

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

In the Matter of the Request for Services of:

CLAIMANT

and

INLAND REGIONAL CENTER, Service Agency

DDS No. CS0016173

OAH No. 2024050138

DECISION

Mary Agnes Matyszewski, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on June 17, 2024, by videoconference.

Claimant's mother represented claimant who was not present.

Dana Hardy, Fair Hearing Representative, Fair Hearings and Legal Affairs, represented Inland Regional Center (IRC).

Oral and documentary evidence was received. The record was closed, and the matter was submitted for decision on June 17, 2024.

ISSUE

Is IRC required to provide copayment assistance for Applied Behavior Analysis (ABA) services covered by medical insurance that claimant received before she was determined to be eligible for regional center services under the Lanterman Developmental Disabilities Services Act (Lanterman Act)?

SUMMARY

Claimant became a regional center consumer on November 29, 2023. As of that date, she was entitled to the services and supports set forth in the Lanterman Act. While claimant's choice to begin the services recommended by her healthcare providers, before she was determined to be eligible for regional center services, was understandable, IRC is prohibited from funding services until she became a regional center consumer. On this record, claimant's appeal is denied.

FACTUAL FINDINGS

Jurisdictional Matters

1. Claimant, a 5-year-old female, resides in her home with her parents and siblings. After becoming a regional center consumer, claimant requested copayment assistance for therapies incurred before IRC determined she was eligible for regional center services.

2. On March 5, 2024, IRC issued a Notice of Action denying claimant's request for copayment assistance because those services were provided before claimant was a regional center consumer.

3. Claimant timely appealed, and this hearing followed.

Evidence Introduced at Hearing

4. IRC Staff Psychologist Sandra Brooks, Ph.D., IRC Program Manager Katie Lee, and claimant's mother all testified in this hearing, and various documents were introduced. The factual findings are based on their testimony and those exhibits.

5. A May 25, 2022, Transdisciplinary Psychoeducational Report, performed by claimant's school district determined she met "the eligibility criteria for special education services under the category of Autism and Language and Speech Disorder." (Of note: A school providing services to a student under an autism disability is insufficient to establish eligibility for regional center services. Schools are governed by California Code of Regulations, title 5, and regional centers are governed by California Code of Regulations, title 17. Title 17 eligibility requirements for services are much more stringent than those of Title 5.) The Transdisciplinary Psychoeducational Report detailed the numerous assessment tools administered by various professionals, including the Autism Diagnostic Observation Schedule, Second Edition (ADOS-2), Childhood Autism Rating Scale, Second Edition (CARS-2), special education assessments, language scales, and development scales. Claimant's physical scale scores were average, her adaptive behavior and social-emotional scale scores were below average, and her communication scores were delayed. Claimant was noted to have difficulty using appropriate verbal and nonverbal communication for social contact, difficulty relating to children and adults, and difficulty providing appropriate

emotional responses in social situations. Her communication skills were in the delayed and deficient ranges. She had delayed learning skills. Claimant's CARS-2 scores placed her in the mild to moderate symptoms of autism spectrum disorder range and her ADOS-2 score "exceeded the autism cutoff and was consistent with an ADOS-2 Classification of Autism." (Of note, this school report also states claimant "has a medical diagnosis of autism," but no information regarding where this diagnosis originated was introduced. The Kaiser Permanente assessment diagnosing autism, referenced below, occurred months after this school assessment.)

6. Dr. Brooks testified that the Transdisciplinary Psychoeducational Report contained the type of autistic specific testing and adaptive testing IRC looks for when reviewing records to determine eligibility. However, those scores did not indicate that claimant had a substantial disability in at least three areas as required by the Lanterman Act. As such, this report did not establish that claimant was eligible for regional center services.

7. A February 15, 2023, Kaiser Permanente document authorized weekly speech therapy services for claimant's developmental speech and language disorder.

8. On February 22, 2023, a Multidisciplinary Autism Assessment Team at Kaiser Permanente evaluated claimant and determined she did "fulfill DSM 5 criteria for autism spectrum disorder." (The *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition*, (DSM-5)¹ contains the diagnostic criteria that must be met in

¹ The upcoming text revision of the DSM-5, the DSM-5-TR, revised the diagnosis of autism spectrum disorder, but no evidence was offered that these revisions changed Kaiser's or IRC's determination.

order to make a diagnosis of autism.) The Multidisciplinary Autism Team Results documented "Severity Level 2" in social communication and restricted, repetitive behaviors. The report recommended that claimant be "assessed by the Regional Center (RC) to determine eligibility for services and consideration of non-health care related services and interventions."

