

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT

vs.

SAN GABRIEL/POMONA REGIONAL
CENTER,

Service Agency.

OAH No. 2013081025

DECISION

This matter was heard before Glynda B.Gomez, Administrative Law Judge, Office of Administrative Hearings, State of California, on October 9, 2013 in Pomona, California.

Daniella G. Santana, Fair Hearings Manager, represented San Gabriel/Pomona Regional Center (SGPRC or service agency), the service agency.

Claimant TS (Claimant) was represented by his mother. Claimant did not attend the hearing.

Documentary evidence and testimony were received on October 9, 2013. The record was held open until October 11, 2013, for Claimant to submit additional documentation of income and for SGPRC to lodge any objections to such documents. Claimant's income information was received, marked and admitted as exhibit E. The service agency did not object to the document. The record was closed and the matter was submitted on October 11, 2013.

ISSUE

Whether SGPRC must continue paying Claimant's insurance co-payments for behavioral services.

FACTUAL FINDINGS

1. Claimant is a 10 year-old boy eligible for regional center services based upon his diagnosis of Autism. Claimant resides in his family's home with both parents and his younger sister. He attends a non-public school and is accompanied at school by a one-to-one aide at all times.

2. Claimant is non-verbal and has severe behavior issues. Claimant cannot tolerate interactions with peers or his younger sister. He has frequent tantrums, self-injurious behaviors and is aggressive towards others. When he becomes upset or has a tantrum, Claimant punches himself in the face and head as many times as he can before he can be restrained. Claimant's self-injurious behavior has caused bruising and bleeding. Claimant has no safety awareness, is not potty trained, and requires assistance with all personal hygiene tasks. It is very difficult for Claimant to go anywhere in the community because of his extreme behaviors.

3. Claimant has received behavioral services in his home pursuant to his April 2012 Individual Program Plan (IPP). Claimant's behavioral services are partially paid by the insurance his father has through his employer. Claimant's parents have seen some improvements in his behavior and have learned some strategies to deal with Claimant's behaviors from the behavioral services. Claimant receives behavioral services three times per week. SGPRC has paid the \$20 per session co-payments for the service since March of 2012.

4. Mother was a school teacher before Claimant's birth, but was not able to return to work after his birth because of the demands of Claimant's care. Claimant's father is a federal employee with a gross income of \$132,736. His income exceeds 400 percent of the federal poverty guidelines for a family of four (\$94,200). Claimant's father is considered an essential employee of the federal government. At the time of the hearing, the federal government was under a "shut down." Although Claimant's father was required to report to work during the government "shut down," at the time of the hearing he was not being paid.

5. Mother provides most of Claimant's care, but she has become weary from his behaviors which are physically and emotionally taxing. Additionally, Claimant's behaviors make it too difficult for his family to take a vacation and for him to be left with a babysitter or respite worker. Recently, Claimant's mother was able to see one of her daughter's soccer games for the first time because she was able to find someone who was capable, and willing, to care for Claimant for two hours on a Saturday for \$20 per hour so she could go to the game. Claimant's family can only afford this caregiver for two hours every other week. When Claimant is home from school, Mother is confined to the house caring for Claimant because of his severe behaviors. Claimant needs behavioral services and is improving slowly as a result of the services. His Mother testified that he would not be able to continue receiving behavioral services three times a week if his family is required to pay the \$240 per month in co-payments associated with the therapy because his family is already overextended financially trying to keep Claimant comfortable and providing for his needs. Loss of the behavioral services would jeopardize Claimant's ability to remain in the family home. Claimant is increasing in size and strength and his mother cannot continue to restrain him by herself as a method of preventing injury. The

behavioral services are helping Claimant to calm himself and minimize his self-injurious behaviors. The new requirement, effective July 1, 2013, for parents to pay the co-payments was a surprise and caught Claimant's family unprepared to absorb the expense.

EXTRA EXPENSES FOR CLAIMANT'S CARE AND WELL-BEING.

6. Water play and water therapy soothe Claimant and have been recommended by his physician. For years, Claimant was able to use his neighbor's pool. At some point, Claimant was not able to continue using the neighbor's pool and there were no publicly available facilities that could accommodate Claimant. Claimant's parents refinanced their home to build a pool at their home for Claimant to use. The refinancing resulted in an increase of 300 dollars per month on their mortgage payment. This expenditure was made only a few months before SGPRC notified Claimant's parents that it would no longer fund the \$240 per month in co-payments associated with his behavioral services.

7. Claimant requires heavy duty diapers for night time. Although SGPRC pays for some diapers for daytime, the diapers are not sufficient for nighttime. The nighttime diapers cost Claimant's family an additional \$119 every three months and an additional \$73 per month for under pads.

8. Claimant's developmental disability makes it extremely difficult for him to have dental care. Routine dental examinations and care require him to undergo general anesthesia. Claimant's recent dental examination and fillings cost Claimant's family \$1,400 above and beyond what his dental insurance paid.

LEGAL CONCLUSIONS AND DISCUSSION

1. The Lanterman Development Disabilities Services Act (Lanterman Act)¹ sets forth a regional center's obligations and responsibilities to provide services to individuals with developmental disabilities. As the California Supreme Court explained in *Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 388, the purpose of the Lanterman Act 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.

2. In enacting the Lanterman Act, the Legislature accepted responsibility to provide for the needs of developmentally disabled individuals, and recognized that services and supports should be established to meet the needs and choices of each person with developmental disabilities. (Welf. & Inst. Code, § 4501.)

