

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

and

EASTERN LOS ANGELES REGIONAL
CENTER,

Service Agency.

OAH No. 2015080538

DECISION

Matthew Goldsby, Administrative Law Judge with the Office of Administrative Hearings, heard this matter on November 2, 2015, at Whittier, California.

Margarita Duran, Fair Hearing Representative, appeared and represented the Eastern Los Angeles Regional Center (Service Agency).

Claimant's mother¹ appeared and represented claimant as his authorized representative. Claimant was not present at the hearing.

The record was closed and the matter was submitted for decision at the conclusion of the hearing.

ISSUE

The issues in this case are whether the Service Agency should fund for claimant's parents to attend a conference on the Masgutova Method and whether an exception applies to the prohibition against regional center funding for experimental treatment.

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

EVIDENCE CONSIDERED

Service Agency's Exhibits 1-14; claimant's Exhibits A-BB; testimony of claimant's mother and father.

FACTUAL FINDINGS

Procedural History

1. Claimant's parents requested the Service Agency to fund their attendance at an eight-day conference presented by the Svetlana Masgutova Educational Institute, beginning January 6, 2016, in San Diego, California. The conference is an intensive therapy conference about the Masgutova Method, described in more detail at Factual Finding 7. The fee for both parents to attend the program is \$9,450.

2. On June 29, 2015, the Service Agency issued a Notice of Proposed Action, denying the request of claimant's parents for funding to attend the conference. Claimant's mother submitted a timely Fair Hearing Request.

3. At the hearing, the Service Agency's representative contended that the request for funding was denied for three reasons. First, the methodology is an experimental therapy and Welfare and Institutions Code section 4648, subdivision (a)(16), prohibits funding for experimental treatment. Second, the conference is an educational service that claimant's school district should fund. Third, the program is not cost-effective.

4. The Service Agency has granted some prior requests from claimant's parents for funding to attend conferences on the Masgutova Method. On April 14, 2009, the Service Agency agreed to pay the sum of \$645 for expenses incurred in purchasing the training with Dr. Masgutova. On February 15, 2011, the Service Agency agreed to reimburse the parents the sum of \$4,250, one-half of the \$8,500 cost to attend a Masgutova conference. On September 23, 2011, the Service Agency agreed to pay the sum of \$2,000 for expenses incurred in training, specifically paying for "parent to attend Masgutova [*sic*] 2-day mini conference held on 8/12/11 – 08/13/11." (Ex. H.)

5. However, the Service Agency has denied similar requests for funding that were considered in fair hearings, as follows:

(A) On April 18, 2014, in OAH No. 2014020931, involving the same parties as in this hearing, Administrative Law Judge David Rosenman concluded that the Service Agency failed to "establish that the Masgutova Method is an educational service and, therefore, the primary responsibility of Claimant's school district." (Ex. 13, p. 5.) In addition, the administrative law judge concluded that "while the total cost of a clinic may be thousands of dollars, Claimant's mother's computations established that the cost per day is not substantially more than [the Service Agency's] claim of the average cost for parent training conferences." (Ex. 13, p. 6.) However, the administrative law judge affirmed the

denial of funding “based on the lack of scientific evidence of the efficacy of the Masgutova Method generally, and the lack of objective evidence that it is a necessary service for Claimant.” (Ex. 13, p. 6.)

(B) In two other cases, funding was denied on procedural grounds. On September 23, 2011, in OAH No. 2010061080, the administrative law judge denied the claimant’s request for reimbursement “without sufficient evidence of the actual cost of [the program], and without sufficient evidence that claimant paid for [the] training.” (Ex. H, p. 4.) On December 10, 2014, in OAH No. 2014091048, the administrative law judge denied funding because the doctrine of *res judicata* barred reconsideration of claimant’s appeal on the merits. (Ex. 14.)

6. At the hearing on this most recent appeal, claimant submitted 28 exhibits, including a DVD recording of the parents assisting claimant with the physical exercises they learned at prior conferences on the Masgutova Method. Claimant’s mother testified that the documentary evidence submitted at this hearing was the same as was submitted at the prior hearings described at Factual Finding 3. However, official notice is taken that the exhibit list filed in OAH No. 2014020931 identified only 15 exhibits that were presented by claimant. Accordingly, notwithstanding her testimony, claimant presented new and additional information at this hearing. Moreover, claimant now concedes that the Masgutova Method is experimental, but contends that the Service Agency should be required to fund the programming based on the facts and circumstances of claimant’s case.

