

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

In the Matter of:

CLAIMANT,

vs.

TRI COUNTIES REGIONAL CENTER, Service Agency.

OAH No. 2020070942

DECISION

Irina Tentser, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter on August 31, 2020 by videoconference and telephone conference.

Aslemand Azita, Fair Hearing Representative and Oxnard Adult Team Manager, represented Tri Counties Regional Center (TCRC or Service Agency).

Mother appeared on behalf of Claimant, a conserved adult, who did not appear.¹

¹ Titles are used to protect Claimant's and his family's privacy.

Oral and documentary evidence was received. The ALJ granted Mother's request that certain documents be placed under seal pursuant to a Protective Order based on privacy considerations. The Protective Order is issued concurrently with this Decision. The record was left open for parties to submit written closing briefs no later than September 8, 2020. On September 7, 2020, Service Agency filed its closing brief, marked as Exhibit 11. On September 8, 2020, Mother filed her closing brief, marked as Exhibit Y.

The record was closed and the matter was submitted for decision on September 8, 2020.

ISSUES²

1. Should Service Agency retroactively reimburse Claimant for private insurance co-payments for Claimant's Demser prescription of fifty-dollars per prescription from May 2019 through May 2020?

² The issue of whether Service Agency should fund for Demser co-payments because the medication is being utilized "out of formulary" (experimental non-Federal Drug Administration approved use) by Claimant was not considered at hearing. The issue was moot due to the fact Claimant's secondary medical insurance, Medi-Cal/Gold Coast, had notified the parties in June 2020, prior to the August 2020 hearing, that it had authorized prospective co-payments to Claimant for the medication and that retroactive reimbursement was available through both public agency funding and/or generic resources.

2. Should Service Agency prospectively fund Claimant for fifty-dollar co-payments per prescription if Gold Coast denies reimbursement beginning June 2020 and ongoing?

EVIDENCE RELIED UPON

Documents: Service Agency Exhibits 1-11; Claimant Exhibits A-Y

Testimony: Julianne Block, Case Worker, God Coast Healthcare; Dr. Joel Morton, Psychiatrist, TCRC Vendor; Veronica Rodriguez-Torres, Transition Manager; Ryan Landseadel, Previous Service Coordinator; and Claimant's mother.

FACTUAL FINDINGS

1. Claimant is a twenty-two-year-old conserved adult who is eligible to receive services from the Service Agency pursuant to the Lanterman Developmental Disabilities Act (Lanterman Act), California Welfare Institutions Code , section 4500 et seq., under the diagnosis of mild intellectual disability. Mother is Claimant's conservator. Claimant resides with his Mother, older sister and younger brother.

2. After eight meetings spanning from September 2019 to February 2020 and a June 2020 meeting, no Individual Program Plan (IPP) has been completed for Claimant because of Mother's and TCRC's lack of agreement about what services, supports, and funding are to be provided to Claimant. For purposes of this decision, it is undisputed that Claimant's funding sources include TCRC, Aetna, Medi-Cal/Gold Coast, In-Home Support Services (IHSS), and Social Security.

3. Demser is a medication approved by the Federal Drug Administration (FDA) to treat high blood pressure. Claimant is prescribed, "off-label"/"out of

formulary"/"orphan usage."³ As result, Mother has encountered challenges to get funding through insurance companies to pay for Demser. Claimant's private insurance, Aetna, had been covering Demser. However, Aetna denied coverage in 2019. Aetna reversed its denial and Mother was ultimately successful in obtaining private insurance coverage for the payment of Claimant's Demser prescription. In early 2020, Mother requested, on behalf of Claimant, that TCRC fund the fifty-dollar copayments for the medication both retroactively and prospectively.

4. By letter dated May 21, 2020, in relevant part, TCRC denied Claimant's Demser co-payment funding request. (Exhibit 1.) TCRC noted that Claimant has dual medical insurance coverage, Aetna (primary) and Medi-Cal/Gold Coast⁴ (secondary). Service Agency asserted that Gold Coast funds the co-payment portion for medications. As a result, TCRC wrote that its funds could not be used to supplant the budget of any agency (Medi-Cal) that has a legal responsibility to serve all members of the public and is receiving public funds for providing those services, citing section 4648, subdivision (a)(8).⁵ TCRC also cited section 4659, subdivision (a), which provides regional centers are payers of last resort for consumers after generic resources are exhausted.

³ Non-FDA approved/experimental use of an FDA approved medication.

⁴ Gold Coast Health Plan is an independent public entity which serves Medi-Cal beneficiaries living in Ventura, California.

⁵ The letter incorrectly referenced "4648.6, subdivision (a)(8)." (Exhibit 1.)

5. On July 2, 2020, TCRC received Claimant's Fair Hearing Request (FHR), filed by Mother on behalf of Claimant, requesting retroactive gap funding for copays and prospective funding of copays "until generic resources are accessed." (Exhibit 1.)

Request for Co-Pay Reimbursement And Propsetive Payment

6. Dr. Joel Morton is Claimant's treating psychiatrist. He assisted in obtaining private insurance coverage of Demser for Claimant. On June 17, 2020, Gold Coast notified Dr. Morton that his request for Demser co-payments had been approved from June 16, 2020 through June 16, 2021. (Exhibit 4.) Mother was subsequently informed of the authorization in July 2020. TCRC was informed of the co-payment authorization in August 2020.

7. Dr. Morton testified at hearing that he has written several letters and is willing to continue to write letters to both pharmacies and insurance companies to assist Claimant with obtaining coverage for Demser.

