

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

In the Matter of:

CLAIMANT

and

SOUTH CENTRAL LOS ANGELES REGIONAL CENTER,

Service Agency.

DDS No. CS0014949

OAH No. 2024050248

DECISION

Eric Sawyer, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on December 19, 2024. The matter was submitted for decision at the conclusion of the hearing.

Claimant, a minor, was represented by his mother. The names of claimant and his family members are omitted to protect their privacy and maintain the confidentiality of this proceeding.

Tami Summerville, Appeals and Governmental Affairs Manager, represented South Central Los Angeles Regional Center (service agency).

ISSUE

May service agency modify its current full funding of claimant's speech therapy services, provided by LA Speech for \$160 per session, by only paying 40 percent of the cost of each session, and only up to a maximum of \$1,280 for any amount exceeding the 40 percent cost of each session?

EVIDENCE RELIED ON

In making this Decision, the ALJ relied on service agency's Exhibits 1 through 6 (pages A7-A8 of Ex. 1 were excluded), the testimony of service agency employees Kimberly Molina and Shauntel Alford, and the testimony of claimant's mother.

FACTUAL FINDINGS

Jurisdictional Matters

1. Service agency determines eligibility and provides funding for services and supports to persons with developmental disabilities under the Lanterman Developmental Disabilities Services Act (Lanterman Act), among other entitlement programs. (Welf. & Inst. Code, § 4500 et seq.; subsequent undesignated statutory references are to this code.)

2. Claimant is a five-year-old boy who is a consumer of service agency under the eligible category of autism. (Ex. 2.)

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3. As described in more detail below, service agency has been fully funding claimant's speech therapy with LA Speech. The cost of each speech therapy session is \$160. (Ex. 2.)

4. On February 29, 2024, service agency issued claimant's mother a notice of action (NOA), advising her that it proposed to reduce the funding for claimant's speech therapy to 40 percent of the cost of each session, which is \$64. 40 percent is the coinsurance amount the family would pay for an out-of-network provider like LA Speech once their deductible has been met. Service agency also proposed to pay no more than \$1,280 for any amount above the 40 percent cost of each session. The \$1,280 amount is claimant's one-fifth share of the family's annual deductible. (Ex. 1.)

5. The NOA states the following reasons for this proposed reduction. The family's health insurance plan is a generic resource and should fund claimant's speech therapy. Service agency's current funding is not cost-effective because LA Speech is an out-of-network provider, reducing the amount the insurance plan is required to pay for the speech therapy. Also, service agency cannot make payments related to the insurance plan's deductible requirements attributable to claimant's family members, who are not service agency consumers. Therefore, service agency should only fund the family's out-of-network coinsurance under the plan for each session (40% of each session cost), and beyond the coinsurance it should pay no more than claimant's share of the family deductible amount under the plan (\$1,280). (Ex. 1.)

6. On March 29, 2024, claimant's mother filed an appeal with the Department of Developmental Services (DDS), challenging service agency's proposed reduction of claimant's speech therapy funding. In her appeal, claimant's mother contends speech therapy is "much needed" and has been provided since claimant was two years old; service agency has always known LA Speech was an out-of-network

provider and has always agreed to fully fund the service, even when claimant transitioned from the Early Start program; service agency's proposal was issued without appropriate prior notice; and a reduction in funding will harm claimant's progress. (Ex. 1.)

7. Service agency has continued providing full funding of the speech therapy as aid-paid-pending the resolution of this appeal. Official notice is taken that the fair hearing for this matter, initially set for a date within the deadline required by the Lanterman Act, was continued three times at claimant's mother's request. Official notice also is taken that, in connection with her first request for a continuance of the fair hearing, claimant's mother waived the time limit prescribed by law for holding the fair hearing and for an administrative law judge to issue a decision.

8. When the fair hearing began, claimant's mother reiterated a continuance request she had filed the day before, which had been denied by another administrative law judge of OAH. The ALJ denied the motion, for reasons stated on the record.

Relevant Background Information

9. Claimant was a service agency consumer in the Early Start program (Gov. Code, § 95000 et seq.) for children under the age of three. (Ex. 2.)

