

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

In the Matter of the Appeal of:

CLAIMANT

vs.

CENTRAL VALLEY REGIONAL CENTER, Service Agency

DDS No. CS0019458

OAH No. 2024070841

DECISION

Hearing Officer Coren D. Wong, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter by videoconference on September 4, 2024, from Sacramento, California.

Jacqui Molinet, Fair Hearing and Appeals Specialist, represented Central Valley Regional Center (CVRC), the service agency.

Claimant's parents represented her.

Evidence was received, the record closed, and the matter submitted for decision on September 4, 2024.

ISSUE

Is CVRC required to fund claimant's request for DIR/Floortime therapy?

FACTUAL FINDINGS

Background

1. Claimant is a seven-year-old girl who loves swimming, art, play acting, and playing with her cousins. She is very friendly and loving. She lives at home with her parents, and they recently moved from Madera to Fresno. Claimant has an older sister who attends college and lives outside the family home. The sisters enjoy a close relationship, and the older one visits as often as she can.

2. Claimant will be in the first grade at Figarden Elementary School in the Fresno Unified School District (Fresno District) during the 2024/2025 school year. She previously attended James Adams Elementary School in the Madera Unified School District (Madera District). Her most recent Individual Education Plan (IEP) was prepared while still enrolled in that district. She was determined eligible for language and speech therapy and occupational therapy. There was no evidence whether claimant will continue receiving services from the Fresno District.

Eligibility for Regional Center Services

3. Mother contacted CVRC to determine claimant's eligibility for regional center services and supports. CVRC completed an intake assessment worksheet and an intake assessment report on May 2, 2022. It referred claimant for a psychological evaluation to rule out autism spectrum disorder (ASD).

4. Judy Chang, Ph.D., a supervising clinical psychologist with Seeds of Hope Psychological Center, PC, evaluated claimant the following month. The evaluation consisted of completing an intake form; a clinical interview with Parents; a review of CVRC's intake assessment worksheet and intake report, a 2022 IEP, and a 2022 Valley Children's Healthcare Aftercare Summary; and the administration of numerous psychological assessments.

5. Based on the totality of her evaluation, Dr. Chang concluded claimant "meets criteria for a diagnosis of an **Autism Spectrum Disorder, without accompanying language or intellectual impairment.**" (Bolding original.) She further concluded, "[Claimant's] current presentation also meets the diagnostic criteria for the diagnosis of **Oppositional Defiant Disorder.**" (Bolding original.) Dr. Chang recommended, "Review by CVRC's multidisciplinary team to determine eligibility for services."

6. CVRC determined claimant eligible for regional center services and supports based on Dr. Chang's diagnosis of ASD.

Individual Program Plans

7. A planning team consisting of Parents, claimant, and her CVRC service coordinator, Kendra Daniels, met on August 30, 2022, to prepare claimant's initial Individual Program Plan (IPP). At the time, claimant was in kindergarten at James Adams Elementary School. The Madera District concluded she did not qualify for special education services under ASD. However, it prepared a 504 Plan to accommodate her disability and explored the possibility of providing occupational therapy.

8. Claimant was attending DIR/Floortime therapy once a week at Touchstone Family Development Center. She started in June 2022. Parents were private paying for DIR/Floortime.

9. DIR/Floortime is a developmental approach to intervention for children with ASD, as contrasted with applied behavior analysis (ABA) therapy which is a behavioral approach. DIR focuses on creating the strong foundation necessary for developing social, emotional, and intellectual abilities. Floortime is a technique for implementing DIR that is based on play.

10. At the conclusion of the meeting, the planning team agreed CVRC would continue providing ongoing case management services and monitoring claimant's progress. It further agreed Ms. Daniels would complete a referral for ABA therapy and "staff" reimbursement of insurance co-payments with her program manager.

11. A planning team met to prepare claimant's current IPP on July 16, 2024. The team included her current service coordinator, Jennifer Merritt. The IPP noted claimant continues to attend DIR/Floortime and "[her] communication skills are increasing, and any negative behaviors are decreasing." Additionally, "[her] communication skills and vocabulary have increased significantly since [her] last IPP, [she] was able to sit and talk to [her] CVRC SC . . . for 85% of [her] IPP meeting."

12. The IPP indicated CVRC will continue providing case management services and monitoring claimant's progress. Additionally, Parents will continue to private pay for DIR/Floortime through private insurance.

