

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

In the Matter of:

CLAIMANT

vs.

ALTA CALIFORNIA REGIONAL CENTER, Service Agency

OAH No. 2021070837

DECISION

Administrative Law Judge Marcie Larson, Office of Administrative Hearings, State of California, heard this matter telephonically and by video conference on April 18 and May 4, 2022, from Sacramento, California.

Alta California Regional Center (ACRC) was represented by Robin Black, Legal Services Manager.

Claimant's sister appeared at the hearing and represented claimant.

Evidence was received, the record was closed, and the matter was submitted for decision on May 4, 2022.

ISSUE

Is ACRC required under the Lanterman Developmental Disabilities Services Act (Lanterman Act) to fund the cost of dental implant treatment for claimant?

FACTUAL FINDINGS

Jurisdictional Matters

1. Claimant is a 67-year-old non-conserved client of ACRC who resides in an Enriching Lives Family Home Agency (FHA) certified home with LeAnn Escobar, a Family Home Provider (FHP). Ms. Escobar's home is in Carmichael, California. Claimant is eligible for regional center services based on his intellectual disability and Autism diagnosis.¹ Claimant's sister is appointed as claimant's power of attorney for financial and health care decisions.

2. In September 2020, claimant's sister requested ACRC provide dental assistance. Specifically, she requested payment of the cost for dental implant treatment to address difficulties claimant was having chewing food due to his dental problems.

3. During claimant's Individual Program Plan meeting on April 27, 2021, claimant's sister informed ACRC that claimant's last dental examination was on

¹ Claimant was initially made eligible for regional center services based on his intellectual disability diagnosis. In 2021, claimant was also made eligible for services based on his Autism diagnosis.

February 7, 2020. He was scheduled for oral surgery planned on May 19, 2021, to begin the dental implant process. She explained the process could take over a year with healing and multiple surgeries. During that time, claimant cannot chew many foods, will need food cut small and possibility blended. Claimant did not have the scheduled dental implant surgery because no decision had been made by ACRC as to claimant's funding request.

4. On June 18, 2021, ACRC issued a Notice of Proposed Action denying claimant's request for funding for dental implants. ACRC denied the request because claimant's dental problems are not related to the eligible developmental disability of mild intellectual disability, claimant did demonstrate that the proposed dental implant treatment is the least costly option to meet his dental needs, and claimant did not propose to use a provider that is vendored or contracted with any regional center to provide services or supports to regional center clients.

5. On July 19, 2021, claimant's sister filed a Fair Hearing Request requesting a hearing appealing the denial of funding.

Claimant's Evidence

6. Claimant's sister explained at hearing that claimant has a life-long history of dental issues. Claimant lived independently for many years. In 2008, he started living with his father until approximately 2016, when his father passed away. Claimant consumed candy and soda. His oral hygiene was poor. He also suffers from severe bruxism, which is teeth grinding. Claimant currently has approximately 14 teeth left. Many of those teeth are damaged and worn down.

7. Claimant's sister became concerned that claimant's lack of teeth may cause a choking hazard. On July 7, 2020, she took claimant to Brock Hinton, D.D.S., for a dental evaluation and to discuss treatment options.

OPINIONS OF BROCK HINTON, D.D.S.

8. Dr. Hinton first saw claimant on July 7, 2020. Claimant's sister was present for the appointment. Dr. Hinton examined claimant and discussed with claimant's sister various treatment options. Dr. Hinton prepared the following written evaluation and treatment options for claimant:

He has severe wear with loss of vertical dimension. His lower anterior teeth are right off at the gum line. His upper teeth are hopeless at this point. His upper teeth are still savable with crown lengthening. I discussed with him and a family member multiple options including conventional dentures, bar supported dentures, hybrid restorations, and all porcelain implant restorations. At this point, they needed to talk with David's sister who is going to be financially responsible for the treatment. We plan to get them back in a couple of weeks to have another consultation to confirm what they wanted to do.

9. Dr. Hinton evaluated claimant again on February 17, 2022. Dr. Hinton provided the following written recommendation regarding treatment:

[Claimant] needs to have dental implants. All of his teeth are in poor condition and need to be extracted. He has autism, obsessive compulsive disorder and bruxism. The

anatomy of his mouth is unfavorable for conventional dentures. He has bone loss, large tori and a flat palate.

I don't think he will be able to wear conventional dentures. Dentures are difficult for the average person to wear. We normally expect a 50% loss of chewing ability even when the anatomy is favorable for dentures. Because of his anatomic problems stated above he will not be able to wear them.

Bone grafting would only be necessary if he is proceeding with implants. The extraction costs on my treatment plan are only estimates. Sacramento Surgical Arts will be the only ones charging for extractions, bone grafting and implants. You should get a current estimate from Dr. Heir at Sacramento Surgical Arts and disregard the surgical component of my treatment plan. It has been 2 years since the original treatment plan and the fees are out of date. We will provide a new treatment plan.

