

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

In the Matter of:

CLAIMANT

and

HARBOR REGIONAL CENTER,

Service Agency.

DDS No. CS0024754

OAH No. 2025030399

DECISION

Julie Cabos Owen, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter by videoconference on April 9, 2025. Latrina Fannin, Manager of Rights and Quality Assurance, represented Harbor Regional Center (HRC or Service Agency). Claimant represented himself. (Claimant's name is omitted to protect his privacy.)

Testimony and documents were received in evidence. The record closed and the matter was submitted for decision on April 9, 2025.

ISSUE

Should HRC be required to provide funding for Claimant's Capsaicin 0.025% topical cream medication?

EVIDENCE

The documentary evidence considered in this case was Service Agency exhibits 1 – 11, and Claimant's exhibit A. The testimonial evidence considered in this case was that of Client Service Manager Lizbeth Moreno, Registered Nurse Consultant Jessica Mahoney, and Claimant.

FACTUAL FINDINGS

Claimant Background

1. Claimant is a 39-year-old non-conserved male. He qualifies for regional center services with a diagnosis of autism spectrum disorder (ASD).
2. Claimant also suffers from temporomandibular joint (TMJ) pain, and he is unable to communicate verbally. He communicates by email or by phone using Relay services.

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Request for and Denial of Funding

3. On September 19, 2024, Claimant's medical insurer, Kaiser Permanente (Kaiser), sent him a letter denying coverage for Capsaicin 0.025% topical cream medication. In its September 19, 2024 letter, Kaiser explained:

You would like to know if the drug, Capsaicin 0.025% topical cream, is covered under your Medi-Cal plan assigned to Kaiser Permanente.

Our Decision-Making Committee denied your request for the drug, Capsaicin 0.025% topical cream because it is not covered under Medi-Cal RX's contract drug list (CDL) and is non-formulary. It also can be bought over the counter.

Therefore, your request for Capsaicin 0.025% topical cream to be approved under your Kaiser Permanente Medi-Cal plan is not a covered benefit.

(Exhibit 6.)

4. After Kaiser's funding denial, Claimant requested HRC provide funding for his Capsaicin 0.025% topical cream medication (Capsaicin 0.025%).

5. During January 2025, Claimant's Service Coordinator (SC) Lladira Macias communicated with Claimant and with HRC Registered Nurse Consultant Jessica Mahoney (RN Mahoney) to explore ways to obtain funding for Claimant's Capsaicin 0.025%. In January 2025, SC Macias documented her attempts to obtain medical records and other information regarding Claimant's funding request.

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6. On the morning of January 15, 2025, SC Macias noted:
- [Claimant] has asked for [HRC] to pay for a medication which is not covered under his Kaiser insurance plan. However, I communicated to [RN Mahoney] that [Claimant] has not provided an explanation for his need for this medication, and I remain uncertain about its intended purpose. The topical cream being discussed is Capsaicin 0.025%. [RN Mahoney] mentioned that she would look into the matter and consult with [HRC Consulting Physician] Dr. Olvera before following up with me.

(Exhibit 5, p. A28.)

7. On the afternoon of January 15, 2025, SC Macias noted:
- [U]pon reviewing [Claimant's] case notes, I noted that on December 4, 2024, he met with the previous [SC] and Manager to discuss his medication concerns. During this meeting, they informed him about the medical consent form required to request his current medical records. They also provided and emailed him two policies outlining the necessity of obtaining these records. I reminded [Claimant] that, according to the case notes, he had agreed to sign the consent form during the meeting. I asked if he still had the form or if he would like me to send a new one. I emphasized the importance of having his current medical records to ensure we provide the best support for his

medication needs. Additionally, I communicated with [RN Mahoney] to review [Claimant's] case and assess the need for the medication. I assured him that I would update him with the medical team's conclusions. [Claimant] responded, acknowledging my review of his case notes and the December 4 meeting details. However, he stated that he does not want to complete the consent form and instead asked for clarification on which medical records are needed so he can obtain them himself. He denied agreeing to sign any documents and mentioned that he could provide the prescription or any other specific medical information required.

