

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

In the Matter of:

CLAIMANT

and

WESTSIDE REGIONAL CENTER, Service Agency.

DDS No. CS0019233

OAH No. 2024070698

PROPOSED DECISION

Harden Sooper, Administrative Law Judge (ALJ), Office of Administrative Hearings, State of California, heard this matter by videoconference on November 8, 2024.

P, Independent Facilitator, and [Redacted], claimant's mother (Mother), represented claimant. Names are omitted to protect the privacy of claimant and his family.

Ron Lopez, Individuals with Disabilities Education Act (IDEA) Specialist, represented Service Agency.

The ALJ received testimony and documentary evidence. At the conclusion of the hearing, Service Agency requested the record remain open to allow it to upload two additional exhibits: (1) a screenshot from Sandis, Service Agency's internal database; and (2) claimant's most recent Self-Determination Program (SDP) budget. Claimant did not object to the admission of either exhibit. The record remained open until the close of business on November 8, 2024, to allow Service Agency to upload the two additional exhibits.

On November 8, 2024, Service Agency uploaded two exhibits to Case Center: (1) a one-page screenshot on page A48, marked for identification as Exhibit 8; and (2) a one-page SDP budget on page A49, marked for identification as Exhibit 9. Exhibits 8 and 9 were admitted into evidence.

The record closed, and the matter was submitted for decision on November 8, 2024.

ISSUE

Is Service Agency required under the Lanterman Developmental Disabilities Services Act (Lanterman Act) to fund Floortime therapy for claimant?

EVIDENCE RELIED UPON

In reaching this decision, the ALJ relied upon Service Agency's exhibits 1 through 9, and the testimony of the following witnesses: Ron Lopez, Service Agency IDEA Specialist; P, Independent Facilitator; and Mother.

FACTUAL FINDINGS

Parties and Jurisdiction

1. Claimant is nine years old and lives with his parents and three older brothers. According to his most recent Individual Program Plan (IPP), claimant is eligible for regional center services based on his diagnosis of Intellectual Disability.

2. Service Agency is a regional center designated by the Department of Developmental Services to provide funding for services and supports to persons with developmental disabilities under the Lanterman Act. (Welf. & Inst. Code, § 4500 et seq.)

3. On June 13, 2024, Service Agency sent Mother a Notice of Proposed Action denying claimant's request for regional center funding for Floortime therapy because Service Agency believed there were interventions more appropriate than Floortime to address claimant's social communication, executive functioning, and challenging behaviors.

4. In a Request for Fair Hearing submitted July 9, 2024, Mother stated she disagreed with Service Agency's denial of funding for Floortime therapy.

Claimant's Request for Funding

BACKGROUND

5. Claimant's most recent IPP, dated February 9, 2022, included the following goals for claimant: (1) claimant will maintain an optimal level of health; (2) claimant will participate in activities in the community to help with spatial awareness, focus, sensory input, and social skills; (3) claimant will increase safety

awareness in the community including around cars, lights, people, et cetera;
(4) claimant will increase the ability to advocate for himself through the use of sentences in all settings; and (5) claimant will become toilet trained, including the whole toileting process. (Ex. 3.)

6. Claimant receives regional center services and funding through the Self-Determination Program (SDP). On a date not established by the evidence, claimant requested to add funding for Floortime therapy to his SDP year three budget. After its clinical staff reviewed claimant's request, Service Agency denied it.

7. Claimant's IPP is updated on a triennial basis, with his next IPP scheduled for January 6, 2025. While the parties have conferred since 2022 regarding claimant's annual SDP budget, claimant's 2022 IPP remains unchanged.

8. Claimant has an Individualized Education Plan (IEP) through his school district. He receives occupational therapy and speech therapy in connection with his IEP. Neither party submitted a copy of claimant's IEP as evidence in this matter.

FLOORTIME THERAPY ASSESSMENT

9. After Service Agency denied his funding request, claimant obtained a Floortime therapy assessment at his own cost. At hearing, claimant submitted an assessment report dated September 20, 2024, authored by Clayton J. Johnson, MA, Licensed Marriage and Family Therapist. Mr. Johnson conducted the assessment on behalf of To Live and Play in LA, a Floortime therapy provider. Mr. Johnson assessed claimant in various areas, including language and communication skills, social skills, behavioral challenges, and daily living and self-care. He recommended claimant receive 60 hours per month of Floortime therapy to address his adaptive hygiene skills,

social interaction, emotional regulation, and nutritional health. The recommended therapy included direct services, social facilitation, and parent training sessions. (Ex. 4.)