10. Dr. Hinton testified at hearing that the best solution for claimant is to have his remaining teeth extracted and have dentures or dental implants. However, Dr. Hinton believes claimant will have a difficult time wearing dentures for several reasons. Dr. Hinton believes that claimant's teeth grinding and obsessive-compulsive disorder will make wearing dentures painful. Additionally, claimant's anatomy is not "favorable" for wearing dentures. Claimant has a flat palate which will cause the dentures to come loose. Claimant also has a "tori" which is a large growth of bone on the inside of the jawbone on the lower arch. The tori creates an undercut which prevents the dentures

from fitting close and smooth to the ridge. Dr. Hinton opined that claimant would be a "dental cripple" if he uses dentures, which means he would not be able to chew well and he could be in pain.

11. Dr. Hinton opined dental implants would allow claimant to function better. There are two types of implants. One type involves implanting upper and lower bars that dentures snap onto. The dentures can be removed for cleaning and sleeping. A second type involves a process of implanting permanent teeth. For both types of implants claimant would need to wear a night guard when he sleeps so he does not damage the teeth or bars through grinding. Claimant would need professional teeth cleaning every few months. Also, the implant areas could become infected if claimant does not have proper oral hygiene care.

12. For both dentures and implants, claimant will need to have surgery to have his tori removed. Additionally, for implants claimant will need to have bone grafts and have the gum removed for each tooth to provide more bone structure. The time frame for dental implants depends on various factors. Implants can occur at the time of extraction of the existing teeth. Another option is to extract the remaining teeth and let the bone grafts heal for three months before the implants are inserted. The shortest period of time for the dental implant process is six months. The longest period it would take is nine months. During that time, claimant would be given temporary dentures.

13. Dr. Hinton estimated that the total cost of treatment for the implants with snap-on dentures would be approximately \$23,747. This amount does not include surgery for the extractions, bone grafts and tori removal. A dental surgeon would complete that work.

14. Dr. Hinton did not ask claimant whether he wanted dental implants. Dr. Hinton explained the process for dental implants to claimant. Dr. Hinton does not know if claimant consented to treatment.

TESTIMONY OF CLAIMANT'S SISTER

15. Claimant's sister submitted Dr. Hinton's recommendation and treatment cost estimates to Lee Cha, claimant's ACRC Service Coordinator. Mr. Cha informed claimant's sister that she needed to submit a second opinion. She submitted a June 29, 2021 treatment plan from Clear Choice for dental implants totaling \$59,500. The treatment provider at Clear Choice told claimant's sister that dentures would not work for claimant.

16. Claimant's sister believes that claimant's dental issues, including bruxism and his diet, are due to his Autism. Since claimant began living with Ms. Escobar, he no longer drinks soda or consumes sugar. His oral hygiene practices have improved and he receives regular dental care. Claimant's sister is requesting ACRC for financial assistance in paying for the implants. She does not know what that amount will be because she has not made a final decision about which type of implant claimant should select. However, she believes \$45,000 is the estimate. Claimant's insurance will pay \$1,500 per calendar year for dental implants. She is not sure whether his dental or health insurance covers the extraction of his remaining teeth.

TESTIMONY OF LEANN ESCOBAR

17. Ms. Escobar operates the family home where claimant has lived since November 2019. Ms. Escobar assists claimant with activities of daily living including preparing all meals, assisting with laundry, ensuring claimant maintains his hygiene and taking claimant to his mental and dental appointments.

18. Ms. Escobar explained that because of claimant's lack of teeth, she serves claimant soft food to prevent choking. Claimant recently had two teeth extracted because they were infected. Ms. Escobar explained the procedure was "extremely stressful" and painful for claimant. However, she believes claimant could tolerate the implant procedures. Ms. Escobar would ensure that claimant continues to practice good oral hygiene so the implants do not become infected.

ACRC's Evidence

TESTIMONY OF LEE CHA

19. Mr. Cha has served as claimant's Service Coordinator for over three years. Mr. Cha was responsible for consulting with his supervisor and sending claimant's request for funding of dental implants to the ACRC Best Practice Committee. Mr. Cha was not involved in the decision to deny claimant's funding request.

20. The first time claimant requested assistance with oral hygiene to be included in his IPP was in April 2021. The Best Practice Committee requested that claimant's sister obtain a second opinion as to whether dental implants were needed to meet claimant's needs. Claimant's sister did not provide a second opinion. Instead, she provided a second estimate for dental implants from Clear Choice. Additionally, neither Dr. Hinton nor Clear Choice were ACRC vendors. As a result, ACRC could not pay those providers directly for dental services. ACRC does not have a vendored prosthodontist.

