

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of :

CLAIMANT,

vs.

EASTERN LOS ANGELES REGIONAL
CENTER,

Service Agency.

OAH No. 2015010184

DECISION

Matthew Goldsby, Administrative Law Judge, heard this matter on April 22, 2015, at the Eastern Los Angeles Regional Center in Alhambra, California.

Judy Perez, Fair Hearing Coordinator, appeared and represented the Eastern Los Angeles Regional Center (the Service Agency).

Claimant's mother¹ represented claimant, who was not present during the hearing.

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision at the conclusion of the hearing.

STATEMENT OF ISSUES

The issue in this matter is whether the Service Agency should be required to fund insurance copayments for behavioral services provided to claimant and paid for by private insurance coverage.

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¹ Claimant and his family are not identified by name in order to protect their privacy.

EVIDENCE CONSIDERED

1. Service Agency's Exhibits 1-5 and 8; and claimant's Exhibits A-C.
2. Testimony of: Judy Perez, Fair Hearing Coordinator; claimant's mother; and claimant's father.

FACTUAL FINDINGS

1. Claimant is a 12-year-old boy with a diagnosis of autism. He is attending general education classes at South Pasadena Middle School. He lives with his parents and brother in South Pasadena, California.
2. Claimant requires behavioral services. He is hard to control and ignores direction. He is 5-feet 2-inches tall and weighs 140 pounds, larger than his mother, which exacerbates her difficulties in controlling his behavior. He has developed a tendency to steal items, including electronic equipment. He lies when caught doing something wrong, such as putting food in the creases underneath the dining table and burning papers in the trashcan. Improvement in non-compliant behaviors is a stated goal in the Individual Program Plan prepared jointly by the Service Agency and claimant's parents.
3. In the past, behavioral services were provided by the Center for Autism Related Disorders (CARD) and funded through private insurance. The Service Agency assisted claimant by funding the behavior management copayments. However, the family became dissatisfied with the level of service and decided to change services. Services through CARD ceased on February 9, 2014, and the family began searching for a new behavioral management agency within their insurance coverage.
4. During the gap in service, claimant continued to reside at home with his family. Claimant continued to receive other services from the Service Agency, including programs in social skills, mental health, adaptive skills, and respite care.
5. When efforts to find a new behavior management agency stalled, the Service Agency agreed to temporarily fund behavioral management with Howard Chudler & Associates, Inc. (Chudler), an established vendor of the Service Agency. The Service Agency extended temporary funding of services with Chudler for three periods of time: April 1, 2014 to May 31, 2014; September 1, 2014 to December 31, 2014; and January 1, 2015 to March 31, 2015.

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6. Claimant currently receives six hours of services per week with Chudler. The family was satisfied with the level of service provided by Chudler, but Chudler would not accept payment through the mother's insurance policy.

7. On December 14, 2014, the Service Agency issued its Notice of Proposed Action to claimant that the temporary funding of behavioral services with Chudler would terminate on March 31, 2015.²

8. The family has agreed to return to CARD for behavioral management services. CARD recommended 16 hours per week in services. The services will be covered by private insurance, but the copayment for these services will exceed \$500 per month.

9. The copayments will cause a strain on the household finances. Claimant's mother has worked for more than 30 years, most recently as a registered nurse at a major hospital. She earned wages of \$109,812 in 2013. Claimant's father has not worked since claimant was born to devote his full time to caring for claimant. The total household gross income in 2013 was \$114,877, including interest, dividends, refunds and capital gains.

10. In addition to ordinary living expenses, claimant's parents pay for claimant's swimming and karate lessons, his participation in religious activities, and his medication. Their older son is an adult and attends college, majoring in Pharmacy. The parents pay approximately \$30,000 per year for the older son's tuition and education expenses and they furnish free room and board in their home. The parents testified that they are required to pay for their son's college education and to support him through his higher education as a matter of "cultural obligation."

11. In 2015, four hundred percent of the federal poverty level was \$97,000 for a family of four.³ Claimant's parents' household annual income currently exceeds \$97,000.

12. Claimant is in good general health and has suffered no serious illness or hospitalization within the past year. He has unreimbursed medical care costs, including dental services, but the amounts are insignificant.

