

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

vs.

CENTRAL VALLEY REGIONAL CENTER,

Service Agency.

OAH No. 2014040482

DECISION

This matter was heard before Administrative Law Judge Dian M. Vorters, State of California, Office of Administrative Hearings on May 27, 2014, 2014, in Visalia, California.

Claimant's father, represented claimant. Claimant's mother was also present.

Shelley Celaya, Client Appeals Specialist, represented Central Valley Regional Center (CVRC).

Evidence was received and the record remained open to allow submission of evidence from both parties. On May 28, 2014, CVRC filed the complete Title 19 Case Notes from November 30, 2010, through May 20, 2014. This document was marked as Exhibit 20 and admitted into the record. On May 30, 2014, claimant filed an audio CD of his June 7, 2013 school district IEP meeting. This item was marked as Exhibit C29 and admitted into the record. The record closed on May 30, 2014.

ISSUE

Did CVRC appropriately determine that claimant is not eligible for occupational therapy and speech therapy services funded through CVRC because he receives these services through the Visalia Unified School District?

FACTUAL FINDINGS

1. Claimant is currently six years, three months of age. He is diagnosed with autism and is eligible to receive services from CVRC on this basis. Claimant lives with his parents and his older sister.

2. On November 29, 2010, CVRC evaluated claimant and found him to be significantly delayed in the areas of cognition, communication (expressive and receptive), physical/fine motor skills, social/emotional skills, and adaptive skills. Consequently CVRC determined claimant to be eligible for Early Start services at age 33 months. At intake, it was recommended that claimant undergo an audiology evaluation due to “significant speech and language delays,” and a psychological evaluation to “rule out autism.” A consultation to encompass occupational therapy, physical therapy, and speech and language therapy was offered within the early start program.

3. On January 21, 2011, claimant underwent a psychological evaluation at CVRC and was found to meet 11 out of 12 diagnostic criteria for Autistic Disorder. He was two weeks shy of his third birthday at the time. The evaluator recommended that claimant would benefit from continued intensive behavioral services, a referral to the school district for special education to include an enriched preschool program and speech and language therapy, a referral to occupational therapy to address his sensory issues, a referral to a child psychiatrist to assess the efficacy of psychopharmacological interventions, and extracurricular activity that would allow interaction with peers to improve social skills.

Services through the School District and CVRC

4. Claimant attended the Visalia Unified School District (VUSD) during the 2013-2014 school year. He received special education services through an Individualized Education Program (IEP). His initial IEP meeting was on February 7, 2011. Speech and language impairment were noted to be his primary disability. In his initial preschool assessment it was recommended that he receive speech and language therapy due to noted delays in his communication skills.

5. Claimant’s initial Individual Program Plan (IPP) Agreement with CVRC was also dated February 7, 2011. This IPP identified the following necessary services and supports: Academic Advocacy, Parent Training, Intensive Behavioral Services (IBS), and respite. The plan was for claimant to receive speech/language therapy in preschool from VUSD staff and behavioral services through a CVRC referral.

In February 2011, claimant began receiving IBS through Bright Future, to address deficits in communication, social and self-help skills, and excesses in acting out behaviors such as hitting, kicking, yelling, and stereotypical behaviors. Bright Future provided behavioral therapy to claimant until the parents terminated its services. According to the Bright Future Exit Report dated November 30, 2011, the objective was to increase claimant’s

independence with daily activities, establish routine, clarify behavioral expectations, address target behaviors (including tantruming, screaming, throwing, hitting, and kicking), establish a functional mode of communication, increase early language and learning skills, and increase receptive language and ready to learn skills. Claimant's mother testified that they felt Bright Future was "very unprofessional" and had lied in reports stating that claimant could perform tasks that he could not.

6. Claimant's next IPP with CVRC was dated February 14, 2012. This IPP identified necessary services and supports as: specialized academic services, intensive behavioral services, and respite. Claimant was receiving IBS through a new provider, ACES. His IPP summarized the preschool services he was receiving through VUSD in an intensive Autism-Specialty Special Day Class. VUSD provided transportation, specialized instruction, speech therapy, and group occupational therapy to assist children with sensory integration.

