

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

OAH No. 2013110859

A.V.,

Claimant,

vs.

NORTH LOS ANGELES COUNTY
REGIONAL CENTER,

Service Agency.

DECISION

This matter was heard by Julie Cabos-Owen, Administrative Law Judge with the Office of Administrative Hearings, on February 5, 2014, in Van Nuys, California. Claimant was represented by his parents and authorized representatives.¹ North Los Angeles County Regional Center (Service Agency or NLACRC) was represented by Ruth Janka.

At the hearing of this matter, the Administrative Law Judge (ALJ) was provided with Exhibits 4, A, B, C, E and F containing Claimant's family's confidential personal and financial information which is protected from disclosure to the public. Redaction of the documents to obscure this information is not practicable and will not provide adequate privacy protection. In order to protect Claimant's family's privacy and prevent the disclosure of confidential information, the ALJ on her own motion, ordered that, following the use of Exhibits 4, A, B, C, E and F in preparation of the Decision, those exhibits would be placed under seal.

Oral and documentary evidence was received, and argument was heard. The record was closed, and the matter was submitted for decision on February 5, 2014.

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¹ Claimant's name is omitted throughout this Decision to protect his privacy.

ISSUE

Should NLACRC be required to continue funding insurance co-payments for Claimant's behavioral services?

FACTUAL FINDINGS

1. Claimant is a five-year-old male consumer who qualifies for regional center services under a diagnosis of autism. He lives at home with his parents, his sister and his grandmother.

2. Since June 2012, Claimant has been receiving behavioral services from McRory Pediatric Services (McRory). The services have been very helpful in addressing Claimant's behavioral deficits. (Exhibit 2; Testimony of Claimant's parents.)

3(a). The behavioral services had initially been funded by NLACRC. However, due to a change in the law, effective February 20, 2013, McRory began billing Claimant's medical insurer for the provided services. (Exhibit 2.)

3(b). Shortly thereafter, Claimant's mother informed NLACRC that the family could not afford the co-payments associated with the insurance funding for behavioral services. She asserted that, if NLACRC did not assist with the copayments, Claimant would not be able to access behavioral services. Consequently, in May 2013, NLACRC agreed to fund the \$10 co-payments for up to six sessions per week, with a maximum total of \$1,500 per year.

4. Effective July 1, 2013, the laws governing regional center funding altered NLACRC's ability to fund such co-payments. Welfare and Institutions Code section 4659.1, allowed regional centers to continue paying co-payments if, among other things, the family has an annual gross income which does not exceed 400 percent of the federal poverty level. If the family's income exceeds 400 percent of the federal poverty level, the regional centers may fund co-payments only if the consumer can establish one of three exemptions: (1) the existence of an extraordinary event which impacts the ability of the parent to pay the copayment; (2) the existence of catastrophic loss (such as that from a natural disaster or accident involving major injuries) that temporarily limits the parent's ability to pay and creates a direct economic impact on the family; or (3) significant unreimbursed medical costs of the consumer's care.

5. As a result of the change in the law, NLACRC informed Claimant's parents that NLACRC was required to discontinue funding Claimant's insurance co-payments for behavioral services.

6. On September 26, 2013, Claimant's mother sent NLACRC a letter requesting for an exemption under the statute to allow NLACRC's continued funding of Claimant's insurance co-payments for behavioral services. The letter stated, in part:

[W]e have been told that regional center will no longer cover the cost of co-payments due to new legislation. This is quite an issue for our family as we have went [sic] through a tumultuous time in recent months.

Due to an inability to refinance or obtain [m]odification on our upside-down mortgage, we were forced to short sale of [sic] our home of 10 years this past July. After months of attempting to save our residence, we were left with no choice. With mounting credit card bills, and scraping by on one income, we made the tough decision and moved to a smaller rental. This has been quite an adjustment for our family of five to move from a spacious ranch house to a three-bedroom townhome, but we are making the best of it.

Currently, my husband . . . is our only breadwinner. I have been a full-time nursing student since the beginning of 2012, and I do not have a consistent paycheck. I will not be able to find a stable job as a registered nurse or contribute to our family finances until next [F]all at the earliest. In addition to caring for our two children, my single mother resides with us as well. She does not have any income besides her social security. She helps us care for our children, but we also help her financially.

