BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: B.I., Claimant, vs. KERN REGIONAL CENTER, Service Agency.	OAH Case No. 2013010953

DECISION

This matter, consolidated for hearing with case number 2013010961 involving Claimant's brother, came on regularly for hearing before Samuel D. Reyes, Administrative Law Judge, Office of Administrative Hearings, on May 28, 2013, in Bakersfield, California.

Jeffrey F. Popkin, Associate Director, represented Kern Regional Center (Regional Center or Service Agency).

N.G.,[1] Claimant's mother, represented Claimant.

Oral and documentary evidence was received at the hearing and the matter was submitted for decision.

ISSUE

Whether Service Agency should fund vision/reading therapy services for Claimant.

FACTUAL FINDINGS

1. Claimant is a 13-year-old Service Agency consumer, with a qualifying diagnosis of mental retardation. She resides with her mother and her 12-year-old brother, who is a Service Agency consumer.

2. Claimant attends junior high school. She is in a mainstream classroom, and

[1] Initials have been used to protect Claimant's privacy.

receives special education supports from the resource specialist.

3. As set forth in her most recent Individualized Program Plan, Claimant is in good general health and does not take medication. She receives routine care from a pediatrician and from a dentist, from whom she receives specialized dental services.

4. Claimant's mother asserts that vision therapy will assist her daughter to reach her potential. Her mother notes that Claimant reads at a second-grade level, and that the services of counselors and readers have not helped, and asserts that vision therapy should be tried. Claimant's mother presented one page from each of four articles touting the benefits of the therapy. These articles are incomplete and are insufficient to establish the scientific merit of the therapy. Service Agency countered with a Policy Statement from the American Academy of Ophthalmology, in which the association concludes that "[C]urrently, there is no adequate scientific evidence to support the view that subtle eye or visual problems cause learning disabilities. [Footnotes omitted] Furthermore, the evidence does not support the concept that vision therapy or tinted lenses or filters are effective, directly or indirectly, in the treatment of learning disabilities. [Footnotes omitted] Thus, the claim that vision therapy improves visual efficiency cannot be substantiated. Diagnostic and treatment approaches that lack scientific evidence of efficacy are not endorsed or recommended. . . ." (Exh. 5, at p. 9.) No expert testimony was presented regarding the relative merits of vision therapy.

5. On February 22, 2013, Penelope S. Suter, O.D. (Suter) evaluated Claimant's vision. Dr. Suter concluded that Claimant suffered from accommodative dysfunction (difficulty in focusing quickly and clearly); eye movement disorder (difficulty in tracking for reading and math); eye coordination deficit; visual perceptual deficits in visual determination, visual memory, visual spatial relationships, visual form consistency, and visual sequential memory; fine motor and visual-written integration deficit; and verbal automaticity. Dr. Suter recommended vision therapy, and Claimant has been receiving such services on a weekly basis since March 2013.

6. In a letter dated May 23, 2013, Dr. Suter wrote that Claimant was nearing the end of her first twelve-week unit of vision therapy. Dr. Suter wrote that Claimant has made good progress, and that she has become more self-confident and social. A reevaluation is scheduled for June 6, 2013. Dr. Suter did not testify, and her letter does not contain any opinion that the visual conditions she has observed are related to Claimant's developmental disability. Dr. Suter wrote: "We realize we do not meet, at this time, the criteria your office requires in order to help with funding for her vision therapy. We would like however, to request that a consideration be put in place that would help reimburse her parents some of her vision therapy costs once she has completed therapy and nationally normed and documentable evidence is in place to show its benefit for her." (Exh. A, at p. 8.)

7. Claimant's family sought payment for the therapy from her insurance, but coverage has been denied.

8. On January 30, 2013, Service Agency denied Claimant's request for vision therapy because it could not fund or purchase experimental treatments. Claimant's mother thereafter filed a Fair Hearing Request.

LEGAL CONCLUSIONS

1. In enacting the Lanterman Act, Welfare and Institutions Code[2] section 4500 et seq., the Legislature accepted its responsibility to provide for the needs of developmentally disabled individuals and recognized that services and supports should be established to meet the needs and choices of each person with developmental disabilities. (Welf. & Inst. Code, § 4501.) The Lanterman Act gives regional centers, such as Service Agency, a critical role in the coordination and delivery of services and supports for persons with disabilities. (Welf. & Inst. Code, § 4620 et seq.) Thus, regional centers are responsible for developing and implementing individual program plans, for taking into account consumer needs and preferences, and for ensuring service cost-effectiveness. (Welf. & Inst. Code, §§ 4646, 4646.5, 4647, and 4648.)

2. Welfare and Institutions Code section 4512, subdivision (b), defines the services and supports that may be funded, in pertinent part, as follows: "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, 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 where 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."

3. Section 4648, subdivision (a)(15), provides, in pertinent part, that regional centers may not purchase experimental treatments or therapeutic services that have not been clinically determined or scientifically proven to be effective or safe or for which the risks or complications are unknown. Service Agency provided evidence from an established association for the proposition that vision therapy services were experimental. Claimant did not present an expert witness or complete or persuasive literature to contradict this assertion.

4. More importantly, however, there was no evidence presented at the hearing to establish that Claimant has a condition related to her developmental disability that can be helped by vision therapy. While Dr. Suter opined that Claimant has received some benefit from the therapy, insufficient evidence was presented to quantify this purported benefit or to conclude that it is attributable to vision therapy.

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[2] All further references are to the Welfare and Institutions Code.

ORDER

Claimant's appeal is denied.

Dated: June 6, 2013

/s/
Samuel D. Reyes
Administrative Law Judge
Office of Administrative Hearings

NOTICE

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