TESTIMONY OF GIANIAN QUIMING

21. Gianian Quiming is a Client Service Manager for ACRC. She has reviewed claimant's request for funding dental implant treatment. Ms. Quiming was not involved

in the decision to deny claimant's funding request. However, she is aware of the reasons for the denial. Ms. Quiming explained that ACRC can provide funding for dental hygiene services for certain circumstances in which the need is clearly documented in client records, medically necessary and related to the claimant's eligible condition. However, ACRC has never funded dental implants because implants have not been found to be medically necessary or related to a claimant's eligible condition.

22. Ms. Quiming opined there is no evidence claimant's dental issues are related to his eligible conditions. Poor dental hygiene and bruxism occur in individuals who do not have Autism or intellectual disability. Before 2020, claimant had not requested services or supports to help him maintain good oral hygiene. Additionally, there is no evidence demonstrating dental implants are medically necessary. ACRC has clients with no teeth and dentures. They can effectively receive the nutrition they need to stay healthy. Additionally, dental implants are not an effective use of state resources.

OPINIONS OF BARBARA FRIEDMAN

23. Barbara Friedman, M.D., is a Staff Physician for ACRC. She has experience working with adults with intellectual disability and Autism. Her duties as a Staff Physician include determining whether an individual is eligible for regional center services and client medical issues. She is also on various committees at ACRC, including the dental committee. Dr. Friedman was not involved in the decision to deny claimant's funding request. Dr. Friedman has not met claimant, but she reviewed claimant's IPP and records submitted in support of the request for funding dental implants.

24. Dr. Friedman opined that claimant's dental condition is not related to his eligible conditions. Bruxism occurs in individuals who do not have Autism or intellectual disability. Additionally, individuals without disabilities can have a large tori. Dr. Friedman noted that the estimates for dental implant treatment claimant's sister provided indicated that claimant would need to have surgery on his tori prior to having the implants.

25. Dr. Friedman spoke to Dr. Hinton regarding his evaluation and treatment recommendation. Dr. Friedman noted that when Dr. Hinton originally evaluated claimant in July 2020, he did not recommend a particular course of treatment. The decision was to be made by claimant's sister. When Dr. Hinton saw claimant in February 2021, he recommended dental implants. Dr. Friedman spoke to Dr. Hinton on March 24, 2022, and asked him about his evaluations of claimant.

Dr. Friedman asked Dr. Hinton if claimant could wear conventional dentures. Dr. Hinton explained that claimant's large tori would affect the fit of the lower dentures. Dr. Hinton explained the process for implants with a bar which dentures can snap on to and be removed. Dr. Hinton explained claimant would still need professional dental cleanings with implants. He also opined that if claimant had properly cared for his teeth, he would not have teeth loss.

26. Based on the estimates claimant's sister provided, the process for dental implants would take eight months after initial treatment. Dr. Friedman opined that someone with Autism and intellectual disability may not be able to tolerate the implants, because it is something new. Also, claimant may be required to undergo general anesthesia which can expose him to further complications. If claimant's oral hygiene is poor, infections could cause deterioration of his gums which could cause the implants to fail.

27. Dr. Friedman also spoke to Paul Glassman, D.D.S., who has consulted with ACRC regarding the dental health needs of individuals with developmental disabilities. Dr. Glassman provided a declaration concerning his opinions regarding the appropriateness of dental implants.

DECLARATION OF PAUL GLASSMAN D.D.S.

27. Dr. Glassman provided a declaration dated April 13, 2022. Dr. Glassman is licensed to practice dentistry in California. He is the Associate Dean for Research and Community Engagement at the College of Dental Medicine at California Northstate University in Elk Grove, California. He is also a Professor Emeritus of, and previously Associate Dean for Information and Educational Technology, and Director of the Advanced Education Program in General Dentistry, at the University of the Pacific, Arthur A. Dugoni School of Dentistry in San Francisco, California.

Dr. Glassman has served on national panels including the Institute of Medicine's (IOM) Committee on Oral Health Access to Services "which produced the IOM report on Improving Access to Oral Health Care for Vulnerable and Underserved Populations." He is a past President of the Special Care Dentistry Association and Co-Director of the California Statewide Task Force on Oral Health for People with Special Needs.

Dr. Glassman also has many years of dental practice experience treating complex patients, including special need patients with implants. He has lectured and published "extensively in the areas of Hospital Dentistry, Dentistry for Patients with Special Needs, Dentistry for Individuals with Medical Disabilities, Dentistry for Patients with Dental Fear, and Geriatric Dentistry." He consults with regional centers, including

ACRC, "regarding the dental health needs of individuals with developmental disabilities."

