

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

In the Matter of the Request for Services of:

CLAIMANT

and

SAN GABRIEL POMONA REGIONAL CENTER, Service Agency

DDS No. CS0019822

OAH No. 2024090251

DECISION

Kimberly J. Belvedere, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on November 26, 2024, in Pomona, California.

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

Daniel Ibarra, Manager of Appeals and Resolutions, represented San Gabriel Pomona Regional Center (SGPRC).

Oral and documentary evidence was received. The record was closed, and the matter was submitted for decision on November 26, 2024.

ISSUE

Shall SGPRC be required to reimburse claimant for copays made in connection with Applied Behavioral Analysis (ABA) services received prior to claimant being found eligible for regional center services under the Lanterman Developmental Disabilities Services Act (Lanterman Act)?

FACTUAL FINDINGS

1. The following factual findings are derived from documentary evidence and the testimony of SGPRC Admissions Coordinator Leticia Chaires.

2. Claimant is a five-year-old girl with a qualifying diagnosis of autism spectrum disorder (autism). She receives respite services. She is currently in Transitional Kindergarten and qualifies for special education under the category of Speech and Language Impaired (SLI). She is placed in a special education classroom with mainstream exposure for about 20 minutes per day, and receives speech therapy services through the local school district.

3. Claimant's mother initially made contact with SGPRC's Intake Department on June 23, 2023, via email stating that she was referred to SGPRC by claimant's pediatrician, who had given claimant a diagnosis of autism. This initial contact prompted the beginning of the intake process.

4. On November 13, 2023, SGPRC provided claimant's mother with a letter notifying her that her initial intake appointment was scheduled for December 4, 2023, with Ms. Chaires.

5. On December 4, 2023 Ms. Chaires met with claimant's mother to gather information to help determine eligibility for regional center services. Services are not discussed during the intake process. Ms. Chaires testified that she did not recall claimant's mother asking any questions about services during the initial intake meeting.

6. SGPRC scheduled a psychological assessment, which was later conducted, and claimant was found eligible for regional center services under the category of autism on April 17, 2024.

7. On June 10, 2024, claimant's mother contacted claimant's consumer services coordinator, regarding an outstanding bill she had from Kaiser Permanente/Easter Seals (Easter Seals), which had been providing claimant with ABA services prior to her eligibility determination at SGPRC. SGPRC informed claimant's mother that, while they would fund copayments for ABA services from the date of eligibility forward, they could not reimburse claimant's mother for services provided prior to claimant becoming eligible for regional center services.

8. On July 19, 2024, SGPRC issued its Notice of Action (NOA) denying claimant's request for reimbursement of \$7,624.41 for copayments made to Easter Seals between May 23, 2023, and April 16, 2024, in connection with claimant's ABA services received prior to claimant being found eligible for regional center services.

9. Claimant's mother's testimony is summarized as follows: She understands that claimant was not eligible until April 17, 2024, but asserted she was told by the regional center to put the ABA account "on hold." Claimant's mother was emotional during her testimony, and explained that prior to having her daughter become a consumer, she had never worked with the regional center. She did the whole process

“backwards” (i.e. obtaining services before eligibility) because she did not know what to do. Claimant’s mother had concerns early on in claimant’s development, but because she was meeting her milestones, claimant’s mother was never directed towards any services. It was not until claimant’s mother felt like there was nowhere else to turn that she started looking for programs for claimant. Claimant has another relative, who has autism, and the parent of that relative recommended claimant’s mother pursue special education through the school district in the summer of 2022. Consequently, claimant’s parents were focused on services at school and not the regional center.

Claimant’s mother first heard about SGPRC during an appointment with claimant’s behavioral pediatrician in March of 2023. Claimant’s mother felt that was the first time anyone validated her concerns about claimant’s development, and she felt very positive about moving forward. She met with Easter Seals, and they set up an evaluation for claimant’s ABA services. They also mentioned SGPRC for financial assistance. Claimant began preschool in June of 2023 and started ABA in July of 2023.