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² After the Notice of Proposed Action was mailed, the Service Agency again extended temporary funding, which is currently scheduled to expire on August 31, 2015.

³ In 2015, the poverty threshold is \$24,250 for a family of four; four hundred percent of that threshold equals \$97,000. (Office of the Assistant Secretary for Planning and Evaluation, U.S. Department of Health & Human Services, 2015 Poverty Guidelines, 2015.)

LEGAL CONCLUSIONS

1. The Service Agency is not required to fund the insurance copayments relating to behavior health treatment for claimant. (Factual Findings 1-10.)

2. The Frank D. Lanterman Developmental Disabilities Act (Lanterman Act) sets forth a regional center's obligations and responsibilities to provide services to individuals with developmental disabilities. (Welf. & Inst. Code, § 4500 et seq.) To comply with the Lanterman Act, a regional center must provide services and supports that "enable persons with developmental disabilities to approximate the pattern of everyday living available to people without disabilities of the same age." (Welf. & Inst. Code, § 4501.)

3. A regional center is required to identify and pursue all possible sources of funding, including private insurance, for consumers receiving regional center services. (Welf. & Inst. Code, § 4659, subs. (a) & (c).)

4. Welfare and Institutions Code section 4659.1, subdivision (a), governs regional center funding of copayments if a service is paid for, in whole or in part, by the health care service plan or health insurance policy of the consumer's parent. The regional center may, when necessary to ensure that the consumer receives the service, pay any applicable copayment associated with the service for which the parent is responsible if all of the following conditions are met:

- (A) The consumer is covered by a parent's health care service plan or health insurance policy.
- (B) The family has an annual gross income that does not exceed 400 percent of the federal poverty level.
- (C) There is no other third party having liability for the cost of the service or support.

5. The party seeking government benefits or services bears the burden of proof. (*Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156.) The standard of proof in this case is the preponderance of the evidence because no law or statute, including the Lanterman Act, requires otherwise. (Evid. Code, § 115.)

6. In this case, there is no dispute that claimant should receive behavioral management services. Improvement in non-compliant behaviors is a stated goal in the Individual Program Plan prepared jointly by the Service Agency and claimant's parents. However, because funding for those services is available through private insurance, the Service Agency is required to pursue insurance coverage for claimant. Although the insurance copayments of \$500 per month will cause a financial strain on claimant's family, the Service Agency is not required to fund the copayments because the family has annual gross income exceeding \$97,000 or 400 percent of the current federal poverty level.

7. An exception under Welfare and Institutions Code section 4659.1, subdivision (c), allows regional center funding of insurance copayments in those cases in which a family has income exceeding 400 percent of the federal poverty level if the service is necessary to successfully maintain the child at home, and the parents or consumer demonstrate one or more of the following:

- (A) The existence of 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.
- (B) The existence of catastrophic loss that temporarily limits the parent's ability to pay and creates a direct economic impact on the family or adult consumer. For purposes of this paragraph, catastrophic loss may include, but is not limited to, natural disasters and accidents involving major injuries to an immediate family member.
- (C) Significant unreimbursed medical costs associated with the care of the consumer or another child who is also a regional center consumer.

8. The parents testified that claimant would need to be institutionalized without the behavioral services. That testimony is not credible. Claimant continued to live at home with the family during the gap in service starting February 9, 2014. Even if a longer-term absence of behavioral services could lead to a consideration of claimant leaving the family home, no evidence was presented to show an extraordinary event or catastrophic loss that impacted the parents' ability to pay the copayments. Claimant has suffered no serious illness or hospitalization within the past year and the amount of unreimbursed medical costs was insignificant. The heaviest burden on the household finances is the parents' decision to pay for their adult son's college education. That decision does not satisfy the Lanterman Act requirement of an extraordinary event that impacts the parents' ability to meet the care and supervision needs of claimant.

9. The preponderance of the evidence does not prove an entitlement to the requested benefits or show an abuse of the Service Agency's wide discretion in determining how to implement claimant's individual program plan.

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ORDER

Claimant's appeal is denied. The Service Agency is not required to fund insurance copayments for behavioral services provided to claimant and paid for by private insurance coverage.

DATED: April 29, 2015

/s/

MATTHEW GOLDSBY
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision. This decision binds both parties. Either party may appeal this decision to a court of competent jurisdiction within 90 days.