9. Dr. Brooks testified that although Kaiser diagnosed autism, they only found two substantial disabilities, social communication and restricted, repetitive behaviors, but the Lanterman Act requires there be at least three. Moreover, the Kaiser report did not describe any sort of adaptive functioning performed, which IRC must also evaluate to determine eligibility. As such, the Kaiser report was not sufficient to determine that claimant met regional center eligibility.

10. Claimant's mother testified that because of the Kaiser diagnosis, claimant was able to obtain ABA services, but those did not begin until June 2023 due to the provider's waiting list. It is copay assistance for these ABA services which claimant seeks. Three invoices from Easter Seals documented the ABA therapies provided to claimant in June, July, and September 2023, and copayment costs totaling \$170.

11. Claimant applied for IRC services on April 25, 2023. IRC initially determined that the information and assessments provided were insufficient to find that claimant had the three required substantial disabilities. However, as Dr. Brooks explained, because of the school and Kaiser reports, IRC referred claimant for a psychological assessment, which was performed on September 20, 2023, and included numerous assessments, autism rating scales, and adaptive behavior scales. Following that assessment, the psychologist diagnosed claimant with autism spectrum disorder; social communication Level 3; restricted, repetitive behaviors Level 2; with accompanying language impairment; without accompanying intellectual impairment.

12. Based on that psychologist's report, IRC's eligibility team determined on November 29, 2023, that claimant was eligible for regional center services. IRC's Eligibility Determination documented that claimant had functional limitations due to her autism in receptive and expressive language, self-care, and self-direction. At hearing, Dr. Brooks, who was not part of claimant's Eligibility Team, noted that, based on her review of the records, an argument could be made that claimant also had functional limitations in the area of learning.

13. On January 4, 2024, claimant's initial Individual Program Plan (IPP) was conducted with claimant, her mother, and an IRC Consumer Service Coordinator. The IPP sets forth the approved services, noting that claimant was receiving weekly speech therapy services through Kaiser and her school district. On January 3, 2024, claimant requested assistance with funding copayments for speech services and the required form was emailed to her. The IPP noted that claimant had been receiving ABA services but was in the process of finding a new provider. The services were funded by Kaiser, but claimant requested assistance with funding copayments and was emailed the required form. Program Manager Lee testified that IRC agreed to assist with copayment funding effective the date of eligibility, November 29, 2023.

14. Program Manager Lee also described the service authorization processes set forth in the law and IRC Purchase of Services Policy, which explains how services can be funded, including allowing for retroactive authorization in limited situations.

15. Claimant's mother described the lengthy process waiting for assessments and therapies, and how she wanted to begin the Kaiser-recommended ABA services as soon as possible because she "did not want her daughter to worsen." Given that the Kaiser diagnosis of autism never changed, the therapy services were medically necessary, and her daughter was eventually determined to be eligible for regional

center services based on a diagnosis of autism, claimant's mother does not understand why the ABA services her daughter received for autism cannot be paid by IRC. Had IRC accepted the Kaiser report, her daughter could have been found eligible much sooner and been receiving services funded by IRC. Instead, claimant's parents funded the services to help their daughter as soon as possible without delay. Moreover, claimant is only seeking reimbursement for the three months of services, not a very large expense. Claimant's mother also explained that she was previously employed as a worker's compensation examiner. When injured workers received treatment and were thereafter approved for workers' compensation, their expenses were retroactively covered, so she does not understand why the same is not true here. Of note, workers' compensation is not governed by the Lanterman Act.

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. 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, 500; *McCoy v. Bd. of Retirement* (1986) 183 Cal.App.3d 1044, 1051-1052.) In this case, claimant bears the burden to demonstrate that she is entitled to the copayment assistance she seeks.

2. The standard by which each party must prove those matters is the "preponderance of the evidence" standard. (Evid. Code, § 115.) 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. (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.)

The Lanterman Act and Regional Centers

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

4. The purpose of the 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.)

5. The Department of Developmental Services (DDS) is the public agency in California responsible for carrying out the laws related to the care, custody and treatment of individuals with developmental disabilities under the Lanterman Act. (Welf. & Inst. Code, § 4416.) In order to comply with its statutory mandate, DDS contracts with private non-profit community agencies, known as "regional centers," to provide the developmentally disabled with "access to the services and supports best suited to them throughout their lifetime." (Welf. & Inst. Code, § 4620.)

6. A regional center's responsibilities to its consumers are set forth in Welfare and Institutions Code sections 4640-4659.

7. IRC is one of 21 California regional centers. IRC provides advocacy for and assistance to the developmentally disabled population living in its catchment area. To qualify for IRC services, a person must live within that area and be diagnosed with a

substantial disability as defined by Welfare and Institutions Code section 4512 and California Code of Regulations, title 17, section 54000.

