

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT

vs.

KERN REGIONAL CENTER,

Service Agency.

OAH Nos. 2013071245

DECISION

This matter was heard before Glynda B.Gomez, Administrative Law Judge, Office of Administrative Hearings, State of California, on September 9, 2013 in Bakersfield, California.

Cheryl Mallinson, Program Manager, represented Kern Regional Center (KRC), the service agency.

Claimant¹ (Claimant) was represented by her father who is her authorized representative (Father). Claimant did not attend the hearing.

Documentary evidence and testimony were received on September 9, 2013. The record was held open until September 30, 2013 for Claimant to submit additional receipts and for KRC to lodge any objections to such receipts. The receipts were received, marked and admitted as exhibit C23 and KRC's response was received,

¹ At hearing, claimant's authorized representative requested that she be referred to only as Claimant and not by her initials.

marked and admitted as exhibit 17. The record was closed and the matter was submitted on September 30, 2013.²

ISSUE

Whether KRC must reimburse Claimant and her parents for the copayments, travel expenses, and lodging expenses incurred for treatment of her depression.

FACTUAL FINDINGS

1. Claimant is a 22-year-old woman eligible for regional center services based upon as diagnosis of Cerebral Palsy. Claimant also has a seizure disorder and suffers from frequent seizures. Claimant is non-ambulatory and requires a mechanical lift to move from her wheelchair or bed. Claimant has average cognitive ability. She attends college and is a volunteer in the community.

2. Claimant suffers from extremely debilitating depression as a result of her seizures and the physical limitations caused by her developmental disability. The seizures have caused a variety of psychological issues including obsessive compulsive disorder. Claimant's depression has been resistant to medication and psychotherapy. The notes of Claimant's psychiatrist Cameron Johnson, M.D.³, indicate that Claimant's depression is related to her developmental disability. (Exhibit 6) Dr. Johnson recommended that Claimant undergo electroconvulsive therapy (ECT), but Claimant was initially resistant to trying ECT.

3. During May of 2013, Claimant experienced increasingly difficult bouts of depression. In late May of 2013, her mental state deteriorated significantly leaving her listless, crying and non-responsive. On May 29, 2013, Claimant attempted to commit suicide by plunging her wheelchair into the deep end of the swimming pool at her residence. Claimant's suicidal ideations continued and resulted in a medical emergency. Because of her developmental disability, and inability to transfer from her wheel chair on her own, there were no safe local facilities in which she could obtain care. On May 31, 2013, Claimant was admitted to the UCLA Neuropsychiatric Institute in Los Angles (UCLA) where she remained until June 9, 2013.

² At the request of Claimant and pursuant to a stipulation of the parties, the exhibits in this case were sealed by the ALJ and a protective order issued as to the exhibits.

³ Dr. Johnson provides telemedicine psychiatry to Claimant as a KRC vendor.

4. Claimant returned to UCLA approximately 15 times for ECT treatment on an out-patient basis after her initial discharge. Claimant received her treatments on Fridays. Her parents drove her to Los Angeles on Thursday evenings, she received treatment on Fridays and returned to Bakersfield the same evening. The treatment takes most of the day and leaves Claimant exhausted. Claimant is not able to drive herself to and from treatment. She must be transported in a specialized van that she owns. There are no local facilities capable of providing the treatment and accommodating Claimant's mobility issues and special needs related to her developmental disability. Claimant's parents take family medical leave from their employment to transport her, wait with her, and care for her after the ECT treatments.

5. Claimant did not advise KRC of the ECT before starting treatment and it was not included in her IPP. Initially, ECT was part of an emergency intervention and therefore, Claimant was not able to contact KRC before undertaking the initial treatment. However, her father called KRC from UCLA once she was admitted, and advised the service coordinator of the situation. Claimant continued the treatment because her depression improved with the treatment. Without the treatment, Claimant's parents would not be able to safely maintain her in the family home.

6. Claimant's insurance pays for a portion of the \$1,500 per ECT session therapy, leaving a co-payment of approximately \$450 per session.

