BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: CLAIMANT, Claimant, v. NORTH LOS ANGELES COUNTY REGIONAL CENTER, Service Agency.	OAH No. 2013110573

DECISION

Carla L. Garrett, Administrative Law Judge (ALJ), Office of Administrative Hearings, State of California, heard this matter on January 10, 2014, in Van Nuys, California.

Stella Dorian, Fair Hearing Representative, represented the North Los Angeles County Regional Center (NLACRC or Service Agency). Claimant was represented by his mother (Mother) and father (Father), (collectively, Parents).

Oral and documentary evidence was received, the record was closed, and the matter was submitted for decision on January 10, 2014.

ISSUE

Must the Service Agency continue funding insurance co-payments for Claimant's Applied Behavioral Analysis (ABA) services?

FINDINGS OF FACT

1. Claimant is a four and one-half year-old boy, and a consumer of the Service Agency. Specifically, Claimant has autistic disorder, and is eligible for services pursuant to

the Lanterman Developmental Disabilities Act (Lanterman Act), California Welfare and Institutions Code, section 4500, et seq.[1]

2. On October 3, 2013, August 9, 2013, the Service Agency issued a Notice of Proposed Action to discontinue funding Claimant's insurance co-payments for his ABA services. On November 14, 2013, Mother filed a Fair Hearing Request on behalf of Claimant. All jurisdictional requirements have been met.

3. Claimant lives with Parents within the Service Agency's catchment area, along with his two younger siblings, who are three and one-half years old, and one and one-half years old. Claimant has significant delays in all speech and language domains, and social and behavioral issues that require constant care and assistance. Claimant receives ABA services approximately four sessions a week, Monday through Thursday, 5.75 hours per session, which are funded through Parents' private insurance plan. The co-payments, at $45 per hour, total $500 per week, for which the Service Agency initially funded.

4. In or about August 2013, in support of their request for the Service Agency's continued funding of co-payments, Parents submitted to the Service Agency their 2012 income documents. Specifically, they submitted their respective 2012 W-2 and Earnings Summary (W-2), which showed that Father earned $104,170 in wages, tips, and other compensation, and Mother earned $31,200, for a total of $135,370 in earnings for 2012.

5. On October 3, 2013, the Service Agency sent Parents a letter stating that their annual gross income of $135, 370 exceeded the federal poverty level by more than 400 percent (i.e., more than $110,280), for a family of five. In addition, the Service Agency noted that there did not appear to be the existence of an extraordinary circumstance or a catastrophic event. Consequently, the Service Agency advised it would be terminating funding of Claimant's co-payments, effective August 31, 2013.

6. On December 9, 2013, Parents prepared a letter and submitted it, along with supporting documentation, to Stella Dorian of the Service Agency at an informal meeting.[2] Parents' letter explained "the unfortunate chain of events" that had placed them in extreme financial hardship, rendering them incapable of paying Claimant's co-payments. Specifically, the letter stated that Father was the only source of regular income for the family, and, because his employer of 15 years decided to reduce its executive compensation due to a downturn in the economy, his salary was reduced to $80,000 in 2013 from the $109, 250 he earned in 2012. In addition, Mother, who worked part-time at a psychiatrist's office as a licensed marriage and family therapist, worked inconsistently, as she had none of her own patients. In an attempt to meet their financial obligations, Parents had to prematurely withdraw their 401k savings. Consequently, they have been subjected to penalties and

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[1] All statutory references are to the Welfare and Institutions Code.

[2] The purpose of the meeting was to attempt to resolve Claimant's matter. Both parties stipulated that the substance of the discussion of the informal meeting could be disclosed during the course of the hearing.

interest as a result of their inability to pay it back. Moreover, Parents remain in constant danger of the bank foreclosing on their home, and are behind on their homeowners' association dues. In addition, they have not been able to make minimum monthly payments on their revolving credit cards, which have resulted in a judgment and a levy against them. Also, Parents have not been able to pay outstanding medical bills as a result of their daughter's surgery in January 2013.

7. Shortly following the meeting, Parents submitted a letter to Ms. Dorian from Dr. Adel Mostafavi, who was the psychiatrist for whom Mother worked. The letter stated that Mother was an independent therapist and an independent contractor who counseled patients referred to her by his offices. Dr. Mostafavi explained that Mother's earnings were based on the number of patients she saw, and the insurance and type of coverage they had. Consequently, Mother earned from $2,000 to $3,000 per month, but advised that, as a part-time marriage and family therapist, Mother's earnings could vary, and were not guaranteed.

8. On December 23, 2013, Ms. Dorian, after meeting and reviewing with the Director of Consumer Services all of the documents submitted by Parents, sent Parents a letter memorializing the substance of the informal meeting, the financial documents submitted, as well as the letter of Dr. Mostafavi. Ms. Dorian advised that because Parents' 2012 income exceeded the federal poverty line by more than 400 percent, and because extreme financial hardship did not, in and of itself, constitute an extraordinary event, the Service Agency was statutorily prohibited from funding co-payments. As a basis for its decision, the Service Agency relied on a decision issued by the Office of Administrative Hearing on December 9, 2013 (OAH No. 2013100389), that stated that "an 'extraordinary event' must mean more than a financial strain experienced by a family. . . Section 4659.1 [of the Welfare and Institutions Code] presumes that a family with an income in excess of 400 percent of the federal poverty level has the ability to make co-payments."