10. Claimant lives at home with his parents and three siblings. (Ex. 2.)

11. Currently, claimant is not enrolled in school. His mother told service agency staff she will enroll claimant either when she finds a school that can provide appropriate services or when she is legally required to do so. (Ex. 2, p. A50.)

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Claimant's Speech Therapy

12. Claimant's speech is delayed. (Exs. 2, 3.) Claimant's mother testified her son does not have the speech of a typical five-year-old. The goal to improve the number of words claimant uses has consistently been listed in his individual program plans (IPPs). (*Ibid.*) Thus, claimant's mother believes the service is imperative. (Testimony [Test.] of mother.)

13. Claimant has received speech therapy from service provider LA Speech since September 2022, while he was still participating in the Early Start program. Claimant attends one session per week. Service agency always has fully funded this speech therapy. (Exs. 2, 3.)

14. LA Speech is only vendored with service agency to provide speech therapy to children in the Early Start program. LA Speech has refused to become vendored with service agency to provide speech therapy to those three years or older. (Test. of Molina.)

15. Service agency continued to fully fund the speech therapy service provided by LA Speech after claimant transitioned from the Early Start program to the Lanterman Act program when he turned three years old, even though LA Speech was no longer vendored to provide the service to claimant. Ms. Molina testified this continued funding happened because of "miscommunication" and service agency efforts to get LA Speech vendored under the Lanterman Act. Claimant's mother testified this continued funding happened because the parties agreed to keep the same provider for consistency, as claimant has trouble with transition, and the parties feared changing providers could impede claimant's speech development. (Test. of Molina, mother; Exs. 2, 3.)

16. By a date in 2023 not established, the balance on claimant's account with LA Speech reached \$7,840. Service agency agreed to pay this amount. However, because LA Speech was not vendored, it would have to be paid by reimbursement, meaning service agency would give claimant's mother a check for the amount, and she would directly pay LA Speech the outstanding balance. This has been the method used since to pay LA Speech. (Test. of Molina, mother; Ex. 3.)

Availability of Insurance

17. Service agency has Purchase of Service (POS) Funding Standards that have been approved by DDS. With regard to speech and language services, the POS Funding Standards advise, "Generic resources should be pursued first as regional center is the payor of last resort." (Ex. 6, p. A70.)

18. Service agency reviews claimant's services, including his speech therapy, every six months. At about the time in 2023 when the large outstanding balance with LA Speech was addressed, service agency decided to explore whether the family's health insurance plan could cover some or all of the speech therapy costs. (Test. of Molina, Alford.)

19. Claimant's family has health insurance through claimant's father's employer (the plan). (Test. of Molina.)

20. The plan has a family deductible, which is a total amount jointly attributed to all five members of claimant's family. This means the plan will not pay for any service to any member of claimant's family until the family deductible is met. As of January 1, 2024, the plan's family deductible is \$6,400; that amount can increase annually. After researching the issue, Ms. Alford determined claimant's portion of the deductible cannot be extracted from the family's total. Thus, there is no scenario

where the plan will pay for claimant's services after only his share of the deductible, or \$1,280, is paid. (Test. of Molina, Alford, mother.)

21. LA Speech will not sign a provider contract with the plan, so it is an out-of-network provider. While the plan will pay 80 percent of the charges by an in-network provider, it will only pay 60 percent of the charges by an out-of-network provider. The remaining 40 percent is the responsibility of claimant's family, also referred to as coinsurance. Thus, even after the family deductible is met, the plan will only pay 60 percent of LA Speech's billed services. (Test. of Alford; Ex. 5.)

22. The plan's annual maximum coinsurance for out-of-network providers is \$16,000, meaning the plan will pay 100 percent of an out-of-network provider's charges once claimant's family has paid \$16,000 of total medical costs in a calendar year. (Test. of Alford, mother; Ex. 5.)

23. Based on its above-described POS Funding Standards, service agency attempted to "fade out" fully funding claimant's speech therapy by recommending to claimant's mother she look for a speech therapy provider within the plan's network, or find a school local to claimant that can provide speech therapy. Ms. Molina testified claimant does not have to attend school to receive special education services from his special education local plan area (SELPA). (Test. of Molina.)