3. "Services and Supports for persons with 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

¹ Welfare and Institutions Code section 4500 et. seq.

and maintenance of independent, productive, normal lives. (Welf. & Inst. Code, § 4512, subd. (b).)

4. Appropriate services and supports include diagnosis, evaluation, treatment, mental health services, protective services, emergency and crisis intervention. The determination of which services and supports are necessary for each consumer shall be made through the IPP process. (Welf. & Inst. Code, § 4512, subd. (b).)

5. The Lanterman Act gives regional centers, such as SGPRC, a critical role in the coordination and delivery of services and supports for persons with disabilities. (Welf. & Inst. Code, § 4620 et. seq.) It is the intent of the Legislature to ensure that the individual program plan and provision of services and supports by the regional center system is centered on the individual and the family of the individual with developmental disabilities and takes into account the needs and preferences of the individual and the family, where appropriate, as well as promoting community integration, independent, productive and normal lives, and stable and healthy environments. It is the further intent of the Legislature to ensure that the provision of services to consumers and their families be effective in meeting the goals stated in the IPP, reflect the preferences and choices of the consumer, and reflect the cost-effective use of public resources. (Welf. & Inst. Code, §4646.)

6. Welfare and Institutions Code section 4646.4, subdivision (a) provides:

Regional centers shall ensure, at the time of development, scheduled review, or modification of a consumer's individual program plan developed

pursuant to Sections 4646 and 4646.5 or an individualized family service plan pursuant to Section 95020 of the Government Code, 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.
- (3) Utilization of other services and sources of funding as contained in Section 4659.

7. Welfare and Institutions Code section 4659, subdivision (a), provides that the regional center shall identify and pursue all possible sources of funding for consumers receiving regional center services. These sources shall include, but not be limited to governmental, other entities, programs or private entities.

8. Welfare and Institutions Code section 4659, subdivision (b), provides that regional centers may not pay for medical or dental services for a consumer over the age of three unless the regional center is provided with documentation that a health care plan, private insurance, or Medi-Cal denied coverage and the regional center determined that the denial does not have merit.

9. In relevant part, Welfare and Institutions Code section 4659.1, provides that effective July 1, 2013, regional centers may only fund co-payments or co-insurance when: (1) the service or support is paid for, in whole or in part,

by the health care service plan or health insurance policy of the consumer's parent; (2) the consumer is covered by his/her parent's health plan or health insurance; (3) the family has an annual gross income that is less than 400% of the federal poverty level; and (4) there is no third party with liability for cost of the service or support.

11. Welfare and Institutions Code section 4659.1, subdivision (c) contains an exception to the prohibition when the service or support is necessary to successfully maintain the consumer at home in the least restrictive setting and the parents or consumer demonstrates one or more of the following:

- (1) The existence of an extraordinary event that impacts the ability of the parent, guardian, or caregiver to meet the care and supervision needs of the child or impacts the ability of the parent, guardian, or caregiver, or adult consumer with a health care service plan or health insurance policy, to pay the copayment or co-insurance.
- (2) The existence of a catastrophic loss that temporarily limits the ability to pay of the parent, guardian, or caregiver, or adult consumer with a health care service plan or health insurance policy and creates a direct economic impact on the family or adult consumer. For purposes of this paragraph, catastrophic loss may include, but is not limited to, natural disasters and accidents involving major injuries to an immediate family member.
- (c) Significant unreimbursed medical costs associated with the care of the consumer or another child who is also a regional center consumer.

Here, Claimant's severe behaviors have a tremendous impact on his family and prevent his mother from returning to full-time employment or from leaving home most days. His behaviors have caused serious injury. His IPP provides for

behavioral services and the services are helping him to make slow improvement and are necessary for him to be maintained in the family home. Claimant has health insurance paid for by his father through his employment with the federal government, but the insurance has a co-payment which amounts to a sizable monthly payment for the services. Father's gross income² is above the threshold set by the legislature for a family of four. However, Claimant's care and needs require substantial expenditures above and beyond what insurance pays for such care. Finally, in trying to provide relief to Claimant, his family incurred substantial debt to install a pool on their property. While the pool may be considered a luxury, the fact is that it was installed for Claimant, at great expense, before Claimant's family was aware that they would be required to pay several hundred dollars more per month for Claimant's behavioral services and without giving them any opportunity to adjust the family budget to accommodate the new expenses. Even considering his father's income, the totality of Claimant's unreimbursed medical expenses and costs associated with Claimant's needs and care are significant. Based on factual findings 1 to 8, Claimant meets the requirements

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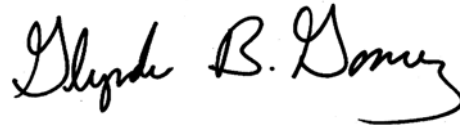
for an exemption from the prohibition on regional center payment of co-payments for behavioral services.

²At the time of the hearing, Claimant's family had no income because his father was working without pay during the government "shut down".

ORDER

Claimant's appeal is granted. The San Gabriel/Pomona regional center shall continue paying the co-payments for Claimant's behavioral services.

DATED: October 22, 2013

A handwritten signature in black ink that reads "Glynda B. Gomez". The signature is written in a cursive style and is positioned above a horizontal line.

GLYNDA B. GOMEZ

Administrative Law Judge

Office of Administrative Hearings

NOTICE

This is the final administrative decision in this matter. Each party is bound by this decision. An appeal from the decision must be made to a court of competent jurisdiction within 90 days of receipt of the decision.