Claimant received IBS services from ACES for approximately six months. In March 2012, IBS services were terminated because according to the mother, claimant's behaviors were so severe that the provider could not handle him. Claimant's parents determined that ABA-like behavioral services "did not seem to work" for claimant. Instead, the family focused on securing speech and occupational therapy for claimant.

7. An IEP meeting at the VUSD was held on February 7, 2013. Apparently the parents were not present. At a follow-up IEP meeting on June 7, 2013, the team discussed extended school year services. Speech services and occupational therapy consultation were to be provided during summer classroom time. Claimant was enrolled in the Diagnostic Academic Skills Class designed for kindergarten students with autism for the 2013-2014 school year.

8. In March 2013, claimant was assigned a new service coordinator at CVRC, Linda Gutierrez. Claimant's mother spoke to Ms. Gutierrez in April 2013, about funding occupational therapy. According to claimant's mother, Ms. Gutierrez informed her of CVRC's policy to not "double pay" for services that a consumer is receiving from the school district and requested a copy of speech and occupational therapy evaluations that the parents had privately secured. The mother stated that after this discussion with Ms. Gutierrez, she never got a written response from CVRC regarding funding/provision of occupational therapy. Ms. Gutierrez testified that she did not issue a Notice of Proposed Action (NOPA) because after attending the June 7, 2013 IEP meeting at the district, she believed the parents were satisfied with what the school was providing.

9. Claimant's next IPP meeting with CVRC was on April 11, 2013. This IPP identified necessary services and supports to include: CVRC will fund ABA services if parents agree to reinstate such services, CVRC will provide ongoing Case Management services and monitor progress annually as needed, CVRC will fund "1:1" supervision services at the YMCA summer program if necessary to address tantrums, Special Education through the VUSD, and Medi-Cal. It was also agreed that the CVRC worker would attend

claimant's next IEP meeting at VUSD. At the time, claimant was not engaged in ABA services and his parents were not interested in having "another vendor in their home" because of "past experience." Parents reported continued tantrums and aggressive tendencies. The parents inquired about speech therapy/occupational therapy to be funded by CVRC; however, the IPP report states that "no concrete answer [was] given" and that occupational/speech therapy was "incorporated in IEP last school year."

10. In January 2014, claimant's father contacted CVRC because claimant's behaviors had gotten worse. He also sought an answer to their request for CVRC to fund occupational therapy. Ms. Gutierrez informed him that the request had been denied. Subsequently, on January 17, 2014, Ms. Gutierrez went to claimant's home and met with the mother. They discussed resumption of intensive behavioral services to help claimant with "maladaptive behaviors to improve daily living skills." At the end of the meeting, claimant's mother requested to resume ABA services.

11. By letter dated January 28, 2014, claimant's parents agreed to renew his 2013 IPP, "subject of course to any additional services that may be approved." This letter also requested CVRC to let them know as soon as possible "whether or not [claimant] will be receiving the in-home consultations, occupational therapy or speech therapy."

12. On March 12, 2014, CVRC mailed a written Notice of Proposed Action to claimant denying funding for occupational therapy and speech therapy outside of the IEP process. The notice was effective April 12, 2014, and cited statutory authority for the regional center's decision. (Welf. & Inst. Code, § 4659.) The notice also informed claimant of his appeal rights.

13. Ms. Gutierrez testified that occupational and speech therapies were never part of claimant's IPP and the parents had never previously requested reimbursement for privately obtained occupational therapy expenses. Her understanding from the June 7, 2013 IEP was that the school district would begin to provide occupational therapy consult services. The IEP team meeting notes state that "OT consult" would begin on June 24, 2014. According to claimant's mother, the occupational therapist comes into the classroom for 20 minutes and provides the teacher with advice and recommendations on what she can do for claimant. The mother stated that they have not asked the school for more occupational therapy skills through an IEP because they are now in the process of moving out of the VUSD.¹