7. In June of 2013, Claimant requested that KRC reimburse her for the co-payments, transportation, parking and hotel room expenses for herself and her parents.

8. On July 10, 2013, KRC issued a Notice of Proposed Action notifying Claimant of the denial of her request. The reason for action was listed as "Denial based on service not related to the KRC eligible diagnosis." As authority for the action, KRC cited Welfare and Institutions Code 4646.4 subdivision (a).

LEGAL CONCLUSIONS

1. The Lanterman Development Disabilities Services Act (Lanterman Act)⁴ sets forth a regional center's obligations and responsibilities to provide services to individuals with developmental disabilities. As the California Supreme Court explained in *Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 388, the purpose of the Lanterman Act is twofold: 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.

⁴ Welfare and Institutions Code section 4500 et. seq.

2. In enacting the Lanterman Act, the Legislature accepted 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.)

3. “Services and Supports for persons with 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. (Welf. & Inst. Code, § 4512, subd. (b).)

4. Appropriate services and supports include diagnosis, evaluation, treatment, mental health services, protective services, emergency and crisis intervention. The determination of which services and supports are necessary for each consumer shall be made through the individual program plan (IPP) process. (Welf. & Inst. Code, § 4512, subd. (b).)

5. The Lanterman Act gives regional centers, such as KRC, a critical role in the coordination and delivery of services and supports for persons with disabilities. (Welf. & Inst. Code, § 4620 et. seq.) 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 IPP, reflect the preferences and choices of the consumer, and reflect the cost-effective use of public resources. (Welf. & Inst. Code, §4646.)

6. Welfare and Institutions Code section 4646.4, subdivision (a) provides:

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 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.

7. Welfare and Institutions Code section 4648, subdivision (10) provides that regional centers may provide:

Emergency and crisis intervention services including, but not limited to mental health services and behavior modification services...as needed, to maintain persons with developmental disabilities in the living arrangement of their own choice.

8. Welfare and Institutions Code section 4659, subdivision (a), provides that 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 governmental, other entities, programs or private entities.

9. Welfare and Institutions Code section 4659, subdivision (b), provides that regional centers may not pay for medical or dental services for a consumer over the age of three unless the regional center is provided with documentation that a health care plan, private insurance, or Medi-Cal denied coverage and the regional center determined that the denial does not have merit.

10. Welfare and Institutions Code section 4659.1, subdivisions (c) and (c)(2) provide in relevant part that that a regional center may pay a copayment associated with the health care service plan or health insurance policy for a service or support if the service or support is necessary to successfully maintain the adult consumer in the least restrictive setting and the parents or consumer demonstrate significant unreimbursed medical costs associated with the care of the consumer.

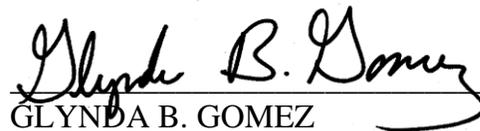
11. Here, Claimant's depression is a result of her developmental disability and related seizures. Despite psychiatric treatment and medication, Claimant's depression became life-threatening, and her family acted quickly to care for her, and obtain follow-up treatment that was recommended by KRC vendor psychiatrist Cameron Johnson. The treatment that Claimant required was not available in her community and she was required to travel to obtain the care. The acute care hospitalization and the subsequent outpatient treatment were necessary for Respondent to remain living in the family home. Although Claimant has medical insurance, the sizable co-payments coupled with necessary transportation and lodging costs are significant. Under these circumstances, it is appropriate for KRC to

reimburse Claimant for the co-payments, hotel lodging, parking and mileage at the Internal Revenue rate for mileage to and from her treatment and hospitalization at UCLA.

ORDER

1. Claimant's appeal is granted.
2. KRC shall reimburse Claimant for co-payments made to the UCLA Neuropsychiatric Hospital, hotel lodging, mileage and parking expenses incurred for the period of May 31, 2013 to September 9, 2013 while she obtained treatment related to her depression.

DATED: October 14, 2013


GLYNDA B. GOMEZ
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).)