

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

vs.

KERN REGIONAL CENTER,

Service Agency.

OAH No. 2018090136

DECISION

Administrative Law Judge Thomas Heller, State of California, Office of Administrative Hearings, heard this matter at Bakersfield, California on October 29, 2018.

Claimant's mother represented Claimant, who was not present. The names of Claimant and his family members are omitted to protect their privacy.

Kristine Khuu, Assistant Director of Client Services, represented Kern Regional Center (KRC).

The matter was submitted on October 29, 2018.

ISSUE

Whether KRC should pay Claimant's health insurance copayments for occupational therapy and an annual insurance deductible.

EVIDENCE RELIED UPON

Documents: KRC exhibits A through L; Claimant's exhibits C-A through C-F.
Testimony: Kristine Khuu; Claimant's mother.

FACTUAL FINDINGS

1. KRC determines eligibility and provides funding for services to persons with developmental disabilities under the Lanterman Developmental Disabilities Services Act (Lanterman Act), among other entitlement programs. (Welf. & Inst. Code, § 4500 et seq.)¹

2. Claimant is a three-year-old boy who is eligible for Lanterman Act services due to a diagnosis of autism spectrum disorder. He lives with his mother, father, and two siblings.

3. Before turning three years old, Claimant was in the Early Start Program, which serves children from birth through 36 months of age who have, or at risk for, a developmental delay or disability. (See Gov. Code, § 95000 et seq.) As part of that program, KRC paid for weekly occupational therapy for Claimant from Terrio Therapy-Fitness (Terrio). Occupational therapy is the therapeutic use of goal-directed activities (occupations) that engage the individual's body and mind in meaningful, organized, and self-directed actions that maximize independence, prevent or minimize disability, and maintain health. (Bus. & Prof. Code, § 2570.2, subd. (k).)

4. In early July 2018, just before Claimant's third birthday, his mother met with a KRC service coordinator to create an Individual Program Plan (IPP) for Lanterman Act services and supports once he turned three years old. KRC agreed to pay for respite care, applied behavioral analysis services, and assistance to the family with applying for Supplemental Security Income/Medi-Cal benefits. But KRC did not agree to continue paying for occupational therapy from Terrio, stating that the therapy "has been discontinued since it's only until the age of 3. Family is trying to see if [insurance] co-

¹ Undesignated statutory references are to the Welfare and Institutions Code.

pays or something can be approved for this service through KRC. For this time however this program is not being funded.” (Exhibit D, p. 19.)

5. Claimant stopped occupational therapy with Terrio when KRC stopped paying for it, but Claimant’s mother wants to restart it. The family has private health insurance, and Claimant’s mother asked KRC to pay the co-payments for the occupational therapy, plus some or all of Claimant’s \$400 annual insurance deductible. Claimant’s mother initially believed the co-payments would be \$15 per visit, but has since learned they would be \$30 per visit for an in-network provider. The family’s insurance also has a 20 percent per visit coinsurance rate, a service limit of 35 days per calendar year for in-network occupational therapy, and an out-of-pocket (stop loss) limit of \$2,700 annually per family member.

6. KRC requested financial information from Claimant’s parents, who disclosed that the family’s gross income in 2017 was \$127,705. KRC then sent Claimant a notice proposing to deny the payment request because “[t]he [f]amily’s gross income is in excess of 400% above the federal poverty level.” (Exhibit A.) In 2018, 400 percent of the federal poverty level for a family of five is \$117,680, i.e., \$10,025 below the family’s gross income in 2017.

7. On September 4, 2018, Claimant submitted a Fair Hearing Request appealing the proposed denial, and KRC forwarded it to the Office of Administrative Hearings. Due to its congested calendar, the Office of Administrative Hearings scheduled the hearing for five days later than the 50-day time period provided for by section 4712, subdivision (a).

8. The parties met informally before the hearing, but were unable to resolve their dispute. In early October 2018, Claimant was also assessed for occupational therapy at school, and was scheduled to begin such therapy at school just after the hearing. KRC does not assert that the therapy at school is a substitute for the therapy

from Terrio, because the school therapy will address Claimant's occupational performance and participation as it relates specifically to education, while the therapy from Terrio would not relate specifically to education.

9. Claimant's mother testified that the occupational therapy from Terrio is necessary to help address Claimant's sensory issues, and provided letters from two physicians recommending that the occupational therapy continue. Claimant displays difficult behaviors, including biting and tantrums, and has regressed since he stopped receiving therapy from Terrio. His mother is concerned his negative behaviors will increase without the therapy and present a risk to maintaining him at home. At the same time, the family is under financial strain from Claimant's unreimbursed medical costs, his special diet, a house mortgage, student loans, and other obligations. Claimant's insurance co-payments and other unreimbursed medical costs were \$2,648.16 between April 1, 2017 and September 25, 2018, and his special diet costs over \$100 weekly. Adding co-payments for weekly occupational therapy would be difficult for the family to afford, and would only cover 35 occupational therapy visits per calendar year.