Private Occupational and Speech Therapy

14. In 2012, claimant pursued alternate means of obtaining occupational and speech therapy. Claimant's physician, Ashraf Ghaly, M.D., made a referral for an evaluation and occupational therapy to Medi-Cal (Anthem Blue Cross of California) seeking coverage

¹ The family will be moving to Riverside County and their regional center case will be transferred to Inland Regional Center.

for occupational therapy. On June 25, 2012, claimant received a “Notice of Action” from Medi-Cal denying the request for coverage. The Medi-Cal denial letter stated:

[I]t was decided that occupational therapy for your child’s autistic disorder and developmental delay is not medically needed. This would need to improve a patient’s level of functioning within a reasonable or short period of time that have been limited due to an illness, an injury, loss of a body part, or a birth defect...occupational therapy for children with a developmental delay is provided by your local regional center. Please call The Central Valley Regional Center at ...for further assistance. Please call your child’s primary care doctor (PCP) for other treatment options.

The notice informed claimant of his right to appeal. The family did not pursue an appeal of the Medi-Cal denial.

15. In August 2012, after the Medi-Cal denial, claimant’s parents obtained a private evaluation for occupational therapy and speech therapy through the Center for Communication Skills/California Learning Connection and Goodfellow Occupational Therapy (Goodfellow). At that time, claimant was four and one-half years of age and attending a Special Day Class in the VUSD. His parents were dissatisfied with the amount of speech and occupational therapy that claimant was receiving through VUSD. His father’s stated concerns included claimant’s sensory processing relating to food (picky eater, cannot stand the sight/smell of fruits and vegetables or anything green) and self-regulation relating to aggression.

16. Courtney Schulman, M.S., a registered occupational therapist conducted claimant’s occupational therapy evaluation on August 6, 2012. After the assessment, Ms. Schulman prepared a report in which she documented the father’s comments, claimant’s test results, observed behaviors, and motor skills. Claimant displayed difficult behavior during the assessment including crying/screaming, lashing out, and slapping his father’s arms when asked to perform a task. During motor development testing, claimant was able to hold a writing utensil, open/close scissors using two hands, pick up small objects, and stack blocks. He was observed to be able to climb stairs, seat himself, and mount suspended equipment. During sensory motor testing, he was easily distracted by noise and movement and became engrossed with spinning objects, flipping light switches, and looking at objects out of the corner of his eye. He sometimes did not respond when his name was called.

Ms. Schulman recommended claimant receive “medically based occupational therapy intervention.” The intervention was recommended to be performed in a clinical setting and focused on “improving [claimant’s] occupational performance throughout his daily life across all environments.” The recommended frequency was one time per week for 60 minutes, for six months, with a progress review at that time.

17. Debbie Esquivel, M.A., a licensed speech/language therapist conducted claimant's speech and language evaluation on August 9, 2012. After the assessment, Ms. Esquivel prepared a report of the parent's comments, test results, and her observations. The report noted that ABA intervention, which claimant had received for approximately one and one-half years, had recently been terminated by the parents. Parents reported improvement in routine behaviors but an increase in undesirable behaviors. Claimant's problem behaviors at home included aggression, yelling, and withdrawal.

Ms. Esquivel did not perform a formal articulation assessment due to "noncompliance and behavioral disruptions." Based on her informal observations, claimant's "individual speech sound development did not appear to be significantly delayed; however, his use of speech is limited." His parents reported his expressive vocabulary was less than 20 words, generally using single word utterances, but sometimes two to three words. Ms. Esquivel found claimant's speech to be 70 to 80 percent intelligible in known contexts. Vocal quality and pitch appeared within normal limits. Speech rate and fluency were difficult to assess with his limited utterances, but no concerns were noted or reported in this area. Claimant's language assessment results showed consistent delays of 27 to 45 months in areas of pragmatics, gesture, play, language comprehension, and language expression. He was weakest in the area of pragmatics or social use of language.

Ms. Esquivel recommended speech-language intervention of once per week for 60 minutes to address deficits in speech, language, and functional communication skills.

