

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

OAH No. 2013080213

JENNIFER T.,

Claimant,

vs.

KERN REGIONAL CENTER,

Service Agency.

DECISION

This matter was heard by Julie Cabos-Owen, Administrative Law Judge with the Office of Administrative Hearings, on October 8, 2013, in Bakersfield, California. Jennifer T. (Claimant) was represented by her mother and authorized representative, Jan T.¹ Kern Regional Center (KRC or Service Agency) was represented by its Interim Director of Community Services, Cherylle Mallinson.

Oral and documentary evidence was received. The record was closed, and the matter was submitted for decision on October 8, 2013.

ISSUE

Should KRC be required to reinstate reimbursement of the parent vendor for speech services?

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¹ Claimant's and her mother's last initial is used in lieu of their surname to protect their privacy.

FACTUAL FINDINGS

1. Claimant is a 30-year-old female client of the Service Agency, diagnosed with Hypothalamic Hamartoma,² which in turn causes seizures and cognitive impairment. (Testimony of Jan T.; Ex. C2.) Claimant qualifies for regional center services under the diagnostic category of epilepsy and under the “fifth category.”³ (Exs.7, 8 and 13.)

2. In approximately 2010, Claimant began receiving “speech-language-cognitive” services through Affiliated Speech Pathology, Inc. (Affiliated), attending two one-hour sessions per week.

3(a). Based on progress summaries from Affiliated in April 2010, and September 2010, Claimant was making steady progress in her specific goals in speech-language-cognitive therapy.

3(b). In September 2010, KRC sought to terminate the speech-language-cognitive therapy. On October 1, 2010, Tasha Oakes, M.S., CCC-SLP, with Affiliated, sent a letter to KRC stating:

I am writing this letter in support of continued funding, two hours weekly for [Claimant’s] therapy. . . . [Claimant’s mother] shared feedback from [Claimant’s] Case Manager and a physician representing Kern Regional Center. She was told that since [Claimant’s] recent report reflects competencies of 85 and 90%, she is no longer in need of services.

[Claimant] has just begun to understand that language can have an abstract component. In recent weeks she has been able to identify potential feelings of another although she may have never had the experience related to those feelings. This growth is huge for [Claimant] who as a developmentally disabled adult (due to continued seizures), has previously not been willing to entertain a thought unrelated to her personal life. She has also begun to show compassion for others and real interest in others due to increased understanding and use of language.

[Claimant’s] ability to utilize abstract language and “step out” of

² Hypothalamic Hamartoma is a type of rare, benign tumor which may cause seizures, behavioral problems and cognitive impairment.

³ The “fifth category” of eligibility includes substantially disabling conditions which are found to be closely related to mental retardation or to require treatment similar to that required for mentally retarded individuals.

her immediate comfort zone will be a great benefit to her in assessing the motives and sincerity of others for basic safety and social interaction.

(Ex. 12.)

3(c). On November 3, 2010, Michael D. Samply, M.F.T., sent a letter to KRC stating:

I have treated [Claimant] with psychotherapy since June 2002. She was experiencing major anxiety that complicated her seizure disorder. Behavioral/cognitive therapy interventions have proven helpful in calming her, improving the quality of her life. . .

I am writing to request continued funding for [Claimant's] weekly therapy at Affiliated Speech Pathology. I have seen marked improvement in [Claimant's] ability to recall history and associate words in conversation since beginning treatment there. Keeping her in the educational setting at [Affiliated] will keep her stable and assist in further cognitive development. Discontinuing this treatment, I believe, will create more anxiety as she will likely decline in cognitive functioning. . . .

(Ex. 5.)

3(d). During a November 9, 2010, informal meeting, Claimant's mother stated that the services were critical to Claimant's well-being because, when Claimant is frustrated due to her inability to communicate well, this exacerbates the likelihood of seizure activity. KRC agreed to continue to fund the therapy through Affiliated through June 30, 2011. (Ex. 10.)

4(a). Based on progress summaries from Affiliated in June and September 2011, Claimant was making steady progress in her changing and developing goals in speech-language-cognitive therapy. She was also able to work with a new therapist and "show more compassion with another patient." (Ex. 12.) Nevertheless, there were areas identified which Claimant still demonstrated deficiencies, including generalization of her skills. (Ex. 12.)

4(b). In the Fall of 2011, KRC sought to terminate the speech-language-cognitive therapy.

4(c). In a September 3, 2011 letter, Mr. Sampley informed KRC:

I am writing to recommend that [Claimant] be approved for

continued speech help funding.

[Claimant] has continued to cooperate fully in both counseling and speech pathology treatments. . . . I believe it is imperative that she continue with both treatment modalities. Your assistance in providing the funds for speech will help her to remain stable in her cognitive functioning and have a more satisfactory quality of life. . . .