24. Claimant's mother has never agreed to accept less than service agency fully funding claimant's speech therapy. She has cooperated with the reimbursement payments to LA Speech because it was her understanding that was the only way the provider could be paid. Agreeing to the reimbursement method was not her concession to reducing service agency's funding for this service. (Test. of mother.)

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25. Claimant's mother prefers using LA Speech for claimant's speech therapy, which has been beneficial. Claimant's mother fears changing providers will upset claimant and set-back his speech development. Claimant's mother also testified there are not many speech therapists within the plan's network; there is usually a waiting list for the plan's few in-network providers. Thus, claimant's mother testified it is not feasible to find an in-network speech therapist at this time. (Test. of mother.)

26. Claimant's mother testified she was never presented with a fade out plan regarding this funding. According to her, service agency's proposal to reduce the speech therapy funding came to her as a shock, and was given without enough warning to allow her to prepare for any change in claimant's speech therapy regimen. She contends trying to find an in-network provider would not be easy, and will take a lot of time. Given claimant's negative reaction to transition, claimant's mother fears making a drastic and sudden change could jeopardize claimant's speech gains. (Test. of mother.)

LEGAL CONCLUSIONS

Jurisdiction and Burden of Proof

1. An administrative hearing to determine the rights and obligations of the parties is available under the Lanterman Act to appeal a contrary regional center decision. (§§ 4700-4717.) Claimant's mother timely appealed service agency's NOA proposing to reduce claimant's speech therapy funding. Therefore, jurisdiction exists for this appeal. (Factual Findings 1-8.)

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2. The standard of proof in this case is the preponderance of the evidence because no law or statute, including the Lanterman Act, requires otherwise. (Evid. Code, § 115.) This standard is met when the party bearing the burden of proof presents 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.)

3. A regional center seeking to terminate or reduce ongoing funding provided to a consumer has the burden to demonstrate its decision is correct, because the party asserting a claim or proposing to make changes to the status quo generally has the burden of proof in administrative proceedings. (See, e.g., *Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 789, fn. 9.) Thus, service agency has the burden of proving by a preponderance of the evidence that it may reduce claimant's speech therapy funding as it requests.

Governing Law

4. Pursuant to section 4640.7, subdivision (a), regional centers shall assist persons with developmental disabilities and their families in securing needed services and supports. Section 4640.7, subdivision (b), specifies that such assistance includes service coordination, 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. Section 4647, subdivision (a), provides that service coordination includes the collection and dissemination of information, as well as monitoring implementation of an IPP to ascertain that objectives have been fulfilled and to assist in revising the IPP as necessary.

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5. Section 4512, subdivision (b), lists a number of services that may be funded by a regional center under the Lanterman Act, including speech therapy. In this case, there is no dispute between the parties that claimant's speech therapy is necessary and beneficial for claimant.

6. However, section 4512, subdivision (b), requires the determination of which services and supports necessary for each consumer shall also include consideration of "the cost-effectiveness of each option."

7. Thus, regional centers are required to "identify and pursue all possible sources of funding for consumers receiving regional center services" (§ 4659, subd. (a)), including school districts (*id.*, subd. (a)(1)) and insurance (*id.*, subd. (a)(2)).

8. Section 4659.1, subdivision (a), allows regional centers to pay any applicable copayment, coinsurance, or deductible associated with the service or support for which a minor consumer's parent is responsible, under certain conditions. At hearing, service agency acknowledged applicability of this statute to this situation, and did not challenge whether the conditions allowing such funding exist.

9. Notwithstanding the above, regional centers remain the payers of last resort, as stated in section 4659.10. The term "payer of last resort" means that, where other providers or generic resources will not fund a service or support otherwise required by the Lanterman Act, DDS or a regional center shall fund the service or support in question.

Analysis and Disposition

10. Claimant's speech therapy is a necessary service being funded by service agency in conformity with the Lanterman Act. (§ 4512, subd. (b).) Pursuant to section

4659.1, subdivision (a), service agency is allowed to fund the service, even to the extent the payments equate to copayments, coinsurance, or the deductible associated with the family's insurance plan. (Factual Findings 12-17.) The parties do not dispute these points.