8. Juliana Block, Gold Star case manager, testified at hearing. In addition, Ms. Block's case management notes and documents were admitted into evidence. (Exhibit 4.) Claimant's former Service Coordinator, Ryan Landseadel, referred Mother to Gold Coast in May 2019 for assistance in obtaining medication coverage. Ms. Block was assigned as the case manager and worked with Mother to obtain insurance coverage for Demser on behalf of Claimant.

9. In June 2019, Claimant's private insurance, Aetna, reversed its denial of coverage and agreed to cover the Demser prescription. After the approval, Ms. Block provided information to Mother regarding seeking co-payment assistance from Valeant Patient Assistance Program (Valeant). Valeant is the pharmaceutical company that makes Demser. However, Mother did not file the request for co-payment

reimbursement with Valeant, informing Ms. Block, according to the case notes, that she wanted TCRC to fund Demser's co-payment. On Mother's request, Ms. Block closed Claimant's case on June 24, 2019. (Exhibit 4.)

10. Ms. Block testified at hearing that Mother could apply for retroactive co-payment reimbursement for the period of June 16, 2019 through June 16, 2020 by submitting a Medicaid form (DMR form) to request funding from Gold Coast. Mother had not submitted the form as of the date of the hearing.

11. Mother testified that she was previously instructed not to seek co-payment reimbursement by Ms. Block and TCRC from generic sources. That claim was credibly disputed at hearing by Ms. Block, Mr. Landseadle, and Veronica Torres.

12. Mother testified at hearing and submitted a closing brief.⁶ Mother testified that she is concerned that, despite the authorization for prospective funding of the co-payments by Gold Coast and the option of applying for retroactive payment of co-payments, she fears that she will not be successful in obtain funding for retroactive and prospective Demser co-payment from Gold Coast or another public or generic source. As a result, she is seeking assurance of co-payment funding from TCRC without first exhausting generic resources and other agency public funding sources for Demser's co-payments.

13. Mother's testimony at hearing focused on past frustration with prior communication between herself and Service Agency. Service Agency, in turn,

⁶ In the closing brief, Mother requested the total amount of three-hundred and fifty dollars for retroactive co-payment reimbursement, which is less than the six-hundred dollar total for total co-payments from May 2019 through May 2020.

expressed frustration with Mother's resistance to providing information to TCRC while seeking public funds for Claimant's requested services and supports.

LEGAL CONCLUSIONS

1. Because Claimant seeks a change in the status quo, Claimant has the burden of proving that a change is necessary. (Evid. Code, §§ 115 and 500.) The standard of proof in this case required proof to a preponderance of the evidence, pursuant to Evidence Code section 115, because no other law or statute (including the Lanterman Act) requires otherwise. "Preponderance of the evidence" means evidence which is of greater weight or more convincing than evidence which is offered in opposition to it. (BAJI No. 2.6 (8th ed. 1994.)

2. The Lanterman Act governs this case for Claimant. (Welf. & Inst. Code, § 4500 et seq.) The Lanterman Act is a comprehensive statutory scheme to provide "[a]n array of services and supports . . . which is sufficiently complete to meet the needs and choices of each person with developmental disabilities, regardless of age or degree of disability, and at each stage of life to support their integration into the mainstream life of the community." (Welf. & Inst. Code, § 4501.) The services and supports should "enable persons with developmental disabilities to approximate the pattern of everyday living available to people without disabilities of the same age." (*Id.*)

3. Under the Lanterman Act, the services and supports to be provided to a consumer are determined in the IPP process on the basis of the needs and preferences of the consumer and a consideration of a range of service options proposed by the IPP participants, the effectiveness of each option in meeting the goals stated in the IPP, and the cost-effectiveness of each option. (Welf. & Inst. Code, § 4512, subd. (b); Gov. Code, § 95020, subd. (a).)

4. Pursuant to Welfare and Institutions Code section 4648, subdivision (a)(8), “[R]egional Center funds shall not be used to supplant the budget of any agency which has a legal responsibility to serve all members of the general public and is receiving public funds for providing those services.”

5. Welfare and Institutions Code section 4659, subdivision (a), provides, “Except as otherwise provided in subdivision (b) or (e), 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, both of the following: (1) Governmental or other entities or programs required to provide or pay the cost of providing services, including Medi-Cal, Medicare, the Civilian Health and Medical Program for Uniform Services, school districts, and federal supplemental security income and the state supplementary program.”

6. In addition, Welfare and Institutions code section 4646.4, subdivision (a) states:

Regional centers shall ensure, at the time of development, scheduled review, or modification of a consumer’s individual program plan development pursuant to Sections 4646 and 4646.5, or of 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. (4) Consideration of the family's responsibility for providing similar services and supports for a minor child without disabilities in identifying the consumer's service and support needs as provided in the least restrictive and most appropriate setting. In this determination, regional center shall take into account the consumer's need for extraordinary care, services, supports and supervision, and the need for timely access to this care.

7. Based on Factual Findings 3 through 12, and Legal Conclusions 2 through 6, Claimant did not establish through a preponderance of the evidence that Service Agency should reimburse Claimant for retroactive Demser fifty-dollar co-payments from May 2019 through May 2020 and for prospective Demser fifty-dollar co-payments from June 2020 and ongoing if Gold Coast denies reimbursement. No extraordinary circumstances were established to justify an exception in this matter.

ORDER

Claimant's appeal is denied.

DATE:

IRINA TENTSER
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.