

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

OAH No. 2013100429

Chiara R.,

Claimant,

vs.

SAN GABRIEL POMONA REGIONAL
CENTER,

Service Agency.

DECISION

Administrative Law Judge Deborah M. Gmeiner of the Office of Administrative Hearings heard this matter on March 4 and March 12, 2014, in Pomona, California.

Chiara R. (Claimant) was represented by her mother, Erin R. (mother).¹ Claimant did not attend the hearing.

Daniela Santana, Fair Hearing Manager, represented San Gabriel Pomona Regional Center (SGPRC or Service Agency).

ISSUE

Should Service Agency fund Claimant's three hours per week of participation in Pasadena Child Development Associates' Social Emotional Development Intervention program?²

¹ Claimant and her mother are identified by their first name and last initial to protect their privacy.

FACTUAL FINDINGS

Jurisdictional Facts

1. Claimant is a four year-old girl who resides with her parents and her baby sister. Claimant is eligible for services under the Lanterman Developmental Disabilities Services Act (Lanterman Act) (Welf. & Inst. Code, § 4500 et seq.) on the basis of autism.³

2. Claimant's 2013 Individual Program Plan (IPP) was developed on July 3, 2013 (July 2013 IPP). Claimant's IPP includes long and short terms goals and desired outcomes. Desired outcomes are generally stated as objectives for the consumer and include services and supports needed to achieve those outcomes. On September 8, 2013, Claimant's mother emailed Claimant's SGPRC service coordinator regarding Claimant's July 2013 IPP, expressing parents' concern about some of the information contained in the IPP. Claimant had a further IPP meeting on September 18, 2013 (September 2103 IPP). As a result, some of the descriptions of Claimant's functioning and desired outcomes were changed to reflect parents' concerns. The September 2013 IPP did not include parents' request that Claimant's service coordinator "explore appropriate funding for a DIR/Floortime program in the home . . ." (Claimant Exhibits 4, 5, and 6.) DIR stands for Developmental, Individual Difference, Relationship, a "comprehensive intervention model [] developed . . . to better understand development in children." (Claimant Exhibit 10.) Floortime strategies provide the "tools" for the DIR intervention model. (*Id.*) PCDA is regional center vendored to provide DIR services through a service known as Social Emotional Development Intervention. (SEDI or SEDI/DIR.)

3. On September 18, 2013, Service Agency issued a Notice of Proposed Action (NPA) informing Claimant's parents that on September 9, 2013, Service Agency's Autism Committee reviewed and denied Claimant's request to fund her participation in PCDA's SEDI. The denial was based on the Committee's "recommendation that Behavioral Health Services available through your health care plan are clinically appropriate for Chiara, to address the maladaptive behaviors Chiara is demonstrating." (Service Agency Exhibit 1.) Service Agency cited Senate Bill No. 949 (Health & Saf. Code section 1374.73), as well as Welfare and Institutions Code sections 4659, subdivisions (a) and (d)(1), 4643⁴, and 4646.6. In particular, Service Agency relied on the fact that Claimant has private insurance through

² Pasadena Child Development Associates has changed its name to Professional Child Development Associates (PCDA). Otherwise the entity remains the same.

³ All further statutory references are to the Welfare and Institutions Code, unless otherwise specified.

⁴ Section 4643 is concerned with intake assessments. It is not clear why Service Agency relied on this section.

Aetna and that Aetna has approved Behavioral Health Services for Claimant. The NPA does not specifically identify the nature of the service approved by Aetna nor does it identify what, if any, documents Service Agency relied on in reaching its decision.

4. Claimant timely filed her Fair Hearing Request on October 1, 2013. Jurisdiction was established and this hearing ensued.

Background

5. Claimant has several problems associated with her diagnosis of autism, including sensory problems, repetitive behaviors such as lining up objects, adjusting to change, and limited pragmatic language skills. Of particular concern to Claimant's parents is her limited responsiveness in social interactions, including her interactions with her parents and peers. While Claimant gets along with her peers, she engages in parallel rather than reciprocal play with them. Claimant does not engage in aggressive or self-injurious behaviors. Claimant's strengths include her good vocabulary and pronunciation, her self-help skills, and her love of animals (including the family dog), puzzles and coloring. Claimant participates in equestrian therapy at her parents' expense. Claimant is in good general health.