(Exhibit 5, p A29.)

8. On January 16, 2025, SC Macias received an email from RN Mahoney, which SC Macias summarized as follows:

[RN Mahoney] reviewed [Claimant's] medication with Dr. Olvera. According to [RN Mahoney], the best course of action in this scenario would be for [Claimant] (and his support team) to contact the pharmacy to see if they might advise him on whether an alternate medication or prescription strength covered by insurance is available. Perhaps the pharmacy can contact [Claimant's] MD and have them adjust the prescription so that it is covered[.] [RN Mahoney] stated that this occurs with medications and prescriptions when one dose strength is covered but the

higher one is not. Furthermore, she stated that it is difficult to provide more precise advice because she does not know the condition the medication is prescribed for.

(Exhibit 5, p. A30.)

9. On January 23, 2025, SC Macias documented her discussion with Claimant as follows:

I informed [Claimant] that I spoke with the [HRC] medical team, and they suggested that the best course of action would be for him or his support team to reach out to the pharmacy to ask about alternative medications or prescription strengths that his insurance covers. Then perhaps the pharmacy could contact [Claimant's] MD to request an adjustment to the prescription for coverage purposes. The team also noted that this situation sometimes occurs with medication and prescriptions, leading to one dose strength being covered while a higher one is not. The medical team stated that it is challenging to provide more specific guidance without knowing the condition for which this was prescribed. . . . I informed [Claimant] that it is necessary to obtain medical records which include a diagnosis . . . and [why] the medication is necessary. . . .

(Exhibit 5, p. A31.)

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10. On January 24, 2025, SC Macias sent an email to Claimant, which she summarized as follows:

I composed and sent email to [Claimant] informing him that after reviewing his request and consulting with the [HRC] medical team, . . . we were unable to approve payment for [Capsaicin 0.025%] at this time. He will receive a formal Notice of Action reflecting this decision. I acknowledged that he provided [the denial letter] from Kaiser Permanente. . . . While we have carefully reviewed his request, we did not receive updated medical records from his provider that outline a current diagnosis or documentation demonstrating the medical necessity of this specific medication. Without this documentation, we are unable to fully assess the need for the medication. We also understand that his provider has recommended an alternative treatment, which he has shared has not worked well for him due to its smell and lack of effectiveness. Although we understand his concerns, the alternative medication remains the option covered under his plan.

(Exhibit 5, p. A32.)

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11. On January 28, 2025, HRC sent Claimant a Notice of Action (NOA), denying his request to fund for Capsaicin 0.025% topical cream medication. The stated reasons for the denial were as follows:

We received a letter from your insurance denying coverage for Capsaicin 0.025% topical cream. The insurance provider denied coverage, citing that this medication is not included in your plan's covered medications and is non-formulary. It also stated that this medication can be purchased over-the-counter. Furthermore, we did not receive updated medical records or a medical summary from your provider that includes a current diagnosis or clearly demonstrates the medical necessity of this specific medication. Without these essential documents, we were unable to fully assess whether Capsaicin 0.025% is necessary for your treatment. While your provider did recommend an alternative treatment, we understand that you chose to decline it due to its smell and lack of effectiveness for your condition. However, the alternative medication remains to be the covered option under your plan, and we encourage you to continue discussing possible treatment options with your provider.

(Exhibit 3, p. A9.)

12. In support of the funding denial, the NOA cited Welfare and Institutions Code section 4646.5, subdivision (a), and HRC's purchase of service policy on durable and non-durable equipment and supplies, which allows HRC to purchase supplies for

adult consumers when "the need for the specific supplies or equipment is associated with, or has resulted from, a developmental disability." (Exhibit 3, p. A9.)

