

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

In the Matter of:

CLAIMANT,

vs.

FRANK D. LANTERMAN REGIONAL CENTER,

Service Agency.

OAH No. 2019050138

DECISION

Carla L. Garrett, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter on June 19, 2019, in Los Angeles, California.

Claimant's mother (Mother) and father (Father) (collectively, Parents), represented Claimant.¹ Jessica T. Franey, Attorney at Law, represented Frank D. Lanterman Regional Center (FDLRC or Service Agency).

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on June 19, 2019.

¹ Initials and family titles are used to protect the privacy of Claimant and his family.

ISSUE

Must the Service Agency fund for marital counseling for Parents?

EVIDENCE RELIED UPON

Documents: FDLRC's Exhibits 1 through 7.

Testimony: William Crosson, Regional Manager; Mother; and Father.

FACTUAL FINDINGS

1. Claimant is a five-year-old girl and a consumer of the Service Agency. Claimant is eligible for services as an individual diagnosed with Intellectual Disability pursuant to the Lanterman Developmental Disabilities Services Act (Lanterman Act), California Welfare and Institutions Code, section 4500, et seq.² Claimant resides with Parents within the Service Agency's catchment area.

2. The Service Agency provides Claimant with 66 hours per month of respite services, orofacial myofunctional speech therapy, and assistive technology services.

3. Claimant's initial Individual Program Plan (IPP) with the Service Agency occurred on March 23, 2017, and provided, among other things, that the Service Agency would share information about the Koch-Young Family Resource Center (Koch-Young Center). The Koch-Young Center provides information, education, and

² All statutory references are to the Welfare and Institutions Code.

support for people with developmental disabilities and their families. In that regard, Koch-Young hosts support groups for parents of individuals with special needs, such as a Parents Collaborate Support Group that meets on the last Friday of each month, from 9:00 a.m. to 10:30 a.m. The Parents Collaborate Support Group discusses topics such as stress, applied behavior analysis, in-home support services, social security, Medicaid, and more. In the past, Parents availed themselves of these support groups on several occasions, but encountered difficulty attending them because their schedules would not permit and often the scheduled topics of discussion would not pertain to their issues.

4. Parents and Claimant have a private health insurance provider, Kaiser Permanente (Kaiser). Kaiser covers mental health services for the treatment of mild to moderate mental health conditions and mental disorders, as defined by the *Diagnostic and Statistical Manual of Mental Disorders (DSM), Fourth Edition*. Kaiser provides the following in its health plan:

We do not cover *services* for conditions that the DSM identifies as something other than a mental disorder.

For example, the DSM identifies relational problems as something other than a mental disorder so we do not cover *services* (such as couples counseling or family counseling) for relational problems.

(Exhibit 4.)

5. The Kaiser health plan does, however, cover outpatient mental health services, at no charge, when provided by Kaiser doctors and other Kaiser plan providers who are licensed health care professionals acting within the scope of their license. Such services include “[i]ndividual and group mental health evaluation and treatment (psychotherapy).” (*Id.*)

6. Parents testified at hearing. Mother explained that the pressure of caring for Claimant 24 hours per day has placed enormous stress on her and Father’s marriage. Because Parents want to continue providing Claimant with a “normal life” from one united household, as opposed to exposing Claimant to two households that functionally divides the collective support Claimant requires, Parents decided that marital counseling would help to fortify their marriage and help to keep the family intact.

7. Beginning in October or November 2018, Parents pursued individual counseling with Kaiser, because Kaiser did not offer marital counseling. It was their hope that after receiving individual therapy, the therapist would ultimately agree to provide therapy to Parents together. Kaiser provided Parents with an authorization to go through Beacon Health Options (Beacon), which provides outpatient mental health services. Parents contacted Beacon, and after waiting an extended period of time for Beacon to return their call, Beacon provided Parents with a list of 15-30 providers to contact. Parents contacted each provider, and each one advised that they no longer work with Kaiser.

8. Parents contacted Kaiser and advised them of their difficulty in securing a therapist. Kaiser provided Parents with another authorization, but like last time, the list yielded no results. Parents expended “hours and hours of time trying to get Kaiser to connect them with a therapist.” (Father’s Testimony.) Parents lodged a complaint with

Kaiser for their failure to provide outpatient mental health services as required, and then approached the Service Agency for marital therapy funding.

