

FACTUAL FINDINGS

1. Claimant is a two-year-old (born 5/13/10) female consumer who receives regional center services under the Early Start Program² and under the Lanterman Act.³ Claimant qualifies for the Early Start Program based on at-risk factors and global delays. She also qualifies for regional center services pursuant to the Lanterman Act under the category of unspecified mental retardation. This matter involves daycare services provided under the Lanterman Act.

2. On October 22, 2012, Claimants parents submitted a Fair Hearing Request on her behalf, appealing the Service Agency's decision to change the parental share /co-payment amount for daycare. (Exhibit 1.)

3. Claimant requires day care services because both parents work outside the home. She cannot attend daycare in the community because she has medical needs which cannot be met in community daycare. Daycare service are currently provided in the family's home. (Testimony of Cal Enriquez.)

4. Regional centers do not typically pay for the total cost of daycare. Under the Lanterman Act, regional centers may pay only the disability-related cost of daycare. Parents are responsible for paying for the portion of day care costs which would be the typical cost of day care for any parent. Based on community standards, this parental cost has been determined to be \$3 per hour. (Testimony of Cal Enriquez; See also Legal Conclusion 3.)

5. However, if parents are able to demonstrate financial need, the Service Agency may approve a lower parental share/co-payment amount or waive the entire co-payment. In order to determine whether such reduction/waiver is warranted, an NLACRC interdisciplinary staffing team reviews specified information using guidelines set forth in the Procedure for Determining Financial Assistance for Daycare Co-Payment, which includes a Family Fee Schedule. (Exhibit 6; See also Legal Conclusion 3.)

² "Early Start" is the name used in California to refer to a federal program providing early intervention services for young children at risk for certain disabilities. The governing law for Early Start is The Individuals with Disabilities Education Act (IDEA), Subchapter III, Infants and Toddlers with Disabilities (20 U.S.C. sections 1431-1445) and the applicable federal regulations found in Title 34, Code of Federal Regulations (C.F.R.) section 303 et seq. The California Early Intervention Services Act is found at Government Code section 95000, et seq. California also adopted regulations to implement the statutory scheme. (Cal. Code Regs., tit. 17, sections 52000-52175.)

³ The Lanterman Disabilities and Services Act is found at Welfare and Institutions Code, sections 4500, et seq.

6(a). The Procedure for Determining Financial Assistance for Daycare Co-Payment is as follows:

1. Family applies for financial assistance for co-payment for their daycare by notifying service coordinator.
2. Family submits documentation of parents' gross income (copy of tax return or recent pay stub). The gross income must be below 200% of poverty level (2012 U.S. Department of Health and Human Services Poverty Guideline)
3. Family documents number of family members residing in household and their ages.
4. Service coordinator and supervisor determine if family's income falls within range for reduced co-payment based on family size and income level chart below. Service coordinator documents the request, the documentation and the outcome of the request for financial assistance in case notes.
5. If the applicant's income is **at or above** 200% of the poverty level, then applicant is not eligible for financial assistance and pays \$3.00/hour co-payment.
6. If applicant's income is **at or above** 175% of the poverty level, then their share of cost is \$2.00/hour.
7. If the income level is **at or below** 150% of the poverty level, then family pays \$1.00/hour.
8. In **extreme circumstances**, NLACRC'S Daycare Review Team can **approve a lower co-payment or waive all co-payment**. (Emphasis in original.)

(Exhibit 6.)

6(b). The Family Fee Schedule sets forth lower hourly co-payments at levels determined by family size and monthly income level. For a family of five with a gross income of \$3,377 - \$4,501, the family hourly rate/co-payment would be \$2; for a family of five with a gross income of \$4,502 or more, the family hourly rate/ co-payment would be \$3. (Exhibit 6.)

7(a). On December 22, 2011, Individualized Family Service Plan (IFSP) Periodic Review was completed when Claimant's case was reviewed with her father by telephone. At that time, Claimant was receiving weekly occupational therapy (OT), physical therapy (PT), and Child Development Services with an emphasis on vision. Although these services had been provided for almost a year, Claimant's father remained concerned about her global delays. Claimant's father reported that the family was overwhelmed with her level of care and that they had been impacted financially because Claimant's mother had been unable to work.

7(b). According to the December 22, 2011 IFSP Periodic Review, Claimant was to be provided day care services for 30 hours per week with an end date of March 31, 2012, and Claimant's "[p]arents will have a \$0 share of cost pending Interdisciplinary Staffing Team review [at] the end of March 2012." The IFSP Periodic Review noted that Claimant's "[p]arents will provide all financial information and employment verification needed to determine the family's parental responsibility / share of cost." (Exhibit 3.)

7(c). This \$0 share of cost was approved on a short term basis to allow Claimant's parents the opportunity to secure and provide pertinent financial information. (Testimony of Cal Enriquez.)

8. In a letter dated December 21, 2011, from Claimant's father entitled "Hardship Letter," the family set forth some of their monthly expenses as follows:

I make 1000.00 a week and I am the sole provider for my family of five. My wife is not able to work as much due to the condition of our daughter. I am behind on most of my bills and the medical expenses for [Claimant] are a lot. We are barely getting by each month and have to use credit cards just to pay our bills on a monthly basics [*sic*]. My work Kaiser Insurance is not very good. I have a 3000.00 a year family deductible, so all our service like x ray's [*sic*] test and lab work, I pay most of until my deductible is met.