11. Pursuant to section 4512, subdivision (b), service agency is required to determine the cost-effectiveness of each service and support contained in claimant's IPP. One way of doing so is fulfilling the mandate of section 4659, which requires service agency to identify and pursue available generic resources to fund required services, such as school districts and insurance. The parties do not dispute these points either.

12. The dispute in this case is whether the family's insurance plan is a viable source of funding claimant's speech therapy. Given how the plan works, it is not the source of funding envisioned by service agency. This is because the plan is not required to cover any costs of claimant's speech therapy until the family has paid \$6,400 of medical costs covered by the plan. Once that threshold has been met, the plan can be a funding source. However, no evidence presented indicates whether or when that threshold is typically met by the family in a given year. As we have entered a new year, it is presumed the family now must meet the entire \$6,400 deductible at this time. (Factual Findings 17-26.) Thus, it is not feasible to require the family to pay 60 percent of claimant's speech therapy, on the premise that insurance is an available generic resource, where insurance currently is unavailable to cover any of the costs. The Lanterman Act does not require families to obtain low deductible or "regional center friendly" insurance plans. It simply requires the parties to seek insurance funding where it exists.

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13. Service agency's argument that using LA Speech is not cost-effective due to its status as an out-of-network provider is similarly illusory. There is nothing in the Lanterman Act requiring a family only to use in-network providers where insurance is available. While service agency is entitled to inquire about the cost-effectiveness of using an out-of-network provider, sections 4640.7 and 4647 require service agency to engage in service coordination and provide information to consumers and their families. In this case, service agency has provided no assistance or information to help the family identify an in-network provider available to serve claimant at this time. According to claimant's mother, there are few in-network providers, and those that are in-network have waiting lists. In order to make a valid argument concerning cost-effectiveness, service agency should be required to provide meaningful assistance to the family.

14. Furthermore, once the family deductible is met, the plan still would cover 60 percent of the speech therapy costs, leaving only 40 percent to be paid by service agency. This would seem to be a fair distribution of funding under the dictates of sections 4512, 4659, and 4659.1. Put another way, even if the family's plan becomes available to fund part of claimant's speech therapy, it is not clear this also means the family must pay the remaining 40 percent, as opposed to service agency.

15. By operation of the above principles, service agency failed to meet its burden of establishing by a preponderance of the evidence that there is another viable source of funding claimant's speech therapy such that its current full funding can be reduced at this time. Pursuant to section 4659.10, service agency is the payer of last resort, meaning it must continue the funding, since it has not been proven there is another source for funding that service. Given that the hallmark of claimant's qualifying disability is delayed speech, and claimant is of the age where the acquisition

of these skills is crucial for his development, the continued funding of this service without interruption is imperative.

16. However, there still is an open question concerning the viability of the family's insurance plan as a funding source. As touched on above, it is unclear when or if the family deductible is met in any given year. When and if the deductible is met, the plan could cover 60 percent of claimant's speech therapy costs. That is the kind of funding contemplated by sections 4512 and 4659. The family's progress toward reaching the family deductible is the kind of information service agency is entitled to under section 4640.7, when it conducts its regular monitoring of claimant's IPP and progress. The family's cooperation in that regard is expected. On the other hand, if service agency is interested in the family using an in-network provider for purposes of obtaining 80 percent plan funding, it is expected to assist the family in that regard, including obtaining information as to the availability of a provider without an uncertain or prolonged waiting period. Once claimant is enrolled in school, it is expected service agency also will assist the family interface with claimant's SELPA, and provide advocacy, concerning the availability of speech therapy as part of claimant's special education services.

17. The above-described activity will take time. As claimant's mother urged, changing speech therapists is not something that can be done suddenly. Thus, service agency may revisit these funding issues related to claimant's speech therapy in no less than one year from the effective date of this decision, if the service coordination and assistance discussed above is provided, and information between the parties is exchanged.

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ORDER

Service agency shall not modify its current full funding of claimant's speech therapy service provided by LA Speech. This order is without prejudice to service agency revisiting this service funding no earlier than one year from now.

DATE:

ERIC SAWYER

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.