6. Claimant receives special education services including speech, occupational, and physical therapy. Her school also provides Discrete Trial Training (DTT) 30 minutes daily.

Claimant's 2013 IPP

7a. Claimant's September 2013 IPP includes both long and short term goals and desired outcomes. Relevant to the issue in this case are goals and outcomes for Claimant to develop purposeful, reciprocal social interactions and problem-solving with her parents and other adults and to develop meaningful relationships with peers. In support of this desired outcome, the IPP states that, "service coordinator will explore appropriate funding and program resources. If no generic resource is available and if SGPRC funds are requested, funding for social skills training will be according to SGPRC board approved funding policy." (Service Agency Exhibit 3.)

7b. Claimant's September 2013 IPP also includes an outcome directed toward Claimant reducing her anxiety and rigidity in daily family life and to regulate her emotions in responses to changes in her activities. The IPP also identifies parents' desire for Claimant to be more accepting of them and others and to be more interactive with parents. (Service Agency Exhibit 3.) The IPP provides that the "Service coordinator will explore appropriate funding and program resources. If no generic resource is available and if SGPRC funds are requested, funding for social skills training will be according to SGPRC Board approved funding policy." (Service Agency Exhibit 3.)

7c. Claimant's September 2013 IPP includes encouraging her to use pronouns and develop age appropriate interpersonal relationships. The IPP identifies the Claimant's school district as the agency responsible to provide services in this area.

7d. Mother testified that during the IPP meeting she tried to emphasize the parents' desire to improve Claimant's social communication and emotional development. Mother understood that the IPP would serve as the basis for selecting services for Claimant, including SEDI from PCDA. Mother also contacted Claimant's service coordinator's supervisor to discuss her desire to have Claimant participate in the SEDI program. Mother also asked to include additional information about Claimant and additional goals and desired outcomes in the IPP. Mother asked for an additional IPP meeting to address these issues. As discussed at Factual Finding 2, mother's request resulted in changes to several of the outcomes, but not to the addition of DIR/Floortime as a service.

Behavior Interventions

8a. Mother has participated in behavior modification training provided by Service Agency and tries to implement its principles with Claimant. Mother testified that she does not believe an Applied Behavioral Analysis (ABA) based program is suitable for Claimant. In support of this contention, mother pointed out the difficulty she has identifying and maintaining Claimant's interest in reinforcers. According to mother, Claimant's interest in objects and activities used to reinforce desired behaviors quickly wanes, necessitating the identification of a new object or preferred activity.

8b. Claimant is covered under her parent's insurance, Aetna. The policy has a \$4,000 deductible. At some point, parents' asked Aetna to fund a DIR/Floortime program. According to mother, Aetna denied coverage for a DIR/Floortime program. Mother said she unsuccessfully appealed that decision. It is not clear if mother provided this information to Service Agency. Aetna did obtain an assessment of Claimant by People's Choice, an ABA service provider. According to mother, Aetna approved 10 hours per week of ABA services. Mother did not obtain a copy of People's Choice assessment and did not know whether it included parent consultation services.

8c. Mother further testifies that she started to use People's Choice services in or about November 2013, after her second child was born. Although People's Choice was authorized by Aetna to fund 10 hours per week of ABA services, they were able to schedule only about seven and a half to eight hours a week because of Claimant's school schedule. According to mother, People's Choice did not provide mother with training during the month they were providing services. She thought this might have been because she was caring for her newborn baby. Mother testified that she did not ask for or receive a copy of the ABA assessment. Mother discussed her concerns about the appropriateness of ABA services with the Service Agency. She also told Service Agency about the \$4,000.00 insurance deductible that would be burdensome for the family.