28. Dr. Glassman opined that "dental implants are generally not medically necessary to the extent that they are generally not required for an individual to be able to receive adequate nutrition." He also opined that an "individual with a history of poor dental hygiene and who has not demonstrated the ability, willingness, and manual dexterity needed to maintain good oral hygiene would not be a good candidate for dental implants." Dr. Glass also opined that he would not recommend dental implants for "an individual with a poor history of oral hygiene and dental care due to the risk of infection and failure."

29. Most notably Dr. Glass opined that:

Another consideration prior [to] placing implants is the extent to which a patient can tolerate the feel of the implants or implant-supported dentures or restorations. In general, individuals with intellectual disabilities and autism are less likely to want to tolerate something that feels new and uncomfortable during the time it takes to get used to it. The ability of the patient to tolerate the multiple procedures required for dental implants, including the possibility of multiple surgeries or procedures using sedation or general anesthesia which may be required to complete the process, should also be a consideration before selecting dental implants.

30. Dr. Glassman explained that dentures are an option. This may allow for the “option of leaving the roots of teeth in the mouth to help prevent the bone loss which would be caused by extracting all of the teeth.” This would also “provide the patient a greater resistance with which to grind or chew food.” He also explained that “patients who have all of their teeth removed are still able to eat soft foods so they can maintain adequate nutrition.”

Analysis

31. Claimant has suffered from a history of dental issues. A combination of his poor oral hygiene and diet, along with bruxism, has contributed to his tooth decay and loss. However, a preponderance of the evidence did not establish claimant’s dental issues are related to his eligible condition. Claimant’s dental issues are not unique to individuals with Autism and intellectual disability.

32. Additionally, the proposed dental implant treatment is not medically necessary or the most cost-effective service and support for claimant’s dental health or his developmental disabilities. The proposed treatment plans involve multiple surgeries and months of treatment. Claimant’s history of poor oral hygiene furthers the risk of infection given the multiple procedures claimant will have to endure. Most significant is the concern that due to his disabilities, claimant may not tolerate the feel of the implants or the trauma he will be required to endure for the proposed treatment.

33. When all of the evidence is considered, claimant did not establish that the Lanterman Act requires ACRC to grant his request to fund the cost of dental implants. Therefore, his appeal must be denied.

LEGAL CONCLUSIONS

1. The Lanterman Act governs this case. (Welf. & Inst. Code, § 4500 *et seq.*) An administrative “fair hearing” to determine the rights and obligations of the parties, if any, is available under the Lanterman Act. (Welf. & Inst. Code §§ 4700-4716.) Claimant requested a fair hearing to appeal ACRC’s denial of his request to fund costs of dental implants.

2. Services and supports for persons with developmental disabilities are defined at Welfare and Institutions Code section 4512, subdivision (b), as follows:

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. The determination of which services and supports are necessary for each consumer shall be made through the individual program plan 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 individual program plan participants, the effectiveness of each option in meeting the goals stated in the individual program plan, and the cost-effectiveness of each option.

Services and supports listed in the individual program plan may include, but are not limited to, diagnosis, evaluation, treatment, personal care, ...[and] specialized medical and dental care . . .

3. Welfare and Institutions Code section 4646, subdivision (a), provides that:

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 individual program plan, reflect the preferences and choices of the consumer, and reflect the cost-effective use of public resources.

4. The individual program plan process must include a review of the general health status of the consumer, including "medical, dental, and mental health needs," when agreed to by the consumer and his authorized representative. (Welf. & Inst. Code, § 4646.5, subd. (a)(6).)

5. Welfare and Institutions Code section 4646.4 provides in relevant part that:

(a) 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 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. The individualized family service planning team for infants and toddlers eligible under Section 95014 of the Government Code may determine that a medical service identified in the individualized family service plan is not available through the family's private health insurance policy or health care service plan and therefore, in compliance with the timely provision of service requirements contained in Part 303 (commencing with Section 303.1) of Title 34 of the Code of Federal Regulations, will be funded by the regional center.

(3) Utilization of other services and sources of funding as contained in Section 4659.

[¶ . . . ¶]

4. The burden is on claimant to establish by a preponderance of the evidence that ACRC is obligated to fund the costs of dental implant treatment. (See Evid. Code, §§ 115 & 500; see also *Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161.) A preponderance of the evidence means that the evidence on one side outweighs or is more than the evidence on the other side, not necessarily in number of witnesses or quantity, but in its persuasive effect on those to whom it is addressed. (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.)

5. As set forth in the Factual Findings and the Legal Conclusions as a whole, claimant failed to establish that ACRC is required under the Lanterman Act to grant his request to fund the cost of dental implant treatment. Therefore, his appeal must be denied.

ORDER

Claimant's appeal of the denial of his request to fund the cost of dental implant treatment is DENIED.

DATE: May 13, 2022

MARCIE LARSON
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. (Welf. & Inst. Code, § 4712.5, subd. (a).)