(Ex. 5.)

4(d). Following a September 12, 2011 informal meeting, KRC asserted that “ongoing speech therapy was not of benefit at this time.” (Ex. 10.) Claimant’s mother brought in documentation regarding the benefit that the speech therapy provided Claimant. Since Affiliated had increased their rate, KRC agreed to fund speech therapy as a parent vendor reimbursement, up to the amount previously paid, \$57.46 per hour, six hours per month. (Ex. 10; Testimony of Jan T.)

5. In Claimant’s June 2012, Individualized Program Plan (IPP), it was agreed that “KRC/SC will seek continued funding for speech reimbursement per KRC policies and procedures.” No termination date was specified.

6. In a Notice of Proposed Action dated July 8, 2013, KRC informed Claimant that “Purchase reimbursement for speech services ended June 30, 2013,” and that “Services are being terminated because there is no evidence of substantial developmental benefit.” (Exs. 3 and C1.)

7. Claimant filed a Fair Hearing Request, requesting a fair hearing to reinstate the terminated reimbursement for speech services. (Ex. 2)

8. Claimant’s mother continued to self-fund the Affiliated services to maintain continuity of therapy. (Testimony of Jan. T.)

9. On August 19, 2013, neurologist, W. Donald Shields, M.D., with the University of California at Los Angeles (UCLA) Pediatric Neurology, wrote a prescription for Claimant to “continue cognitive therapy [twice per week],” noting that Claimant “continues to improve [with] the therapy.” (Ex. 6.)

10. On August 19, 2013, Affiliated wrote a Speech-Language-Cognitive Progress Summary, stating:

[Claimant] demonstrates substantial progress in linguistic and cognitive realms through insightful therapy activities, completion of home assignments and introduction to new people and peers in structured activities.

During the last year [Claimant] has gained confidence in conversational exchange, to the point that she feels comfortable asking and answering questions of people she is working with in therapy. [Claimant] has also made significant progress in her ability to judge appropriateness of verbal teasing and initiate some teasing of her own. This is a major gain toward competence with more complex and abstract language. [Claimant] can now project the reactions of others in posed situations with 80% accuracy. This is helping her to gauge her own reactions more accurately. [Claimant] can “switch gears” semantically now, using words with more than one meaning, without frustration. . . . When [Claimant] is seizure free she is presenting a happy, relaxed attitude that has not been available to her previously. We are very pleased with [Claimant’s] progress and intend to continue therapy at one hour weekly.

(Ex. 12.)

11. On August 21, 2013, Mr. Sampley wrote a letter to KRC, stating:

I would like to inform you as to [Claimant’s] progress since my last correspondence 9/3/2011. I am pleased to report that [Claimant] has continued therapy twice monthly. She has also participated in speech therapy sessions at [Affiliated] regularly. I am pleased to report that [Claimant] shows improvement in her ability to communicate. She states that her sessions with her speech therapists are encouraging, helpful and something she looks forward to attending. I would highly recommend that she continue on this course of treatment.

[¶] . . . [¶]

[Claimant] is improving in her ability to manage anxiety. I believe that is due to her improved skill in communicating feelings. . . .

Your continuation of funding speech treatments will greatly help [Claimant] grow and improve. I believe it will be very difficult to even maintain her present cognitive level of functioning should we alter the course of treatment. This would increase stress in [Claimant’s] home environment as she can get agitated when associations loosen and communication becomes more difficult. I believe a decline in her present level of

functioning will be prevented if she continues on this present course of treatment.

(Ex. 5.)

12. On August 26, 2013, an informal meeting took place between KRC Program Manager Mark Edward Meyer and Claimant's mother. In an August 28, 2013 letter documenting that meeting, Mr. Meyer asserted:

As it appears that [Claimant's] current level of communicative functioning is such that she is able to effectively communicate with others with no substantial difficulty, it is [KRC's] position that continued funding by [KRC] for speech therapy services should be discontinued. It is reported that there are no remarkable problems in the clarity of [Claimant's] speech. It appears that she has no deficits in her verbal communication skills that substantially inhibit her ability to effectively communicate her needs or wants to others. Rather, it appears that the current concerns with [Claimant's] communicative skills largely center on her social/conversational skills (which, based on the latest report from Affiliated Speech, do not appear to be substantially impaired).

(Exs. 4 and C6.)

13. On September 30, 2013, Affiliated drafted a Speech-Language Progress Summary stating:

[Claimant] has been in ongoing, effective therapy in our office for several years. Review of previous progress summaries reflects continued, steady improvement in both cognitive and communicative realms. She has developed many skills that are successful in a controlled clinical setting, such as:

1. Projecting reactions of others in posed situations is 80% accurate, in the clinical setting, with familiar clinicians.