9a. Mimi Winer, R.N., M.S. (Winer), is PCDA's Director of Programs and Services. Winer testified about the SEDI program. Winer assessed Claimant on January 30 and 31, 2014 and determined that SEDI would be able to address her social and emotional developmental needs. That assessment included consideration of Claimant's IPP, as well as information provided by PCDA's Speech and Language Pathologist, Anne Davis, a psychological evaluation performed by Pean Lai, Ph.D. on April 11, 2013 to determine eligibility for Lanterman Act services, and consultation with PCDA's Developmental Pediatrician, Dr. Diane Cullinane. Winer's assessment included information about Claimant's current motor, communication, self-help, sensory, and social-emotional development and relationships, with the latter area receiving the most attention. Winer described her impressions of Claimant:

Chiara is a beautiful 4-year old girl with a diagnosis of Autism, who is demonstrating strengths and challenges in all aspects of social-emotional development. She is showing skills across the early milestones of social-emotional development in her relationships with both parents, limitations in expression, differentiation, and regulation of emotions, limited interests and play skills, and difficulties in sustained, reciprocal social interactions and social communication with parents and peers. Chiara is also demonstrating significant difficulty with disordered language in spontaneous play and social interactions. Similar concerns were documented by the SGPRC Psychological Evaluation in April 2013. With a DIR approach and Floortime strategies, Chiara showed the ability to sustain continuous back and forth meaningful, social interactions with another person and her parent utilized coaching to help Chiara co-regulate and manage her emotions. . . . (Claimant Exhibit 8.)

9b. The assessment identified skills Claimant and her parents need in order to "achieve higher social-emotional milestones, utilizing a DIR model and Floortime strategies." Winer identified four six-month goals for Claimant:

1. Chiara will demonstrate the ability to respond to overtures from both parents, sharing joint attention and sustaining enjoyment in warm, pleasurable, meaningful play and social interactions, without resisting or interrupting the interaction to leave. . . .
2. Chiara will demonstrate the ability to express a range of clearly differentiated emotions . . . in natural play and social interactions with both parents, and be able to co-regulate with both parents to recover from intense emotions within 15 minutes. . . .
3. Chiara will demonstrate the ability to share interest in meaningful play interactions with her parents, increasing sequences of play ideas and simple problem-solving, with continuous adult support. . . .

4. Chiara will increase her ability to express meaningful thoughts and ideas in unstructured social communication, with continuous adult support to make associations and put words and pronouns together, in the context of purposeful social interactions with parents. . . .

Winer recommended three hours per week of SEDI/DIR services, including parent training and coaching.

9c. Winer testified that she believes DIR meets the definition of a “behavioral health treatment” as that term is used in Health and Safety Code section 1374.73, subdivision (c)(1), but that PCDA has had problems gaining recognition with most insurers because of the statute’s requirement that treatment be provide by or under the supervision of a “qualified autism service provider.” (*Id.* at Health & Saf. Code, § 1374.73, subd. (c)(2).)

Service Agency Contentions

10a. Daniela Santana (Santana), Fair Hearing Manager, testified on behalf of Service Agency. The sole basis for Service Agency’s decision to deny funding for SEDI was the fact that Aetna had approved an ABA program for Claimant. Santana testified that the Autism Committee reviewed Claimant’s request for SEDI/DIR services. According to Santana, the Committee did not have a copy of People’s Choice assessment. Because Claimant was eligible to receive behavioral health treatment through an ABA provider pursuant to Health and Safety Code section 1374.73, Service Agency reasoned that sections 4643, 4646.4, 4646.6, 4659, and 4686.2 prohibited it from funding SEDI.

10b. Service Agency categorizes both ABA and DIR as behavioral services. Santana testified that the Agency considers ABA and DIR services to be duplicative. According to Santana, Service Agency categorizes a variety of behavioral modalities as behavioral services for purposed of entering information in the agency’s computer system. These services include among others ABA, DIR, behavior intervention, adaptive skills training and social skills training. SEDI is licensed as a community integration program because its program is offered in the community rather than the home.

10c. Santana testified that she discussed Service Agency’s denial of funds for SEDI/DIR with mother. According to Santana, Mother told People’s Choice that she was concerned about Claimant’s social–emotional development and that People’s Choice said they would help with that issue.

10d. Santana recalled that when she discussed the decision with mother, mother told her that her Aetna insurance policy involved a large deductible and the cost of the program was a significant reason for asking Service Agency to fund SEDI. Santana discussed with mother Service Agency’s willingness to review the family’s financial situation and that it might be able to help defray some of the costs of ABA not covered by the insurer. (See § 4659.1.) Mother testified that cost was not the primary consideration in deciding not to continue with the ABA program.