Eligibility Laws

8. Welfare and Institutions Code section 4512, subdivision (a), defines “developmental disability” in part as:

a disability that originates before an individual attains 18 years of age; continues, or can be expected to continue, indefinitely; and constitutes a substantial disability for that individual. . . . this term shall include . . . autism. . . .

9. Welfare and Institutions Code section 4512, subdivision (d), defines “consumer” as a person who has a disability that meets the definition of developmental disability set forth in Welfare and Institutions Code section 4512, subdivision (a).

10. California Code of Regulations, title 17, section 54000, defines developmental disability in a similar manner and provides in part:

(a) “Developmental Disability” means a disability that is attributable to . . . autism . . .

(b) The Developmental Disability shall:

(1) Originate before age eighteen;

(2) Be likely to continue indefinitely;

(3) Constitute a substantial disability for the individual as defined in the article. . . .

11. California Code of Regulations, title 17, section 54001, defines "substantial disability" as "significant functional limitations" which must be in at least these three areas, depending on the person's age: receptive and expressive language; learning; self-care; mobility; self-direction; capacity for independent living; and economic self-sufficiency.

Applicable Laws

12. Welfare and Institutions Code section 4640.7, states:

(a) It is the intent of the Legislature that regional centers assist persons with developmental disabilities and their families in securing those services and supports which maximize opportunities and choices for living, working, learning, and recreating in the community.

(b) Each regional center design shall reflect the maximum cost-effectiveness possible and shall be based on a service coordination model, in which each consumer shall have a designated service coordinator who is responsible for providing or ensuring that needed services and supports are available to the consumer. Regional centers shall examine the differing levels of coordination services needed by consumers and families in order to establish varying caseload ratios within the regional center which will best meet those needs of their consumers.

13. Welfare and Institutions Code section 4647, subdivision (a), states:

Pursuant to Section 4640.7, service coordination shall include those activities necessary to implement an individual program plan, including, but not limited to, participation in the individual program plan process; assurance that the planning team considers all appropriate options for meeting each individual program plan objective; securing, through purchasing or by obtaining from generic agencies or other resources, services and supports specified in the person's individual program plan; coordination of service and support programs; collection and dissemination of information; and monitoring implementation of the plan to ascertain that objectives have been fulfilled and to assist in revising the plan as necessary.

14. Welfare and Institutions Code sections 4646, 4646.4, and 4646.5 outline the IPP process. Welfare and Institutions Code section 4646.5, subdivision (a)(8), requires there to be a "schedule of regular periodic review and reevaluation to ascertain that planned services have been provided, that objectives have been fulfilled within the times specified, and that consumers and families are satisfied with the individual program plan and its implementation."

15. Welfare and Institutions Code section 4659.1, subdivision (a), authorizes regional centers to pay "any applicable copayment, coinsurance, or deductible associated with the service or support" if certain conditions are met. Subdivision (d) authorizes regional centers to do so even if those conditions are not met in limited circumstances, none of which applied here.

16. California Code of Regulations, title 17, section 50612, sets forth regional center purchase of service requirements. Subdivision (a) requires consumers to obtain a purchase of service authorization from the regional center for all services purchased using regional center funds. Subdivision (b) requires the authorization to be obtained before services are provided. Subdivision (b)(1) permits retroactive authorization for emergency services in certain limited situations, none of which applied here.

IRC Purchase of Services Policy

17. The IRC Purchase of Services Policy sets forth how various services shall be provided and funded, including requiring IRC “to utilize the least costly provider” and requiring families to carry out their responsibilities. Section 1.2.4, subdivision (a), requires authorizations to be obtained before services are provided. The policy contains a section titled “Exceptions” which authorizes service purchases that are not consistent with the standards set forth in the policy when specific exceptions exist, none of which were shown to exist here.

Evaluation

18. When claimant first applied for services in April 2023, IRC advised that the information provided was insufficient to determine eligibility for regional center services, and referred claimant for a further assessment. Claimant never appealed that decision and continued with the IRC assessment process. (Of note, even if she had appealed and prevailed, her eligibility would be the date of that decision, not the date of her application.) Following IRC’s referral for a psychological assessment, IRC determined on November 29, 2023, that claimant was eligible for regional center services. At that point in time, claimant became a “consumer” under the Lanterman Act. At no time prior to that November date was claimant a consumer as defined by

law. The Lanterman Act sets forth the services to be provided to consumers and does not allow IRC to provide services to individuals who are not regional center consumers. While claimant's position is understandable, she was not a consumer prior to November 29, 2023, and is not entitled to copayment assistance for the services or therapies she incurred prior to that November date.

ORDER

Claimant's appeal from Inland Regional Center's determination that it will not provide copayment assistance for ABA services covered by medical insurance that claimant received before November 29, 2023, is denied. IRC shall not reimburse those copayments.

DATE: June 19, 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.