9. Ms. Dorian further explained that because there was no loss of employment or an illness or condition that impacted Parents' ability to be employed, and because Parents had not reported a catastrophic event, the Service Agency had no statutory authority to grant an exemption and continue funding co-payments. Ms. Dorian did advise, however, that if Parents believed the reduction in their income in 2013 did not exceed 400 percent federal poverty level, they should submit income documents to the Service Agency for review and reconsideration.

10. At hearing, in reference to Parents' 2013 income, Ms. Dorian explained that because the letter submitted by Dr. Mostafavi showed that Mother made between $2,000 and $3,000 per year, the Service Agency calculated the family's gross income using the $3,000 figure, which placed them above the 400 percent federal poverty level for a family of five. However, when the Service Agency calculated the family's gross income using the $2,000 figure, it noted that the amount fell below the 400 percent federal poverty line. Consequently, the Service Agency needed to know the exact amount of Mother's monthly income in order to make a concrete determination whether the earnings fell below the 400 percent poverty line in order to continue the funding for co-payments. At hearing, Parents

submitted a statement dated January 2, 2014 from Dr. Mostafavi that stated that Mother's earnings for the fiscal year of 2013 "were approximately $35,000." However, the Service Agency, reiterated that it needed documentation evidencing Mother's *actual* income for 2013.

Father's Testimony

11. At hearing, Father explained that he and his family were under extreme financial distress, as a result of his reduction of income of approximately $30,000, coupled by medical expenses his family incurred in 2013. Specifically, Claimant's family incurred approximately $20,000 in out-of-pocket medical expenses. Of the $20,000, Claimant incurred $10,000 to $12,000 of those costs for neurologists, lab panels, and chelating (removal of heavy metals from Claimant's body). Claimant's younger sister, who had been diagnosed with developmental and language delays, incurred approximately $7,000 for developmental specialists, and for the removal of her adenoids and tonsils. The remainder of out-of-pocket expenses stemmed from doctor visits to address Father's back problems and mole biopsies, Mother's routine women's health visits, and Claimant's younger brother's emergency room visit for falling on his head.

12. As a result of their financial hardships, which Father characterized as "catastrophic," he and Mother have been unable to pay their monthly mortgage, their utilities have been shut off on several occasions, and they have been suffering increased penalties as a result of their failure to pay their bills. In addition, Father explained that the Service Agency did not consider other bills and expenses that the family has incurred, such as a credit card payment of $300 a month, repayment of their 401k loan, babysitter expenses the family incurs when Mother must go to work ($300 to $400 a week), gasoline ($250 to $350 per month), car note ($560), car insurance ($160), utilities ($900 to $1,600 a month), student loan ($560), groceries (including gluten free food for Claimant) ($1,800), payroll deductions ($1,800), and other incidentals (approximately $200 per month). In addition, Parents owe $3,500 in legal fees. Consequently, instead of being in the black every month, they are "way in the red."

13. Parents are highly concerned about Claimant's continued receipt of ABA services, as they are unable to afford the copayments. In November 2013, as a result of a miscommunication, Claimant did not receive ABA services for approximately two weeks. As a result, Claimant's behavior regressed significantly. Parents do not want Claimant to suffer any further regression as a result the cessation of ABA services.

LEGAL CONCLUSIONS

The Service Agency is not required to fund Claimant's co-payment for the reasons set forth below:

1. The Lanterman Act sets forth a regional center's obligations and responsibilities to provide services to individuals with developmental disabilities. As the California Supreme Court explained in *Associaton 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. 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.

3. 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.

4. In relevant part, Welfare and Institutions Code section 4659.1, provides that effective July 1, 2013, regional centers may fund co-payments or co-insurance only 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.

5. 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.

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

6. Here, Claimant has failed to sustain his burden of demonstrating that the Service Agency must fund his copayments related to his ABA services. The evidence showed that Parents' annual gross income exceeded 400 percent of the federal poverty level, statutorily prohibiting the Service Agency from funding the Claimant's co-payments. In addition, Claimant failed to meet his burden of demonstrating that he qualified for any exemptions that would permit the funding of co-payments.

7. Specifically, while Father testified that the family had suffered $20,000 in out-of-pocket medical expenses, Claimant presented no documentary evidence supporting this claim, particularly unreimbursed medical costs associated with the care of Claimant or of any other Service Agency sibling, as required by section 4659.1, subdivision (c)(2). In addition, the record does not show that the family has undergone a catastrophic loss, such as a natural disaster or an accident involving major injuries to an immediate family member, as required under section 4659.1, subdivision (c)(3). Finally, despite Claimant's assertion to the contrary, Claimant's family has not suffered "an extraordinary event that impacts the ability of the parent . . . to meet the care and supervision needs of the child or impacts the ability of the parent . . . to pay the copayment," as required under section 4659.1, subdivision (c)(1). Although Claimant contends that his family's extreme financial hardship amounts to an extraordinary event impacting the ability of Parents to pay the copayment, the plain language of the statute does not specify extreme financial hardship as an extraordinary event. Clearly, had the legislature contemplated financial hardship as an extraordinary event, it would have listed it as an example, just as it listed natural disasters and accidents involving major injuries as examples under the category of catastrophic loss. For this and the reasons set forth above, Claimant's appeal must be denied.

8. Parents are encouraged to immediately resubmit their financial documentation to the Service Agency after Mother obtains an exact figure related to her 2013 earnings to determine whether Parents' annual gross income still exceeds 400 percent of the federal poverty line. In addition, Parents should considering submitting <u>all</u> documentation to the Service Agency concerning unreimbursed medical expenses related to Claimant or any Service Agency sibling.

ORDER

Claimant's appeal is denied.

Date: February 11, 2014

CARLA L. GARRETT
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.