The short sale of our home and trying to keep our heads above water with our ballooning credit card bills has negatively affected our credit scores and financial security. Every dollar that my husband brings in already has a place to go. At this time, we are trying to recuperate and have hopes of rebuilding our financial foundation. This is taking a lot of work and sacrifice, but it is something that we must do for our family. I am aware that we do not meet the financial criteria for a family of five. However, if any consideration can be given to our current financial situation, it would be greatly appreciated.

We have been fortunate to have the help of the Regional Center these past few months to cover the expense of [behavioral services]. I have seen my son blossom under the guidance of his therapists, and I would hate to cut down on hours in order to make the service affordable for us. However, at where we are

financially, I am not sure if our family budget can withstand an additional monthly expense amounting to a few hundred dollars.

(Exhibit 5.)

7. On October 25, 2013, NLACRC sent Claimant's parents a Notice of Proposed Action (NOPA) stating that NLACRC would have to discontinue funding Claimant's insurance co-payments for behavioral services. The NOPA cited Welfare and Institutions Code section 4659.1, and informed Claimant's parents of the following:

NLACRC has reviewed your 2012 federal income tax returns and has determined that your gross annual income exceeds 400 percent of the federal poverty level. Furthermore, NLACRC has reviewed your request for an exemption based on the information you provided in your letter dated September 26, 2013 outlining your family's current financial situation. NLACRC is not in agreement that this demonstrates the existence of either an extraordinary circumstance or catastrophic event; therefore NLACRC is unable to continue funding [Claimant's] health insurance co-payments at this time. . . .

(Exhibit 1.)

8. On November 14, 2013, Claimant's mother signed and subsequently submitted a Fair Hearing Request, requesting that NLACRC continue to fund the co-payments for Claimant's behavioral services. (Exhibit 1.)

9(a). In order to determine whether an exemption can be established, NLACRC reviews specified information using guidelines set forth in the Federal Register annual update of poverty guidelines. Essentially, the family submits documentation of the number of persons living in the home and the family's gross income (copies of W-2 Wage Earners Statements, payroll stubs, a copy of the prior year's state income tax return, or other documents and proof of other income). NLACRC reviews this information to determine if the family's income exceeds 400 percent of the federal poverty level based on family size and income level. (Exhibit 3.)

9(b). For a family of four, a gross income of \$94,200 is 400 percent of the federal poverty level. For a family of five, a gross income of \$110,280 is 400 percent of the federal poverty level. (Exhibit 3.)

10. In this case, Claimant's grandmother lives with the family and helps with child care. She has social security income, the amount of which was not disclosed to NLACRC nor established by the evidence. Additionally, Claimant's

family does not claim her as a dependent for purposes of federal income tax. Consequently, the analysis regarding whether the family's income exceeds 400 percent of the federal poverty level was conducted based on a family size of four.

11(a). The family's 2012 federal income tax return listed their adjusted gross income as \$125,290. According to a 2012 W-2 Wage and Tax Statement, Claimant's father's wages from his primary employer was \$101,207.62. According to 2013 W-2 Wage and Tax Statements, Claimant's father's wages from his primary employer was \$97,208.49, and his wages from another employer were \$1,440. Claimant's mother did not have any income and is currently a full-time student.

11(b). Based on the documentation submitted, the family's gross income was over \$94,200, and therefore exceeded 400 percent of the federal poverty level.

12. Given their level of income, Claimant's family sought to establish that they met one of the three statutory exemptions.

13(a). At the fair hearing, Claimant's family presented documentation regarding their monthly expenses, which they asserted exceeded their net monthly income. They listed their total monthly expenses at \$6,387.73, and their total net monthly income at \$5,300.

13(b). However, based on Claimant's father's income for 2013, their monthly gross income is approximately \$8,200. When questioned about the discrepancy between that monthly gross income and the asserted \$5,300 net income, Claimant's mother acknowledged that in addition to taxes, other monthly deductions from gross income for insurance, retirement and dependent care impacted their monthly net income.