BASIS FOR SERVICE AGENCY'S DENIAL OF FUNDING

10. Jessica Haro, Service Agency's board-certified behavior analyst and specialist in Autism Spectrum Disorder (ASD), was unavailable to testify at hearing due to an unspecified emergency. Claimant did not object to Mr. Lopez testifying about his conversation with Ms. Haro regarding the reasons for Service Agency's denial of claimant's request. According to Mr. Lopez, Ms. Haro opined Applied Behavior Analysis (ABA) therapy was a more appropriate service for claimant than Floortime therapy. Ms. Haro noted funding for ABA therapy was available through claimant's private health insurance. She also noted Floortime was not "evidence-based," and did not address the health and safety concerns cited in claimant's IPP. Ms. Haro's review of Mr. Johnson's assessment report did not change her opinion. Mr. Lopez was unable to provide further detail about the basis of Ms. Haro's opinion.

11. Based on his own knowledge, Mr. Lopez described several differences between ABA and Floortime therapy. ABA therapy is a behavioral intervention practice tailored to children with maladaptive behaviors. ABA addresses executive functioning skills such as organization and attention to task. Mr. Lopez testified ABA therapy provides support for children who can socialize but have issues with engagement or accepting changes in their schedule. He explained in contrast Floortime therapy is a play-based therapy meant to address difficulties with adapting to social situations. Mr. Lopez reiterated Floortime therapy has not been proven to provide the same concrete behavioral intervention benefits as ABA. Mr. Lopez however acknowledged Service Agency may fund Floortime therapy if other generic resources have been exhausted and the therapy meets the needs specified in a consumer's IPP or other reports. Mr.

Lopez's testimony was based upon his training and experience over 25 years working for Service Agency and his membership in the California Autism Professionals Network.

12. Service Agency's position statement, dated November 8, 2024, set forth a different basis for its denial of claimant's request, citing claimant's behavioral challenges. Service Agency stated, "There was concern that [claimant's] behaviors would impede claimant successfully accessing the Floortime services." (Ex. 7, p. A47.) The position statement did not reference claimant's failure to exhaust generic resources or cite ABA as a more appropriate service based on claimant's needs.

MOTHER'S TESTIMONY

13. Mother testified claimant's behavioral challenges have improved significantly since the 2022 IPP. She described claimant as a "social butterfly" who likes to interact with other people but lacks the proper tools to do so. Mother believes Floortime therapy will provide claimant with both improved social skills and life skills, such as hygiene and toileting training. Claimant attends weekly social events and summer and winter camps through an organization called Friendship Circle. Mother reported claimant had no behavioral issues impeding his participation in these social activities.

14. Claimant presented evidence corroborating Mother's testimony about claimant's behavior. Ms. P., who has known claimant for about five years, also testified claimant's behavior has significantly improved since 2022. Additionally, in his assessment report, Mr. Johnson did not cite any behavioral challenges that would impede claimant from participating in Floortime therapy.

15. Mother further testified claimant participated in ABA therapy for about two years, from 2020 through 2022, and the therapy was not effective for claimant.

Claimant's ABA provider was unable to provide consistent therapy sessions for claimant. Claimant was scheduled for 15 hours per week of ABA therapy but received only three to six hours per week because of the provider's staffing issues. Mother also noted claimant's behavior deteriorated during the two years when he participated in ABA therapy. Mother did not receive any written reports documenting claimant's progress during his two years of ABA therapy.

16. Mother testified she received verbal denials from both claimant's school district and claimant's health insurance provider when she requested funding for Floortime therapy. About a year ago, the assistant principal at claimant's school told Mother the Los Angeles Unified School District (LAUSD) would not fund Floortime therapy. Around the same time, Mother called Blue Shield, claimant's health insurance provider, and asked if it would fund Floortime therapy. Blue Shield also denied funding. Mother did not receive written denials from either LAUSD or Blue Shield.

17. Mother experienced significant difficulties when communicating with Service Agency personnel over the past two years. She noted claimant's service coordinator would not respond timely to emails or phone calls. Two months ago, Mother requested to change service coordinators. Since then, claimant has not been assigned a service coordinator.

ANALYSIS

18. The goals and recommended therapy in Mr. Johnson's Floortime therapy assessment report support claimant's IPP goals. Mother testified credibly about why she felt Floortime therapy would benefit claimant.