13. Claimant filed a Fair Hearing Request to appeal the denial of funding, and this fair hearing was set.

Evidence at Fair Hearing

14. Client Service Manager (CSM) Lizbeth Moreno and RN Mahoney testified credibly on behalf of HRC and detailed the reasons for HRC's funding denial.

15. Claimant testified credibly about his request for funding and why he believes HRC should fund his Capsaicin 0.025%.

16. Prior to the hearing, Claimant submitted two letters to HRC from Kaiser doctors. In a letter, dated February 26, 2025, internist Eugene Y. Kwon, M.D., wrote, "[Claimant] is a patient of mine. Capsaicin 0.025% was prescribed and can be used for musculoskeletal pains for things such as joint pains (knees, hips, etc) and TMJ pain." (Exhibit 7.) In a letter, dated February 28, 2025, psychiatrist Amy Walston, M.D., wrote, "[Claimant] is a patient under my professional care. Capsaicin is medically necessary for [Claimant's] treatment." (Exhibit 8.)

17. At hearing, Claimant submitted a Kaiser document listing his current prescribed medications including "Capsaicin (ARTHRITIS- MUSCLE, CAPSAICIN) 0.025% Top[ical] Crea[m], Apply to affected area(s) 3 to 4 times a day as needed for aches and pain." (Exhibit A.)

18. HRC considered the Kaiser denial letter and the two letters from Claimant's Kaiser doctors. However, HRC stood by its denial, based on HRC's Service

Policy regarding "DURABLE AND NON-DURABLE EQUIPMENT AND SUPPLIES," which provides in pertinent part:

[HRC] may purchase durable or non-durable equipment or supplies for adult or minor clients only if all of the following criteria are met: [¶] . . . [¶]

2. the need for the specific supplies or equipment is associated with, or has resulted from, a developmental disability[.] [¶] . . . [¶]

6. the supplies or equipment to be purchased have been denied by, or the client is not eligible for, California Children's Services, Medi-Cal, private insurance or any other third-party payer.

(Exhibit 10, p. A40.)

19. Per HRC policy, if a consumer's need for a medication is related to their qualifying diagnosis, and a consumer's medical insurance provider denies coverage, HRC must fund the medication. Thus, to fund Claimant's Capsaicin 0.025%, Claimant's need for the medication must be "associated with, or has resulted from," his ASD. Consequently, HRC sought to obtain Claimant's medical records to gain a better understanding of why the Capsaicin 0.025% was prescribed. Alternatively, HRC offered to have its clinical team communicate with Claimant's doctors to obtain information regarding the Capsaicin 0.025% and its connection to Claimant's ASD.

20. HRC asserts it must obtain medical records or information directly from Claimant's provider(s) explaining the medical necessity for Capsaicin 0.025%, including

a specific diagnosis and how it is connected to the medication (i.e., that the Capsaicin 0.025% used to treat Claimant's TMJ pain will impact the treatment of Claimant's ASD by leading to improvement of his ASD). If HRC received documentation or direct information from Claimant's physicians verifying Claimant's joint pain is tied to his diagnosis of ASD, HRC would fund the Capsaicin 0.025%.

21. However, Claimant refused to sign consent forms authorizing HRC staff to either obtain his medical records or communicate with his providers. Consequently, HRC has received insufficient documentation from Claimant to make the determination that Claimant's need for Capsaicin 0.025% is associated with, or has resulted from, his ASD.

22. Although Dr. Kwon's letter indicated the Capsaicin 0.025% "can be used for musculoskeletal pains for things such as joint pains (knees, hips, etc.) and TMJ pain," this information does not constitute a diagnosis, nor does it state Claimant's specific need for the medication. Additionally, although Dr. Walston's letter indicated "Capsaicin is medically necessary for [Claimant's] treatment," the letter did not indicate for what diagnosis the Capsaicin was needed. Consequently, HRC is unable to fully assess Claimant's need for Capsaicin 0.025%.