Claimant’s mother contacted the regional center around June of 2023 and put all of claimant’s information into the system. SGPRC told her it was going to “take a while” for the initial intake meeting to be conducted. In the meantime, as she waited for the first intake meeting, she started getting bills for claimant’s ABA copays. Claimant’s mother said she called SGPRC, and the person she spoke with told her to put the “account on hold.” Claimant’s mother also emailed Easter Seals and told them she did not have an initial meeting with SGPRC yet, and they put the account on hold.

At the initial intake meeting on December 4, 2023, Ms. Chaires informed her that the process might be more expeditious than normal since the information she provided was in order, but that SGPRC still needed to conduct an assessment.

Claimant's mother thought that since claimant already had a diagnosis of autism, claimant was eligible for regional center services and moving forward with the intake process was just a "formality." Claimant's mother also felt that since someone from SGPRC told her to put her ABA account on hold, she was misled during the process. Now claimant's ABA provider is telling her that if the bill is not paid, claimant runs the risk of having her ABA services terminated.

LEGAL CONCLUSIONS

Purpose of the Lanterman Act

1. 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.)

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 she is entitled to reimbursement for the payment for ABA services incurred prior to the determination of her eligibility for services by SGPRC.

3. The standard by which a 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.)

Applicable Law

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.

8. The Department of Developmental Services (DDS) is the state agency 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.)

9. A regional center's responsibilities to its consumers are set forth in Welfare and Institutions Code sections 4640-4659.2.

10. The determination of which services and supports the regional center shall provide is made through the Individualized Program Plan (IPP) process 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 IPP participants, the effectiveness of each option in meeting the goals stated in the individual program plan, and the cost-effectiveness of each option. (Welf. & Inst. Code, § 4512, subd. (b).) Regional centers have wide discretion in determining how to implement an IPP. (*Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 390.)

11. Welfare and Institution Code section 4646, subdivision (a), requires that the services and supports assist each consumer in achieving their personal outcomes and life goals and promote inclusion in the community.

12. Welfare and Institution Code section 4646.4 requires regional centers to establish an internal process to ensure adherence with federal and state laws and regulations. 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.

13. Welfare and Institution Code section 4648 describes the activities regional centers must perform to achieve the stated objectives in the consumer's IPP, and requires regional centers to be fiscally responsible.

14. The Lanterman Act provides that a purchase of service authorization must be obtained in advance from the regional center for all services purchased out of regional center funds. (Cal. Code Regs., tit. 17, § 50612.) A retroactive authorization is allowed for emergency services "if services are rendered by a vendored service provider: (A) At a time when authorized personnel of the regional center cannot be reached by the service provider either by telephone or in person (e.g., during the night or on weekends or holidays); (B) Where the service provider, consumer, or the consumer's parent, guardian or conservator, notifies the regional center within five working days following the provision of service; and (C) Where the regional center determines that the service was necessary and appropriate." (Cal. Code Regs., tit. 17, § 50612, subd. (b)(1).)

Evaluation

15. Claimant did not establish by a preponderance of the evidence that applicable law permits SGPRC to reimburse claimant \$7,624.41 for copayments made to Easter Seals between May 23, 2023, and April 16, 2024, in connection with claimant's ABA services. The copays were made before claimant was approved for regional center services on April 17, 2024, and not as part of the IPP process. While it is understandable that claimant's parents were unfamiliar with the process, and did

what they thought was right and what they believed to be in the best interest of their daughter, regional centers may only reimburse for prior services rendered in limited circumstances, none of which apply here, and even if they did, those reimbursements are only authorized for existing consumers; not for individuals who were not consumers at the time the services were received. Consequently, applicable law requires claimant's appeal be denied.

ORDER

Claimant's appeal from SGPRC's determination that it will not reimburse claimant \$7,624.41 for copayments made to Easter Seals between May 23, 2023, and April 16, 2024, in connection with claimant's ABA services received prior to claimant being found eligible for regional center services, is denied. SGPRC shall not reimburse this pre-eligibility expense.

DATE: December 11, 2024

KIMBERLY J. BELVEDERE

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.