19. As presented at hearing, Service Agency's basis for denying claimant's request for funding was unconvincing. Ms. Haro's unavailability to testify resulted in an

abbreviated explanation of Service Agency's rationale. It was unclear whether Ms. Haro was aware claimant's behavior improved over the past two years or that claimant already participated in two years of ABA therapy, which Mother found ineffective. It appears Service Agency may have relied on incomplete information when denying claimant's request, which is consistent with Mother's testimony about her difficulty communicating with Service Agency.

20. Although both Ms. Haro and Mr. Lopez noted Floortime therapy was not "evidence-based," Service Agency did not submit evidence corroborating or explaining that position. To the contrary, Mr. Lopez acknowledged Service Agency may fund Floortime therapy in some cases.

21. Mother testified credibly regarding the denials of both LAUSD and Blue Shield for Floortime therapy funding. Service Agency may fund Floortime therapy if all requirements under the Lanterman Act are met.

22. The evidence did not establish whether 60 hours per month was an appropriate amount of therapy for claimant. Although Mr. Johnson conducted a thorough assessment, he did not provide a detailed explanation for his recommendation of 60 hours per month of therapy.

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. In a proceeding to determine whether an individual is eligible for regional center funding, the burden of proof is on claimant to establish by a preponderance of the evidence they meet the proper criteria. (Evid. Code, §§ 115, 500.)

A preponderance of the evidence means 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.)

Applicable Law

2. The Legislature enacted a comprehensive statutory scheme known as the Lanterman Act to provide an array 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.) 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, and to enable them to approximate the pattern of everyday living of nondisabled persons of the same age and to lead more independent and productive lives in the community. (*Assn. for Retarded Citizens v. Dept. of Developmental Services* (1985) 38 Cal.3d 384, 388.)

3. “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. (Welf. & Inst. Code, § 4512, subd. (b).)

4. Developing the IPP for a regional center consumer is the cornerstone of the Lanterman Act. The IPP process must consider the needs and preferences of the consumer and, where appropriate, the family, to determine the services and supports to be funded. (Welf. & Inst. Code, §§ 4646, 4646.5, 4647, 4648.) The planning process

includes gathering information and conducting assessments to determine the “life goals, capabilities and strengths, preferences, barriers, and concerns or problems of the person with developmental disabilities.” (Welf. & Inst. Code, § 4646.5, subd. (a)(1).) The IPP process must ensure conformance with the regional center’s purchase of service policies and utilization of generic services and supports when appropriate. (Welf. & Inst. Code, § 4646.4, subds. (a)(1), (a)(2).)

5. While a regional center is obligated to secure services and supports to meet the goals of each consumer’s IPP, a regional center is not required to meet a consumer’s every possible need or desire but must provide cost-effective use of public resources. (E.g., Welf. & Inst. Code, §§ 4512, subd. (b), 4640.7, subd. (b), 4651, subd. (a), 4685, subd. (c)(3)(A), & 4697, subd. (b)(2).)

6. Regional centers must “identify and pursue all possible sources of funding for consumers receiving regional center services.” Those sources include, but are not limited to, school districts and private health insurance providers. (Welf. & Inst. Code, § 4659, subds. (a), (c).)

Claimant’s Request for Funding

7. Claimant proved by a preponderance of evidence Service Agency must fund Floortime therapy. Claimant’s evidence demonstrating Floortime therapy would support his IPP goals was more convincing than Service Agency’s evidence to the contrary. Service Agency’s argument was three-fold: (1) ABA therapy was a more appropriate service than Floortime therapy; (2) claimant had not exhausted generic funding sources for Floortime therapy; and (3) claimant’s behavioral challenges would impede his ability to receive Floortime therapy services. Claimant’s evidence refuted all three arguments. Mother testified credibly regarding the ineffectiveness of claimant’s

prior ABA therapy, the denial of funding for Floortime therapy by both claimant's school district and health insurance provider, and the significant improvement in claimant's behavior since his 2022 IPP. Although Service Agency noted Floortime therapy is not "evidence-based," Service Agency acknowledged it may fund Floortime therapy in some cases. Therefore, Service Agency must fund Floortime therapy for claimant pursuant to the Lanterman Act.

8. Claimant did not prove by a preponderance of evidence that he requires 60 hours per month of Floortime therapy. Mr. Johnson's report contained insufficient information to assess the number of hours of therapy needed to meet claimant's IPP goals. Pursuant to the Order below, the parties must meet and confer within 30 days of the effective date of the Decision to determine the proper amount and frequency of Floortime therapy and make any necessary adjustments to claimant's IPP and year three SDP budget.