Background Information

7. Claimant is a 16-year-old boy with autism, apraxia, and severe language disorder. Claimant is verbal and ambulatory, but requires assistance with all daily routines and tasks. Claimant is receiving regional center services from the Service Agency. Specifically, the Service Agency is funding respite care and DIR/Floortime services. According to his last Individual Program Plan (IPP) dated July 21, 2015, claimant is in the 11th grade in the Whittier Union High School District and is receiving services from the school district in speech and language and occupational therapy.

8. Claimant’s father testified that, in the past, claimant was “uncomfortable in his skin.” Claimant could not sit still and did not make eye contact with others. He had a history of running or fleeing, becoming “easily distracted and overly stimulated,” and “hitting his head with his fist when he becomes frustrated.” (Ex. 3, p. 10.)

9. The Masgutova Method is a treatment developed by Dr. Svetlana Masgutova, a clinician of Russian background and education. She received her Doctorate in Developmental and Educational Psychology in 1988 from the Scientific Research Institute of Russian Education Academy in Moscow. In summary, the Masgutova Method begins with an assessment of a child to ascertain whether certain motor reflexes are missing or have not fully developed. Dr. Masgutova designed exercises that train a child to experience and complete the development of these motor reflexes. From “thousands of assessments completed by Dr. Masgutova,” there are anecdotal reports of substantial reductions in

autism-related deficits. (Ex. E.) Conference materials describe the method in more particularity as “a set of programs focused on the restoration and maturation of primary movements, reflexes, coordination systems, skills for optimal performance of natural mechanisms, developmental processes, and sensory motor integration.” (Ex. A.)

10. The conferences provide training to parents, by lecture and often by hands-on work with their children. Course materials contain detailed instructions for in-home use, with step-by-step diagrams and photographs, on topics including sensory motor reflex integration, neuro-structural reflex integration, tactile integration, visual and auditory reflex integration, facial reflex integration, archetype integration, balance board exercises, and reflex integration. (Ex. X.)

11. The Masgutova Method has met the continuing education criteria of the American Occupational Therapy Association and the American Speech-Language-Hearing Association. (Ex. K.). April Dunneho, Donna B. Wexler, M.A., CCC-SLOP, physical therapist Diane Whiteside, and Magdalena Gorecka teach the Masgutova Method in their professional practices. The Brainchild Institute also offers the Masgutova Method as part of its therapeutic services.

Experimental Treatment

12. The Service Agency referred claimant’s case to Angela Espinoza Puopolo, a licensed occupational therapist who evaluated claimant in 2014 in relation to the prior requests for funding. In her report dated September 11, 2015, the therapist observed that the method is “primarily intended for use with children with neuromotor/muscular problems” and that the “limited amount of information found relating to autism appeared to be anecdotal and no research was cited to support the claims.” (Ex. 4.) The therapist consulted with eight practitioners with knowledge and experience in the treatment of autism and “they had no knowledge or experience with the Masgutova Method.” (*Ibid.*) She reviewed numerous articles about the method, which exhibited treatment of children with physical disabilities. She concluded that the method is “experimental and unknown to the Autism community and is not even referenced in known Autism Research Centers.” (*Ibid.*) As in her prior evaluations, the therapist advised the Service Agency that funding was unauthorized. (Ex. 5 and 6.)

13. The Service Agency also requested a staff psychologist to perform a clinical review of the Masgutova method. The psychologist acknowledged that “a comprehensive and detailed review would be outside the scope of my practice.” (Ex. 7.) The psychologist observed from a review of the Masgutova website that “the intervention involves methods that target motor reflex patterns and sensory processing system which is again, beyond the scope of my training and professional expertise.” (*Ibid.*) Based solely on the psychologist’s knowledge and experience in Evidence Based Practices, the doctor concluded that the Masgutova method was “not included in the literature as an Evidence Based Practice or emerging practice” and that the “method would not be clinically recommended as it is clearly

not shown to be an evidence based practice within the field related to treatment intervention for individuals with [autism].” (*Ibid.*)

14. The parents concede that the Masgutova Method is an experimental therapy, but they believe that the Service Agency should fund the programming based on the facts and circumstances of claimant’s case.

Facts and Circumstances

15. Claimant’s parents first discovered the method in 2009 when they attended an eight-day course. They have consistently applied the in-home techniques that they have learned. The parents have observed that claimant “has made great developmental strides” after applying the Masgutova Method. (Ex. I.) His mother observed that, by March 2015, claimant was “able to regulate his body, sit and participate in classroom activities, all which were extremely difficult for him before we started this home program.” (Ex. I.)