LEGAL CONCLUSIONS

1. The Lanterman Act governs this case. An administrative hearing to determine the rights and obligations of the parties, if any, is available under the Lanterman Act to appeal a regional center decision. (§§ 4700-4716.)

2. The standard of proof in this case is a preponderance of the evidence, because no applicable law or statute (including the Lanterman Act) requires otherwise. (Evid. Code, § 115.) Because Claimant is requesting a change in an existing service, she bears the burden of proof. In seeking government benefits, the burden of proof is on the person asking for the benefits. (See, *Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161 (disability benefits).)

3. The Lanterman Act sets forth a regional center's obligations and responsibilities to provide services to individuals with developmental disabilities. (See §§ 4640 et seq.) 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." In addition to assisting consumer's and their families "in securing those services and supports which maximize opportunities and choices for living, working, learning, and recreating in the community. . . . [e]ach regional center design shall reflect the maximum cost-effectiveness possible and shall be based on a service coordination model . . ." (§ 4640.7.)

4. Under the Lanterman Act, a consumer's needs and the services and supports required to achieve the consumer's goals are identified as part of the individual program planning process. (§§ 4646 et seq.) Section 4646.5, subd (a)(1) provides that the planning process shall include:

Gathering information and conducting assessments to determine the life goals, capabilities and strengths, preferences, barriers, and concerns or problems of the person with developmental disabilities. For children with developmental disabilities, this process should include a review of the strengths, preferences, and needs of the child and the family unit as a whole. Assessments shall be conducted by qualified individuals and performed in natural environments whenever possible. Information shall be taken from the consumer, his or her parents and other family members, his or her friends, advocates, authorized representative, if applicable, providers of services and supports, and other agencies. The assessment process shall reflect awareness of, and sensitivity to, the lifestyle and cultural background of the consumer and the family.

5. The IPP and the provision of supports and services is intended to be “centered on the individual and family[,] . . . take into account the needs and preferences of the individual and family, where appropriate[,] . . . 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.” (§§ 4646, subd. (a), 4646.5.) The IPP “is developed through a process of individual needs determination,” should involve the consumer and his parents, and should be prepared jointly by the planning team. (§ 4646 subd. (b).) “Decisions concerning the consumer’s goals, objectives, and services and supports that will be included in the consumer’s individual program plan and purchased by the regional center or obtained from generic agencies shall be made by agreement between the regional center and the consumer . . . at the program plan meeting.” (§ 4646, subd. (d); see also §§ 4646.7, 4648.) The program planning team may meet again if an agreement is not reached. (§ 4646, subd. (d).) If the parties are unable to reach an agreement, the consumer or her authorized representative may request a fair hearing. (§§ 4700 et seq.)

6. While a consumer and her parents’ preferences and desires regarding goals and objectives and services and supports are to be given consideration in the planning process, regional centers are not authorized to purchase any and all services a consumer or her family may desire. (See §§ 4640.7, 4646, 4646.4, 4646.5, 4659, 4686.2.) Regional center design must “reflect the maximum cost-effectiveness possible . . .” (§ 4640.7, subd. (b).)

7. When purchasing services pursuant to an IPP, regional centers must ensure:

(1) Conformance with the regional center’s purchase of service policies, as approved by the department [of developmental services] pursuant to subdivision (d) of Section 4434.

(2) Utilization of other sources of services and funding as contained in Section 4659.

(3) Consideration of the family’s responsibility for providing similar services and supports for a minor child without disabilities . . . (§ 4646.4, (subd. (a).))

8. Regional Centers are also required to “identify and pursue all possible sources of funding for consumers receiving regional center services . . .” from governmental entities such as Medi-Cal, and private entities such as insurers. (§ 4659, subd. (a).) Except in certain circumstances not applicable in this case, section 4659 provides that:

(c) Effective July 1, 2009, notwithstanding any other provision of law or regulation to the contrary, regional centers shall not purchase any service that would otherwise be available from Medi-Cal, Medicare, the Civilian Health and Medical Program for Uniform Services, In-Home Support Services, California Children’s Services, private insurance, or a health care service plan when a consumer or a family meets the criteria of this coverage but chooses not to pursue that coverage. . . .