23. HRC sought to help Claimant explore options, suggesting he or his support team reach out to the pharmacy to ask about alternative medications or different prescription strengths of Capsaicin that his insurance may cover. Claimant did not explore those.

24. Claimant admitted Capsaicin 0.025% is not prescribed for his ASD. However, he believes HRC should fund for Capsaicin 0.025% because it lessens his hip, joint, and TMJ pain and, in turn, helps his ASD. He did not specify how it helps his ASD.

25. Claimant believes HRC's Service Policy allows funding for his Capsaicin 0.025%. He pointed to HRC's Service Policy for "GENERAL STANDARDS," which provides: "Harbor Regional Center shall strive: [¶] . . . [¶] 11. To give consideration to any exception that should be granted when the [Individual Program Plan (IPP)] team establishes a need to authorize services outside of a service policy criteria." (Exhibit 9, p. A37.) However, CSM Moreno disagreed, noting that the IPP team was unable to establish a need to authorize the requested service with the information it was provided.

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 Developmental Disabilities Services Act (Lanterman Act) to appeal a regional center decision. (Welf. & Inst. Code, §§ 4700-4716.) Claimant timely requested a hearing following Service Agency's denial of eligibility, and therefore, jurisdiction for this appeal was established.

2. A party who seeks government benefits or services bears the burden of proof. (See, e.g., *Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161 [disability benefits].) Where a change in services is sought, the party seeking the change bears the burden of proving that a change in services is necessary. (Evid. Code, § 500.) The standard of proof in this case is a preponderance of the evidence because no law or statute (including the Lanterman Act) requires otherwise. (Evid. Code, § 115.)

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3. In seeking funding for Capsaicin 0.025%, Claimant bears the burden of proving by a preponderance of the evidence that the funding is required. Claimant has failed to meet his burden of proving he is entitled to the funding he seeks.

Relevant Provision of the Lanterman Act

4. A regional center is required to ensure the provision of services and supports to consumers that meet their individual needs, preferences, and goals as identified in their IPP. (Welf. & Inst. Code, §§ 4501; 4512, subd. (b); 4646, subd. (a).)

5. In securing services and supports for its consumers, a regional center must consider the cost-effectiveness of service options. (Welf. & Inst. Code, §§ 4646, subd. (a); 4512, subd. (b).)

6. Additionally, when purchasing services and supports, regional centers are required to ensure the "utilization of generic services and supports when appropriate." (Welf. & Inst. Code, § 4646.4, subd. (a)(2).)

7. Welfare and Institutions Code section 4512, subdivision (b), specifically provides:

"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 [IPP] process. The determination shall be made 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 [IPP], and the cost-effectiveness of each option.

8. Welfare and Institutions Code section 4646.4 specifically provides, in pertinent part:

(a) Regional centers shall ensure, at the time of development, scheduled review, or modification of a consumer's [IPP] developed pursuant to Sections 4646 and 4646.5. . . , the establishment of an internal process. This internal process shall ensure adherence with federal and state law and regulation, and when purchasing services and supports, shall ensure all of the following:

(1) Conformance with the regional center's purchase of service policies, as approved by the department pursuant to subdivision (d) of Section 4434.

(2) Utilization of generic services and supports when appropriate. . . .

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9. Welfare and Institutions Code section 4646.5, subdivision (a), provides in pertinent part:

The planning process for the [IPP] . . . shall include all of the following: (1) 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. . . .

Information shall be taken from the consumer, the consumer's parents and other family members, the consumer's friends, advocates, authorized representative, if applicable, providers of services and supports, and other agencies. The assessment process shall reflect awareness of, and sensitivity to, the lifestyle and cultural background of the consumer and the family.

Determination of Issue

10. The Lanterman Act envisions a collaborative IPP process in determining the appropriate services and supports for regional center consumers. Provision of those services and supports is governed by the Lanterman Act, its supporting regulations, and a regional center's purchase of service policies.