16. Claimant’s speech pathologist has also observed that “a significant factor which has contributed to [claimant’s] recent progress has been his participation in Masgutova therapy.” (Ex. B.) Because claimant has a history of “significant speech and language needs,” the pathologist considers it to be “of paramount importance that [claimant] receive the service he needs to make progress to build functional life skills and work towards independence.” (Ex. B.) Another speech pathologist also opined that “continued funding of the Masgutova [*sic*] Intervention is necessary for [claimant’s] developmental growth potential to be realized.” (*Ibid.*)

17. Andrea David, Ph.D., as the Program Director with Greenhouse Therapy Center, evaluated claimant to determine claimant’s ongoing needs for continuing DIR/Floortime services. In her report, she observed “great improvements as a result of newer intervention added to his program,” specifically referring to the Masgutova Method. (Ex. B.)

18. At the hearing, the parents presented a DVD recording that depicted claimant calmly participating in physical exercises with his parents, allowing them to manipulate and activate various limbs and muscles. He was able to perform resistance exercises with his hands. Claimant was able to balance on a board while throwing and catching a beach ball. He made eye contact and smiled while engaging in the exercises. Claimant’s parents testified that claimant was unable to perform any of these tasks before they started using the Masgutova Method.

19. Claimant’s mother presented evidence to show that the San Gabriel/Pomona Regional Center authorized the mother to act as an approved vendor at the maximum rate of \$4,000 per month. The child had a diagnosis of mild to moderate autism. To address his deficits in language and social skills, the family participated in a specialized parent-coordinated intensive behavior intervention program developed by the Autism Treatment Center of America. Claimant’s mother testified that the program was experimental therapy. The mother implemented the intervention to help the child meet his IPP goals. As a result of

the intervention, the child made “progress in the areas of communication, eye-contact, attention span, and flexibility.” (Ex. D.)

20. The parents have sought other resources to fund the programs. They qualified for a \$6,000 scholarship towards the cost to attend a conference in January 2010. They have sent letters to local businesses, including Longo Lexus, Puente Hills Hyundai, Honda Norwalk, and Long Beach Hyundai, to request sponsorship of their participation at the conferences; to date, none of the businesses have offered to sponsor claimant’s parents. They have sought funding through the school district, but the school district declined the request because it is providing occupational therapy.

21. The effective hourly rate for each parent to attend is \$88, which will include six program sessions each day, lectures by Dr. Masgutova each evening, and six instructional DVDs for home study.

LEGAL CONCLUSIONS

1. The burden of proof is on claimant as a party seeking to establish an entitlement to government benefits or services. (*Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156.) The standard of proof requires proof by a preponderance of the evidence. (Evid. Code, § 115.)

2. It is the intent of the Legislature to ensure that the provision of services to consumers and their families 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. (Welf. & Inst. Code, § 4646, subd. (a).)

3. 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).)

4. Notwithstanding any other law or regulation, effective July 1, 2009, regional centers shall not purchase experimental treatments, therapeutic services, or devices that have not been clinically determined or scientifically proven to be effective or safe or for which risks and complications are unknown. (Welf. & Inst. Code, § 4648, subd. (a)(16).)

5. Other services and supports may be provided as set forth in sections 4685, 4686, 4687, 4688, and 4689, when necessary. (Welf. & Inst. Code, § 4648, subd. (a)(15).)

6. In this case, during claimant’s treatment using the Masgutova Method, he has exhibited signs of progress. However, the evidence shows and claimant concedes that the program is an experimental therapy. Accordingly, the law prohibits the Service Agency from funding claimant’s participation. Because Welfare and Institutions Code section 4648, subdivision (a)(16), expressly applies “notwithstanding any other law or regulation,” there is no case-by-case exception. Accordingly, although Welfare and Institutions Code section

4648, subdivision (a)(15), authorizes funding for “other services and supports . . . when necessary,” the applicable statute supersedes the alternative authority.

7. The evidence that, in an unrelated matter, the San Gabriel/Pomona Regional Center authorized the mother of an autistic consumer to act as an approved vendor at the rate of \$4,000 per month does not compel the Service Agency to do so in this case. The matter did not involve the Masgutova Method and the testimony of claimant’s mother alone is insufficient to show that the specialized parent-coordinated intensive behavior intervention program authorized in the unrelated matter was experimental therapy.

8. Based on the evidence on this record, the Masgutova Method was not shown to be an educational service for claimant and, therefore, not the primary responsibility of claimant’s school district. In addition, the cost per day is not excessive for parent training that the Lanterman Act would otherwise authorize. Nonetheless, until the Masgutova Method can be clinically determined or scientifically proven to be effective or safe, the Service Agency has no authority under the law to fund the service, notwithstanding the apparent benefit the claimant derives or the past purchase reimbursements made by the Service Agency.

ORDER

Claimant’s appeal is denied. The Service Agency’s decision to deny funding for the Masgutova Method is affirmed.

DATED: November 16, 2015

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.