(d) (1) Effective July 1, 2009, notwithstanding any other provision of law or regulation to the contrary, a regional center shall not purchase medical or dental services for a consumer three years of age or older unless the regional center is provided with documentation of a Medi-Cal, private insurance, or a health care service plan denial and the regional center determines that an appeal by the consumer or family of the denial does not have merit.

9. Section 4686.2 establishes standards for the purchase of behavior intervention services by a regional center:

(a) Effective July 1, 2009, notwithstanding any other provision of law or regulation to the contrary, any vendor who provides applied behavioral analysis (ABA) services, or intensive behavioral intervention services or both, as defined in subdivision (d), shall:

(1) Conduct a behavioral assessment of each consumer to whom the vendor provides these services.

(2) Design an intervention plan that shall include the service type, number of hours and parent participation needed to achieve the consumer's goals and objectives, as set forth in the consumer's individual program plan (IPP) or individualized family service plan (IFSP). The intervention plan shall also set forth the frequency at which the consumer's progress shall be evaluated and reported.

(3) Provide a copy of the intervention plan to the regional center for review and consideration by the planning team members.

(b) Effective July 1, 2009, notwithstanding any other provision of law or regulation to the contrary, regional centers shall:

(1) Only purchase ABA services or intensive behavioral intervention services that reflect evidence-based practices, promote positive social behaviors, and ameliorate behaviors that interfere with learning and social interactions.

(2) Only purchase ABA or intensive behavioral intervention services when the parent or parents of minor consumers receiving services participate in the intervention plan for the consumers, given the critical nature of parent participation to the success of the intervention plan.

(3) Not purchase either ABA or intensive behavioral intervention services for purposes of providing respite, day care, or school services.

(4) Discontinue purchasing ABA or intensive behavioral intervention services for consumer when the consumer's treatment goals and objectives, as described under subdivision (a), are achieved. ABA or intensive behavioral intervention services shall not be discontinued until the goals and objectives are reviewed and updated as required in paragraph (5) and shall be discontinued only if those updated treatment goals and objectives do not require ABA or intensive behavioral intervention services.

(5) For each consumer, evaluate the vendor's intervention plan and number of service hours for ABA or intensive behavioral intervention no less than every six months, consistent with evidence-based practices. If necessary, the intervention plan's treatment goals and objectives shall be updated and revised.

(6) Not reimburse a parent for participating in a behavioral services treatment program.

[¶] . . . [¶]

(d) For purposes of this section the following definitions shall apply:

(1) "Applied behavioral analysis" means the design, implementation, and evaluation of systematic instructional and environmental modifications to promote positive social behaviors and reduce or ameliorate behaviors which interfere with learning and social interaction.

(2) "Intensive behavioral intervention" means any form of applied behavioral analysis that is comprehensive, designed to address all domains of functioning, and provided in multiple settings for no more than 40 hours per week, across all settings, depending on the individual's needs and progress. Interventions can be delivered in a one-to-one ratio or small group format, as appropriate.

(3) "Evidence-based practice" means a decision making process that integrates the best available scientifically rigorous research, clinical expertise, and individual's characteristics. Evidence-based practice is an approach to treatment rather than a specific treatment. Evidence-based practice promotes the collection, interpretation, integration, and continuous evaluation of valid, important, and applicable individual- or family-reported, clinically-observed, and research-supported evidence. The best available evidence, matched to consumer circumstances and preferences, is applied to ensure the quality of clinical judgments and facilitates the most cost-effective care.

(4) "Parent participation" shall include, but shall not be limited to, the following meanings:

(A) Completion of group instruction on the basics of behavior intervention.

(B) Implementation of intervention strategies, according to the intervention plan.

(C) If needed, collection of data on behavioral strategies and submission of that data to the provider for incorporation into progress reports.

(D) Participation in any needed clinical meetings.

(E) Purchase of suggested behavior modification materials or community involvement if a reward system is used.

10. Health and Safety Code section 1374.73, provides in pertinent part:

(a) (1) Every health care service plan contract that provides hospital, medical, or surgical coverage shall also provide coverage for behavioral health treatment for pervasive developmental disorder or autism no later than July 1, 2012.

