vision Therapy," as well as claimant's interest in having it funded by VMRC. Outcome #15 stated: "[Claimant] will receive vision therapy, as appropriate," and noted that VMRC would explore generic resources and determine if VMRC could fund the service. If not, VMRC would issue a Notice of Action, which is what occurred here. CSC Gonzalez explained that "exploring" does not mean the regional center will fund the service, it simply means it will investigate to determine if it can do so. Here, because the service was experimental, the request was denied.

13. Claimant's parents testified about the tremendous improvements claimant has achieved because of vision therapy. It has improved his ability to socialize, participate with friends on the playground, prevent falls and other injuries, and improved his peripheral vision and depth perception. They described the many injuries and falls claimant suffered when wearing glasses and how vision therapy has helped. They noted that the Lanterman Act provides services to improve consumers' lives, and help make them more independent, which is exactly what vision therapy does for claimant. They are looking to VMRC as the payor of last resort to fund claimant's vision therapy. Claimant's parents' testimony was heartfelt and sincere. They truly believe vision therapy has positively influenced their son's life, and they wish to continue assisting him by using this therapy. They asserted that rather than relying on unknown persons referenced in studies, VMRC should take into account the way vision therapy has benefitted their son and his condition. They referred to various Lanterman

Act documents they introduced which discuss how services are funded to assist consumers with their conditions and consumers' rights. However, none of those cited materials mandate that VMRC ignore the prohibition against funding experimental services. The Lanterman Act must be read as a whole, and all of it must be considered when a regional center makes funding decisions.

14. There was also testimony and argument regarding whether vision therapy is provided by optometrists or ophthalmologists, but that issue is not relevant to the determination of whether vision therapy can be funded. It did appear from the evidence introduced that both specialties provide this therapy.

15. Claimant submitted a document detailing his diagnosis, numerous injuries sustained because of his vision issues, two child protective service visits that occurred because of his injuries, how his glasses did not help and may have worsened his condition, and the great improvement in claimant's quality of life since receiving vision therapy. Claimant attached links to two articles regarding exotropia and the need to treat it, but admitted that the articles do not state that vision therapy has been scientifically proven.

16. A March 29, 2024, letter from claimant's treating optometrist, who is providing the vision therapy, noted she recommended claimant discontinue wearing his glasses because she has found glasses are not as effective as vision therapy. She recommended claimant begin vision therapy and wrote that claimant's father reported claimant was not falling or bumping into objects and people as much, after a few weeks of not wearing glasses. As such, they "decided to stay the course without the glasses and start vision therapy." The optometrist wrote further: "Vision therapy is the ideal treatment for exotropia since it is active therapy versus the glasses approach being more passive." She noted that amblyopia (a.k.a. lazy eye, the inability to see

clearly in both eyes) can result if exotropia is left untreated. Nothing in the optometrist's letter indicated that vision therapy is scientifically proven to be effective or that it is used to treat a qualifying developmental disability.

17. Another document detailed claimant's treating optometrist's education and experience. Nothing in that document indicated that vision therapy is scientifically accepted or used to treat a qualifying developmental disability.

18. Several emails from staff at claimant's school documented the improvements they observed in claimant's balance, visual skills, and socialization with peers; improved awareness of his surroundings; increased ability to use both eyes; and improved ability to navigate safely around peers and obstacles in the classroom, after he began vision therapy.

19. Receipts documented the cost of vision therapy, and that it is not a covered therapy. A Benefits Detail from one insurer also noted that vision therapy is not a covered service.

20. A document listing all of the insurance-approved ophthalmologists claimant's mother contacted noted that she was informed by all of them that they do not provide vision therapy.

LEGAL CONCLUSIONS

Purpose of the Lanterman Act

1. The purpose of the Lanterman Developmental Disabilities Act (Lanterman Act) is to provide a "pattern of facilities and services . . . sufficiently complete to meet the needs of each person with developmental disabilities, regardless of age or degree

of handicap, and at each stage of life." (Welf. & Inst. Code § 4501; *Association of Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 388.)

Burden and Standard of Proof

2. Each party asserting a claim or defense has the burden of proof for establishing the facts essential to that specific claim or defense. (Evid. Code, §§ 110, 115, 500; *McCoy v. Bd. of Retirement* (1986) 183 Cal.App.3d 1044, 1051, footnote 5.) In this case, claimant bears the burden to prove VMRC should fund the service he seeks.