11. Per HRC policy, if a consumer's need for a medication is related to their qualifying diagnosis, and their medical insurance provider denies coverage, HRC must pay for the medication. In this case, Claimant's insurance provider denied coverage for his Capsaicin 0.025%. Thus, to fund Claimant's Capsaicin 0.025% in conformity with its policies, HRC must obtain medical records or information directly from Claimant's

providers confirming Claimant's need for the medication is "associated with, or has resulted from," his ASD (i.e., the diagnosis necessitating Capsaicin 0.025%, and how the Capsaicin 0.025% used to treat Claimant's pain will positively impact his ASD).

12. However, Claimant refused to sign consent forms authorizing HRC staff to either obtain his medical records or communicate with his providers. Consequently, HRC received insufficient documentation or information from Claimant to make the required determination that Claimant's need for Capsaicin 0.025% is associated with, or has resulted from, his ASD.

13. Moreover, Claimant did not establish that an exception is warranted under paragraph 11 of HRC's GENERAL STANDARDS policy. HRC's IPP team was unable to establish a need to authorize the services with the information it was provided.

14. Claimant has provided insufficient information to establish he meets HRC purchase policy requirements or any exception for funding his Capsaicin 0.025%.

15. Given the foregoing, HRC's denial of funding for Claimant's Capsaicin 0.025% was appropriate.

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ORDER

Claimant's appeal is denied. Harbor Regional Center's denial of funding for Claimant's Capsaicin 0.025% is upheld.

DATE:

JULIE CABOS OWEN

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 may appeal the decision to a court of competent jurisdiction within 180 days of receiving the final decision.

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Service Agency.

DDS No. CS0024754

OAH No. 2025030399

ORDER DENYING APPLICATION FOR RECONSIDERATION

On April 29, 2025, the Office of Administrative Hearings received Claimant's application for reconsideration of the Decision issued on this matter on April 15, 2025. Under Welfare and Institutions Code section 4713, subdivision (c), the application has been referred to the undersigned, who did not write the Decision for which reconsideration is requested.

Harbor Regional Center (HRC) has not filed a response to the application.

The Decision denied Claimant's appeal of HRC's determination not to provide funding to Claimant for an over-the-counter topical pain medication (Capsaicin 0.025% topical cream). Claimant has autism spectrum disorder (ASD), which is a developmental disability as defined in the Lanterman Developmental Disabilities Services Act. (Welf. & Inst. Code, § 4500 et seq.) HRC provides services and supports to Claimant due to his ASD.

Claimant contends the medication lessens his hip, joint, and temporomandibular joint (TMJ) pain, which in turn helps with his ASD. Claimant contends HRC should fund the medication given its connection to his ASD. Claimant's health insurer denied coverage for the medication, which prompted Claimant to request funding for it from HRC.

The Decision states in relevant part, "Claimant refused to sign consent forms authorizing HRC staff to either obtain his medical records or communicate with his providers. Consequently, HRC received insufficient documentation or information from Claimant to make the required determination that Claimant's need for Capsaicin 0.025% is associated with, or has resulted from, his ASD." (Decision, p. 16.)

In his application for reconsideration, Claimant states he has "new information to add that will change the outcome of the hearing." (Application for Reconsideration, p. 1.) Claimant contends he already gave HRC his medical records, and he therefore did not see a need to sign medical consent forms. Claimant also contends the Capsaicin 0.025% lessens his jaw pain to let him talk more, which improves his ASD.

"[A] party may apply to the hearing office or to the director responsible for issuing the final decision for a correction of a mistake of fact or law, or a clerical error

in the decision. . . .” (Welf. & Inst. Code, § 4713, subd. (b).) Claimant’s application for reconsideration does not demonstrate the existence of any mistake of fact or law in the Decision. The “new information” that Claimant identifies does not prove any such mistake. Therefore, the application is denied.

DATE:

THOMAS HELLER

Administrative Law Judge

Office of Administrative Hearings