[¶] . . . [¶]

(3) This section shall not affect services for which an individual is eligible pursuant to Division 4.5 (commencing with Section 4500) of the Welfare and Institutions Code or Title 14 (commencing with Section 95000) of the Government Code.

[¶] . . . [¶]

(c) For the purposes of this section, the following definitions shall apply:

(1) “Behavioral health treatment” means professional services and treatment programs, including applied behavior analysis and evidence-based behavior intervention programs, that develop or restore, to the maximum extent practicable, the functioning of an individual with pervasive developmental disorder or autism and that meet all of the following criteria:

(A) The treatment is prescribed by a physician and surgeon licensed pursuant to Chapter 5 (commencing with Section 2000) of, or is developed by a psychologist licensed pursuant to Chapter 6.6 (commencing with Section 2900) of, Division 2 of the Business and Professions Code.

(B) The treatment is provided under a treatment plan prescribed by a qualified autism service provider and is administered by one of the following:

(i) A qualified autism service provider.

(ii) A qualified autism service professional supervised and employed by the qualified autism service provider.

(iii) A qualified autism service paraprofessional supervised and employed by a qualified autism service provider.

(C) The treatment plan has measurable goals over a specific timeline that is developed and approved by the qualified autism service provider for the specific patient being treated. The treatment plan shall be reviewed no less than once every six months by the qualified autism service provider and modified whenever appropriate, and shall be consistent with Section 4686.2 of the Welfare and Institutions Code pursuant to which the qualified autism service provider does all of the following:

(i) Describes the patient's behavioral health impairments or developmental challenges that are to be treated.

(ii) Designs an intervention plan that includes the service type, number of hours, and parent participation needed to achieve the plan's goal and objectives, and the frequency at which the patient's progress is evaluated and reported.

(iii) Provides intervention plans that utilize evidence-based practices, with demonstrated clinical efficacy in treating pervasive developmental disorder or autism.

(iv) Discontinues intensive behavioral intervention services when the treatment goals and objectives are achieved or no longer appropriate.

(D) The treatment plan is not used for purposes of providing or for the reimbursement of respite, day care, or educational services and is not used to reimburse a parent for participating in the treatment program. The treatment plan shall be made available to the health care service plan upon request.

(2) "Pervasive developmental disorder or autism" shall have the same meaning and interpretation as used in Section 1374.72.

(3) "Qualified autism service provider" means either of the following:

(A) A person, entity, or group that is certified by a national entity, such as the Behavior Analyst Certification Board, that is accredited by the National Commission for Certifying Agencies, and who designs, supervises, or provides treatment for pervasive developmental disorder or autism, provided the services are within the experience and competence of the person, entity, or group that is nationally certified.

(B) A person licensed as a physician and surgeon, physical therapist, occupational therapist, psychologist, marriage and family therapist, educational psychologist, clinical social worker, professional clinical counselor, speech-language pathologist, or audiologist pursuant to Division 2 (commencing with Section 500) of the Business and Professions Code, who designs, supervises, or provides treatment for pervasive developmental disorder or autism, provided the services are within the experience and competence of the licensee.

(4) “Qualified autism service professional” means an individual who meets all of the following criteria:

(A) Provides behavioral health treatment.

(B) Is employed and supervised by a qualified autism service provider.

(C) Provides treatment pursuant to a treatment plan developed and approved by the qualified autism service provider.

(D) Is a behavioral service provider approved as a vendor by a California regional center to provide services as an Associate Behavior Analyst, Behavior Analyst, Behavior Management Assistant, Behavior Management Consultant, or Behavior Management Program as defined in Section 54342 of Title 17 of the California Code of Regulations.

(E) Has training and experience in providing services for pervasive developmental disorder or autism pursuant to Division 4.5 (commencing with Section 4500) of the Welfare and Institutions Code or Title 14 (commencing with Section 95000) of the Government Code.

(5) “Qualified autism service paraprofessional” means an unlicensed and uncertified individual who meets all of the following criteria:

(A) Is employed and supervised by a qualified autism service provider.

(B) Provides treatment and implements services pursuant to a treatment plan developed and approved by the qualified autism service provider.

(C) Meets the criteria set forth in the regulations adopted pursuant to Section 4686.3 of the Welfare and Institutions Code.

(D) Has adequate education, training, and experience, as certified by a qualified autism service provider.

