

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT

vs.

NORTH LOS ANGELES COUNTY
REGIONAL CENTER,

Service Agency.

OAH No. 2013090066

DECISION

This matter was heard before Glynda B.Gomez, Administrative Law Judge, Office of Administrative Hearings, State of California, on January 30, 2014 in Van Nuys, California.

Stella Dorian, Risk Assessment Supervisor, represented the North Los Angeles County Regional Center (NLACRC or service agency), the service agency.

Claimant RT (Claimant) was represented by his father. Claimant did not attend the hearing.

Documentary evidence and testimony were received, the record closed, and the case was submitted for decision on January 30, 2014.

ISSUE

Whether NLACRC must continue paying Claimant's insurance co-payments for behavioral services.

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FACTUAL FINDINGS

1. Claimant is a 4 year-old boy eligible for regional center services based upon his diagnosis of Autism. Claimant resides in his family's home with both parents and his two older siblings.

2. Claimant is non-verbal and has severe behavior issues including frequent tantrums and self-stimulatory behaviors such as spinning for hours at a time. Claimant also has digestive and feeding difficulties. He has Celiac disease, hemophilia, and sometimes requires intravenous fluids and feeding. Claimant's most recent hospital stay cost his parents \$2,300 out of pocket, in addition to their payments for his insurance premiums.

3. Claimant has received behavioral services in his home pursuant to his Individual Program Plan (IPP) since February 2013. Claimant's behavioral services are partially paid by his family's insurance. Claimant's parents have seen some improvements in his behavior and have learned some strategies to cope with Claimant's challenging behaviors from the behavior services. Provider. Claimant receives behavioral services four times per week. Because payment of the \$30 per session co-payments was a hardship for Claimant's family, NCLARC has paid the co-payments for Claimant's behavioral services. Claimant also receives speech and language services twice a week which require \$30 per session co-payments.

4. Claimant's parents both work and had a combined gross income of \$115,085 which is in excess of four hundred percent of the federal poverty guidelines for a family of five (\$110,280).

5. In August of 2013, NLACRC notified Claimant's parents that, based upon changes to the Lanterman Developmental Disabilities Services Act which were effective July 2013, and consideration of the family gross income, NLACRC would discontinue paying the insurance copayments for Claimant's behavioral services. Claimant appealed the decision by filing a request for fair hearing and this hearing ensued.

6. Claimant's parents are financially overwhelmed at this time. Although they both work full-time, they have three children including Claimant to support. Claimant has substantial medical expenses and care requirements which consume a large part of the family budget. Despite their willingness to do so, Claimant's parents are unable to sell or refinance their home to obtain additional resources, because like many families in recent years, they find that they owe much more on their home than it is worth. Currently, they struggle to make the mortgage payments and pay for Claimant's unreimbursed medical expenses. The family's financial resources have been exhausted and they are financially constrained because of the mortgage payments and mounting medical expenses for their family. The new requirement, effective July 1, 2013, for parents to pay the co-payments, in this case \$760 per

month, was a surprise and caught Claimant's family unprepared to absorb the expense. At hearing, Claimant's father testified that the behavior services were making a substantial improvement in Claimant's level of functioning and his ability to communicate.

LEGAL CONCLUSIONS

1. The Lanterman Development Disabilities Services Act (Lanterman Act)¹ 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.

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 IPP process. (Welf. & Inst. Code, § 4512, subd. (b).)

5. The Lanterman Act gives regional centers, such as NLACRC, 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 IPP and provision of services and supports by the regional center system is centered on the individual and the family of the individual with

¹ Welfare and Institutions Code section 4500 et. seq.

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 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.

8. 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.

9. In relevant part, Welfare and Institutions Code section 4659.1, provides that effective July 1, 2013, regional centers may only fund co-payments or co-insurance when: (1) the service or support is paid for, in whole or in part, by the health care service plan or health insurance policy of the consumer's parent; (2) the consumer is covered by his her parent's health plan or health insurance; (3) the family has an annual gross income that is less than 400% of the federal poverty level; and (4) there is no third party with liability for cost of the service or support.

10. Welfare and Institutions Code section 4659.1, subdivision (c) contains an exception to the prohibition when the service or support is necessary to successfully maintain the consumer at home in the least restrictive setting and the parents or consumer demonstrates one or more of the following:

(1) The existence of an extraordinary event that impacts the ability of the parent, guardian, or caregiver to meet the care and supervision needs of the child or impacts the ability of the parent, guardian, or caregiver, or adult consumer with a health care service plan or health insurance policy, to pay the copayment or co-insurance.

(2) The existence of a catastrophic loss that temporarily limits the ability to pay of the parent, guardian, or caregiver, or adult consumer with a health care service plan or health insurance policy and creates a direct economic impact on the family or adult consumer. For purposes of this paragraph, catastrophic loss may include, but is not limited to, natural disasters and accidents involving major injuries to an immediate family member.

(c) Significant unreimbursed medical costs associated with the care of the consumer or another child who is also a regional center consumer.

11. Here, Claimant's severe behaviors and inability to communicate are extremely debilitating and have a tremendous impact on Claimant and his family. There is no dispute about Claimant's need for behavioral services and the services are helping him to make slow improvement and are necessary for him to be function. Claimant has health insurance paid for by his family, but the insurance has a co-payment which amounts to a sizable monthly payment for the services in addition to the co-payments required for necessary speech services and other medical services required for his hemophilia and feeding issues. Claimant's parents have a gross income which is slightly above the threshold set by the legislature for a family of five. Even on his parents' income, the totality of Claimant's unreimbursed medical expenses, and costs associated with Claimant's needs and care, are significant. Based on factual findings 1 to 6, Claimant meets the requirements for an exemption from the prohibition on regional center payment of co-payments for behavioral services.

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ORDER

Claimant's appeal is granted. The North Los Angeles County Regional Center shall continue paying the co-payments for Claimant's behavioral services.

DATED: February 6, 2014

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.