9. On February 25, 2019, Mother sent an email to the Service Agency requesting marital counseling support. Mother advised the Service Agency that Parents had been trying to secure a therapist through Kaiser, but had been unsuccessful. Mother also informed the Service Agency that she had received a referral to a Marriage and Family Therapist, Diane Simon Smith (MFT Smith), from one of Claimant's teachers, and explained that MFT Smith serves as a vendor for the North Los Angeles County Regional Center (NLACRC).

10. MFT Smith provides marital counseling and psychotherapy to parents who have children with disabilities. MFT Smith does not work with any insurance plans, and only works with private clients who pay their fees out-of-pocket. She also accepts payment from NLACRC. Parents requested the Service Agency to designate MFT Smith as a "guest provider" so that the Service Agency could fund for marriage counseling.

11. On April 4, 2019, the Service Agency sent Parents a letter denying their request. On April 25, 2019, Mother filed a Fair Hearing Request.

LEGAL CONCLUSIONS

1. This case is governed by the Lanterman Developmental Disabilities Services Act (Welfare and Institutions Code section 4500 et. seq., referred to as the Lanterman Act Lanterman Act).³ Under the Lanterman Act, an administrative "fair

³ All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

hearing” is available to determine the rights and obligations of the parties. (§ 4710.5.) Claimant requested a fair hearing to appeal the Service Agency’s proposed denial of funding for marital counseling. Jurisdiction in this case was thus established.

2. The standard of proof in this case is the preponderance of the evidence, because no law or statute (including the Lanterman Act) requires otherwise. (Evid. Code, §115.) Claimant is requesting that the Service Agency fund for funding marital counseling. Under these circumstances, Claimant bears the burden of proof.

3. Under the Lanterman Act, the State of California accepts responsibility for persons with developmental disabilities. The Lanterman Act mandates that an “array of services and supports should be established . . . to meet the needs and choices of each person with developmental disabilities . . . and to support their integration into the mainstream life of the community.” (§ 4501.) These services and supports are provided by the state’s regional centers. (§ 4620, subd. (a).)

4. The California Legislature enacted the Lanterman Act “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.” (*Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 388.)

5. Regional centers must develop and implement IPPs, which shall identify services and supports “on the basis of the needs and preferences of the consumer, or where appropriate, the consumer’s family, and shall include consideration of . . . the cost-effectiveness of each option” (§ 4512, subd. (b); see also §§ 4646, 4646.5, 4647, and 4648.) The Lanterman Act assigns a priority to services that will maximize

the consumer's participation in the community. (§§ 4646.5, subd. (a)(2); 4648, subd. (a)(1), (2).)

6. Regional centers have a duty to ensure that a consumer utilizes generic services and supports, and to consider the family's responsibility for providing similar supports and services for a minor child without disabilities, taking into account the consumer's need for extraordinary care, services, supports and supervision, and the need for timely access to this care. (§ 4646.4, subd. (a)(2), (a)(4).) Regional centers are also mandated to identify and pursue all possible sources of funding for consumers receiving regional center services, including governmental or other entities or programs required to provide or pay the cost of providing services. (§ 4659, subd. (a).)

7. Claimant has not met her burden of proving that the Service Agency should fund for marital counseling. The Service Agency is a payor of last resort and, as provided by statute, it is prohibited from funding marital counseling, as another payor is available to fund the requested service, to wit, Kaiser. While Parents have encountered difficulty in prompting Kaiser to fulfill its obligations pursuant the terms of their healthcare plan, Kaiser's failure does not create an obligation on the part of the Service Agency to do what Kaiser has not. Rather, Parents must explore and pursue remedies to address Kaiser's failure to provide therapy services, with an aim at ensuring Kaiser's compliance with the terms of the health plan.

8. For the foregoing reasons, Claimant's appeal is denied.

ORDER

Claimant's appeal is denied. The Service Agency's denial of Claimant's request for marital counseling is affirmed.

DATE:

CARLA L. GARRETT

Administrative Law Judge

Office of Administrative Hearings

NOTICE

This is the final administrative decision; both parties are bound by this decision. Either party may appeal this decision to a court of competent jurisdiction within 90 days.