Request for Regional Center Funding

13. Prior to the last planning team meeting, Parents asked CVRC to fund claimant's DIR/Floortime therapy. CVRC denied the request and issued a Notice of Action (NOA) on June 26, 2024. The NOA identified CVRC's proposed action as "denying your request for DIR Floortime Therapy" and cited Welfare and Institutions Code sections 4614, 4648, subdivision (a)(17), and 4659. It included the following explanation:

DIR/Floortime is considered an unestablished intervention for the treatment of ASD by the National Standards Project. Generic Resources, such as private insurance must be exhausted prior to Regional Centers considering funding supports or services.

14. On July 19, 2024, Mother requested a fair hearing challenging the NOA on behalf of claimant. She explained, "I disagree with CVRC ruling and would like the opportunity to present evidence as to how much DIR has improved my child's quality of life through their therapy." (Spelling original.)

15. After receiving Mother's request but before fair hearing, CVRC changed its position and no longer considers DIR/Floortime an unestablished intervention it is prohibited by law from funding. It agreed to fund claimant's DIR/Floortime. However, CVRC did not withdraw the NOA, and Parents did not withdraw their appeal.

16. CVRC repeatedly requested that Parents provide claimant's treatment records from Touchstone Family Development Center so it could assess claimant's progress toward meeting her treatment goals and determine the appropriate amount

of treatment to fund. CVRC also requested records directly from Touchstone Family Development Center.

17. CVRC received few treatment records. One document provided was entitled "Evaluation of Progress and Effectiveness of DIR/Floortime Program Services." It explained Touchstone Family Development Center prepares an initial assessment, weekly progress notes, and semi-annual progress reports for clients. Initial assessment consists of: (1) interviewing the parents; (2) observing the parents and child interacting; (3) administering the Functional Emotional Assessment Scale (FEAS) "to assess the quality of symbolic thinking, motor function, sensory function, and quality of interaction," Functional Emotional Developmental Capacities (FEDC) to assess "functional emotional development in everyday activity and contexts," and Neuro Developmental Scale of Relating and Communication (NDRC) to evaluate "sensory function and communication"; and (4) forming a general impression. "Program goals are developed for each child based on these assessment methods." A written report of the initial assessment is prepared and shared with the parents.

18. The client's assigned clinician documents the client's weekly progress in weekly progress notes prepared after each session. The clinician describes the goals worked on, the parents' report of significant information or changes, and his or her clinical impressions of the child's performance.

19. Finally, a semi-annual progress report is prepared and shared with the parents. The report is based on a reassessment of parent information, clinical observation, weekly progress notes, and administration of the FEDC. The updated FEDC scores are provided in the report.

20. CVRC also received claimant's initial assessment report and two recent update reports. The initial assessment report recommended "continued DIR/Floortime intervention" without specifying how often. Both update reports "recommended . . . six to eight hours per week and a minimum of three sessions per day of twenty-minute intentional, parent-mediated, DIR/Floortime sessions at home or in the community." Neither update report included updated FEDC scores. No weekly progress reports were provided.

21. Based on the limited records provided, CVRC determined DIR/Floortime has helped claimant make some progress toward her treatment goals. She has been attending therapy once a week, despite recommendations that she attend more often. CVRC offered to fund DIR/Floortime once a week.

22. At hearing, Mother explained a typical DIR/Floortime session lasts 90 minutes. However, claimant does not transition between tasks well and can quickly become dysregulated. When that happens during DIR/Floortime, her therapist does not leave because it is the end of the session, but she stays until claimant has regained her composure. Therefore, Mother requested six hours of DIR/Floortime a week, to be used "flexibly" to account for occasions on which therapy continues beyond a standard session.

23. Shelley Celaya, CVRC's Assistant Director of Case Management Services, explained DIR/Floortime falls under the Department of Developmental Services' service code for "adaptive skills trainer." That service code authorizes payment on an hourly or a daily basis. The former pays for the number of hours of service provided. The latter pays a flat rate for a day, regardless of the number of hours of services provided. Ms. Celaya explained CVRC could fund DIR/Floortime at the daily rate if that was more

beneficial to claimant. She estimated the daily rate is a little more than double the hourly rate.

Analysis

24. Claimant requested funding for DIR/Floortime, and CVRC denied funding because DIR/Floortime is an unestablished intervention. Prior to fair hearing, CVRC reversed its position and determined DIR/Floortime is not an unestablished intervention it is precluded by law from funding. However, it did not withdraw the NOA, and Mother did not withdraw her appeal. At fair hearing, CVRC representatives explained the factual basis and reasoning for CVRC's offer to fund one hour of DIR/Floortime per week. Parents explained they want more hours and why.

