

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

W.C.,

Petitioner,

v.

FRANK D. LANTERMAN
REGIONAL CENTER,

Respondent.

OAH Case No. 2011120369

[California Early Intervention Services Act,
Government Code section 95000 et seq.]

DECISION

Daniel Juárez, Administrative Law Judge, Office of Administrative Hearings, heard this matter on December 28, 2011, in Los Angeles, California.

W.C. (Petitioner) was represented by his mother.¹

Waterson & Huth, and Pat Huth represented the Frank D. Lanterman Regional Center (Respondent).

The parties submitted the matter for decision on December 28, 2011.

STATEMENT OF THE CASE

Respondent seeks to terminate its funding of occupational therapy (OT) for Petitioner. Respondent contends, in accordance with the law, Petitioner must pursue OT funding from Petitioner's health insurance.

Petitioner contends he has done all he can to pursue such funding from his health insurance to no avail and, therefore, Respondent should continue to fund OT.

¹ Initials are used to identify Petitioner and family title is used to identify Petitioner's representative to preserve Petitioner's privacy.

FACTUAL FINDINGS

1. Respondent served its Notice of Proposed Action on Petitioner on November 15, 2011. Petitioner filed a request for hearing on December 7, 2011.
2. Petitioner is a one-year-old boy with Down syndrome and hypotonia.
3. The parties do not dispute that Petitioner needs OT.
4. Respondent has documented Petitioner's need for OT in his Individualized Family Service Plan (IFSP), dated May 31, 2011; the semi-annual IFSP periodic review, dated November 22, 2011; the IFSP, dated May 18, 2010; and the IFSP periodic reviews, dated July 15, 2010, and November 30, 2010.
5. Respondent initially agreed to fund Petitioner's OT (in approximately May 2010) to ensure he received OT services while Petitioner's mother sought funding from his health insurance. In accordance with changes in the applicable law, effective July 2009, OT funding is to be sought from a person's health insurance. (See Legal Conclusions 2 and 3.)
6. Petitioner's health insurance is Medi-Cal. He also receives California Children's Services (CCS).
7. At each IFSP and periodic review, Respondent (via Petitioner's Service Coordinator) discussed and explained to Petitioner's mother that Respondent agreed to fund OT solely while Petitioner's family secured OT funding from his health insurance. At each of these meetings, Respondent explained the change in the law that required Petitioner to seek OT funding from his health insurance and provided Petitioner's mother with the information necessary to seek OT funding from either CCS or Medi-Cal. Respondent had discussions by telephone regarding the same with Petitioner's mother on December 6, 2010, January 12, March 7, April 14, April 21, and December 5, 2011.
8. Respondent agreed to extend its funding of Petitioner's OT at each IFSP and IFSP periodic review based on Petitioner's mother's assertions that she would pursue and obtain OT funding from Medi-Cal or CCS.
9. Throughout its case management of Petitioner, Respondent has ensured that Petitioner's mother has had copies of Petitioner's OT progress reports, IFSPs and IFSP periodic reviews at each IFSP and IFSP periodic review meeting. These documents contain the clinical evidence of Petitioner's need for OT. Respondent has also spoken directly with CCS personnel regarding Petitioner's OT needs and the documentation CCS requires to fund OT.

10. From May 18, 2010, through at least December 5, 2011, on each date noted in Factual Findings 4 and 7, Respondent provided Petitioner's mother with the necessary documents and/or information with which to pursue and secure OT from Medi-Cal or CCS.

11. Petitioner's mother has not secured OT funding from Medi-Cal or CCS. In December 2011, CCS informed Petitioner that it was unable to determine his medical eligible condition for OT based on insufficient documentation. Thereafter, Petitioner's Service Coordinator responded to CCS with documentation of Petitioner's need for OT. The parties currently await a response from CCS. There was no evidence of whether Medi-Cal has made any determination regarding Petitioner's eligibility for OT funding.

12. Petitioner's mother provided no evidence that she has pursued OT funding from Medi-Cal.

13. Petitioner's mother agrees OT has been very useful and effective for Petitioner and she wants the service to continue. She does not believe Respondent has given her the information that Medi-Cal and CCS require to fund OT. She disputed Respondent's assertion that Petitioner's Service Coordinator has provided her with the necessary documents. Petitioner's mother was not credible. The evidence established that Respondent has indeed provided her the necessary documentation on numerous occasions.

LEGAL CONCLUSIONS

1. Respondent bore the burden of proof by a preponderance of the evidence. (Evid. Code, §§ 115, 500.)

2. Government Code section 95004, subdivision (b)(1) states in part, "[n]otwithstanding any other law or regulation to the contrary, a family's private insurance for medical services or a health care service plan identified in the individualized family service plan, other than for evaluation and assessment, shall be used in compliance with applicable federal and state law and regulation."

3. Respondent has funded OT for Petitioner for well over one year, with the expectation that Petitioner's mother would pursue funding from Medi-Cal or CCS. The law does not require Respondent to fund OT where health insurance is available. (Gov. Code, § 95004, subd. (b)(1).) Petitioner has Medi-Cal and Medi-Cal may appropriately fund OT. (*Ibid.*) Respondent has provided Petitioner's mother with the necessary documentation and information to pursue and obtain OT funding from Medi-Cal and/or CCS. Petitioner's mother has failed to do so. Respondent is under no obligation to continue to fund OT under these circumstances. There is no basis to grant Petitioner's appeal.

4. Cause exists to deny Petitioner's appeal, pursuant to Government Code section 95004, subdivision (b)(1), as set forth in Factual Findings 1-13, and Legal Conclusions 1-3.²

ORDER

Petitioner's appeal is denied.

Dated: January 11, 2012

DANIEL JUAREZ
Administrative Law Judge
Office of Administrative Hearings

² To continue to address Petitioner's OT needs, it is hoped that Petitioner's mother immediately seeks coverage from Medi-Cal and that Respondent continues to make itself available to assist her in providing to Medi-Cal the documentation and information Medi-Cal requires to fund OT for Petitioner.