18. Claimant attended approximately five months of occupational/speech therapy at Goodfellow. Goodfellow generated an Occupational Therapy Exit Report dated April 4, 2013. The report was prepared by Ms. Neuwirth, and outlined treatment and areas of concern with claimant's fine/visual motor skills, sensory processing/tactile stimuli, and behavior/self-regulation. The Exit Report summary stated the following:

[Claimant] participated well during OT sessions and was making some progress with tactile processing. Negative behaviors did interfere with therapy sessions and progress towards goals. Parents were concerned about [claimant's] behaviors and chose to discontinue OT sessions to focus on behavior rehabilitation. Therefore, OT services were discontinued as of 4/4/2013.

19. Claimant's parents paid \$400 each for the initial occupational and speech therapy evaluations. Claimant participated in the recommended occupational therapy sessions through Goodfellow from October 2012 through February 2013. Claimant submitted receipts for his out-of-pocket expenses for occupational therapy.² He seeks

² Receipts from Goodfellow for occupational therapy are itemized as follows: Initial evaluation \$400. Occupational therapy for month of October 2012 (\$400), November 2012

reimbursement from CVRC for the cost of the occupational therapy he received from Goodfellow (\$1,600), as well as the cost of the two initial evaluations (\$800). Claimant's mother acknowledged that the family never submitted any receipts to CVRC for payment and that reimbursement for occupational therapy was never included in claimant's IPP.

Claimant's School Speech/Language Therapist - Brooke LoBue

20. Brooke LoBue is claimant's speech and language therapist in the VUSD. Ms. LoBue earned her master's degree in Speech Language Pathology in 2007. She is licensed and holds a Clinical Rehabilitative Services Credential for Speech and Language Pathology and a Certificate of Clinical Competence which allows her to use the title of "pathologist." Ms. LoBue defined "speech therapy" as the way in which the muscles and motoric movements of the mouth produce sounds and words, also referred to as "articulation therapy" (For example: aaa, baa). She described "language therapy" as "more pragmatic," encompassing communication, socialization, semantics, and grammar – using language appropriately." She identified claimant's problems as more language oriented.

21. Ms. LoBue worked with claimant during the 2013-2014 school year in a special day class for students with autism. The program is called the Collaborative Partnerships Program and operates at the pre-kindergarten through sixth grade levels. She explained that she has a "center" in the classroom and students rotate into her center one or two at a time. Ms. LoBue stated that if she thought any child needed more language therapy, she would bring it up in an IEP, she would not recommend that the student get it outside of the school. She does have students who receive speech/language services through the Children's Hospital in Madera. The drive is about an hour south of Visalia.

22. Ms. LoBue attended claimant's most recent IEP at the VUSD on February 6, 2014. At the IEP, they discussed claimant's school progress including speech therapy. Ms. LoBue described claimant's limitations as "a pretty severe delay." His IEP requires him to receive at least 20 minutes of speech therapy per week of "individual or group" speech/language therapy. Claimant is slotted to see her for a minimum of two, 10 minute sessions; one session is individual and for the other, claimant is partnered with a student who possesses more advanced language skills. However, Ms. LoBue stated that on any given day, claimant may receive five to 30 minutes depending on his state of compliance. She stated that if they are "in a groove" they keep going. Ms. LoBue helped draft goals for claimant in collaboration with his teacher and others and she worked with him on his measurable goals. For example, under Goal No. 2, claimant can presently "imitate two to three word phrases in 80 percent of opportunities." By February 6, 2015, his goal is to be able to independently use two to three word phrases for a variety of functions (requesting, greeting, commenting, and refusing).

(\$400), December 6, 2012 (\$100), January 2013 (\$300), and February 2013 (\$400). Total occupational therapy receipts were \$1,600, not including the initial evaluations.

23. Ms. LoBue has work experience providing speech/language therapy in a non-school environment. She explained that in an educational setting, districts require therapists to outline current functioning and goals in terms of educational progress. In a private setting the focus is more global to include functioning in the home environment and is designed to augment speech/language therapy provided in school. In Ms. LoBue's opinion, the therapy provided by the school district is adequate to meet claimant's needs in the school environment. However, she shared that every language impaired child would benefit from outside therapy sessions.