Our Mortgage is 1805.00 per month, the homeowner's association is 165.00. My car payment is 500.00, car insurance is 150.0 per month, So Cal Gas \$40.00 ATT for cable and internet is \$150.00 monthly. My credit card bills total about 15,000 with a minimum payment of about 300.00. Kaiser co-pays and meds run about 150.00 per month (30.00 co pay for all family members each visit). Car gas would be 100.00 weekly or about 500 monthly. Grocery for the family and Maddie's special diet run about 150.00 per week or 600.00 monthly.

The misc include dmv fee's [*sic*] for both cars, parking for all Maddie's Doctor Appointments [*sic*], eating out, car repairs. Gardner 45.00 monthly, Clothing and shoe's 150.00 or so monthly. Lowe's and Home depot are 2000.00. Most of my accounts are paperless so I don't have statement. If asked to, I can print something on-line or provide my user name and passwords. (Exhibit 2.)

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9. In an undated letter from Claimant's parents to their service coordinator, Lourdes Villacorte, more detailed monthly expenses were provided as follows:

We have no means to pay for day care now. If we had to pay even a small portion of day care, we would not be able to have day care. Darren makes \$1000 a week. He works Monday – Friday 8 to 5, with two full checks per month going to B of A, for our mortgage. Starting April 1st my employer is changing from Kaiser, to Aetna. My portion for my family will be \$400 monthly. I never had to pay anything before. My car payment is \$500.00 per month. Right now, we have to use credit cards to make it each month. We are behind on our mortgage and trying to get a loan mod. At this point if something does not change, we will lose our home in 6 months.

Kim is a hair stylist; she rents her space at Eden Salon in Canyon Country. Her rent is \$170 per week. (Her Bank statement will reflect that) [S]he pays \$60 for supplies per week. She lost most of her clientele do [sic] to all the medical issues with Madison over the last year and a half. Currently she goes to work Monday thru Saturday from approximately 8 or 9 am to 8pm. She has been primarily answering phone and hoping to get walk inn's [sic], or helping out the other stylist for tips. She currently has covers [sic] her \$170.00 per week rent. Some weeks she makes \$40, 50 or \$100, other weeks, she just makes her rent. On May 1st, her salon is moving down the street in the same parking lot as the Edwards Movie Theater, in Canyon Country, and her rent is expected to be \$50 to \$75.00 higher per week.

We currently drive to Irvine 4 days per week for Madison to do Hyperbaric Oxygen therapy. This will continue for 80 to 120 treatments. Those costs, of close to \$5,000 have all been put on credit cards, and Credit Care medical billing. Gasoline back and forth is killing us financially. Madison is also doing Horse therapy at \$50 per week. We are trying to do all we can for our baby.

We also have a 17 and 13 year old boys that have to be driven to school every day and picked up . . . They are also involved in sports and extracurricular activities. We don't have enough hours per day with all we have to do.

Maddie is currently 22 months and still like a new born. She has head control, but that is it. Does not sit up, hold anything and her eyes don't work well. It is extremely hard to get through each day. . . .

Her is a list of our main bills monthly . . .

B of A Mortgage 1805.76, Soledad Garden (HOA 165.00, Kinetka Credit Union \$500.00 (car payment), Electric (Edison) 140, Car Gas \$800.00, Food \$600.00, ATT (phone, cable and internet) \$180, Water, \$40.00, Trash \$30.00, Gas \$35, Cell phones (Sprint Verizon) \$150.00, Kaiser (old medical bills) \$100 per mo. CREDIT CARDS American Express 2,000 balances, [sic] Discover \$1000.00, Chase 10,500.00, Lowes and Home Depot \$2000.00

(Exhibit 2.)

10. Under extreme circumstances, such as catastrophic family events (e.g. significant medical bills or damage to property), NLACRC will waive the parents' entire co-payment amount. In Claimant's case, the NLACRC review team did not find any catastrophic event impacting the family's financial circumstances. Claimant's father's income was verified at about \$4,000 per month. With regard to expenses, the team ascertained that there were discretionary expenditures specifically related to Claimant's disability, including equestrian therapy and hyperbaric oxygen sessions. These are considered experimental therapy, which NLACRC typically does not fund. NLACRC determined that, due to a lack of catastrophic event, combined with the discretionary expenditures, Claimant's family did not qualify for financial assistance with the parental share/co-payment for daycare costs. (Testimony of Cal Enriquez.)

11. Once the staffing team determined that NLACRC would be unable to provide financial assistance for day care co-payments, NLACRC decided to fund the assistance in an incrementally decreasing amount. Consequently, from January through May 31, 2012, the parental share was \$0; from June 1, 2012, through August 31, 2012, the parental share was increased to \$1 per hour; from September 1, 2012, through December 31, 2012, the parental share was increased to \$2 per hour; and from January 1, 2013, through May 13, 2013, the parental share was increased to \$3 per hour. These amounts were documented in a series of "Change in Service for Existing Outcome" forms, and on May 17, 2012, Claimant's parent signed all of the forms under the checked box stating "We give permission for implementation of this change/addition to my IFSP." (Exhibit 7.)