10. KRC does not dispute that the therapy with Terrio is appropriate, but asserts that KRC may not pay the insurance co-payments and deductible given the family's gross income. KRC was able to pay for the therapy while Claimant was in the Early Start Program, but the Lanterman Act has different funding restrictions.

LEGAL CONCLUSIONS

LEGAL STANDARDS

1. Disputes about the rights of disabled persons to receive services and supports under the Lanterman Act are decided under its fair hearing and appeal procedures. (§ 4706, subd. (a).) "'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 independent, productive, and normal lives.” (§ 4512, subd. (b).) Occupational therapy is one such service and support. (*Ibid.*)

2. Where a service or support provided under an IPP is covered partially or fully by the health insurance policy of the consumer’s parent, guardian, or caregiver, “the regional center may, when necessary to ensure that the consumer receives the service or support, pay any applicable copayment, coinsurance, or deductible . . . if all of the following conditions are met: [¶] (1) The consumer is covered by his or her parent’s, guardian’s, or caregiver’s . . . health insurance policy. [¶] (2) *The family has an annual gross income that does not exceed 400 percent of the federal poverty level.* [¶] (3) There is no other third party having liability for the cost of the service or support” (§ 4659.1, subd. (a), italics added.) Where, as here, a family’s income exceeds that threshold, a regional center may pay the copayment, coinsurance, or deductible “if . . . the service or support is necessary to successfully maintain the child at home or the adult consumer in the least-restrictive setting, and the parents or consumer demonstrate 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 . . . to pay the copayment, coinsurance, or deductible. [¶] (2) The existence of catastrophic loss that temporarily limits the ability to pay of the parent, guardian, or caregiver, or adult consumer . . . and creates a direct economic impact on the family [¶] (3) Significant unreimbursed medical costs associated with the care of the consumer or another child who is also a regional center consumer.” (§ 4659.1, subd. (c).)

3. Claimant has the burden of proving KRC should fund the copayments and deductible (see 4659.1, subd. (c); *Lindsay v. San Diego County Retirement Bd.* (1964) 231 Cal.App.2d 156, 160-161), and must do so by a preponderance of the evidence (Evid. Code, § 115). A preponderance of the evidence means "'evidence that has more convincing force than that opposed to it.' [Citation.]" (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.)

DISCUSSION

4. The evidence did not establish that the occupational therapy from Terrio is "necessary to successfully maintain [Claimant] at home. . . ." (§ 4659.1, subd. (c).) The physicians recommending it opined that the therapy was beneficial, not that it was necessary to maintain Claimant at home. Claimant's regression since the therapy stopped also does not prove it is necessary to maintain Claimant at home. As described, his difficult behaviors do not appear to present a risk to his ability to live with his family.

5. Claimant also did not prove the existence of an "extraordinary event," "catastrophic loss," or "significant unreimbursed medical costs" under section 4659.1, subdivision (c). No evidence was presented of an extraordinary event or catastrophic loss, and Claimant's unreimbursed insurance copayments and other unreimbursed medical costs were \$2,648.16 between April 1, 2017 and September 25, 2018, a period of almost 18 months. (Factual Finding 6.) These costs are a small percentage of the family's gross annual income, and would still be a small percentage even after adding the expected occupational therapy copayments and annual deductible. The family's gross annual income in 2017 was also \$10,025 more than 400 percent of the federal poverty level in 2018 (*ibid.*), and Claimant's unreimbursed medical costs are well below \$10,025 annually. Therefore, Claimant did not prove the existence of "significant unreimbursed medical costs" for Claimant under section 4659.1, subdivision (c). The family's mortgage, student loans, and other financial obligations

are not factors in that determination.

6. Claimant's insurance includes a cap on occupational therapy visits of 35 days per calendar year (Factual Finding 5), and section 4659.1 would not appear to prohibit KRC from paying for visits beyond the cap. But it was unclear at the hearing if KRC is even proposing to deny payment for additional visits beyond the annual cap. KRC's Notice of Proposed Action and Claimant's Fair Hearing Request only concerned Claimant's copayments and annual insurance deductible. Claimant may submit an additional fair hearing request if there is a dispute about payment for visits beyond the annual cap.

ORDER

Claimant's appeal is denied.

DATED:

THOMAS HELLER

Administrative Law Judge

Office of Administrative Hearings

NOTICE

This is the final administrative decision in this matter. Each party is bound by this decision. Either party may seek judicial review of this decision in a court of competent jurisdiction within 90 days.