[Claimant's] ability to judge her own and other's reactions in spontaneous settings continues to require direction by adults, for her safety and well-being.

2. Asking and answering questions judged to be appropriate in therapy partners is 90% accurate.

[Claimant] continues to require cueing by others for turn-taking in conversation, as she is often unaware that she is monopolizing the conversation, a pragmatic ability with which she requires more practice.

3. 70%-80% accuracy in completing worksheets involving analogies, problem solving and inference.

[Claimant] frequently requires discussion with the clinician or family members when attempting these activities as she still does not interpret abstract language independently. A major improvement is her willingness to discuss possible answers. In the past she has frequently “shut down” if frustrated and refused to complete the activity.

4. [Claimant’s] ability to read and answer questions at the article level has improved. In the past she preferred only multiple choice questions but is now 80% accurate with multi-type questions.

[Claimant] is beginning to understand that reading can be enjoyable and a method for improving intelligence and gathering information so that she has more topics she can confidently discuss.

We feel it is extremely important that [Claimant] continue in weekly therapy to progress toward independence in communication and cognitive skills. As she builds more competence with abstract language she will be developing more adult skills that may allow her to pursue volunteer and possible employment opportunities within sheltered environments.

(Ex. C3.)

14. At the fair hearing, the Service Agency maintained that its termination of funding was appropriate because there was “no showing that [Claimant] is not able to communicate.” Although Mr. Myers did not consider the September 30, 2013 progress report from Alliance, Ms. Mallinson reviewed it and “decided to go forward with the fair hearing.” (Service Agency Argument by Ms. Mallinson.)

15. At the fair hearing, Claimant’s mother maintained that Claimant has been making steady and substantial progress and that, without continued speech therapy, her cognitive and speech abilities will significantly deteriorate, thereby degrading her quality of life. She further maintained that speech-language-cognitive therapy is much more than just teaching the act of talking, and that it is “cognitive,

not just linguistic.” (Testimony of Jan. T.) There was no evidence to contradict these assertions, which were supported by the Alliance and Sampley reports/letters.

LEGAL CONCLUSIONS

1. Claimant’s appeal of the Service Agency’s termination of parent vendor reimbursement for speech services is granted. (Factual Findings 1 through 15; Legal Conclusions 2 through 8.)

2. 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 Evidence Code sections 115 and 500.) Thus, in proposing termination of previously-provided parent vendor reimbursement for speech services, the Service Agency bears the burden of proving by a preponderance of the evidence that the change is necessary and that the services are no longer necessary to meet Claimant’s needs. The Service Agency has failed to meet its burden.

3. Welfare and Institutions Code section 4512, subdivision (b) provides, in part:

[T]he 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.* (Emphasis added.)

4. Welfare and Institutions Code section 4646 provides, in part:

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. (Emphasis added.)

5. Welfare and Institutions Code section 4646.5 provides, in part:

(a) The planning process for the individual program plan described in Section 4646 shall include all of the following:

[¶] . . . [¶]

(2) A statement of goals, based on the needs, preferences, and life choices of the individual with developmental disabilities, and a statement of specific, time-limited objectives for implementing the person's goals and addressing his or her needs. These objectives shall be stated in terms that allow measurement of progress or monitoring of service delivery. These goals and objectives should maximize opportunities for the consumer to develop relationships, be part of community life in the areas of community participation, housing, work, school, and leisure, increase control over his or her life, acquire increasingly positive roles in community life, and develop competencies to help accomplish these goals .

6. Welfare and Institutions Code section 4648 provides, in part:

In order to achieve the stated objectives of a consumer's individual program plan, the regional center shall conduct activities including, but not limited to, all of the following:

(a) Securing needed services and supports.

(1) It is the intent of the Legislature that services and supports assist individuals with developmental disabilities in achieving the greatest self-sufficiency possible and in exercising personal choices. The regional center shall secure services and supports that meet the needs of the consumer, as determined in the consumer's individual program plan, and within the context of the individual program plan, the planning team shall give highest preference to those services and supports which would allow minors with developmental disabilities to live with their families, adult persons with developmental disabilities to live as independently as possible in the community, and that allow all consumers to interact with persons without disabilities in positive, meaningful ways.

ORDER

Kern Regional Center's termination of parent vendor reimbursement for speech therapy is overruled, and Claimant's appeal is granted.

Kern Regional Center shall continue to reimburse Claimant's parent vendor for speech services at the rate of \$57.46 per hour, one hour per week. This reimbursement shall begin retroactive to July 1, 2013.

DATED: October 15, 2013



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.