3. The standard by which each party must prove those matters is the "preponderance of the evidence" standard. (Evid. Code, § 115.)

4. A preponderance of the evidence means that the evidence on one side outweighs or is more than the evidence on the other side, not necessarily in number of witnesses or quantity, but in its persuasive effect on those to whom it is addressed. It is "evidence that has more convincing force than that opposed to it." (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.)

The Lanterman Act, DDS, and Regional Centers

5. The Lanterman Act is found at Welfare and Institutions Code section 4500 et seq.

6. Welfare and Institutions Code section 4501 sets forth the state's responsibility and duties.

7. Welfare and Institutions Code section 4512 defines services and supports. Subdivision (b) states in part:

"Services and supports for persons with developmental disabilities" means 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. . . .

8. Welfare and Institutions Code section 4646, states in part:

(a) It is the intent of the Legislature to ensure that the individual program plan and provision of services and supports by the regional center system is centered on the individual and the family of the individual with developmental disabilities and takes into account the needs and preferences of the individual and the family, if

> appropriate, as well as promoting community integration, independent, productive, and normal lives, and stable and healthy environments. It is the further intent of the Legislature to ensure that the provision of services to consumers and their families be effective in meeting the goals stated in the individual program plan, reflect the preferences and choices of the consumer, and reflect the cost-effective use of public resources.
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> (b) The individual program plan is developed through a process of individualized needs determination. The individual with developmental disabilities and, if appropriate, the individual's parents, legal guardian or conservator, or authorized representative, shall have the opportunity to actively participate in the development of the plan.
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> [¶] . . .[¶]

9. Welfare and Institutions Code section 4646.4, subdivision (a), requires regional centers to establish an internal process to ensure adherence with federal and state laws and regulations, and when purchasing services and supports, regional centers must conform to the purchase of service policies, utilize generic resources and other sources of funding, consider the family's responsibility, and consider information regarding the individual's need for service, barrier to access, and other information.

10. Welfare and Institutions Code section 4646.5, subdivision (a), sets forth the requirements of the planning process for the IPP.

11. Welfare and Institutions Code section 4648 requires regional centers to ensure that services and supports assist individuals with developmental disabilities in achieving the greatest self-sufficiency possible. Regional centers must secure services and supports that meet the needs of the consumer, as determined by the IPP. Regional centers must be fiscally responsible and may purchase services or supports through vendorization or contracting. Subdivision (a)(17) prohibits regional centers from purchasing:

> 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. . . .

Evaluation

12. The Lanterman Act allows regional centers to provide services and supports that are "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" (WIC, § 4512(b)) and which "assist individuals with developmental disabilities in achieving the greatest self-sufficiency possible" (WIC, § 4648). No evidence demonstrated that vision therapy alleviates claimant's autism, but the evidence did show it has improved his socialization, independence, and made him more self-sufficient. Thus, it appears it is a service that could be funded if these factors (improving his socialization,

independence, and making him more self-sufficient) were the only ones required under the Lanterman Act to fund the therapy. However, the Lanterman Act also places constraints on regional centers regarding the services and supports they may fund. At issue here, they are prohibited from funding experimental services and supports (WIC, § 4648 (a)(17)).

Claimant failed to establish by preponderance of the evidence that vision therapy is a generally accepted method for treating individuals with a developmental disability, that its use is evidence-based, or that it is not experimental. VMRC may not use funds to purchase non-evidence-based or experimental services. Claimant's parents clearly want what is best for their son, and it was undisputed that vision therapy is helping claimant's exotropia and his socialization skills, as well as making other improvements in his life. However, no evidence refuted Director Lazaro's testimony that exotropia is not linked to autism or that vision therapy is an experimental therapy. Regional center funds may not be used to purchase therapies that do not address the developmental disability or that are experimental. On this record, claimant's request must be denied.

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ORDER

Claimant's appeal of Valley Mountain Regional Center's determination that it cannot fund his request for vision therapy is denied. Valley Mountain Regional Center's determination is affirmed, and it shall not fund vision therapy for claimant.

DATE: June 26, 2024

MARY AGNES MATYSZEWSKI
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 under 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.