24. Ms. LoBue is familiar with Applied Behavior Analysis (ABA). In her opinion, claimant would benefit from this. ABA programs are run by Board Certified Behavior Analysts. The goal is to encourage and maintain appropriate behaviors through modification of the environment.

CVRC Personnel

25. Barbara Newman was claimant's previous case manager from Early Start Intake until May 2012. In October 2012, she became the Federal Revenue Coordinator at CVRC. As claimant's case manager, Ms. Newman attended IEP meetings at VUSD. She reviewed claimant's initial IEP dated February 7, 2011, and confirmed that he was to receive language/speech services in the amount of 20 minutes per day, one day a week. Claimant's vocabulary goal was to increase expressive communication skills through use of a functional system of communication by 15 words. According to Ms. Newman, the 20 minute session is not the only time speech/language is addressed because the entire classroom is geared to improve this deficit. Ms. Newman also stated that speech therapy is not the only means of teaching a child to communicate. For children with Autism, spoken language is a goal. However, autism core deficits include lack of socialization, i.e. getting a child to want to interact with others. ABA services are designed to address core deficits.

26. Regarding funding, Ms. Newman explained that CVRC does not provide direct services and that the school district is the primary resource for families. The regional center will not fund therapies being provided by the school system, as that would create a "duplication of service." If a parent feels that the service provided by the school is not meeting the child's needs, the parent can call for another IEP to ask for more and different services from the school district. CVRC can also help locate services in the community that can provide a particular service. If either Medi-Cal or private insurance denies a claim, the parents can appeal the denial. If the parent can establish that a service is necessary, then the regional center will consider funding the service. She cautioned that the Lanterman Act mandates that all other funding avenues be exhausted.

27. Rachel Hagans is the Assistant Director of Case Management Services at CVRC. Ms. Hagans stated that when deciding on a purchase of service, they first look to the Lanterman Act and then to the Purchase of Service Policy. The Purchase of Service Policy was developed by CVRC and is used as a "guideline" only. Under "Therapy Services," the Purchase of Service Policy states:

Therapy services include occupational, physical, speech, or nutritional therapies that are required to prevent deterioration of a specific dysfunction or to improve the functional level of a client. These services are not generally purchased by the regional center.

Under “Criteria,” the Purchase of Service Policy states:

In most cases the need for therapy is met by public school programs. California Children’s Services, Medi-Cal, private insurance or other resources. Purchased therapies must always relate to a specific Individual Program Plan objective. Funding is discontinued when **generic resources have been identified**, ... (Bold in original.)

The regional center may purchase therapy services for a client if the following criteria are met:

- a. The client requires therapy to prevent a specific deterioration of condition, or to form the basis of a long-term plan, or to enable the client to live a more independent and productive life; AND
- b. An assessment by a qualified professional has been completed and indicates that the client would benefit from the therapy and recommends a time-limited, specific course of treatment; AND
- c. **Generic resources are not available.** (Bold in original.)

The Purchase of Service Policy cites Welfare and Institutions Code section 4659, subdivision (c), as prohibiting regional centers from purchasing any service that would otherwise be available from “Medi-Cal, Medicare, the Civilian Health and Medical Program for Uniform Services, In-Home Supportive Services (IHSS), California Children’s Services, private insurance or a health care service plan ...”

28. Ms. Hagans testified that in claimant’s case, the school district is the generic resource. She stated that CVRC does not have any updated reports on whether the school is meeting claimant’s needs and that all evaluations on claimant are “a couple of years old.” She was referring to the August 2012 evaluations conducted by the Center for Communication Skills. She referenced an attempt by the VUSD to conduct an Occupational Therapy Evaluation on October 23, 2012. Unfortunately, claimant was not present for the session. The parents were subsequently called on November 13, 2012, and reported that claimant would not be returning to school and they did “not feel a need to further assess [claimant] for occupational therapy ... within his educational setting at this time.” They

indicated that they “may consider further assessment at a later time.” Occupational consult services were ultimately added to claimant’s IEP in June 2013. (Factual Finding 13.) Ms. Gutierrez described this model as the occupational therapist works with the teacher who works with the student.