14. NLACRC found that none of the statutory exemptions could be established. NLACRC did not find any "extraordinary event" or "catastrophic loss" which impacted the family's ability to pay the co-payment, nor did NLACRC find the existence of any significant unreimbursed medical costs of Claimant's care. Specifically, NLACRC determined that the family's sale of their home and payment of monthly expenditures did not amount to an "extraordinary event" or "catastrophic loss."

15. Claimant's parents testified credibly at the fair hearing. They pointed out that they had to sell their home and move into a smaller rental property to recuperate from accumulated debt. They emphasized that their family's monthly expenditures exceeded their income, that they are currently trying to improve their credit scores, and that taking on the co-payment expense "would be a huge step back." (Testimony of Claimant's parents.)

16. Based on the totality of the evidence, Claimant's family did not establish that they met any of the statutory exemptions which would allow NLACRC to continue funding insurance co-payments for Claimant's behavioral services.

LEGAL CONCLUSIONS

1. Cause exists to deny Claimant's appeal of the Service Agency's termination of funding insurance co-payments for Claimant's behavioral services. (Factual Findings 1 through 16.)

2(a). 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, Evid. Code, §§ 115 and 500.)

2(b). In proposing to discontinue Claimant's previously-funded insurance co-payments for behavioral services, NLACRC bears the burden of proving by a preponderance of the evidence that the change in services is appropriate. The Service Agency has met its burden of proof on that issue.

3. Welfare and Institutions Code section 4659.1, provides in pertinent part:

(a) If a service or support provided pursuant to a consumer's individual program plan . . . is paid for, in whole or in part, by the health care service plan or health insurance policy of the consumer's parent, guardian, or caregiver, the regional center may, when necessary to ensure that the consumer receives the service or support, pay any applicable copayment or coinsurance associated with the service or support for which the parent, guardian, or caregiver is responsible if all of the following conditions are met:

(1) The consumer is covered by his or her parent's, guardian's, or caregiver's health care service plan or health insurance policy.

(2) The family has an annual gross income that does not exceed 400 percent of the federal poverty level.

(3) There is no other third party having liability for the cost of the service or support, as provided in subdivision (a) of Section 4659 and Article 2.6 (commencing with Section 4659.10).

[¶] . . . [¶]

(c) Notwithstanding paragraph (2) of subdivision (a) . . . , a regional center may pay a copayment or coinsurance associated with the health care service plan or health insurance policy for a service or support provided pursuant to a consumer's individual program plan . . . if the family's or consumer's income exceeds 400 percent of the federal poverty level, the service or support is necessary to successfully maintain the child at home or the adult consumer in the least-restrictive setting, and the parents or consumer demonstrate 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 coinsurance.

(2) The existence of catastrophic loss that temporarily limits the ability to pay of the parent, guardian, or caregiver, . . . 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.

(d) The parent, guardian, or caregiver of a consumer . . . shall self-certify the family's gross annual income to the regional center by providing copies of W-2 Wage Earners Statements, payroll stubs, a copy of the prior year's state income tax return, or other documents and proof of other income.

¶ . . . ¶

(g) Regional centers shall not pay health care service plan or health insurance policy deductibles.

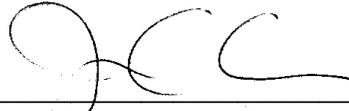
4. Based on the federal poverty guidelines, Claimant's family's income exceeds 400 percent of the federal poverty level and is thus at a level which is not eligible for continued regional center funding of co-payments. Additionally, although the family had to sell their home and move to a smaller rental and continues to have substantial debt, this financial situation does not constitute an "extraordinary event"

or “catastrophic loss.” Claimant’s family failed to establish that they meet any of the statutory exemptions which would allow NLACRC to continue funding insurance co-payments for Claimant’s behavioral services. Given the foregoing, NLACRC’s termination of funding insurance co-payments for Claimant’s behavioral was appropriate.

ORDER

North Los Angeles County Regional Center’s termination of funding insurance co-payments for Claimant’s behavioral services is upheld. Claimant’s appeal is denied.

DATED: February 20, 2014



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.