25. The sole issue on appeal was CVRC's denying claimant funding for DIR/Floortime because it is an unestablished intervention. Claimant did not raise the issue of the amount of DIR/Floortime in her appeal. CVRC subsequently agreed to fund DIR/Floortime therapy. Therefore, claimant's appeal is moot.

LEGAL CONCLUSIONS

Applicable Burden and Standard of Proof

1. Claimant has the burden of proving by a preponderance of the evidence that she is entitled to funding under the Lanterman Act. (*Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161 [the party seeking government benefits has the burden of proving entitlement to such benefits]; Evid. Code, § 115 [the standard of proof is preponderance of the evidence, unless otherwise provided by law].) That standard requires claimant to produce evidence of such weight that, when

balanced against evidence to the contrary, is more persuasive. (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.) In other words, she must prove it is more likely than not CVRC is required to fund her request for DIR/Floortime. (*Lillian F. v. Super. Ct.* (1984) 160 Cal.App.3d 314, 320.)

Applicable Law

2. Under the Lanterman Act, the State of California accepts responsibility for persons with developmental disabilities and pays for the majority of the “treatment and habilitation services and supports” to enable such persons to live “in the least restrictive environment.” (Welf. & Inst. Code, § 4502, subd. (b)(1).) To determine how an individual consumer is to be served, regional centers are directed to conduct a planning process that results in an IPP designed to promote as normal a lifestyle as possible. (Welf. & Inst. Code, § 4646; *Assn. for Retarded Citizens v. Dept. of Developmental Services* (1985) 38 Cal.3d 384, 389.) 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 [consumer].” (Welf. & Inst. Code, § 4646.5, subd. (a)(1).)

3. The IPP must set forth goals and objectives for the consumer, contain provisions for the acquisition of services (which must be based upon the consumer’s developmental needs), contain a statement of time-limited objectives for improving the consumer’s situation, and reflect the consumer’s particular desires and preferences. (Welf. & Inst. Code, §§ 4646, subd. (a)(1), (2), & (4), 4646.5, subd. (a)(2), 4512, subd. (b), & 4648, subd. (a)(6)(E).) The regional center must “secure services and supports that meet the needs of the consumer” within the context of the IPP. (Welf. & Inst. Code, § 4648, subd. (a)(1).)

4. A regional center shall not continue to fund a service “unless . . . the regional center and the consumer . . . agree . . . reasonable progress toward objectives have been made.” (Welf. & Inst. Code, § 4648, subd. (a)(7).) When the service is intensive behavioral intervention services, the service provider is required to: (1) perform a behavioral assessment of the consumer; (2) develop a treatment plan describing the service provided, number of hours needed, recommended parent participation, and frequency for evaluating and reporting the consumer’s progress; and (3) provide the regional center a copy of the treatment plan. (Welf. & Inst. Code, § 4686.2, subd. (a)(1)–(3).) The regional center must evaluate the treatment program “no less than every six months.” (*Id.*, subd. (b)(1)(D).) It is precluded from continuing to fund a service once “the consumer’s treatment goals and objectives . . . are achieved.” (*Id.*, subd. (b)(1)(C).)

5. When a consumer requests a service or support and the regional center decides to deny the request, the regional center must send the consumer “adequate notice” of the proposed denial. (Welf. & Inst. Code, § 4710, subd. (b).) “Adequate notice”: (1) is in writing; (2) identifies the proposed action; (3) includes the reasons for the action; (4) provides the effective date for the action; and (5) specifies the legal basis for the action. (Welf. & Inst. Code, § 4701, subd. (a)(1)–(4).) A consumer who disagrees with the regional center’s proposed action may appeal by requesting an informal meeting, mediation, and/or a fair hearing. (Welf. & Inst. Code, § 4710.5, subd. (a).)

Conclusion

6. The NOA provided claimant and Parents adequate notice of CVRC’s proposal to deny funding for DIR/Floortime therapy. Mother appealed on behalf of claimant. CVRC subsequently changed its position and agreed to provide funding.

CVRC did not withdraw its NOA, claimant did not withdraw her appeal, and she did not appeal CVRC's offer to fund DIR/Floortime one day a week. Her appeal is moot and, therefore, denied.

ORDER

Claimant's appeal of Central Valley Regional Center's June 26, 2024 Notice of Action is MOOT and therefore DENIED. CVRC has agreed to fund DIR/Floortime Therapy.

DATE: September 10, 2024

COREN D. WONG

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 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.