29. Claimant exhibits some self-injurious and aggressive behaviors at school as outlined in his February 6, 2014 IEP. To address this concern, VUSD created a Behavior Intervention Plan (BIP) as part of the 2014 IEP. Additionally, in January 2014, at the mother’s request, claimant’s CVRC case manager amended his IPP to reinstate ABA services. As of the hearing date, claimant had not resumed in-home ABA, due to the family’s pending relocation.

Discussion

30. Because claimant is receiving speech and language therapy through his school district IEP, the regional center cannot fund additional in-kind therapies. Augmentation of these therapies, if appropriate, can be requested and delivered through the IEP process. (Welf. & Inst. Code, § 4659, subd. (a).)

31. All other legal arguments have been considered and are found to be without merit.

LEGAL CONCLUSIONS

Applicable Laws and Regulations

1. The statutory scheme known as the Lanterman Developmental Disabilities Services Act (Lanterman Act) was enacted by the legislature to provide facilities and services to meet the needs of those with developmental disabilities. (Welf. & Inst. Code, §§ 4500-4846; *Mason v. Office of Administrative Hearings* (2001) 89 Cal.App.4th 1119, 1125.)

2. Once a regional center determines that a person is eligible for services, an individual program plan must be developed to determine what services and supports are required, taking into account the needs and preferences of the individual and the family, and promoting independent, productive, and normal lives.

Individual plans are formulated as part of a collaborative process of individual needs determination by the disabled person and, if appropriate, her parents or guardians. (Welf. & Inst. Code, § 4646, subd. (b).) The plan must be prepared jointly by the planning team, and decisions concerning the goals, objectives, and services provided shall be made by agreement between the regional center and the disabled person. (Welf. & Inst. Code, § 4646, subd. (d).)

3. The state “allocates funds to the centers for operations and the purchasing of services, including funding to purchase community-based services and supports.” (*Michelle*

K. v. Superior Court 221 Cal.App.4th 409, 423.) Regional centers are required to contract with appropriate agencies to provide fixed points of contact in the community for persons with developmental disabilities and their families, such that they have access to the services and supports best suited to them throughout their lifetime. (Welf. & Inst. Code, §§ 4620, 4648, subd. (a)(1).)

The services provided must be effective in meeting the plan's goals, and must also reflect the preferences and choices of the consumer, as well as the cost-effective use of public resources. *Harbor Regional Center v. Office of Admin. Hearings* (2012) 210 Cal.App.4th 293, 307; Welf. & Inst. Code, §§ 4512, 4646, subd. (a).)

4. Regional center funds shall not be used to supplant the budget of any agency that has a legal responsibility to serve all members of the general public and is receiving public funds for providing those services. (Welf. & Inst. Code, § 4648, subd. (a)(8).)

5. Welfare and Institutions Code section 4659 provides:

(a) Except as otherwise provided in subdivision (b) or (e), 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, both of the following:

(1) Governmental or other entities or programs required to provide or pay the cost of providing services, including Medi-Cal, Medicare, the Civilian Health and Medical Program for Uniform Services, school districts, and federal supplemental security income and the state supplementary program.

(2) Private entities, to the maximum extent they are liable for the cost of services, aid, insurance, or medical assistance to the consumer.

(b) Any revenues collected by a regional center pursuant to this section shall be applied against the cost of services prior to use of regional center funds for those services. This revenue shall not result in a reduction in the regional center's purchase of services budget, except as it relates to federal supplemental security income and the state supplementary program.

[¶]...[¶]

(e) This section shall not be construed to impose any additional liability on the parents of children with developmental disabilities, or to restrict eligibility for, or deny services to, any individual who qualifies for regional center services but is unable to pay.