[¶] . . . [¶]

11. In light of Factual Findings 1 through 10 and Legal Conclusions 1 through 10, Claimant has met her burden to show that SEDI/DIR is an appropriate program. As required by Section 4686.2, SEDI assessed Claimant and, based on that assessment, recommended specific, time-limited goals. The assessment plan includes parent participation through coaching and training. The goals are designed to achieve the outcomes set forth in Claimant's September 2013 IPP. Those goals focus on Claimant's social-emotional development. Service Agency does not dispute the fact that SEDI/DIR is an appropriate program for Claimant. In fact, Service Agency asserts that the program is a "behavioral health treatment service" as that term is defined in Health and Safety Code section 1374.73 as well as a behavior program as that term is used by Service Agency.

12. Because Claimant met her burden to show that SEDI/DIR is appropriate, the burden shifts to Service Agency to produce evidence as to why Service Agency should not be required to fund SEDI/DIR. At the hearing, Service Agency did not refute the appropriateness of SEDI/DIR. Service Agency cites Health and Safety Code section 1374.73 and Welfare and Institutions Code section 4659 subdivision (a) and (d)(1), 4643, 4646.4 and 4686.2 in support of its contention that because Claimant's insurer has approved People's Choice ABA program, a "behavioral health treatment" service, Service Agency is not permitted to fund a different behavioral health treatment program. Put another way, Service Agency believes that the services SEDI/DIR offers are "otherwise . . . available" from People's Choice and that it is thereby prohibited from funding SEDI/DIR. (§4659, subd. (c).) In arriving at this decision, Service Agency did not consider People's Choice ABA assessment or conduct its own assessment pursuant to section 4686.2.

13. Service Agency's argument might be persuasive if the Autism Committee had obtained a copy of People's Choice assessment and made a determination that People's Choice goals would support Claimant's IPP goals and outcomes. (§4659, subd. (c).) They did not gather that information and therefore their decision that the People's Choice program was available to meet Claimant's needs is not supported by the evidence. Without considering the People's Choice assessment, Service Agency did not engage in the kind of information gathering, assessment, and individualized planning required by the Lanterman Act as part of the IPP process.

14. In light of Factual Findings 1 through 10 and Legal Conclusions 1 through 13, Claimant's request for funding for three hours per week of PCDA's SEDI/DIR services is granted through June 30, 2014. In the interim, Service Agency should obtain a copy of People's Choice assessment to determine whether People's Choice services will support Claimant's IPP goals and outcomes. No later than May, 1, 2013, parents shall sign a consent for release of information to allow People's Choice to provide Service Agency with its assessment and if necessary, for Service Agency to discuss Claimant's goals and desired outcomes with People's Choice. If the information needed to consider Claimant's needs for behavioral services cannot be obtained by June 30, 2014 through no fault of Claimant or her

parents, then Service Agency shall continue to fund SEDI/DIR until the information can be obtained and a decision made.⁵ This time frame also allows Service Agency to assess parents' eligibility for assistance with insurance related expenses to the extent permitted by law, and for parents to confirm with their insurer the availability of behavioral health services should Service Agency again deny funding for SEDI/DIR.

ORDER

1. Service Agency is ordered to fund three hours per week of PCDA's SEDI/DIR services through June 30, 2014. Service Agency is further ordered to obtain a copy of People's Choice assessment in order to determine whether People's Choice services will support Claimant's IPP goals and outcomes. If the information cannot be obtained by June 30, 2014 through no fault of Claimant or her parents, then Service Agency shall continue to fund SEDI/DIR until the information can be obtained and a decision made.

2. No later than May 1, 2014, Parents shall provide Service Agency with a signed release of information authorizing People's Choice to provide Service Agency with its assessment and for Service Agency to discuss Claimant's goals and desired outcomes with People's Choice.

Dated: March 27, 2014

DEBORAH M. GMEINER
Administrative Law Judge
Office of Administrative Hearings

NOTICE

UNDER THE LANTERMAN DEVELOPMENTAL DISABILITIES SERVICES ACT, THIS IS A 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.

⁵ Nothing in this decision is intended to abrogate Claimant's right, if any, to aid-paid –pending an appeal. (§ 4715, subd. (a)(3).)