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ORDER

Claimant's appeal from Service Agency's denial of his request to fund Floortime therapy is granted in part and denied in part. Within 30 days of the effective date of the Decision, the parties shall meet and confer to determine the appropriate frequency and hours of Floortime therapy needed to reach claimant's IPP goals and make any necessary adjustments to claimant's IPP and year three SDP budget.

DATE:

HARDEN SOOPER

Administrative Law Judge

Office of Administrative Hearings

BEFORE THE
DEPARTMENT OF DEVELOPMENTAL SERVICES
STATE OF CALIFORNIA

In the Matter of:

Claimant,

OAH Case No. 2024070698

vs.

DECISION AND ORDER BY THE DIRECTOR

Westside Regional Center,

Respondent.

ORDER OF DECISION

On November 15, 2024, an Administrative Law Judge (ALJ) at the Office of Administrative Hearings (OAH) issued a Proposed Decision in this matter.

For the reasons explained below, the attached Proposed Decision is rejected. Instead, the Department holds as follows:

1. Welfare and Institutions Code section 4648, subdivision (a)(17), prohibits regional centers from purchasing therapeutic services that are not evidenced based and scientifically or clinically proven to be effective. In addition, Welfare and Institutions Code section 4686.2, subdivision(b)(1), states regional centers must only purchase Applied Behavioral Analysis (ABA) service or intensive behavioral intervention services that reflect evidence-based practices, promote positive social behaviors, and ameliorate behaviors that interfere with learning and social interactions. Furthermore, Welfare and Institutions Code section 4685.8, subdivision (c)(6), states that Self Determination Program (SDP) shall only fund services and supports provided pursuant to this division that the federal Centers for Medicare and Medicaid Services determines are eligible for federal financial participation. Thus, SDP funds can only be used to purchase behavioral intervention services that are generally accepted, evidenced- based, positive approaches, as these services are eligible for federal financial participation. (See also Welfare and Institutions Code section 4685.8, subdivision (c)(6); See also the Application for 1915(c) Home Community Based Services (HBCS) Waiver: California 1166.R00.00)

2. Welfare and Institutions Code section 4685.8, subdivision (d)(3)(C), requires SDP participants to only use SDP funds to purchase services and supports necessary to implement a

consumer's Individual Program Plan (IPP) as described in Welfare and Institutions Code section 4646.

3. After a full and independent review of the evidence submitted in this case, we conclude that neither party presented sufficient clinical evidence to determine that ABA, Adaptive Skills Training (AST), Floortime services, or any other therapeutic or behavioral intervention services would be appropriate to meet Claimant's IPP needs and goals. There is significant controversy whether Floortime services constitutes evidence-based treatment for most consumers, particularly past a certain age such as Claimant's age of nine years old. At the OAH hearing, Westside Regional Center (WRC) failed to demonstrate that Floortime services was not an evidenced-based behavioral therapy or that Floortime services was not appropriate to address claimant's needs and goals. The proposed decision states that while WRC claimed that Floortime therapy was not evidence-based, it "did not submit evidence corroborating or explaining that position," particularly for this Claimant. Similarly, Claimant's representatives failed to provide sufficient evidence to assess whether ABA, AST, or Floortime services was a more appropriate therapeutic or behavioral intervention service for Claimant.

4. Both parties are ordered to meet and confer on the proper services for Claimant. As part of these discussions, WRC must either independently, if it has the in-house expertise, or through the retention of a qualified expert, conduct a clinical assessment of Claimant to determine whether ABA, AST, Floortime, or any other therapeutic or behavioral intervention services are appropriate therapy for claimant and whether the proposed services are consistent with Welfare and Institutions Code sections 4648, subdivision (a)(17), 4686.2, subdivision (b)(1), and claimant's IPP. This clinical assessment shall be completed within 90 calendar days from the date of this Order, with a written report determining what therapeutic and behavioral intervention services are appropriate for Claimant. If the Claimant is still dissatisfied with the services offered after the meet-and-confer process, pursuant to Welfare and Institutions Code section 4710, WRC shall notify Claimant of any denial for requested service and Claimant may appeal the denial of such service.

5. WRC shall provide a written update to the Department within 30 calendar days after the date of the written clinical assessment has been completed. The written update shall include an attachment of the written clinical assessment, as well as a written summary of the communications between the parties and a determination of which services are appropriate for Claimant.

This is the final administrative Decision. Each party is bound by this Decision. Either party may request a reconsideration pursuant to 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.

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, December 13, 2024.

Original signed by

Pete Cervinka, Acting Director