12. In an IFSP dated June 4, 2012, it was noted that Claimant's "[p]arents will have a \$0 share of cost pending a Fair Hearing." (Exhibit 5.)

13(a). In a June 22, 2012 letter from Ruth Janka, NLACRC's Contract Administrator, to Claimant's parents after an informal meeting, Ms. Janka noted that Claimant's father's "gross income is approximately \$60,000 per year; you net approximately \$1,000 per week." (Exhibit 8.)

13(b). This assessment comports with a pay stub Claimant's father submitted for the week of November 16 through 22, 2011, which indicted his gross income for that week was \$1,200 and his net income was \$1,026.75. (Exhibit 4.)

14. The June 22, 2012 letter further stated:

[W]hile the Lanterman Act seeks to provide parents with support that enables a child to remain in the family home, it also requires the regional center to consider a parent's typical responsibility to purchase the service for a same aged child without a developmental disability. This is demonstrated in the provision of law that allows a regional center to pay "only the cost of care that exceeds cost of providing care to a child with a disability." As we discussed, day care is a service that a parent must purchase for a minor child, regardless of disability, when a parent is unable to personally provide care and supervision needed by the child. That being said, the Legislature anticipated that there would be circumstances where a parent may not be able to pay the typical cost of day care, and thus, allows the regional center to pay in excess of the "disability-related cost" when a family demonstrates financial need.

NLACRC has established a procedure by which financial need for the provision of day care services is assessed; decisions based on a family's gross income and size, as compared to the federal poverty guidelines; further, information demonstrating an extreme circumstance that would warrant waiving a parent's co-payment is considered as well.

Based on family size, families with a gross income at or above 200% of poverty level are not eligible for financial assistance, and thus, a \$3.00/hour co-payment is imposed. . . .

Your family's gross income is \$1,200 per week or \$5160 per month, which is above 200% of the poverty level.

In reviewing your family's financial circumstance based on the information provided, it is clear that you are making personal choices to purchase experimental treatments for Madison, in an effort to remediate her developmental disability. While I

LEGAL CONCLUSIONS

1. Cause exists to deny Claimant's appeal of the Service Agency's termination of financial assistance for parental share of cost for daycare. (Factual Findings 1 through 16.)

2(a) . Where a change in services is sought, the party seeking the change has the burden of proving that a change in services is necessary. (See, Evid. Code, §§ 115 and 500.)

2(b). In proposing to discontinue Claimant's previously-funded financial assistance for parental share of cost for daycare, NLACRC bears the burden of proving by a preponderance of the evidence that the change in services is appropriate. The Service Agency has met its burden of proof on that issue.

3. Welfare and Institutions Code section 4685, subdivision (c)(6) provides:

When purchasing or providing a voucher for day care services for parents who are caring for children at home, the regional center may pay only the cost of the day care service that exceeds the cost of providing day care services to a child without disabilities. The regional center may pay in excess of this amount when a family can demonstrate a financial need and when doing so will enable the child to remain in the family home.

4(a). In the case at hand, in December 2011, NLACRC approved a "\$0 share of cost [for day care services] on a short term basis to allow Claimant's parents the opportunity to secure and provide pertinent financial information." (Exhibit 3.) However, after review of the financial information, the NLACRC review team found that the family's income did not qualify for a reduction in the parental share of cost, nor did the review team find that the family's monthly expenditures constituted extreme circumstances which could warrant reduction or waiver of the parental share of cost. Given these findings, NLACRC determined that Claimant's family was unable to demonstrate financial need pursuant to Welfare and Institutions Code section 4685, subdivision (c)(6). However, to allow Claimant's family time to adjust to the increase in their share of cost, NLACRC decided to continue the financial assistance in an incrementally decreasing amount, until January 1, 2013. Nevertheless, since June 4, 2012, NLACRC has continued to allow Claimant's family to have a \$0 share of cost pending the Fair Hearing.

4(b). At the fair hearing, the evidence established that NLACRC's determination was appropriate. Based on the Family Fee Schedule (Exhibit 6), the family's income was at a level which was not eligible for financial assistance, and therefore, the family would be required to pay a \$3.00 per hour co-payment.

Additionally, although the family does have substantial debt, some of their large expenditures involved the family's choice to purchase treatments not funded by the regional center to remediate Claimant's developmental disability. NLACRC established that this discretionary use of funds, while an understandable decision to contribute toward possible treatment of Claimant's disability, did not constitute extreme circumstances such that the family demonstrated the financial need required for NLACRC to lower or waive the co-payment amount. Given the foregoing, NLACRC's termination of financial assistance for parental share of cost for daycare, by incremental increase of the co-payment, was appropriate.

ORDERS

North Los Angeles County Regional Center's termination of funding the parental share of cost for daycare is upheld. Claimant's appeal is denied.

DATED: December 14, 2012

JULIE CABOS-OWEN
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.