6. Regarding regional center purchase of service requirements, California Code of Regulations, title 17, section 50612, states in relevant part:

- (a) A purchase of service authorization shall be obtained from the regional center for all services purchased out of center funds. This requirement may be satisfied if the information is provided, sent, or delivered, as the case may be, in an electronic record capable of retention by the recipient at the time of receipt.
- (b) The authorization shall be in advance of the provision of service, except as follows:
 - (1) A retroactive authorization shall be allowed for emergency services if services are rendered by a vendored service provider:
 - (A) At a time when authorized personnel of the regional center cannot be reached by the service provider either by telephone or in person (e.g., during the night or on weekends or holidays);
 - (B) Where the service provider, consumer, or the consumer's parent, guardian or conservator, notifies the regional center within five working days following the provision of service; and
 - (C) Where the regional center determines that the service was necessary and appropriate.

Service Determination

7. Claimant is eligible for CVRC services based on his diagnosis of autism. (Welf. & Inst. Code, § 4512.) In addition to special education services that he receives from his school district, claimant also qualifies for and will benefit from intensive applied behavioral services (ABA) through CVRC. He has intermittently received ABA services through two different vendors, Bright Future Behavioral Sciences and ACES. At the parent's request, intensive in-home ABA services through both providers were terminated in 2011 and 2012. However, in January 2014, ABA services were reinstated into his IPP. (Factual Finding 29.)

8. It is not disputed that claimant benefits from speech/language therapy to assist him in his communication and interpersonal skills. Claimant is six years of age and attended a special day class within the VUSD during the 2013-2014 school year. Pursuant to his school district IEP, claimant received specialized speech therapy and consult occupational therapy in the classroom.

9. Claimant seeks additional occupational therapy to assist him in his functional abilities, social participation, education, and activities of daily living. Occupational therapy

is not and never has been a component of claimant's IPP. Claimant receives this service as well as speech/language therapy through his school district. The family obtained a private evaluation from Goodfellow in August 2012, and claimant received occupational therapy from Goodfellow from October 2012 through February 2013. The cost was onerous and the parents now seek reimbursement for these expenses. (Factual Finding 19.) At no time prior to hearing did the parents request CVRC to reimburse them for privately secured occupational therapy. Claimant did not establish that additional occupational and speech therapy was "necessary and appropriate" at the time he obtained the services through Goodfellow. (Cal. Code Regs., tit. 17, § 50612, subd. (b).) Also, claimant's request for retroactive reimbursement is not timely as it was not made in advance of the provision of service, and not prompted by an emergency situation. (*Ibid.*)

10. CVRC provided persuasive evidence that claimant's request for additional occupational and speech therapy funded through the regional center was properly denied. The Lanterman Act provides that regional centers shall pursue all possible sources of funding for their consumers. Funding sources include private insurance, Medi-Cal, supplemental security income, and school districts. Provision of services must also be "cost-effective." (Welf. & Inst. Code, § 4646, subd. (a).) According to the Goodfellow Exit Report, the parents terminated occupational therapy services through Goodfellow because claimant's behaviors interfered with progress toward goals. They instead chose to focus on behavior rehabilitation. Hence, it is not established that privately obtained occupational and speech therapy would be beneficial to claimant at this time.

11. Claimant's need for speech and occupational therapy is met through the school district. The district appears to have been responsive to claimant's requests through the IEP process. If additional speech/language and/or occupational therapy is warranted, it is appropriate for claimant's parents to request services through the IEP process. (Factual Finding 30.)

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ORDER

The appeal of claimant for speech and occupational therapy services outside of the school district setting and funded by Central Valley Regional Center, is DENIED. Claimant's request for reimbursement of privately obtained occupational/speech therapy is DENIED.

The Notice of Proposed Action, denying eligibility for direct funding of occupational and speech therapy, effective April 12, 2014, is AFFIRMED.

DATED: June 9, 2014

DIAN M. VORTERS
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision in this matter. Both parties are bound by this decision. Either party may appeal this decision to a court of competent jurisdiction within 90 days after receiving notice of this final decision. (Welf. & Inst. Code, § 4712.5, subd. (a).)